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**ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION**

Volume 73

Held: June 2, 1988, in the World Trade and Convention
Center, 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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MR. CHAIRMAN

Associate Chief Justice Poitras will not be with us today, he has some significant duties to perform in his court in Quebec. So we will carry on as best we can. Miss Derrick.

MS. DERRICK

Thank you, My Lord.

SUPERINTENDENT A. E. VAUGHAN, recalled and previously sworn, testified as follows:

EXAMINATION BY MS. DERRICK

Q. Superintendent Vaughan, when we left off yesterday we were just referring you to Volume 34 at page 52, which is Mr. Marshall's Dorchester statement.

A. Yes.

Q. Because you had rec...we were relating this to the police in 1971 suspecting Mr. Marshall and I think you were making a comment with respect to Mr. Marshall's juvenile behavior, providing them with some grounds to suspect him of Mr. Seale's murder. That...are we on track together?

A. I believe.

Q. And you will note that in Volume 34 at page 52 of Mr. Marshall's statement there are references by Mr. Marshall to being questioned a lot by John MacIntyre for things like knocking over gravestones, dynamite caps and was kicked out of Wentworth Park, although there's no reference to

1 when these things happened or how often. Now what I'd
2 suggest to you is that what's described here is pretty typical
3 kid stuff.

4 A. Not in my view it isn't.

5 Q. Is that right? You think that that would give a police officer
6 a good basis for suspecting someone of murder?

7 A. Well, that good basis for suspecting murder is a difficult
8 question. A lot of murders are committed by people who
9 have no record at all. But certainly that's anti-social
10 behaviour that Mr. MacIntyre seems to have...seems to have
11 been confronted with on a number of occasions on the part
12 of Mr. Marshall.

13 Q. And you don't think that it's quite a leap from that kind of
14 behaviour to suspecting Mr. Marshall of murdering Sandy
15 Seale?

16 A. Well, we're talking also, not only of being in the graveyard
17 and knocking over tombstones and dynamite caps. But
18 we're also talking about what policemen, at least, consider
19 fairly serious crime in terms of robbing people in the park.
20 That's normally considered, in our view, a violent crime.

21 Q. But I thought that that was part of the problem here that
22 you've taken the view that Mr. Marshall didn't disclose that
23 at the time...

24 A. Yes.

25 Q. ...which would have made him less likely to be a suspect if

- 1 he had, I think that's basically what you say in your letter.
- 2 A. No, my position really is that when we were discussing this
3 yesterday that that type of activity would be consistent
4 with...robbery would be something that would be consistent
5 with what Mr. MacIntyre would be used to dealing with
6 with Mr. Marshall.
- 7 Q. I think I'm not following you because I understood
8 yesterday that it was the nondisclosure of this robbery that
9 you say...
- 10 A. Put it this way. If Mr. Marshall had disclosed that robbery
11 that would be more consistent with Mr. MacIntyre's
12 association with Mr. Marshall than encountering a man who
13 just chanced...a chance encounter with somebody who
14 resembles a priest in the park and somebody winds up
15 dead.
- 16 Q. Although Mr. MacIntyre never dealt with Mr. Marshall in
17 terms of a robbery. There is no evidence of that...
- 18 A. No, no.
- 19 Q. ...at all.
- 20 A. I realize that.
- 21 Q. Right.
- 22 A. But what I'm saying is had he disclosed that information it
23 would be more consistent with the behaviour of Mr.
24 Marshall.
- 25 Q. So that's the same...

- 1 A. In Mr. MacIntyre's mind.
- 2 Q. ...thing as say...sorry, I didn't mean to interrupt.
- 3 A. In Mr. MacIntyre's mind.
- 4 Q. So that's the same thing as saying Mr. Marshall isn't really
5 believable unless he's up to no good.
- 6 A. No, I'm saying it's more consistent with what Mr. MacIntyre
7 was dealing with in terms of Mr. Marshall.
- 8 Q. Even though Mr. Marshall was never charged and never
9 convicted for any violent offences prior to this one.
- 10 A. Yes. Mr. Marshall did not disclose the fact that he was in the
11 park for the purpose of robbing anybody. However, Mr.
12 MacIntyre had dealt with him on a number of occasions in a
13 criminal activity way and had he disclosed that to him it
14 may have seemed more credible to him the story, than the
15 story that was presented.
- 16 Q. And it isn't your experience as a police officer that the
17 disclosure of a violent crime, a violent offence like robbery,
18 during the course of which a killing occurs would make a
19 person more likely to be suspected of the murder rather
20 than less likely.
- 21 A. Not necessarily.
- 22 Q. In fact, in May of 1971, there was no evidence of any
23 animosity between Mr. Marshall and Mr. Seale.
- 24 A. Not that I'm aware of from the reports.
- 25 Q. And there was no evidence of Mr. Marshall being a violent

1 person.

2 A. No evidence of...

3 Q. Mr. Marshall being a violent person.

4 A. Well, in my view, robbing people is a violent crime.

5 Q. But there was no evidence of that in May of 1971.

6 MR. BAILEY

7 Excuse me, My Lords, I'd just like to remind everyone that
8 my ...Superintendent Vaughan was not even in the division in
9 1971. Superintendent Vaughan didn't come to the division until
10 1985. I just wonder since you've already heard the evidence of
11 the persons who were directly involved in that activity whether
12 there is much to be gained, if anything, from a questioning of
13 my...of Superintendent Vaughan on these lines.

14 MR. CHAIRMAN

15 None to be gained. The only involvement, as I understand
16 it, of Superintendent Vaughan is when he, at the request or as a
17 result of a memorandum from Staff Sergeant Wheaton, reviewed
18 the file and reached certain conclusions. We have the advantage
19 of having heard the evidence of most or certainly some of the
20 witnesses who are referred to in the file. So we would have
21 Superintendent Vaughan at a distinct disadvantage. He only
22 having the...what's written there.

23 MR. BAILEY

24 I certainly think that it's germane as to the basis for his
25 conclusions and...

1 MR. CHAIRMAN

2 That's right, and he's explained this but...

3 MR. BAILEY

4 ...so on, but as to whether or not there was evidence or not I
5 don't know that my client is able to answer those kinds of
6 questions.

7 MR. CHAIRMAN

8 I'm not disagreeing with you.

9 MS. DERRICK

10 My Lord, I...perhaps I can clarify this. I'm certainly asking
11 Superintendent Vaughan with respect to what evidence he saw
12 upon his review of the file.

13 MR. CHAIRMAN

14 He's told us.

15 MS. DERRICK

16 I...and I think that it is germane with respect to him then
17 drawing the conclusions that he has and that's why I was
18 pursuing that line of questioning.

19 MR. CHAIRMAN

20 But it's...you know.

21 MS. DERRICK

22 He has said MacIntyre and his investigators certainly had
23 grounds to suspect Marshall.

24 MR. CHAIRMAN

25 Right. When you read the statement of Donald Marshall,

1 I've forgotten the page now.

2 MS. DERRICK

3 52.

4 MR. CHAIRMAN

5 Page 52, which points out the danger of placing too much
6 emphasis on what...on what people read many years later. You
7 started by saying, "I was picked up by the Sydney police on
8 several occasions. I was questioned." But there were two other
9 sentences proceeding that which read,

10 I guess you would say (this is Donald Marshall)
11 I was a bad young boy. I drank a lot and
12 generally hung around. I was picked up by the
13 Sydney police, city police on several occasions. I
14 was questioned by John MacIntyre for things
15 like knocking over gravestones, dynamite caps
16 and was kicked out of Wentworth Park.
17 MacIntyre didn't like me as I wouldn't talk or
18 confess of these crimes.

19 But by taking bits and pieces out of it it conveys the wrong
20 impression, and if we're going to cross-examine Superintendent
21 Vaughan as to how he could conceivably arrive at the conclusion
22 that he did based on his knowledge that he gleaned from the file
23 then surely the whole paragraph should be read into the record,
24 shouldn't it?

25 MS. DERRICK

Well, My Lord, respectfully I don't believe that changes
anything. That's certainly a matter for argument.

1 MR. CHAIRMAN

2 That's right.

3 MS. DERRICK

4 On this...

5 MR. CHAIRMAN

6 And that's...

7 MS. DERRICK

8 ...point, but I...I...and I believe I have my answers, wanted to
9 draw out the fact from Superintendent Vaughan that upon his
10 review of the file there was no evidence disclosed that there was
11 animosity between the parties or that Mr. Marshall was a violent
12 person and that statement doesn't disclose those things either.

13 MR. CHAIRMAN

14 Well, again, as you say, that's a matter for argument.

15 MS. DERRICK

16 Q. Superintendent Vaughan, in your review of the materials in
17 preparation of this letter, did you have occasion to review Al
18 Marshall's 1971 reinvestigation report?

19 A. Yes, I read his report.

20 Q. So that was part of the entire...

21 A. Yes.

22 Q. ...materials that you looked at. In your letter at page...I'm
23 looking at page 74, this is Volume 20.

24 A. Yes.

25 Q. Are you acknowledging in that final paragraph where you

1 say,

2 There's one other point to be considered in the
3 overall analysis of MacIntyre's actions in the
4 investigation of the Seale murder. MacIntyre's
5 position would undoubtedly be that although his
6 methods of interrogation may have been
7 somewhat irregular or forceful they were
8 intended to elicit truthful statements from the
9 three witnesses referred to earlier.

10 Then you say, "Furthermore, that the three witnesses
11 incorrectly misconstrued the intent of his methods to be
12 threatening or coercive leading them to provide false
13 information."

14 A. Yes.

15 Q. Are you, in effect, saying there that on the evidence you had
16 before you you determined that the actions of Mr.
17 MacIntyre were subjectively viewed as threatening or
18 coercive, but you're saying that this was misunderstood or
19 misconstrued by Chant, Pratico and Harriss?

20 A. What I'm saying there is that Mr. MacIntyre may have used
21 forceful tactics but that he believed that Marshall was guilty
22 of the offence. He was attempting to elicit the truth from
23 them and that in the statements that the witnesses provided
24 they have taken the approach that Mr. MacIntyre used as to
25 suggest that he had counseled them to perjure themselves.

Q. So you're effectively giving Mr. MacIntyre the benefit of the
doubt. You're saying that he didn't intend to be threatening,

1 they merely took it that way.

2 A. On the basis of my review of the file I did not see what is
3 alleged to be criminal activity on the part of Mr. MacIntyre.
4 I read overzealousness, I read retaining or detaining
5 witnesses for a long period of time, I read allegations of
6 desk pounding and using a loud voice. But I didn't read
7 anything in there of...that would connote criminal activity.

8 Q. And are you saying, in effect, that you believe the witnesses
9 lied because of an error on their part?

10 A. I believe they incorrectly interpreted Mr. MacIntyre's
11 actions.

12 Q. So they took it wrong what was going on, that's what you're
13 saying.

14 A. Oh, absolutely.

15 Q. Would it not be fair to say that if a witness feels threatened
16 by a police officer then the police officer must be being
17 threatening, it's a subjective thing?

18 A. Well, he could very well have been intimidating.

19 Q. I'd suggest to you that it's not proper that a police officer be
20 intimidating.

21 A. It's not an accepted practise, no.

22 Q. It's not a proper practise.

23 A. No.

24 Q. You said in your direct evidence that...yesterday, that
25 perhaps Mr. Chant lied because of "powers of suggestion by

1 the police", I think those were your words. Am I not right
2 in saying that it's not proper for the police to suggest things
3 to witnesses that aren't true?

4 A. It's a tactic that's used. It may not be...it may not be
5 according to Hoyle, but it's a tactic that's used. It may not
6 be accepted in courts if a person happens to be an accused,
7 but there are many tactics that are used by police.

8 Q. It's not a proper tactic though, is it?

9 A. Well, it's a tactic that's used, I guess you could say that it's
10 not proper in that sense.

11 Q. Well, you don't approve of it as a tactic.

12 A. Not necessarily, no.

13 Q. Effectively in your preparation of your opinions here you
14 dismissed Superintendent Bentley, Barlow and Staff
15 Sergeant Wheaton.

16 A. Yes.

17 Q. And their criticisms of the police.

18 A. Yes. I didn't necessarily dismiss aggressive tactics, if that's
19 what you're talking about. I dismissed their notion that I
20 should launch an investigation into criminal activity.

21 Q. If the allegations of the witnesses have included physical
22 brutality by the police would you have felt there should be
23 an investigation then?

24 A. Physical brutality?

25 Q. Yes.

SUPT. VAUGHAN, EXAM. BY MS. DERRICK

1 A. Oh, well, physical brutality is an offence.

2 Q. So you would have felt there should be an investigation if
3 the allegations had amounted to that.

4 A. Into that particular offence, but not necessarily counseling
5 perjury, but I mean we'd have to see what the
6 circumstances would be.

7 COMMISSIONER EVANS

8 Are we talking about hypothetical situations or are we
9 dealing with actual situations?

10 MS. DERRICK

11 No, I was asking...

12 COMMISSIONER EVANS

13 There's no, absolutely no suggestion that any physical
14 violence...

15 MS. DERRICK

16 No.

17 COMMISSIONER EVANS

18 ...was ever used.

19 MS. DERRICK

20 And I certainly wasn't suggesting in this case that there was.

21 COMMISSIONER EVANS

22 Well, what's the point then in discussing it?

23 MS. DERRICK

24 I guess the point in why I put it to Superintendent Vaughan
25 is to determine at what point he would feel that there ought to be

1 an investigation.

2 A. Well, I've...I've testified yesterday that there would have to
3 be some proof of facts that would lead objectively to the
4 inference that Mr. MacInyre wilfully counseled these
5 people to tell an untruth.

6 Q. To your knowledge there has never been an internal review
7 by the Sydney Police force with respect to these matters.

8 A. Well, I have no knowledge of that, no.

9 Q. So if there were improper tactics being used in 1971 they
10 could have still been going on in 1986 for all you would
11 know?

12 COMMISSIONER EVANS

13 Well, how is this witness going to answer that? He has told
14 you he knows nothing about the internal operations of the Sydney
15 Police force.

16 MS. DERRICK

17 Thank you, My Lord.

18 COMMISSIONER EVANS

19 I think you're way off line on this type of questioning and
20 it's not helping us any. What we're trying to find out is what
21 happened and getting evidence from people who know what
22 happened. This man knows nothing about that.

23 MS. DERRICK

24 Thank you, My Lord.

25 Q. In Volume 34, Superintendent Vaughan, at page 89. This, I

1 believe, is a report by Staff Sergeant Wheaton in May of
2 1982 and it is the report in which the reference is made to
3 Mr. Edwards advising Staff Sergeant Wheaton of Gordon Gale
4 saying that the interviews with respect to MacIntyre and
5 Urquhart should be held in abeyance for the present. And
6 then at the very end of the report he says, Staff Sergeant
7 Wheaton says, "This file will be held open pending further
8 instructions as well as new areas of investigation which may
9 come to light." From whom would those instructions come?
10 Who would provide those instructions, the further
11 instructions that are referred to?

12 A. I can't answer you that question.

13 Q. So you don't know what he would be referring when he says
14 that, whether he means furthers instructions from the RCMP
15 or further instructions from the Attorney General's
16 Department.

17 A. There was a report, and I'm not sure of the date, that went
18 in after suggesting that our investigation into the Seale-
19 Marshall matter had been completed, and we could proceed
20 with whatever. I don't know whether that comes before or
21 after. So I'm uncertain and I can't answer your question. If,
22 in fact, the Seale murder investigation by Mr. Scott and Mr.
23 Wheaton had been completed then I would suggest that an
24 investigation into practises and procedures used by the city
25 police, that instruction would have to come from the

SUPT. VAUGHAN, EXAM. BY MS. DERRICK

1 Attorney General's Department. But I don't know what he's
2 alluding to there. He could be alluding to further
3 investigation with respect to the Seale murder that he was
4 involved in legitimately, but other than that I can't respond.

5 Q. If my recollection is correct, I think the reference to the
6 investigation being complete, in fact, predated this.

7 MR. CHAIRMAN

8 Paragraph 4, I think.

9 MS. DERRICK

10 Yes, thank you, My Lord.

11 Q. In paragraph 4, page 88, "In regards to the Ebsary-Marshall
12 portions of this file all avenues of investigation known to
13 date have been completed."

14 A. Yes.

15 MR. CHAIRMAN

16 Staff Sergeant Wheaton's report of 1982 we're looking at.

17 MS. DERRICK

18 It's paragraph 4.

19 MR. CHAIRMAN

20 Yes.

21 SUPT. VAUGHAN

22 A. Well, I would...I can make the assumption that the...he's
23 waiting for Mr. Gale to offer this...the direction that they
24 proceed with the interview of, in Mr. Wheaton's mind, of Mr.
25 MacIntyre and Mr. Urquhart.

1 Q. Thank you. Superintendent, just a few other questions. If
2 you turn to page 100 of Volume 20, Volume 20 is the
3 volume that has your letter in it. Page 100 is Mr. Coles'
4 response to your letter.

5 A. Yes.

6 Q. Is that what you expected in terms of a response?

7 A. Well, when I wrote it over, as I testified yesterday, if in fact
8 they had any advice to offer with respect to my
9 interpretation of the evidence then I would expect them to
10 respond to that, giving me some advice. This letter says, in
11 fact, they agree with that.

12 9:54 a.m.

13 A. Cont'd.

14 So if you're asking me whether I anticipated the Attorney
15 General's Department to come back and say, "Lay a charge," or
16 "Don't lay a charge," or "You've got evidence," or "You haven't,"
17 I had no anticipation in that respect. I had drawn my
18 conclusions on it and any advice that they may wish to offer
19 to me. If was a misinterpretation and I've had another look
20 at it.

21 Q. And did you expect this advice to take the form of being legal
22 advice, like a legal opinion?

23 A. Yes.

24 Q. With respect to the issue of...

25 A. With respect to the strength of the evidence.

1 Q. With respect to counselling, the offence of counselling
2 perjury?

3 A. That's right. But as I say, I didn't have any particular
4 anticipation. That was my conclusion. If they had something
5 to offer, they would have offered it.

6 MS. DERRICK

7 Thank you, Superintendent Vaughan.

8 MR. CHAIRMAN

9 Mr. Pugsley?

10
11 EXAMINATION BY MR. PUGSLEY

12
13 Q. Superintendent Vaughan, my name is Ron Pugsley and I'm
14 acting for John MacIntyre.

15 A. Yes, sir.

16 Q. Yesterday, His Lordship, Mr. Justice Evans, addressed some
17 questions to you about Staff Wheaton coming too early to the
18 decision that Marshall was innocent. Do you recall those
19 questions?

20 A. Yes, I do.

21 Q. And it's my recollection of the evidence and of what His
22 Lordship said that it was on February the 16th that Wheaton
23 came to the conclusion that Marshall was innocent at a time
24 when he had interviewed only and taken statements from
25 only three people; namely, Sarson and Chant and Jimmy

Re: - 2

Margaret E. Graham Discovery Service

298 PORTLAND STREET, DARTMOUTH, N.S. B2Y 1K4

PHONE: 469-5734

To: All Solicitors

From: Margaret E. Graham

Date: June 6, 1988

Re: Daily Transcripts.

Errata

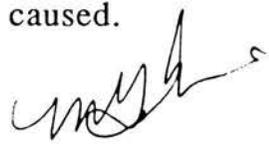
Volume 72, Page 12882, Line 25 should have added:

"was submitted, that were submitted by Staff Sergeant Wheaton and, in particular, his 1983 summation." Insert corrected page as attached.

Volume 73, Pages 12966 to 12978 should have:

SUPT. VAUGHAN, EXAM. BY MR. PUGSLEY as a header, instead of exam. by Ms. Derrick.

I apologize for any inconvenience this may have caused.



M. Graham

1 A. Yes.

2 Q. He had not yet interviewed Patricia Harriss and he had not
3 yet interviewed John Pratico. Now do you agree with the
4 suggestion that that was too early in the investigation to come
5 to the conclusion that Marshall was innocent?

6 A. He may have concluded that, but he continued his
7 investigation. I don't believe that it's premature to arrive at
8 certain conclusions, as long as you don't leave it at that
9 without furthering your investigation.

10 Q. Quite so. As long as you don't fall victim to tunnel vision, as
11 has been, as the term has been described.

12 A. That's correct.

13 Q. And you've indicated that you did not feel that Sergeant
14 Wheaton fell victim to tunnel vision because he kept an open
15 mind in the balance of the investigation with respect to the
16 innocence or guilt of Donald Marshall, Jr.

17 A. The reports would indicate that.

18 Q. Yes.

19 A. Yes, sir.

20 Q. Assuming that he did not fall victim to tunnel vision in that
21 regard; that is, with respect to whether or not Donald
22 Marshall, Jr. was innocent or not, I want to suggest to you that
23 he did fall victim to tunnel vision with respect to John
24 MacIntyre and his involvement vis-à-vis pressuring Chant
25 and Pratico.

1 MacNeil.

2 A. Yes.

3 Q. He had not yet interviewed Patricia Harriss and he had not
4 yet interviewed John Pratico. Now do you agree with the
5 suggestion that that was too early in the investigation to come
6 to the conclusion that Marshall was innocent?

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22 regard; that is, with respect to whether or not Donald
23 Marshall, Jr. was innocent or not, I want to suggest to you that
24 he did fall victim to tunnel vision with respect to John
25 MacIntyre and his involvement vis-à-vis pressuring Chant

1 and Pratico.

2 A. I would have to... It would be conjecture on my part to
3 answer this question.

4 Q. Yes.

5 A. But I will answer it, if you wish. I don't believe, and as I say,
6 it's simply an opinion of mine, I don't believe that at that
7 particular point in time Mr. Wheaton or others (otherwise it
8 would have wound up in the reports) believed Mr. MacIntyre
9 had committed a criminal offence. I believe that people,
10 policemen, and I don't think that they're in isolation, live with
11 certain situations for a long period of time and become
12 emotionally involved in them and they may very well arrive
13 at conclusions after a period of time that certain things were
14 wrong.

15 Q. Conclusions that might be either right or wrong.

16 A. That's correct.

17 Q. When do you feel that Wheaton came to the conclusion that
18 MacIntyre had been guilty of some criminal offence?

19 A. I don't know. I don't believe, as I say, it was at that
20 particular time, for a number of reasons which I've stated,
21 such as the pertinence of the, or the relevance of the
22 document that it was allegedly placed under the table.
23 There's absolutely no mention of counselling perjury or any of
24 those types of tactics, overt acts, anything else in any of the
25 correspondence that I've read.

1 A. I would have to... It would be conjecture on my part to
2 answer this question.

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5 it's simply an opinion of mine, I don't believe that at that
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21 document that it was allegedly placed under the table.
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23 those types of tactics, overt acts, anything else in any of the
24 correspondence that I've read.

25 Q. That, of course, goes to the issue of whether or not, in fact,

1 that incident occurred at all.

2 A. That's correct.

3 Q. Certainly there's nothing in his report of May, 1983, a year
4 after, as I recall it, that takes this hard line about counselling
5 perjury. It's not until the 1986 report that he's that adamant.

6 A. That's right, sir.

7 Q. Yes.

8 A. In the reports. I don't know what has been discussed
9 verbally. I have no knowledge of that.

10 Q. Well, certainly on an examination of the reports, I believe it's
11 May of 1983 and again May of 1986, there appears to be a
12 sharp turn.

13 I do, however, want to go back to the question of
14 tunnel vision as far as MacIntyre is concerned and suggest to
15 you that he was guilty of tunnel vision and that having come
16 to the conclusion that Marshall was innocent, as he did on or
17 about the 16th of February, it was necessary for him to come
18 to the conclusion that Chant and Pratico had lied when they
19 gave evidence at trial. That, I take it, necessarily follows.

20 A. You're talking about Mr. MacIntyre and tunnel vision?

21 Q. I'm sorry, Wheaton. Wheaton having come to the conclusion
22 that Marshall was innocent, having come to that conclusion on
23 or about the 16th of February, 1982, Staff Wheaton
24 necessarily had to come to the conclusion that Chant and
25 Pratico had lied when they gave evidence.

1 Q That, of course, goes to the issue of whether or not, in fact,
2 that incident occurred at all.

3 A. That's correct.

4 Q Certainly there's nothing in his report of May, 1983, a year
5 after, as I recall it, that takes this hard line about counselling
6 perjury. It's not until the 1986 report that he's that adamant.

7 A. That's right, sir.

8 Q Yes.

9 A. In the reports. I don't know what has been discussed
10 verbally. I have no knowledge of that.

11 Q Well, certainly on an examination of the reports, I believe it's
12 May of 1983 and again May of 1986, there appears to be a
13 sharp turn.

14 I do, however, want to go back to the question of
15 tunnel vision as far as MacIntyre is concerned and suggest to
16 you that he was guilty of tunnel vision and that having come
17 to the conclusion that Marshall was innocent, as he did on or
18 about the 16th of February, it was necessary for him to come
19 to the conclusion that Chant and Pratico had lied when they
20 gave evidence at trial. That, I take it, necessarily follows.

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23 that Marshall was innocent, having come to that conclusion on
24 or about the 16th of February, 1982, Staff Wheaton
25 necessarily had to come to the conclusion that Chant and

1 A. That's correct.

2 Q. And that is correct and then he was then required, I suggest,
3 to make a determination as to why they had lied.

4 A. That's right.

5 Q. And he came to the conclusion or the determination that they
6 had lied because of improper pressure on the part of
7 MacIntyre?

8 A. That's correct.

9 Q. Yes, all right. Now do you agree that his investigation into the
10 circumstances surrounding whether or not Chant and Pratico
11 had lied would necessarily involve talking to those people
12 who were present when Chant and Pratico were interviewed?

13 A. His investigation, I believe, did include the interview of
14 people like Mr. Magee and Mrs. Chant. I believe that's
15 correct, yes.

16 Q. It did not, however, include interviewing John MacIntyre?

17 A. No, it did not.

18 Q. And it did not include interviewing William Urquhart?

19 A. No, it did not.

20 Q. And one would have thought that those were two rather
21 essential persons that one would want to interview in order
22 to assess the reliability of the statements made by Chant and
23 Pratico they were improperly pressured?

24 A. That would be a logical assumption if, in fact, the
25 investigators at the time believed that to be a relevant issue,

1 Pratico had lied when they gave evidence.

2 A. That's correct.

3 Q. And that is correct and then he was then required, I suggest,
4 to make a determination as to why they had lied.

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7 had lied because of improper pressure on the part of
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22 essential persons that one would want to interview in order
23 to assess the reliability of the statements made by Chant and
24 Pratico they were improperly pressured?

25 A. That would be a logical assumption if, in fact, the

1 pertinent issue.

2 Q. Do you agree that it would be relevant that when taking
3 statements from witnesses such as Chant and Pratico, that in
4 the event they alleged they were pressured improperly by
5 policemen, that it would be appropriate and right and
6 thorough to put down in the statement the name of the
7 individuals involved who were doing the improper
8 pressuring?

9 A. To include their names...

10 Q. Yes.

11 A. In the reports?

12 Q. Yes.

13 A. Yes.

14 Q. That would be a key element to include in the report, I take
15 it?

16 A. Well, yes.

17 Q. Yes. Did you notice that there were statements taken from
18 Maynard Chant by the investigators in 1982? One as late as
19 April the 20th?

20 A. Yes.

21 Q. And the first one on February 16th.

22 A. Yes.

23 Q. The first one was an abortive interview because of a wake
24 going on in the Chant home, at which Carroll and Wheaton
25 were both present. But that statement is signed. The second

1 investigators at the time believed that to be a relevant issue,
2 pertinent issue.

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4 statements from witnesses such as Chant and Pratico, that in
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24 Q. The first one was an abortive interview because of a wake
25 going on in the Chant home, at which Carroll and Wheaton

1 statement, April 20th, some more than two months later,
2 taken by Carroll and Hyde, I believe, neither one of those
3 statements identifies MacIntyre as exerting any improper
4 pressure at all.

5 A. Yes, I agree with you.

6 Q. And I suggest to you that if MacIntyre had been identified by
7 Chant in either one of those statements, that it would be
8 critical for the investigators to put that down in the
9 statement?

10 A. I'm not... To answer that question, I would have to presume
11 that Chant knew who MacIntyre was, his identity and so on to
12 identify him in the statement.

13 Q. Quite so.

14 A. But if he did, then, and he had those allegations to make, then
15 most assuredly, he should have put it in the statement.

16 Q. Did not Staff Wheaton advise you that Maynard Chant told he
17 and Carroll that it was MacIntyre that improperly pressured
18 him?

19 A. Yes.

20 Q. Do you not find it singular that he advises you that verbally,
21 but Chant himself in the written statement is not able to
22 confirm that identification?

23 A. Well, it may very well be attributed to an oversight on the
24 part of Mr. Wheaton. I don't think there's any deliberate
25 attempt to mislead, if that's where we're going.

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2 statement, April 20th, some more than two months later,
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25 part of Mr. Wheaton. I don't think there's any deliberate

1 Q. I'm not suggesting that, and I'm not suggesting either
2 whether it was in bad faith or good father or what, but do you
3 not find it singular that two statements taken from one
4 witness, and one of the very few witnesses in the
5 reinvestigation that was interviewed on two occasions and
6 gave two statements, that he was not able to identify
7 MacIntyre in either one? And yet, Wheaton was making the
8 verbal assertions that Chant could identify MacIntyre as
9 improperly pressuring him.

10 A. Yes, well, as I said, it may very well be that it was verbally...
11 He was verbally identified to Mr. Wheaton and didn't include
12 it in the statement. It wasn't a complete statement in that
13 context.

14 Q. Both statements were not complete.

15 A. Yes.

16 Q. Carroll and Wheaton both. Do you not find it rather singular
17 as well that when Wayne Magee was interviewed on April
18 2nd by Harry Wheaton, that Wayne Magee advised Staff
19 Wheaton that MacIntyre had not improperly pressured
20 Maynard Chant on the June 4th statement taken in
21 Louisbourg?

22 A. Yes.

23 Q. And yet that very key fact was not included in the statement
24 by Harry Wheaton. Do you not find that rather unusual?

25 A. When they took the statements, I'm really not sure what they

1 attempt to mislead, if that's where we're going.

2 Q. I'm not suggesting that, and I'm not suggesting either
3 whether it was in bad faith or good faith or what, but do you
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21 Maynard Chant on the June 4th statement taken in
22 Louisbourg?

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25 by Harry Wheaton. Do you not find that rather unusual?

1 had in their mind. I'm of the view that they certainly did
2 interview them with respect to pressure tactics. There's no
3 question of that. They did carry out that dimension of the
4 investigation. I'm not convinced that they had in their mind
5 at that time any notion of criminality on the part of Mr.
6 MacIntyre and Mr. Urquhart. And that is the only conclusion
7 that I can come to for the omission of certain things.

8 Q. Yes, but would not a trained investigator, upon coming to the
9 conclusion that a man is innocent, a man who is convicted
10 essentially on the evidence of two eyewitnesses. Those two
11 eyewitnesses say that they lied under pressure from the
12 police when they gave evidence before a jury in 1971. Would
13 not a competent and careful investigator want to find out why
14 they lied? That's pretty germane, isn't it?

15 A. It's germane, there's no doubt about it at all.

16 Q. Conceivably, they may not be telling the truth when you
17 interviewed them in the reinvestigation. You want to assess
18 whether or not their statements...

19 A. Yes.

20 Q. At that time are accurate.

21 A. Yes.

22 Q. And I suggest to you further that it was rather singular that
23 at the statement taking on June 4th in Louisbourg when we
24 have either six or seven people present.

25 A. That's correct.

1 A. When they took the statements, I'm really not sure what they
2 had in their mind. I'm of the view that they certainly did
3 interview them with respect to pressure tactics. There's no
4 question of that. They did carry out that dimension of the
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23 Q. And I suggest to you further that it was rather singular that
24 at the statement taking on June 4th in Louisbourg when we
25 have either six or seven people present.

1 Q. That there's only one person, one person who says that
2 Wayne Magee was not present. And that person was not
3 there at all. That person was Harry Wheaton. That person,
4 eleven years later in 1982, says he doubts that Wayne Magee
5 was there at all. And yet Wayne Magee says he was there
6 and MacIntyre says he was there and Urquhart says he was
7 there and Beudah Chant says he was there and Maynard
8 Chant says he was there. The only person who says he
9 doesn't think he was there was Harry Wheaton. Now I
10 suggest to you that these things indicate to me that Staff
11 Wheaton had tunnel vision as far as MacIntyre's involvement
12 was concerned. He was, he came to the conclusion that
13 MacIntyre was the villain and he adopted that scenario
14 throughout the piece.

15 A. That may very well be. I don't know what was in Staff
16 Wheaton's mind when he...

17 Q. All right.

18 A. Chose to disbelieve that Mr. Magee's testimony was wrong or
19 statement was wrong.

20 Q. In Volume 20 in, I believe it's page 80, your memorandum
21 that is dated 86-06-12.

22 A. Yes, sir.

23 Q. In the last paragraph, you say:

24

25

I would strongly advise Staff Wheaton not to

1 A. That's correct.

2 Q. That there's only one person, one person who says that
3 Wayne Magee was not present. And that person was not
4 there at all. That person was Harry Wheaton. That person,
5 eleven years later in 1982, says he doubts that Wayne Magee
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25

SUPT. VAUGHAN, EXAM, BY MR. PUGSLEY

1 discuss this case at all with any media or other
2 unauthorized persons in any detail whatever.

3 Is that the message you conveyed to Wheaton "in any detail
4 whatever," or did you indicate to him that he was not to
5 discuss it at all?

6 A. He was advised and he understood that he wasn't to discuss
7 this matter with the media, period.

8 Q. Right. Were you aware at that point in time that he, and this
9 is June of 1986, when I say "at that point in time," because I
10 don't know the exact dates when Staff Wheaton met with
11 Michael Harris on the eight occasions and discussed freely and
12 voluntarily any virtu... It would appear any question that
13 Michael Harris wanted to ask. The book is published in '86.
14 The preface written by Michael Harris is dated, I believe, June
15 of 1985, which suggests that the interviews with Harris took
16 place before your memo of June 12th, 1986. Were you aware,
17 in fact, that Wheaton had met with Michael Harris on eight
18 occasions?

19 A. No, I wasn't.

20 Q. What comment do you make concerning that kind of conduct
21 by an R.C.M.P. officer while the Ebsary case is still before the
22 courts?

23 A. Well, our instructions are quite clear, that these types of
24 interviews are not to be given under circumstances where
25 people are still before the courts, whether it's Ebsary or

1 I would strongly advise Staff Wheaton not to
2 discuss this case at all with any media or other
3 unauthorized persons in any detail whatever.

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5 whatever," or did you indicate to him that he was not to
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22 by an R.C.M.P. officer while the Ebsary case is still before the
23 courts?

24 A. Well, our instructions are quite clear, that these types of
25 interviews are not to be given under circumstances where
people are still before the courts, whether it's Ebsary or

1 Marshall or whomever.

2 Q. Has any action ever been taken against Staff Wheaton at any
3 time, not only with respect to this particular investigation, but
4 any other investigations in which he has been involved with
5 respect to his comments to the media or leaks to the media?

6 A. Not to my knowledge. I can't honestly answer you that. I
7 don't know and I haven't checked.

8 Q. I see. Where could one check that? How would it be possible
9 to check that?

10 A. Well, that would have to be ascertained through his officer
11 commanding or through the administration officer for the
12 division.

13 Q. I see. Who is the administration officer for the division?

14 A. Currently, it's Superintendent Sabean.

15 Q. Sabean?

16 A. Sabean, that's right.

17 Q. S-A-B-E-A-N?

18 A. That's right.

19 Q. He resides in Halifax, does he?

20 A. That's correct, sir.

21 Q. You were asked yesterday why there was no mention in
22 writing in 1982 of the Patricia Harriss incident of slipping it
23 under the table and your answer, I believe, and I stand to be
24 corrected on this, was he was not really dealing with the
25 activities of John MacIntyre at that time and that might have

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25 activities of John MacIntyre at that time and that might have

1 been a reason why it was not included in the... And you were
2 speculating, I think, but I think that was the speculation that
3 you offered. Am I correct on that?

4 A. In part. I'm of the view that Staff Sergeant Wheaton wasn't
5 looking, and this, of course, again, is speculation and it may be
6 right or it may be wrong, but I have a notion that at that
7 particular time, the investigators may have felt some
8 manipulation, whatever, but I don't believe, because of those
9 various omissions, that they believed a criminal offence had
10 taken place. And I'm also fairly certain that had the senior
11 officers in the division, and I'm referring to the criminal
12 operations officer, had they been of the opinion or had
13 knowledge that that was a suspicion, I'm quite certain that
14 there would have been a direction to interrogate them.

15 Q. I can accept that... I may or may not accept... Or I may or
16 may not argue with you concerning that speculation in 1982,
17 but surely it does not hold up in 1986 when Staff Wheaton
18 was asked to comment and, indeed, did comment on the
19 conduct of MacIntyre and says that he should be charged
20 criminally. But, again, no mention at all in 1986 of slipping a
21 piece of paper on the floor.

22 A. No, there's no mention of it at all.

23 Q. No.

24 A. And I have no explanation for it in '86.

25 Q. And if he may not have been thinking about in '82, he

1 been a reason why it was not included in the... And you were
2 speculating, I think, but I think that was the speculation that
3 you offered. Am I correct on that?

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25 Q. And if he may not have been thinking about in '82, he

1 certainly, and did, in fact, think about MacIntyre's conduct in
2 1986 when he recommended perjury charges.

3 A. That's correct.

4 Q. But, again, singular that there was no mention in the written
5 report in '86.

6 A. That's right, sir.

7 Q. You mentioned yesterday, talking about methods of
8 interrogation and you said, I think the words used, "a
9 widespread practice in 1971 to put it to witnesses, 'You're
10 lying, tell me the truth,'" that kind of approach.

11 A. Well, I said that it wasn't unique to Mr. MacIntyre, that
12 practice.

13 Q. I think, and I may be wrong, I think the words you used, sir,
14 were "widespread practice."

15 A. Okay, fine, I'll accept that.

16 Q. Are you prepared to...

17 A. Yes.

18 Q. Accept that description as an appropriate description for that
19 type of interrogation in 1971?

20 A. Perhaps I should qualify that by saying that not every
21 policeman in the country would use that tactic, but it had
22 been used.

23 Q. Sure.

24 A. There's no question of it at all.

25 Q. And you're aware that, I don't mean of your own personal

1 certainly, and did, in fact, think about MacIntyre's conduct in
2 1986 when he recommended perjury charges.

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19 type of interrogation in 1971?

20 A. Perhaps I should qualify that by saying that not every
21 policeman in the country would use that tactic, but it had
22 been used.

23 Q. Sure.

24 A. There's no question of it at all.

25 Q. And you're aware that, I don't mean of your own personal

1 experience, but you're aware that that practice was in vogue
2 in various places throughout Canada in 1971?

3 A. It had been used in various places, yes.

4 Q. Would that... In this particular case, Chief MacIntyre knew
5 that the first written statement that he took from Pratico and
6 Chant both were lies, knew that they had lied. And may I
7 suggest to you that all the more reason why it would be a
8 legitimate tactic to say to witnesses who you knew had
9 already lied to you, "Look it, I want the truth."

10 A. Oh, yes. However, you also have to recognize, in my view,
11 that when you're dealing with young people and you use
12 forceful tactics, it's not a proper tactic to use force, and
13 particularly when you're dealing with young people, because
14 of that very suggestive nature that they have. And that's the
15 danger of that type of thing.

16 Q. It is, indeed, although there's no suggestion in the first Chant
17 interview on May 30th by Chant himself that there was any
18 pressure of any kind by MacIntyre.

19 10:15 a.m.

20 A. I agree with that.

21 Q. And yet he did lie.

22 A. I agree.

23 Q. Yeah. So the investigator is put in a difficulty situation
24 when he's faced with that set of circumstances.

25 A. And the qualification, I believe I put on it, is that if the

1 statements are to be believed, because my opinions are
2 being expressed from reports that are written.

3 Q. Yes.

4 A. I have no direct, not having been here, knowledge of...

5 Q. Quite so.

6 A. ...those types of things.

7 Q. Yes. We sort of skimmed over your background,
8 Superintendent Vaughan, and I must admit I just glanced
9 briefly at the two pages. Can you condense for us verbally
10 your background with the force? You've been with the force
11 for thirty-one years?

12 A. Yeah, thirty-two in the end of July. Well, it's...I've been all
13 over Canada literally.

14 Q. Yes. You've fulfilled various functions during the course of
15 your career.

16 A. I've worked on detachments and highway patrol units. A
17 fair number of years in plainclothes responsibilities and in
18 audit responsibilities and then in the commission ranks as
19 an assistant OC and assistant...or an OC, assistant CIB officer
20 and CIB officer, criminal operations officer.

21 Q. The kind of investigation carried out by Staff Wheaton and
22 Staff...and Jim Carroll on this case in 1982, that's the kind of
23 work you had done in the past in your career.

24 A. I have, yes.

25 Q. Yes.

SUPT. VAUGHAN, EXAM. BY MR. PUGSLEY

1 A. With one qualification again.

2 Q. Yes.

3 A. I did not, during that period of time, investigate a case that
4 had been commenced by another city police force.

5 Q. I see. But as far as investigation itself is concerned you've
6 done that...

7 A. Yes.

8 Q. ...on many occasions.

9 A. Yes, sir.

10 MR. PUGSLEY

11 Thank you, sir, that's all the questions I have.

12 MR. CHAIRMAN

13 Mr. Murray.

14 MR. MURRAY

15 Thank you, My Lord.

16 EXAMINATION BY MR. MURRAY

17 Q. Superintendent Vaughan, my name is Donald Murray. I'm
18 representing William Urquhart and I have a few questions
19 in a very narrow area for you in relation to Mr. Urquhart.
20 Your ultimate letter dated August 1st, '86, to Gordon Gale,
21 has very brief reference to Mr. Urquhart, only as an
22 assistant in the investigation. I take it that Staff Wheaton's
23 letter to you in 1986 setting out what he felt were improper
24 practises and why John MacIntyre ought to be charged with
25 perjury contained no similar complaint of William Urquhart.

SUPT. VAUGHAN, EXAM. BY MR. MURRAY

1 A. No, it did not, sir.

2 Q. You then conducted an independent review of the material
3 in the file.

4 A. Yes.

5 Q. To see if Staff Wheaton's remarks with respect to John
6 MacIntyre were justified. I take it that if you had come
7 across documentation in the file or anything which
8 suggested misconduct by Mr. Urquhart you would have
9 independently assessed that as well.

10 A. Yes.

11 Q. There was no documentation that you could find that
12 suggested any criminal conduct on the part of Mr. Urquhart.

13 A. Not at that time, no, sir.

14 Q. The only documentation, I suggest, that could cast any
15 aspersion on Mr. Urquhart would be in reference to Patricia
16 Harriss and the allegations about being with her for a
17 number of hours.

18 A. That's right, sir.

19 Q. I'd like you to turn to Volume 20, at page 55, 65 rather.

20 A. Yes, sir.

21 Q. And there's a sentence...

22 COMMISSIONER EVANS

23 What page?

24 MR. MURRAY

25 Page 65, Your Honour.

SUPT. VAUGHAN, EXAM. BY MR. MURRAY

1 Q About six lines down there's a sentence that begins, "She
2 will give evidence..."

3 A. Yes. I see that.

4 Q And it reads,

5
6 She will give evidence that Detective Urquhart
7 did not want to hear about these other two men.
8 She was turned over to MacIntyre who kept
9 badgering her for hours and hours until she
10 eventually told him what she saw.

11 And continues on. Then in the third paragraph on that page
12 there's a concluding sentence, "After a five-hour interview
13 with the former Chief and Detective Urquhart she had forgot
14 the two men and stated that the only people on the street
15 were Marshall and Seale."

16 A. Yes.

17 Q If Mr. Wheaton was wrong about those two facts then any
18 basis for criticism of Mr. Urquhart in relation to Patricia
19 Harriss disappears as well.

20 A. From what I can see in the correspondence.

21 Q And from what you recall from your review of the file
22 material.

23 A. Yes.

24 MR. MURRAY

25 I have no further questions.

MR. BARRETT

No questions, My Lord.

EXAMINATION BY MR. PINK

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Q. Superintendent Vaughan, my name is Darrel Pink and I'm here on behalf of the Attorney General's Department. I just have a very few areas to cover with you. In your letter of August 1, 1986, to Mr. Gale on the first page, at the end of the first para...end of the second paragraph you say, "It should not have been construed in any way, " at page 72, "It should not have been construed in any way as precluding a police investigation at a later date if such was deemed necessary and warranted," that's with regard to Staff Sergeant Wheaton's report of May 20th, '82.

A. That's right, sir.

Q. And, in fact, the RCMP did carry on the investigation as it related to Mr. Ebsary. If you could look at Volume 34 at page 114.

A. 34. Yes, sir.

Q. The investigation pertaining to Mr. Ebsary and the eventual charge against him did continue and there was this further report from Corporal Carroll.

A. Yes.

Q. And, in fact, the investigation as it related to the Marshall murder investigation or the Seale murder investigation also continued, and on page 123 on that volume.

A. Yes.

Q. There is a further report.

1 A. Yes.

2 Q. Pertaining to that. Correct.

3 A. Yes, right, sir.

4 Q. And so the RCMP in Sydney did deem it necessary to carry
5 on their investigation and were able to do so.

6 A. Oh, they did, yes, indeed. In terms of the Seale
7 investigation, yes.

8 Q. Staff Wheaton in his report to you, which preceded, which
9 was part of your review of the file made reference to a
10 three-phase investigation.

11 A. Yes, sir.

12 Q. From your review of the file material did you find any other
13 reference to the investigation having been broken down into
14 three separate and distinct phases?

15 A. It's included, I believe, in these '82 reports having
16 completed the phases and then moving into the interview of
17 Mr. MacIntyre and Mr. Urquhart, the interviews of these
18 people, is this what you're referring to?

19 Q. Well, did you...is that the only reference then to MacIntyre
20 and Urquhart being distinct from everything else?

21 A. That I can see.

22 Q. And is there anything that breaks up the Ebsary murder
23 investigation as a separate and distinct investigation from
24 the...or the charges against Ebsary as opposed to the
25 reinvestigation as it pertained to Donald Marshall?

1 A. Not that I'm aware of.

2 Q. Thank you. Sir, you...in your resumé that you prepared for
3 this hearing, Exhibit 156.

4 A. Yes, sir.

5 Q. On page 5 at the very bottom you say as follows,

6
7 Recognizing the Attorney General is responsible
8 for the administration of justice we sent copies
9 of serious crime reports to the department
10 because of his accountability to the public
11 interest and he must assured of an adequate
12 level of police service to the public.

13 A. Yes.

14 Q. Am I correct that the reports we see in the Marshall file
15 would qualify as serious crime reports?

16 A. Yes, indeed, and, in fact, with respect to the Marshall matter
17 the Attorney General's Department, at least, I don't know
18 prior to 1982, but certainly since 1982 they've received
19 everything that had been submitted on it.

20 Q. And in general and specifically regarding the Marshall
21 matter, you would expect the serious crime reports to
22 accurately and completely reflect what the investigator was
23 doing.

24 A. Yes.

25 Q. And the reports prior to reaching the Attorney General
would be commented on by senior officers and sometimes
the criminal operations officer.

1 A. That's correct, sir.

2 Q And they, too, would reflect what they were thinking and,
3 about the investigation.

4 A. That's right, sir.

5 Q And the Attorney General's Department would only have the
6 knowledge that's gained...that's in the reports of the
7 thoughts and reflections of the officers conducting the
8 investigation.

9 A. And that's true at the criminal operations officer's level also.

10 Q I guess it's just magnified one level...

11 A. Yes.

12 Q ...when it gets to the Attorney General's Department.

13 A. That's correct.

14 Q Finally, sir, I just wanted to make sure I understood your
15 evidence from yesterday regarding the RCMP's role in the
16 Province. As I understand your evidence, the RCMP really
17 conducts two types of policing in the Province: federal
18 policing and provincial policing.

19 A. That's correct.

20 Q Federal policing involves all federal statutes except the
21 Criminal Code and I might be missing environmental or
22 something may also fall under it.

23 A. Yes, sir.

24 Q The provincial policing is done in Nova Scotia by contract.

25 A. That's right, sir.

1 Q Between the Province and the Federal Government.

2 A Yes.

3 Q And under the police contract the RCMP become the
4 provincial police force as that's defined in the Police Act.

5 A That's correct, sir.

6 Q And have powers throughout the Province as the provincial
7 police force.

8 A That's correct, sir.

9 Q The contract specifies the municipal units or the type of
10 municipal units in which the RCMP polices.

11 A That's right, sir.

12 Q And RCM...and the RCMP can become involved in municipal
13 policing in one of three ways, I suggest to you. One by
14 contract with the municipality directly.

15 A That's correct, sir.

16 Q By being requested by the Attorney General to carry out an
17 investigation in an area of municipal jurisdiction.

18 A That's right.

19 Q Or by being invited into a municipal jurisdiction by the local
20 police force.

21 A That's correct. But we, in fact, will retain the right based on
22 the availability of our resources to do that type of thing or
23 the nature of the case.

24 Q And if a municipal police force invites the RCMP into their
25 jurisdiction.

SUPT. VAUGHAN, EXAM. BY MR. PINK

1 A. That's correct.

2 Q Nothing is required from the Attorney General to give them
3 specific power to police in that area.

4 A. Not that I'm aware of.

5 Q They have...RCMP officers have the authority by virtue of
6 being provincial police officers to investigate in that area.

7 A. Right, sir.

8 Q Thank you, sir.

9 MR. PRINGLE

10 I think perhaps we have the option of going third from last,
11 My Lord, in this case. We may have nothing to ask.

12 COMMISSIONER EVANS

13 I just wanted to ask you one question. Dealing with the...you
14 go by contract or are requested by the AG's Department or a
15 request by the local...

16 SUPT. VAUGHAN

17 Police department.

18 COMMISSIONER EVANS

19 Police department. But I take that latter would be a very
20 limited participation.

21 SUPT. VAUGHAN

22 It is. It's normally in the area of assisting the police
23 department to investigate a particular case. They may need
24 technical assistance.

25

SUPT. VAUGHAN, EXAM. COMMISSIONERSCOMMISSIONER EVANS

Yes.

SUPT. VAUGHAN

And this is done quite frequently on an ongoing basis, whether it's...

COMMISSIONER EVANS

But if it was going to be any lengthy period would you not contact the AG's office.

SUPT. VAUGHAN

Yes, we would have deliberation with them on that matter, particularly in cases like the Marshall matter and I believe some negotiation took place with Mr. Edwards, if I'm ...

COMMISSIONER EVANS

I was thinking particularly when they brought in the polygraph man from some place, you wouldn't be spending your funds without not having some idea of reimbursement by the Province, I take it.

SUPT. VAUGHAN

Yes, indeed, it's a very serious consideration, the amount of our resources, because we do contract with the Province for police services.

COMMISSIONER EVANS

Thank you.

MR. CHAIRMAN

Superintendent, with respect to reporting, it's my

SUPT. VAUGHAN, EXAM. COMMISSIONERS

1 understanding from some witnesses we've had testify who are
2 members of your force that when a report is sent into the CIB
3 officer, I'm thinking particularly now of Inspector Al Marshall's
4 report.

5 SUPT. VAUGHAN

6 Yes, My Lord.

7 MR. CHAIRMAN

8 It is then read by one or more readers.

9 SUPT. VAUGHAN

10 It may be read by one or more readers, generally one
11 reader, and forwarded on to the...I see it then.

12 MR. CHAIRMAN

13 What is shown on that report to indicate that it has been
14 read?

15 SUPT. VAUGHAN

16 Well, first of all, if it's being forwarded on to the Attorney
17 General's Department, normally it would be signed with a
18 forwarding minute by the criminal operations officer or his
19 designate, in his absence, and directed to the Deputy Attorney
20 General. And in other cases where it's forwarded as a matter of
21 course it's stamped, "Copy forwarded to the Attorney General's
22 Department."

23 MR. CHAIRMAN

24 I think you told Miss Derrick that you had read the report of
25 Inspector Marshall.

SUPT. VAUGHAN, EXAM. COMMISSIONERS

1 SUPT. VAUGHAN

2 I had, yes, sir.

3 MR. CHAIRMAN

4 Is that the kind of report that you would anticipate would
5 be forwarded to the Department of the Attorney General.

6 SUPT. VAUGHAN

7 Yes, sir.

8 MR. CHAIRMAN

9 Now, where is...

10 MR. WILDSMITH

11 Mr. Ross asked with your indulgence for me to go ahead of
12 him.

13 MR. ROSS

14 Now, I am here.

15 EXAMINATION BY MR. ROSS

16 Q. Superintendent Vaughan, my name is Anthony Ross and I'd
17 like to ask you one or two questions on behalf of Oscar Seale
18 and the Black United Front. Now there is one concern that
19 I've had for a while and perhaps you might be able to help
20 me clear this up. I'd ask you to look at Volume 34, please.

21 A. What page?

22 Q. Page 5 through 8. Those four pages. The first page, in fact,
23 is captioned "Occurrence report" and the following pages are
24 a continuation of the report. And without going into the
25 content of the report, I just wanted to find out whether or

1 not it was a practise in the RCMP to create a running
2 narrative of the work being done on any particular officer
3 when investigating a major crime?

4 A. On any particular officer?

5 Q. By, yeah, no, by any particular officer, if he...if he's got a
6 narrative of his activities.

7 A. Yes. This is the type of form that they would use and that
8 may translate itself into a formal report on another form. If
9 you look at the bottom, you'll see the number C237 into our
10 headquarters.

11 Q. Sure, I understand that.

12 A. Yes.

13 Q. So, then if one was to get, to look at a total RCMP file on a
14 major investigation, is it fair to say that you should find the
15 occurrence...the occurrence report followed by almost daily
16 continuation sheets reflecting the activity of the officer and
17 from time to time comprehensive reports?

18 A. Find them where, at our headquarters level?

19 Q. Some place, I don't know.

20 A. Well, at the detachment level where the investigation is
21 being done, you would find the occurrence reports. You may
22 not find those in the headquarters' file.

23 Q. I see.

24 A. In our file, at our headquarters' level. You would find the
25 formal report itself.

1 Q I see. But as far as the daily activity sheet, there is no
2 requirement to file a sheet on what each officer is doing.

3 A. Oh, the normal course of the investigation, yes, they write
4 these on these occurrence reports and then ultimately an
5 investigative report, if it's required, would be found on a
6 formal reporting document which would go forward.

7 Q Sure. Let's forget about the formal reporting document for a
8 minute then and let's just deal with the occurrence report
9 and the continuation sheet. I take it when you reviewed
10 this file, you would have had access to the occurrence report
11 and a substantial number of continuation sheets, would you?

12 A. I can't recall seeing the occurrence reports myself. I can't
13 recall. There may have been some on the files, but I don't
14 think so.

15 Q Well, would you expect, on an investigation of this nature,
16 that there would be occurrence reports reflecting the day-
17 to-day activity of the police officer in charge?

18 A. I would expect that they would have an occurrence report
19 submitted on their activities which would be held at the unit
20 level. But for our decision-making purposes, I would expect
21 a formal report covering the pertinent details to be on our
22 division file.

23 Q Sure.

24 A. For the information of the people that have to deal with it
25 and make the decisions on it.

1 Q. And I take it, sir, that as far as the occurrence reports are
2 concerned, these should be to a large degree or in large
3 measure consistent with the day-to-day notebook type
4 notes which the officer would take...would make.

5 A. Yes, generally.

6 Q. So, that...

7 A. ...the progress...

8 Q. ...if you were to get his notebook, you'd find entries for the
9 first Monday and every...for, sorry. You'd get his notebook
10 and if there are twenty entries in the notebook for activity
11 with respect to that investigation, those should also appear
12 on the occurrence report some place with an explanation,
13 would you...

14 A. Not necessarily. There may be entries in the notebook that
15 it wouldn't be necessary to enter into an occurrence report.

16 Q. Okay. Thank-you very kindly. Now, coming back to your
17 testimony. As I recall, you indicated that, and just for your
18 recollection, the RCMP is a professional organization that if
19 you're going to make statements, these have got to be based
20 on fact. Do you recall giving that evidence?

21 A. Yes, I do.

22 Q. Yes. And further that as far as the investigation is
23 concerned, that you understood that there was supposed to
24 be an investigation of the Seale murder or a reinvestigation
25 of it, that's the general function in these...

1 A. Yes.

2 Q. Yes. You went further to indicate in response to Miss
3 Derrick, you commented that anti-social behaviour was a
4 reasonable basis to support suspicion of...suspicion of
5 criminal activity.

6 A. That has to be put in this context. I'm talking about Mr.
7 MacIntyre and the story that comes to Mr. MacIntyre by Mr.
8 Marshall that he's in the park and these two people who
9 resemble priests, whatever, they encounter them and Mr.
10 Seale winds up being stabbed. And what I'm intending to
11 convey, if I didn't do it very well, was that not disclosing to
12 or disclosing to Mr. MacIntyre at the outset that the purpose
13 of the encounter was for a robbery would be much more
14 consistent with Mr. MacIntyre's knowledge of and dealings
15 with Mr. Marshall.

16 10:32 a.m.

17 Q. I see. So I take it, then, that subsequent to 1982, when
18 Ebsary was indeed identified as the man behind the knife...

19 A. Yes, sir.

20 Q. That new factors had been brought into the investigation.
21 Number one, you had Ebsary and his personality. He had
22 been classified as, I guess you read the reports, as bizarre,
23 eccentric.

24 A. Yes.

25 Q. A penchant for knives.

1 A. Yes.

2 Q. A fascination by violence.

3 A. That's right.

4 Q. Lived in a strange little world by himself and prone to
5 unprovoked attacks. Do you recall all that?

6 A. Well, I don't necessarily recall "prone to unprovoked attacks".

7 Q. Okay, perhaps...

8 A. But you're probably right.

9 Q. Perhaps I'll tell you where you'll find that. If you look at
10 Volume...

11 MR. BAILEY

12 Excuse me, if it pleases the Commission. If this refers to
13 some report that Superintendent Vaughan has reviewed, once
14 again, I think that to ask to Superintendent Vaughan to go into the
15 personality of Mr. Ebsary, unless it's contained in reports, is not
16 helpful to this Commission and not fair to this witness.

17 MR. CHAIRMAN

18 It's certainly not assisting us, but I gather from
19 Superintendent Vaughan's reply, that you have read the report.

20 SUPT. VAUGHAN

21 I've read a report which described Mr. Ebsary as eccentric.
22 I can't recall the wording...

23 MR. CHAIRMAN

24 The components that made up his eccentricity or his alleged
25 eccentricity. Or that he was given to unprovoked assault. But let's

SUPT. VAUGHAN, EXAM. BY MR. ROSS

1 take all that as a given. Now what's your question, Mr. Ross?

2 MR. ROSS

3 Well, that's the point. All I want to put that as given. Now
4 comes the question.

5 MR. CHAIRMAN

6 All right.

7 BY MR. ROSS

8 Q In light of all of this, recognizing this is 1982. You've got a
9 new personality involved. Why was it still so easy just to
10 accept that Sandy Seale, on the other hand, who could not
11 have been classified as antisocial, or in any way prone to any
12 form of ill conduct, why was it so easy just to accept on face
13 value that he had been involved in a robbery?

14 A. I can't answer it other than the fact that it's happened in the
15 past and where fine young people become involved in
16 activities such as that. He's young. He may have been led. I
17 don't know. I really can't explain it.

18 Q That's exactly the point. He's young and he may have been
19 led.

20 MR. BAILEY

21 Once again, with respect, none of that is in any report that
22 my client, that Superintendent Vaughan has read.

23 MR. CHAIRMAN

24 I know, and I realize that a lot of Superintendent Vaughan's
25 evidence is not very relevant, but I assume counsel to this

1 Inquiry, we're taking advantage of his years of experience and
2 training in the investigatory field to get his professional opinion.

3 MR. ROSS

4 That's all I'm looking for, if it pleases, My Lord.

5 MR. CHAIRMAN

6 And we now have it.

7 MR. ROSS

8 That is the one question that I was concerned with.

9 BY MR. ROSS

10 Q. And I take it, then, that you didn't think it was necessary to
11 look behind the personality of Sandy Seale as it was known to
12 determine... For instance, when you looked at Marshall, you
13 considered his history and the fact that he could be a suspect
14 in the eyes of MacIntyre.

15 A. Yes.

16 Q. And with really fairly good police reasoning.

17 A. Yes.

18 Q. When you looked at Ebsary, he could be a suspect for a man
19 to wield a knife because of his background and character.

20 A. Yes, that's correct.

21 Q. And, as far as Sandy Seale is concerned, the only thing we
22 knew is that he was young and could be led.

23 A. I can't give you any definitive response on that other than
24 what I've already given you.

25

1 MR. ROSS

2 Thank you very kindly.

3 EXAMINATION BY MR. WILDSMITH

4
5 Q Superintendent, my name is Bruce Wildsmith. I'm here for
6 the Union of Nova Scotia Indians. I just have three quick
7 areas for you. I'm looking at Exhibit 156, which is your
8 description of your relationships with the R.C.M.P. and I'm
9 looking at page four of Exhibit 156, the top item that says
10 "Public complaints made to the department about procedures
11 used by policemen."

12 A. Yes, sir.

13 Q I take it when you say "public complaints," you mean
14 complaints by members of the public?

15 A. Yes, I am.

16 Q And would it be also fair to take it that if you had allegations
17 from people who were witnesses at a trial that they had been
18 induced to fabricate evidence by policemen who were, in fact,
19 the police chief and the police inspector that you would
20 regard that as one of these public complaints about which you
21 should have discussions with Mr. Gale.

22 A. Yes.

23 Q That's fair?

24 A. If we had an allegation from a member of a public?

25 Q Yes, somebody who was, in fact, a witness at a trial.

1 A. Yes.

2 Q. It's no less serious, is it, if the allegation comes from a
3 member of your own force?

4 A. Yes.

5 Q. And, therefore, that ought to be the kind of thing that's
6 discussed at your level with Mr. Gale?

7 A. Yes.

8 Q. I'm looking at Harry Wheaton's report now in Volume 34...

9 MR. CHAIRMAN

10 Mr. Wildsmith, can you give me some indication as to how
11 that relates to the Union of Indians?

12 MR. WILDSMITH

13 Yes, I think... I've asked questions in this area before, My
14 Lord, and I think that I had the same difficulty with you before
15 and explained at that time that I'm interested and the Union of
16 Nova Scotia Indians is interested in the way the system of justice
17 is expected to operate as a basis for assessing how it operated
18 with Donald Marshall. It's kind of a comparative concept.

19 MR. CHAIRMAN

20 Well, Donald Marshall, Jr. is represented by very able
21 counsel who, again, today, on cross-examination, canvassed these
22 very issues and I've asked counsel time and time again if they
23 will try and restrict their cross-examination to areas directly
24 affecting their clients. And I'm at a loss on the line of questioning
25 that you're following now, unless you have reason to believe that

SUPT. VAUGHAN, EXAM. BY MR. WILDSMITH

1 if the complaint had involved some member of your client's group
2 that there would have been a different approach taken.

MR. WILDSMITH

4 Well, you see, I think what Your Lordship is asking me to do
5 is separate the notion that Mr. Marshall was divisible into an
6 Indian in some contexts...

MR. CHAIRMAN

8 No, no.

MR. WILDSMITH

10 And not in another.

MR. CHAIRMAN

12 Your clients were granted standing for a specific reason and
13 I recognize that you have a more difficult chore in dealing with
14 racism than many other counsel have in dealing with a more
15 factual situation. But you're now getting into the factual situation
16 relevant to the review by Superintendent Vaughan, and that's all
17 he here's for.

MR. WILDSMITH

19 Yes.

MR. CHAIRMAN

21 Of certain police activities.

MR. WILDSMITH

23 Yes, and the issue I'm interested in is who has responsibility
24 for following up on allegations of misconduct by the police force
25 that, in fact, is responsible for...

SUPT. VAUGHAN, EXAM. BY MR. WILDSMITH

1 MR. CHAIRMAN

2 My understanding of Superintendent Vaughan's evidence so
3 far is that upon receiving the allegation of Staff Sergeant Wheaton
4 with respect inter alia to Chief MacIntyre, that he then reviewed
5 the files that were available and concluded that no further
6 investigation at that time was warranted.

7 MR. WILDSMITH

8 At a certain point.

9 MR. CHAIRMAN

10 At that time. At the time that he wrote his letter to, to Mr.
11 Gale.

12 MR. WILDSMITH

13 Yes.

14 MR. CHAIRMAN

15 Left the door open as to what the R.C.M.P. may or may not
16 do...

17 MR. WILDSMITH

18 That letter was in 1986 that...

19 MR. CHAIRMAN

20 That's right.

21 MR. WILDSMITH

22 That Your Lordship is referring to.

23 MR. CHAIRMAN

24 That's right.

25

SUPT. VAUGHAN, EXAM. BY MR. WILDSMITH

1 MR. WILDSMITH

2 Which is a period here of four years when, between this
3 gentleman's assessment and Mr. Wheaton's suggestion. And I'm
4 trying to figure out who...

5 MR. CHAIRMAN

6 Mr. Wheaton said...

7 MR. WILDSMITH

8 Might have some responsibility in those four years.

9 MR. CHAIRMAN

10 I don't know what four years you're talking about now.

11 MR. WILDSMITH

12 Mr. Wheaton's report that I've just referred Superintendent
13 to was written in 1982, May the 20th, 1982. Now between that
14 and Superintendent Vaughan's letter, August the 1st, 1986, so
15 we've got a period of slightly in excess of four years. Now what
16 happened to the suggestion in that time? We also have Mr.
17 Gale's...

18 MR. CHAIRMAN

19 He doesn't know, does he?

20 MR. WILDSMITH

21 Well, it's the area of responsibility and, surely, a man of his
22 seniority can comment on responsibility in the steps or the chain
23 of command...

24 MR. CHAIRMAN

25 It would have been better if I had allowed the irrelevant

SUPT. VAUGHAN, EXAM. BY MR. WILDSMITH

1 question in the beginning, and we would have the answer. What's
2 the answer to Mr. Wildsmith's...

3 SUPT. VAUGHAN

4 Pardon me, sir?

5 MR. CHAIRMAN

6 What's the answer to Mr. Wildsmith's question?

7 MR. WILDSMITH

8 I don't think I've got around to asking the question, but I'll
9 accept Your Lordship's view that it's not relevant and move on to
10 something else.

11 BY MR. WILDSMITH

12 Q. In Exhibit 156, on page five, Item 10, is your document
13 referring to matters where you routinely send reports on to
14 the Attorney General's Department. Item 10 at the top of
15 page five refers to "hunting offences by Indians."

16 A. Oh, yes, sir, yes.

17 Q. Can you tell me, and perhaps you can't, when that policy or
18 practice came into force, to refer hunting offences by Indians
19 to the Attorney General's Department?

20 A. That relates to the Simon case and the treaty rights of Indians
21 for hunting purposes and it relates to... It relates to our
22 reference to the Attorney General's Department before we
23 take any action.

24 Q. Yes.

25 A. Because I believe that that constitutional issue has not been

1 finally resolved and so our policy instructions, in fact, state
2 that when we come across an Indian hunting then...

3 Q. My question was when, sir?

4 A. Pardon me?

5 Q. When?

6 A. When?

7 Q. When did this directive or this instruction come?

8 A. I believe the Simon decision was 1985 and we've had policy
9 changes two or three times since.

10 Q. And these policy changes are initiated by the Attorney
11 General's Department?

12 A. No, they're initiated by us, but in consultation with the
13 Attorney General's Department.

14 Q. I see. And as you specified it here, I take it that no charges
15 are to be laid until the decision is made by the Attorney
16 General's Department on prosecutions.

17 A. Yes, we receive...

18 Q. How long has the policy been in that form, no charges until
19 direction?

20 A. Well, I can't give you a definitive time. At least a year.

21 Q. Okay.

22 A. I can go that far.

23 Q. A year earlier than today?

24 A. Yes.

25 Q. That's several years after the Simon case?

- 1 A. Yes.
- 2 Q. Okay.
- 3 A. It may have been before but, as I say, I can't be specific on it.
- 4 Q. And does your direction come from officer commanding in
5 Halifax, or Ottawa, or the Attorney General's Department? I
6 think you said there was an R.C.M.P. review in consultation
7 with the Attorney General's Department?
- 8 A. Attorney General's Department of the province.
- 9 Q. Yes, so is consultation at the Halifax level, division level?
- 10 A. That's correct.
- 11 Q. With yourself or with someone else?
- 12 A. Normally, we'll send a report to Mr. Gale.
- 13 Q. Yes, I mean the directions or the instructions, were they ones
14 that you engaged in discussions with with Mr. Gale?
- 15 A. Yes, or the chief reader himself, we'll engage in discussions.
- 16 Q. I don't mean on a case-by-case basis. I mean on the...
- 17 A. On the policy issue.
- 18 Q. Instructions.
- 19 A. I understand what you're talking about, yes.
- 20 Q. So the person that you would deal with in the Attorney
21 General's Department is Mr. Gale?
- 22 A. That's correct.
- 23 Q. Thank you. On page four in your description.... Sorry, on page
24 two in your description. The first item on the reporting
25 system refers to major crimes or sensitive issues. And

1 apparently, in brackets, you indicate what is meant by
2 "sensitive issues". "Ones likely to arouse media attention or
3 political attention."

4 A. That's correct.

5 Q. Can you tell us what then the purpose of referring these
6 sensitive issues are to division headquarters?

7 A. What is the purpose?

8 Q. Yes.

9 A. Our policy instructions set out, from our headquarters in
10 Ottawa, set out fairly clearly that any major issue that is
11 likely to create a great deal of media sensation or involve a
12 member of our organization are to be reported to our
13 headquarters forthwith.

14 Q. What about this reference to political attention?

15 A. That would arouse media attention on a fairly wide basis.

16 Q. I think it's expressed in here as alternates, media or political
17 attention.

18 A. Actually, it's both.

19 Q. Do you know anything about the system of "green tab files"?

20 A. Pardon me?

21 Q. Do you know anything about a system of "green tab files"?

22 A. Yes.

23 Q. Can you tell us about that?

24 A. All that is is a method of classifying documents. There are
25 certain police practices that are used, certain techniques that

1 are used and it's on a need-to-know basis. So, therefore, it's
2 categorized "green border."

3 Q. So "green bordered" files are files created by the R.C.M.P.?

4 A. That's correct.

5 Q. And they are on a need-to-know basis?

6 A. Yes.

7 Q. And would some of those files go to the Attorney General's
8 Department and some not?

9 A. They may, depending on the nature of the investigation and
10 their requirement to have it.

11 Q. Yes. So, on occasion, some of those need-to-know files would
12 go to the Attorney General's Department?

13 A. That's correct, yes, sir.

14 Q. Would they be kept at the Attorney General's Department or
15 just brought in to show to certain people?

16 A. They would be forwarded to the Attorney General's
17 Department and kept within the confines of their record-
18 keeping system.

19 Q. Do you know how long it's been the practice to do that?

20 A. I couldn't... I haven't got the vaguest idea. Some considerable
21 period of time, I'd suggest.

22 Q. 1971?

23 A. It may have been. My recollection wouldn't go back that far.

24 Q. Okay.

25 A. On that.

1 Q. And can you give us some examples of what files would be on
2 a need-to-know basis?

3 A. Well, let me put it this way. We have technical operations
4 that are sensitive and, in the public interest, we don't discuss
5 them. They may involve wiretap operations or they may
6 involve undercover operations or whatever the case may be.
7 And that may very well be the type of report that would
8 have a green border on it. And it may also be a case where
9 we require the assistance of the Attorney General in an
10 operation and that would be one of the categories that I could
11 refer you to.

12 Q. Might some of these files also fall into the category of
13 sensitive issues requiring political attention or involving,
14 likely to arouse political attention?

15 A. I beg your pardon?

16 Q. Would some of these files also involve what's classified in
17 your document as involving sensitive issues that might arouse
18 political attention?

19 A. They may or they may not. It's...

20 Q. Yes, could be in that category.

21 A. They could be.

22 Q. Yes. I also note in your Item 1 on page two in the fourth line,
23 that one of the apparent purposes of sending the reports on to
24 division headquarters is so that readers or analysts could look
25 at them to identify shortcomings.

1 A. That's part of their function, yes.

2 Q. Is it fair for me to think that what's being suggested here is
3 that greater attention is paid to these files with respect to the
4 adequacy of the investigative work that's been done?

5 A. Yes, we want to insure to the extent possible that the
6 operations are carried out with propriety, compliance with
7 the law and the policies of the organization. And that's one of
8 the systems of checks and balances.

9 Q. A more thorough job done in those cases.

10 A. Yes, sir.

11 Q. And I'm also looking at page five, Item 11, and I don't know,
12 maybe this should be cross-referenced with what we've just
13 been discussing. It seems to indicate, if I read this correctly,
14 that this would then be one of those cases that gets more than
15 average publicity, or where there's an indication that the
16 Attorney General's Department will be contacted concerning
17 the case.

18 A. Yes.

19 Q. So that would be amongst the matters that are discussed with
20 Mr. Gale.

21 A. Yes, either directly or by report.

22 Q. Written report, do you mean?

23 A. Yes, sir.

24 MR. WILDSMITH

25 Thank you. Those are all my questions.

13012 MS GOULD, EXAM. BY MR. SPICER

1 MR. PRINGLE

2 We have no questions, My Lord.

3 MR. BAILEY

4 No, thank you very much.

5 MR. CHAIRMAN

6 Thank you very much, Superintendent Vaughan. A short
7 recess.

8 11:00 a.m. INQUIRY RECESSED UNTIL 11:21 a.m.

9 MR. CHAIRMAN

10 Mr. Spicer?

11 MR. SPICER

12 Thank you, My Lord. The next witness is EVA GOULD.

13

14 EVA GOULD, duly called and sworn, testified as follows:

15

16 EXAMINATION BY MR. SPICER

17 Q. Your name is Eva Gould?

18 A. That's right.

19 Q. Where do you live?

20 A. Right now, I live at 126 Membertou Street Rear.

21 Q. Okay, now we're going to have a little problem hearing you, I
22 think. Can you talk a little closer to the mic, because your
23 voice is quite quiet and I'm having a little trouble picking it
24 up.

25 A. It might get better as my nervousness goes.

- 1 Q. Sorry? Okay. Ms. Gould, you were brought up on the
2 Eskasoni Reserve, is that right?
- 3 A. That's right.
- 4 Q. And your mother was Dutch; I believe your father is a native,
5 is that correct?
- 6 A. That's right.
- 7 Q. You left that reserve at about age 14.
- 8 A. That's right.
- 9 Q. At some point later on, you became involved in the native
10 court worker program in Nova Scotia.
- 11 A. Yes, in 19... It was the early part of '72.
- 12 Q. For how long were you associated with the native court
13 worker program?
- 14 A. If I can remember right, it was, like I say, the early part of
15 '72 right through to the... April '86, I believe it was.
- 16 Q. '76?
- 17 A. Yeah, I'm sorry, '76.
- 18 Q. Okay. During that period of four years... Were you, in fact, at
19 one stage of the game the coordinator of that program?
- 20 A. Yes, I was.
- 21 Q. For what part of that period of time were you the
22 coordinator?
- 23 A. I believe it was from the first... around January '74... I've got
24 to keep thinking. We're talking '74 here. '74 until '76 in
25 April.

- 1 Q. Okay, so basically...
- 2 A. When they terminated it at the time.
- 3 Q. The last two years, you were associated with the program.
- 4 A. Yes.
- 5 Q. Okay. During the time that you were associated with the
6 program from '72 to '76, did you appear in court fairly
7 often?
- 8 A. Yes, I did.
- 9 Q. Did you have an opportunity as a court worker appearing in
10 court to see various lawyers working in the courtrooms?
- 11 A. Yes.
- 12 Q. Did you have an opportunity to observe Donald C. MacNeil
13 from time to time?
- 14 A. Okay, I've got to put a picture on that face first, that name.
15 Yeah, he was a prosecutor, right?
- 16 Q. That's right.
- 17 A. Yes. Yes, I did.
- 18 Q. I remember I asked Mr. Francis this question, and I'm going
19 to ask you the same question as to whether or not you
20 observed whether or not Mr. MacNeil treated native accused
21 any differently than he would have treated whites?
- 22 A. What a question!
- 23 Q. If you're not able to offer an opinion, just say you don't know.
- 24 A. Well, I do know, so I can't say I don't know, but I can't
25 answer that a yes or no.

- 1 Q. Okay, well, just give me your answer.
- 2 A. I saw him quite often deal with natives and white people in a
3 number of different ways. Some that I was quite shocked at
4 and some I was quite pleased with.
- 5 Q. Overall, did you have any sense that he treated natives in a
6 discriminatory fashion, in a way that was less respectful than
7 he would have treated whites?
- 8 A. That's the exact word I was just about to use. I was going to
9 say often there was not as much courtesy, not as much
10 respect, and it was almost as if, "Get this over with and get
11 you out of my way. You're just a nuisance and a bother, the
12 whole works of you."
- 13 Q. That last comment, you're saying, refers to the way that he
14 dealt with natives from your experience?
- 15 A. Natives and ourselves as court liaison officers, or court liaison
16 people.
- 17 Q. Would he deal with people other than natives in that fashion?
- 18 A. Honestly, I'd say yes, I have seen him deal with other people
19 in that fashion, too.
- 20 Q. Can you say whether or not those people would have been
21 poor people, white people, blacks?
- 22 A. Yeah. I think there was a little more respect shown to people
23 that came from a higher or better class or a more well-
24 educated type of person.
- 25 Q. You correct me if I'm wrong, but can I summarize what

1 you've just said as meaning that, from your experience, Mr.
2 MacNeil treated people from lower socioeconomic classes with
3 less respect and that happened to include natives in large
4 part?

5 A. Sometimes. I'm having a problem seeing you and I'm having
6 a problem...

7 Q. Is it the light? If I stand, if I get my head so that my shadow
8 is over you, is that better?

9 A. Yes, thank you.

10 Q. I'll try not to move. Did you also have an opportunity to
11 observe Simon Khattar?

12 A. He's a lawyer?

13 Q. Yes.

14 A. Yes.

15 Q. And the same question, did you have an opportunity to
16 observe whether or not, in your view, he treated natives any
17 differently than anybody else in the courtroom?

18 A. I don't know in court as per se when the session, like the
19 court is in session. But I've seen him dealing with native
20 people just prior to getting into court, let's say, preparing for?

21 Q. Right.

22 A. In a fashion that, to me, was condescending.

23 Q. In what sense?

24 A. In that talking to them, the tone was "Let's rush and hurry,"
25 and "Are you sure that's what you're saying and you're not

- 1 just making it up?" Or "Are you not lying? Isn't that what
2 I'm saying more what you mean to say?" This type of thing.
- 3 Q. Did you ever see him doing that type of pre-court preparation
4 with witnesses that were not native?
- 5 A. No, because I had no opportunity to be in an area where he,
6 with him at that time.
- 7 Q. So you're not able to say whether or not he treated natives
8 any differently than whites in that respect?
- 9 A. No, I...
- 10 Q. Okay. During the time that you were with the court worker
11 program, are you able to tell us, generally, whether you
12 sensed that native defendants had any difficulties, language
13 difficulties, in the courtroom?
- 14 A. Some of them had some of the time.
- 15 Q. Right.
- 16 A. But not all the time and not always. When I was... Can I
17 explain something to you?
- 18 Q. Yes.
- 19 A. When I was dealing with the native person in court or
20 whoever we happened to be dealing with that was a part of
21 that judicial system at the time, whether it was a probation
22 officer, parole officer, a judge, a prosecutor, or a lawyer, or
23 who, Children's Aid, whoever, I would take the native person.
24 They would tell me, talk to me about... The native person
25 would tell me what their concern or what they were trying to

1 pass on to the party that we were talking to.

2 Q. You were acting as a intermediary, more or less?

3 A. I would try and make sure that I understood and passed it on
4 to the party we were talking to. Like there's three people
5 now sitting here having these discussions, and I would then
6 clarify with the native person, "Did I understand you right
7 and is that what you're meaning to pass on to this person?"
8 And they would verify or not verify. And if they didn't, we
9 would take the time to try and, you know, make sure we
10 understood what the native person was getting, trying to get
11 across. And if we couldn't, we would bring in somebody that
12 was more fluent and more able, because I never professed to
13 be fluent in Micmac. I have a good working command of it.
14 It's a very complicated language. I understand it better than
15 I can speak it back. And I was always very careful and lots
16 of the times, especially when we were dealing with the
17 National Parole Service and Adult Probation and Legal Aid
18 and the Juvenile Courts and the Family Court systems, we
19 were always asked to be very patient with making sure the
20 people understood, I always had to make sure.

21 Q. Did you ever have occasion to ask for the use of an
22 interpreter?

23 A. Yes, I... Do I understand you right? Did I ever go to the court
24 and ask them if I could interpret for someone?

25 Q. Of if you wanted to have...

1 A. Or if I could bring in somebody else?

2 Q. Bring in an interpreter?

3 A. Yes, we did.

4 Q. Did you ever see judges do that of their own initiative?

5 A. Yes, I was going to add, and I also had several, or quite often
6 I've had a judge feel that he wanted to make sure this person,
7 and I can think of a couple of specific cases. He wanted to
8 make sure these people understood, so he asked, since I was
9 sitting there, if I would act as an interpreter or if I could get
10 someone to act as an interpreter for them.

11 Q. Do you remember who the judge was?

12 A. I remember... Let me see, I've got to put a name on this
13 picture again. Lavette, George Lavette. I remember him
14 doing that, especially in the courts in Baddeck. And I
15 remember O'Connor, Charles? John F. did it.

16 Q. John F. MacDonald?

17 A. Uh-huh. And the family court one, Edwards? I believe there
18 was an Edwards in Family Court. Now this is awhile ago and
19 I'm trying to remember these names and I've got all kinds of
20 faces in my head.

21 Q. Did you ever experience any difficulty when you requested
22 an interpreter with a judge saying, "No, you're not going to get
23 one"?

24 A. Yeah, I've had that happen too. "I don't see the need for it. I
25 don't feel that there's a need for it. I've dealt with this

1 person before and had no problem." And I was told that the
2 request was not going to be granted by some of those same
3 judges.

4 Q. Some time ago, in fact, it seems a long time ago now, Bernie
5 Francis gave some testimony concerning an incident involving
6 Lou Matheson and Judge John F. MacDonald. And later on,
7 when John F. MacDonald gave his testimony, he was being
8 questioned by Mr. Ruby about that incident and it's apparent
9 from Mr. Ruby's examination that you had spoken either to
10 him or to counsel working with him and Mr. Ruby had
11 suggested to John F. MacDonald a version of that story, which
12 I'm just going to review with you now and ask you whether
13 or not this is your recollection of it, because Mr. Ruby
14 certainly suggested to John F. MacDonald that this is your
15 recollection of the story.

16 A. Can I ask you not to review what you've got there and just
17 tell you what I remember?

18 Q. You can go ahead and do that, if you'd like, sure.

19 A. That's why I didn't want anybody talking to me. I don't want
20 to try to... I want to remember it like I remembered it. I
21 think the incident they were referring to happened in a
22 courthouse in Sydney. Lou Matheson was prosecuting that
23 day. John F. was the judge. There was several legal aid
24 lawyers there and several... Well, the court docket was quite
25 heavy on that day. There was also on that day, part of the

1 court docket consisted of about five or six native people,
2 several of whom had been there, like repeatedly. One
3 particular person had been there, like I think this was her
4 third or fourth time in a period of four months and I had
5 been there with her a couple of times previous to that and
6 had remembered hearing a judge almost pleading with her,
7 "Don't come back into this court because I don't know what
8 I'm going to do with you," this judge.

9 Q. Same judge? John F?

10 A. Yeah, and then she's there and all of a sudden, he realizes
11 who it is and he was... I mean he was having not too good a
12 day because he was, I mean he was obviously in a rush and
13 he was tired and he was a little bit upset over something.
14 And he came to this native person and he was getting a little
15 bit, I guess, tired with all the native crimes coming up or
16 something and he says... he called this name and a person
17 stood up and he looked and he said, "Oh, no, not you again.
18 What are we going to do?" And he looks over at the other
19 person sitting there, which is the prosecutor, and he says...

20 Q. And is that Mr. Matheson?

21 A. Uh-huh, and he says, "What are we going to do to keep her
22 out of this court? We'll build a fence around the reserve or
23 what?" And Mr. Matheson half stood and half didn't, like he
24 just got up on one, and says, "I don't know, Judge, maybe we
25 have to."

1 Or something to that nature. And he sat back down and
2 then the Judge looked at the lady and he says to her...she's
3 standing there now in front of the...well, wherever it was
4 they stand there, you'd have to see the courtroom to see
5 what I can picture.

6 11:35 a.m.

7 Q. Right.

8 A. And he says to her, "What am I going to do with you?
9 You're here again." and then the case just went on. Mr.
10 Francis stood up, I think, just between...before that...after
11 Matheson made his comment, Bernie jumped up and said
12 something to the Judge about his statement and the Judge
13 looked at him and said, "Order in the court, be seated or
14 leave," or something like this.

15 Q. Uh-hum.

16 A. Bernie Francis then got up, went to the door and banged his
17 way out of the courtroom and I thought he left. I stayed.
18 There was several more people there and this girl was quite
19 upset, she was already very nervous and then she didn't
20 know what was going to happen to her really.

21 Q. This is the defendant now you're talking about.

22 A. And I just said, I was sitting very near her so I just said to
23 her, in MicMac, as best as I could, I said to her, "Just keep
24 calm and try to take a couple of deep breaths."

25 Q. Was...

1 A. And then she said something, I don't know, I don't
2 remember, she started talking to the Judge and then the
3 Judge read her sentence to her and she, I think it was that
4 she pleaded guilty and the court just went on, the next
5 people, the next people, the next, then we left.

6 Q. Was there then a meeting in Judge MacDonald's office?

7 A. Okay. When I went...when we all left the court chambers
8 and went out into the hall to leave the building, Bernie
9 Francis was still there. I thought he had gone because he
10 had been out there for quite some time.

11 Q. Right.

12 A. He then...he was very upset, his face was all flushed and he
13 was quite upset. He said...I thought we were going to go and
14 he said, "Come on." He was very upset and his voice tone
15 was very harsh and he was my boss and he says, "Come on,
16 we're going to go down there. I'm going to let him know he
17 can't get away with remarks like that."

18 Q. Now, who is "he" now, who is he talking about? The Judge
19 or Matheson?

20 A. The judge.

21 Q. The judge, okay.

22 A. And he went down, we went down the hall and he went into
23 the little office and he requested to see the Judge. We were
24 told that he was busy right now. There was several people
25 there. He said, "Well, I'll wait and I'll wait as long as I have

1 to." And I looked at him and I said, "Bernie, maybe we
2 should go and come back later or whatever," and he said,
3 "No, I'll wait." He kept saying, "I'll wait." A few seconds
4 later, I think the girls name was Olga, she went back in and
5 she said to the Judge, "Mr. Francis is still here and he's
6 insisting on waiting," and the Judge said, "I'll see him," and
7 Bernie says, "Come on, let's go." He went in and then they
8 had the discussion.

9 Q. What was the discussion?

10 A. The Judge's office was very small so Bernie went in up to
11 the Judge's desk and it had only took maybe one or two
12 footsteps to get him right to the Judge's desk and, oh, my
13 mind went blank. He says, his voice is very loud and he's
14 talking...

15 Q. Who's this, Bernie now or the Judge?

16 A. No, the Judge didn't say anything, not yet. Bernie is
17 expressing his displeasure with what the Judge had said and
18 indicating that he was discriminatory and that he wanted an
19 apology. I believe he said he wanted a public apology.
20 Anyways...

21 Q. Where are you at this point? Are you in the room too?

22 A. I'm in the room at the door.

23 Q. Right.

24 A. Like I'm right at the entrance of the door because Bernie
25 says, "Come on, come on." So anyway, the discussion goes on

1 and the Judge has by this time pushed his chair a little
2 bit...as far back as he could push it against the wall and he's
3 sitting there and he says. My mind has gone blank again.
4 He says something, anyways to the effect that he was...he
5 didn't feel he had anything to apologize for or something
6 like this and then there was some exchange, quite loud,
7 between the Judge and Bernie and Bernie, I can remember
8 Bernie hitting the desk and the Judge's face turning white
9 and I says to Bernie, "Come on, Bernie, I think we should
10 leave." And Bernie says something like, "I'm going to go
11 report this to the Union of Nova Scotia Indians and Human
12 Rights," or something and the Judge says, "Well, it's my court
13 and I can do what I want; I don't care if you take it back to
14 the Union." Or, "Take it back to the Union if you please, it
15 doesn't bother me," or something like that and Bernie just
16 turned around and grabbed me by the arm or looked at me
17 and says, "Come on, let's get out of here," and we left.

18 Q. Your recollection then is that Bernie's comments were
19 directed towards suggestion that it was Judge John F.
20 MacDonald that had made the comment about the fence
21 around Eskasoni and not Mr. Matheson.

22 A. No, Matheson didn't say it. Matheson just sort of halfed
23 agreed with it because the Judge said it. Who he was saying
24 it to, I still don't know. He said it and when he was sort of
25 like finishing his statement or maybe when he was saying

1 the whole thing and he was sort of like looking at Matheson,
2 who was sitting there and that's why Matheson sort of half
3 got up and says, "Yes," whatever he said to him.

4 Q. Have you had occasion to discuss your recollection of that
5 incident with Mr. Francis?

6 A. He came to the office where I worked, apparently it was
7 after he made the statement in front of...

8 Q. The Commission.

9 A. The Commission, I believe it was, one morning.

10 Q. Right. Did you relate to him your recollection of what, in
11 fact, had occurred?

12 A. I told him exactly what I just told you.

13 Q. Right. What was his response?

14 A. Gee, I don't remember right now. What was his response?
15 Oh, that I was probably remembering it different, and I said,
16 "Bernie, I even remember the clothes you were wearing that
17 day." But anyway. They talked to me a couple times about
18 how I remembered and didn't remember things, but I can't
19 help it. I don't think too many people that observed the
20 same thing would interpret it all in the same way anyway.

21 Q. At this point in time, you say you've had a couple of
22 discussions with Bernie about it. Do the two of you then still
23 disagree as to who made that comment?

24 A. I don't know, because I was never trying to agree or
25 disagree. I don't know where he stands on it. I just had

1 that one discussion with him when he came to my office
2 where I work now and then when I was talking to the lady...

3 Q. Anne Derrick.

4 A. Yes. Bernie...when she asked to talk to me about that, Bernie
5 was there and wouldn't leave and he sort of just again said
6 he remembered it a little different than I remembered it.

7 Q. So, it's fair to say that the two of you still have different
8 recollections of what happened?

9 A. I guess so, I don't...

10 Q. If I could just ask you for a moment, you have that Volume
11 41 in front of you, if you could turn to page 53 of that
12 volume. Actually probably I suppose 52.

13 A. Oh, yeah, I remember that, I made that up.

14 Q. Okay. You recognize the document that commences at page
15 52.

16 A. Yeah. I made that up when I worked in the Native Court
17 Worker's Program.

18 Q. Okay. And this is a document, is it, that describes in general
19 terms the functions...the function of the Native Court Worker
20 Program and what it was that the program was all about.

21 A. Very condensed, yeah.

22 Q. Sure.

23 A. The reason I made this up was to try and...there was some
24 form of it in existence but basically it didn't...it was
25 just...contained just a tiny portion. I just enhanced it a little.

1 The idea of this was to try and create an awareness amongst
2 everybody that we were working with as to exactly what we
3 were trying to do, not just the native community. They
4 were a little bit aware of it. But the people that we worked
5 with in the justice system, and if we left things like this
6 around I was hoping that they would have looked at it and
7 wanted to...I offered...I sent covering letters with these to
8 different offices indicating that "Here is what it's about and
9 I'd appreciate your looking at it, I would appreciate your
10 comments. If you have any questions we're more than
11 anxious to sit down and have a discussion with you on
12 them."

13 Q. You've had an opportunity to look at this document again in
14 the last hour or so.

15 A. I quickly skimmed it a few seconds ago, yes.

16 Q. Right. Are you able to tell us whether or not the items that
17 you set out in this document fairly represent what the
18 program was all about at the time in 1974 and '75?

19 A. Very briefly it was. To me the main idea of the program
20 was to liaison between the native people and the criminal
21 justice system. And, you couldn't put too much in here, so I
22 just tried to outline some of the duties and how we tried to
23 do that.

24 Q. Right.

25 A. With no budget to put something like this together and no

1 money to get it printed it was a chore. So, you couldn't put
2 too much in. Just enough to try and give a brief idea and,
3 yeah, I pretty well covered some of the main areas that we
4 worked in.

5 Q. At the time you were involved the court worker program,
6 were you satisfied that the native court worker program
7 was fulfilling a useful function?

8 A. Yes, it was. It was in that it was assisting some of the, well,
9 it was assisting the native people to better understand what
10 was happening to them, better be able to accept it and to
11 help themselves within the system, because to me it wasn't
12 just... you do something for someone to help them at a point.
13 You educate them how to help themselves in case this might
14 happen again in the future, and you...you also were there to
15 assist the non-native public that were dealing with native
16 peoples to become better aware of some of the problems
17 that they may have in understanding and relating to the
18 system.

19 Q. So, it...

20 A. So it did serve a function, although it was a very difficult
21 function in that you didn't belong to a specific group or
22 organization.

23 Q. Right.

24 A. You tried to fit in the best you could and tried to get
25 accepted the best you could. I think your personality and

1 the personalities of the people you were dealing with
2 sometimes made that a little easier and it sometimes it
3 didn't.

4 Q. And it wasn't then just a court worker program per se. If
5 I'm hearing you correctly, it involved liaison with a lot of
6 agencies other than just the court.

7 A. It was with all agencies really. We did an extensive amount
8 of work with National Parole Service, with Adult Probation
9 Services, with Children's Aid and family adoptions. I've
10 done change of names. I worked with change of names with
11 Legal Aid, with private practising lawyers where they would
12 handle native cases when the native people could afford it
13 and like they wanted to know something about how do you
14 find out this or who in the community should I contact
15 about this or which government department or Indian
16 Affairs department or whatever. Yeah, it was not just in the
17 courtroom or helping somebody get a lawyer to get to court.
18 And then there was a lot of after court work. If the
19 sentence was, like follow up, I guess, is the words that I'm
20 looking for.

21 Q. With a view to educating the native person how to deal with
22 the system and to educate white people how to deal with
23 natives in the system, is that a fair assessment? Yes.

24 A. Yes. I see that as the role of any facilitator in any position.

25 Q. Page 55, that volume. It's a note to Alex Denny care of

1 yourself and refers in September of 1975, it was the
2 understanding of the Attorney General's Department that
3 the Union had terminated the Court Worker's Program and
4 laid off all court workers. Can you explain to us why that
5 happened at that time?

6 A. I don't know. I...

7 Q. Do you remember it happening?

8 A. I was never laid off, that's why I'm confused at this. I
9 remember some type of political thing now, there was two
10 organizations starting up.

11 Q. Uh-hum.

12 A. And it had something to do with federal funding and
13 provincial funding, but I was actually never laid off from
14 the time I started work until the time I finished in '76,
15 when the program finished and I had resigned anyway, ah,
16 because I had another job, but I don't know. I believe there
17 was something for awhile there to do with the Union and
18 provincial-federal funding and they wanted to not have
19 provincial funding and this was a provincially-funded
20 program. And, then again the Union of the Non-Status and
21 Métis Association, I think, and I think the Union had some
22 funding problems within itself and didn't think it could
23 continue to carry some of the programs that it was running
24 that time and was going to terminate a few of them or...

25

11:50 a.m.

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Q. Do I take it from your comments that you don't fully recollect what it was that happened at that time in 1975?

A. No.

Q. If I could just ask you to flip over to page 65.

A. And I'm really puzzled by that, because I know I was never laid off. 65?

Q. Yeah, 65 and 66, I guess, which is a letter that went with it. It seems to be a letter of resignation from yourself as Coordinator of the Court Worker Program effective November 24, 1975. 65 and... That's it, 65 and then 66.

A. Okay. Oh, I remember him, Jim Crane.

Q. You told me a little while ago that you actually left in April of '76. I'm just wondering, I can see in the note on 66 attached to your resignation, there's somebody's handwriting that says, "Withdrew her resignation until further notice."

A. I remember that. Like I said, I had several times wanted to resign and I remember the...

Q. For what reason?

A. Actually, I don't remember all the reasons right now. I know I had a family of about seven that I was running. I was taking a course at university in the nights and I was running this program, which took me all across the province.

Q. I guess all I'm...

A. And then there was problems within the Union itself.

1 Q. Were you dissatisfied with the way the program was going at
2 the time?

3 A. It was a very hard program to work with.

4 Q. For what reason?

5 A. The reason. If the program was set up a little differently, I
6 think it would have been easier for us to work and be
7 accepted by the people that we were trying to assist. Not
8 necessarily by the native people, but by the people within the
9 justice system.

10 Q. Can you give us some help then as to in what way do you
11 think the program could have been set up better so that it
12 would have been more readily acceptable?

13 A. I never thought of that, but we were trying to function...
14 What we were trying to do was assist judges, lawyers,
15 prosecutors, probation officers in providing a service to or
16 dealing with a native person when the oppor... or the occasion
17 came up that they had to. And when you're trying to assist
18 someone in providing a service to someone else, when you
19 have not... When your command of their, you don't have too
20 great a command of the job that they're doing because you're
21 not in it.

22 Q. That's right.

23 A. You're not even a part of it. You ask a lot of questions. I asked
24 a lot of questions, did a lot of reading. If I was dealing with
25 National Parole, I got along with Jim MacNeil like a

1 father/daughter relationship. He helped me a lot to
2 understand a lot of things, and Bernie. Bernie MacNeil, I
3 believe his name is, too. He's still there. You had to try and
4 learn, let's say, the parole system in order to be able to help
5 them help the native and the native become more aware of it
6 and to understand it well enough. And then you'd have to, if
7 you were switching on the same day to work with Family
8 Court, you had to learn all about that again and you just had
9 to keep going around. Like, if we were properly trained or if
10 we were stationed in one or two... If you had native people,
11 let's say, a native parole officer that was a bona fide,
12 legitimate parole officer and that person was responsible for
13 all the normal duties of a probation officer, plus maybe the
14 extra duty of assisting when a native was in front of the
15 board of was on parole or whatever. Whether that person
16 was on parole to this native parole officer or to one of his co-
17 workers...

18 Q. Are you suggesting that it would have been easier for the
19 court worker program to work if there had been more native
20 representation on the institutional side as well as on the court
21 worker side?

22 A. I think so. We would be better able to understand what was
23 going on, let's say. The court worker program tried to be a
24 be-all to everyone and I think that was spreading yourself
25 much too thin. Because it was really hard. It took a lot of

1 study and work. And if you had a system where you had
2 several native people in some capacity working within some
3 of these departments, to be there as facilitators or to be there
4 as a part... Can I use myself as an example? I'm an employee
5 of the federal government, Employment and Immigration
6 Canada. I'm an employment counsellor, PM-2. I also assist
7 with native people that come to our department that require
8 the assistance. Not all of them do. I assist the native person
9 that wants the help and/or I assist a counsellor that wants
10 help in dealing with the native community or the native
11 client. So I'm an employee, I'm fully versed. I have a very
12 good command of all of the programs and services provided
13 by that particular department. And, therefore, I'm in a
14 position that I can walk in and fit into any situation or any
15 meeting or liaise or help in any way. And it makes it much
16 easier than if I were working for a department, whether it's
17 Indian Affairs, Union of Nova Scotia Indians, or whatever
18 other Indian organization exists, and was asked every now
19 and then, "Go to Employment and Immigration and help out
20 with this situation that they're trying to deal with or this
21 service that they're trying to provide to a native community."

22 Q. Did you have, during the course of your employment with the
23 court worker program, did you have a degree of liaison with
24 representatives of the provincial government?

25 A. Yes.

1 Q. How did you feel you were treated by the representatives of
2 the provincial government?

3 A. You're talking about who when you say "provincial
4 government"? I'd like specifics.

5 Q. You had some liaison, did you not, with the Attorney General's
6 Department?

7 A. Yes.

8 Q. Did you have any liaison with Mr. Coles and Mr. Gale?

9 A. Mr. Coles, Mr. Gale, and Mr. Crane. I worked very, very well
10 with Mr. Crane and very closely. We were on an advisory
11 board together and that's something that I had wanted
12 always because these people were funding the program.
13 They also were, I understood, the bosses of a lot of the people
14 that we were supposed to be working with. And they were in
15 a position to help liaison our working relationship with these
16 people. And Mr. Crane helped me out in many ways in
17 getting to be, in getting our aims and objectives of our
18 program, getting ourselves accepted and...

19 Q. Mr. Coles?

20 A. Mr. Crane more than anybody else.

21 Q. All right, but what kind of a relationship did you have with
22 Mr. Coles?

23 A. Mr. Coles, we had several meetings. We had several
24 discussions. We worked to try and improve. He would ask
25 how we felt it could be or couldn't be improved and I don't

1 remember too much else about him. Because everything was
2 sort of like delegated to someone under him, I think. He
3 appeared at several of our meetings. He seemed cooperative,
4 but sometimes frustrated.

5 Q. Frustrated by what?

6 A. He dealt more with... Mostly, he dealt with the, let's say, what
7 would be my boss.

8 Q. Right.

9 A. Not with me, per se.

10 Q. When you left the court worker program in April of '76, I
11 think you indicated a few minutes ago it was because you had
12 another job at that point.

13 A. That's right.

14 Q. Was there any... Was your leaving the court worker program
15 in any way attributable to any degree of frustration with the
16 program itself?

17 A. That's one of the reasons I wanted to leave. I was getting
18 very tired and... Can I get a Kleenex?

19 Q. Sure.

20 A. I was getting very tired and it was a lot of area to cover. You
21 had to be on the road a lot of the time and I had a big family.

22 Q. Was that unusual to you because you were the Coordinator
23 that you travelled as much as you did?

24 A. Well, even when I wasn't, I was still required to travel quite a
25 bit because there was not, like there was a lot of area to cover

1 and we only had, I think at one point, there was just Bernie
2 and I and I...

3 Q. You were responsible for the whole province or just for Cape
4 Breton?

5 A. No, the whole province. I'd go to court in Yarmouth, in
6 Windsor, in Antigonish, in Baddeck, in Louisdale, in Glace...
7 North Sydney.

8 Q. Are you able to say at this point whether or not you think
9 that a program like the native court worker program would
10 be, would still serve some use in Nova Scotia?

11 A. I think so. I think if you had a program and the people were
12 properly trained, people with empathy and compassion for
13 others, patience, and if the program could be somehow made
14 to be accepted by the system that we're trying to serve, the
15 court system, let's say, I think it would work well.

16 Q. Do you think that the court system, as you call it, did accept
17 the court worker program during the time that you worked in
18 it?

19 A. They were starting to become... Well, the first thing you have
20 to do is try to get them to accept you as a person and realize
21 that you're not there to sort of like watch them... I don't
22 know what word I'm looking for. I'm at a loss right now. But
23 there was a feeling there for the longest time, and some
24 people never let go of it. They made it very difficult for you
25 to work with them because the thing was, "Who in the name

MS. GOULD, EXAM. BY MR. SPICER

1 of God are you to come in here and even watch or suggest or
2 tell me or that I may need your help?" And the first thing
3 was to try to get yourself accepted, to build up your
4 credibility, your dependability, your reliability, and your
5 sincerity and just to get them to know you as a person. That
6 took a lot of work and a lot of effort and it proved to be very
7 successful and helpful. There are several people that I made,
8 got to know at that time that I'm still very close friends with.

MR. SPICER

9
10 Thanks very much.

MS. GOULD

11
12 Gee, when you said "Thanks very much," I thought you were
13 going to say that I could get down now.

MR. SPICER

14
15 No.

MS. EDWARDH

16
17 Just a couple of questions, Mrs. Gould.

EXAMINATION BY MS. EDWARDH

18
19
20 Q. I wanted to just pick up on an area that Mr. Spicer raised
21 with you, which was the process of acceptance in the courts
22 and just see if you could assist us in commenting upon. Was,
23 first of all, Sydney, in your experience in the courts in the
24 Sydney area, any different than your experience in the courts
25 throughout Nova Scotia?

1 A. I would say yes.

2 Q. Can you explain just for our benefit in what way it would be
3 different?

4 A. I think the only way I could explain would be to relate it to
5 situations. For one, the Sydney courtroom was always much
6 bigger and much busier and very, sometimes more formal
7 than, let's say, sittings in a courthouse in Baddeck that was set
8 up for court for that day only, or in Louisdale or in some of
9 the other places. I can remember being in a courtroom in St.
10 Peters and almost, well, you were always accepted as just
11 being... You were expected to be there. When you weren't,
12 they would call up and ask "Where were you?" "Is someone
13 on the way?" Or, "Are you coming?" And sometimes when
14 the judges were going out, I can remember one specific judge
15 wanted to make sure that we were going to be there, so he
16 called and offered to drive us out. The setting was less formal
17 and made it easier to fit in. You were more accepted. I think
18 they depended on you a little more because some of the
19 isolated or rural communities, the people spoke more Micmac
20 or were less well educated or more withdrawn or something
21 and it made it a little more difficult for them to relate to and
22 be related back to in the systems.

23 Q. Would it be fair then to summarize your observations as
24 indicating that your experience in Sydney showed that you
25 were less acceptable in the Sydney court system than in

1 perhaps smaller communities?

2 A. Yes.

3 Q. And in terms of dealing with, I'm going to use the term
4 resistance, in dealing with the resistance to your participation
5 in the courts, did you have an opportunity, for example, to sit
6 and discuss the role of, that you wanted to play or that Mr.
7 Francis wanted to play with the prosecutor, Donnie MacNeil?

8 A. I remember trying a couple of times before I became court
9 worker and I was told, "Well, if you want that, why don't you
10 get your bosses to do that? Get them to write me a letter or
11 something." And then after when I had a little more say in
12 the thing and we discussed it at one of our board meetings
13 and Mr. Crane wrote up a letter explaining the program and
14 we made these pamphlets and things and I went back at
15 another time and offered to, or indicated that I'd like to talk
16 to him and we did have some talk but I think it was more to
17 humour me than to anything else. That's the feeling I got
18 from that particular person at that time. But with many
19 others, it was quite receptive.

20 Q. No, but with respect to Mr. MacNeil for a moment, was there
21 any time with respect to your involvement with him that he
22 made any efforts to assist you in implementing the program?

23 A. Any efforts to assist in implementing the program? I think
24 the nearest effort he would have made to assist me in any
25 way was to ask me for my version of what he thought had

1 happened or what he, as a prosecutor, should know. Like he
2 was trying to get information from us.

3 Q. Would that be in terms of getting a statement from an
4 accused person through you?

5 A. Not so much a statement as like this is just before we're going
6 into court. I can remember a couple of times him coming and
7 saying, "Well, you know, this is...We don't have too much on
8 this case. What can you tell us about it?"

9 Q. Any other helpful activities?

10 A. Not really, because he was a very hard person to work with
11 or for or to try to communicate with.

12 Q. What do you mean?

13 A. He just made me feel that I was a nuisance, or we were a
14 nuisance and he didn't need us. He could do his job without
15 us.

16 Q. In fact, would it be fair to say with respect to him, he was one
17 of the individuals who was not accepting of your role?

18 A. He said he didn't need us.

19 Q. Now with respect to the bench and the judges that you dealt
20 with in the Sydney area...

21 A. But see, listen, the judges in the Sydney area are the same
22 judges, some of them, that went to Baddeck and Louisbourg
23 and some of those other places... I mean Arichat.

24 Q. I appreciate that, but mostly they don't sit throughout the
25 whole province, although they would sit in areas outside

MS. GOULD, EXAM. BY MS. EDWARDH

1 Sydney. Would they ever call upon your assistance or did
2 you ever have occasion to have a formal meeting with them
3 to discuss what you could do to assist them in the courts and
4 how they could use you to facilitate their own task?

5 A. Yes. Like I said, I had contacted all of, and Gordon... Jim Crane
6 had assisted in contacting all of the judges and prosecutors
7 and when I made a personal contact to them, several of them
8 responded.

9 Q. And when you say... Let's deal, first of all, with the bench.

10 A. We sat down and talked about my role in the courts and they
11 sort of indicated how they would like to use us and what they
12 thought we should be doing or could be doing and how we
13 could be helping and some of them said, "Well, we appreciate
14 it in any way that you could help us."

15 12:10 p.m.

16 Q. There's a comment that I wanted to draw to your attention
17 made by His Honour Judge MacDonald about his perceptions
18 of being uncomfortable with both yourself and Mr. Francis
19 because occasionally you would want to talk about individual
20 cases and, therefore, he felt he really shouldn't have anything
21 to do with you. Do you recall ever trying to speak to him
22 about individual cases and, if so, in what context would you
23 have occasion to have those kind of discussions?

24 A. He was one of the judges that we couldn't hardly get to talk to
25 period. I mean even to explain what we were doing. And one

MS. GOULD, EXAM. BY MS. EDWARDH

1 of the things we were, that was pointed out to us when we
2 started, me, when I started working in the Court Workers
3 Program and, again, when I worked with the advisory board,
4 I was, I used to ask, you know, just what role do we play in
5 relation in trying to talk to a judge about a case before it's
6 being heard and that was always a no-no. I don't think even
7 lawyers do that.

8 Q. No.

9 A. So we did not, I did not ever attempt to do it.

10 Q. Okay.

11 A. The only time I would talk to a judge is, and I had, I have
12 talked to John F. was after everything was finished.

13 Something very similar to Bernie Francis' instance would
14 happen, or if it happened, I would just very quietly, after the
15 thing was over, call him up or ask to see him and sit there
16 and just indicate to him, "Do you realize that this was said and
17 it could probably look like," just for the awareness. To create
18 the awareness so that maybe he would be a little more
19 cautious.

20 Q. And what was, for example, His Honour Judge MacDonald's
21 response when you would point to areas of your concern or
22 comments that may have been made that were questionable
23 or problematic?

24 A. I'd say it depended on his mood. If his mood was, sometimes
25 we was receptive, sometimes he admitted, or acknowledged, I

MS. GOULD, EXAM. BY MS. EDWARDH

1 can remember once him saying, "I think I have to be a little
2 more, I think I should be a little more on guard." Things like
3 that.

4 Q And on guard, was he relating that to a specific comment that
5 he had made in relation to native people?

6 A. Yeah, on guard to what he's saying.

7 Q And do you recall what that comment was?

8 A. Not right now, no.

9 Q If you could give us an overview of your observations of the
10 administration of justice in that time period in Sydney, would
11 you have any comment as to how native people were viewed
12 in the courts? Were they viewed differently? Were they
13 viewed in the same way? Was there any aspect of their
14 treatment that particularly bothered you?

15 A. That's almost the same as what he had asked and the answer,
16 I think, I understand it to be the same. The answer would be
17 like some, in, sometimes, I felt that a lot of the times it was
18 dealt with, like, let's get this over with and done with. It's a
19 nuisance. It's just a routine. Smack, dab, get it over with.
20 Nobody's going to complain. Nobody's going to know. If these
21 people don't watch us then it won't get anywhere.

22 Q Did you ever come to the conclusion in watching either the
23 court or native people interact with police or prosecutors, that
24 they were less likely to be believed or even the parole board.

25 A. Not necessarily the parole board. But the prosecutors and the

MS. GOULD, EXAM. BY MS. EDWARDH

1 judges. I've heard the question, I've heard the same question
2 put to the persons several, a person several times and asked,
3 the person asked, "Do you want to change your answer now?"

4 Q. And did you see that throughout the period of time you were
5 a court worker?

6 A. [No audible reply.]

7 Q. Yes, I'm sorry, the witness nodded "yes." Now there's one
8 other area that perhaps you could assist us with Mrs. Gould
9 which is any observations you have about the interaction of
10 police officers and native people who would be brought to
11 court. Can you assist us in identifying any problems you
12 observed between young native people charged, or even older
13 native people charged, and the police officers who they were
14 dealing with?

15 A. Police officers, you mean like the city police and the RCMP?

16 Q. Yes. Yes. Let's start with the city police first.

17 A. A lot of them were very afraid of the city police. A lot of
18 them didn't trust the city police and I don't think the city
19 police believed a lot of them because, I say that because they
20 would keep asking the same question over and over again
21 trying to see if they could get, seemingly clarification on
22 something that was crystal clear. Like, "Did you do it, yes or
23 no?" And the person would say no and they'd keep asking
24 the same, "Did you do it, yes or no?" And the person would
25 still say no, and well, "If I put it this way will you change

MS. GOULD, EXAM. BY MS. EDWARDH

1 your mind?" And then I've heard somebody say, "Well, I
2 don't think you're telling the truth."

3 Q. Why were individuals afraid? You used the term they were
4 afraid of the city police. What was transpiring in the
5 community that led you to that conclusion?

6 A. I don't really know what was transpiring in the community
7 because I can only speak for the individuals that I am
8 specifically thinking of and I think they were, well I don't
9 think they were afraid of the police because they had had
10 some bad experiences. Like being detained without given a
11 reason or being treated roughly or being threatened. Like if
12 you don't this, then, you know, this will happen. Or, this is
13 what they're telling me, okay, and I saw a young boy that
14 wasn't even, he was still a juvenile being, because of his size,
15 taken by the City police, who I think were aware of the fact
16 that he was still a juvenile because they knew the community
17 and I think they knew the family and I think they knew the
18 boy, taking him and putting him in the city lock-up.

19 Q. Did you get involved in that?

20 A. Only that, I believe it was the parents couldn't believe that
21 this was happening and when they were called or when they
22 were made aware of the fact that this person was here and
23 they were called, needed assistance in going down on a drive
24 or just wanted the moral support. A lot of our function was in
25 providing moral support to people, too.

MS. GOULD, EXAM. BY MS. EDWARDH

1 Q. And so..

2 A. This was in the night time, if I remember right. And the
3 mother was quite upset and the child had been at the city
4 lock-up for a while and they didn't, they just didn't want to
5 believe that he, the person was only, I think, 14.

6 Q. If you had wanted to file a complaint or assist the parents of
7 this young person to file a complaint, to whom would you
8 have gone in the police force in Sydney? Or any other
9 organization. Where would you go?

10 A. I would, my first reaction would have been to go to the police
11 chief, chief of police, and try and discuss it with them. This is
12 where I would always use, try to use the advisory board and
13 indicate to them what had just happened and get their advice.

14 Q. Did you have occasion to ever discuss, then, matters of your
15 concern with Chief MacIntyre?

16 A. Say that name again?

17 Q. John MacIntyre who was...

18 A. But he wasn't, was he a chief then?

19 Q. May not have been. I'm not sure what...

20 A. A big person.

21 Q. Yes.

22 A. No, he wasn't the chief of police then, I don't think.

23 Q. He may have become the chief later. Did you have any
24 occasion to have any dealings with him.

25 A. He didn't like us so we didn't have too much dealing with him

MS. GOULD, EXAM. BY MS. EDWARDH

1 because the impression was always, "I don't need you to do
2 my work."

3 Q. And when you say "like you", didn't like us, are you referring
4 to yourself and Mr. Francis as the...

5 A. I'm not talking about Mr. Francis through any of this, am I?

6 Q. No. I just, who do you mean by "us"? Are you talking about
7 the program or...

8 A. Yeah. The native Court Work Program. The Union of Nova
9 Scotia Indians. The native people that think they were
10 supposed to be supposedly helpers, mediators or whatever.

11 Q. So your comment about "us" is really that he didn't like any of
12 the native people that he was dealing with, is that what
13 you're saying?

14 A. That were trying to get involved in him performing his duties.
15 Like I was, if I was trying to get, to give him some
16 information or to try and pass him some information or to get
17 some information from him to try and help the native person
18 better understand what was happening to them, it was as if,
19 "It's none of your business to be here. I don't have to give
20 you this information." You know, this type of thing.

21 Q. Did he ever change his position towards yourself or anybody
22 else that you're aware of so that he viewed the program as
23 helpful?

24 A. No. He's one person that, he's one person, even the name
25 always scared me because of the, like he put on a big, I don't

MS. GOULD, EXAM. BY MS. EDWARDH

1 know if it was a big air or what, but he would come across as
2 like you were going to be in trouble any minute for talking to
3 him. You were going to be locked up or you were going to be,
4 it was always intimidating to me. I was always very scared.
5 And it wasn't just myself it was some people. And it was
6 basically how he presented himself, how he talked to us, his
7 tone of voice. How he treated you, type of thing.

8 Q. Did he, during the course of the time that you observed him,
9 did he treat yourself and other native people differently than
10 he would a white police officer colleague?

11 A. Yeah, because a white police officer was his colleague.

MS. EDWARDH

12 Those are my questions, Mrs. Gould, thank you for your
13 patience.
14

COMMISSIONER EVANS

15 Did John MacIntyre treat the Indian boys or girls any
16 differently than he treated the white boys or black boys?
17

18 A. I find that hard to answer because I didn't have too much
19 dealing in seeing him with the non-, like it was none of my
20 business to be there when he was dealing with non-native
21 boys or girls or people. But I think when I saw him in, I'm
22 putting myself back now to the courthouse in Sydney and
23 while he was having interaction with people in the lobbies
24 and just even in the courtroom itself before proceedings
25 began, it seems that his dealing with some of the people, I

1 saw him talking to were, I couldn't hear what they were
2 saying or anything, but it just seemed like the way he was
3 presenting himself was a little more acceptable and
4 presentable and more polite.

5 COMMISSIONER EVANS

6 Thank you.

7 MR. MURRAY

8 My Lord, Mr. Pugsley and myself didn't anticipate that this
9 witness would be on now, we anticipated another witness would
10 be being called. I wonder if, at the Commission's indulgence given
11 that it's close to the lunch hour, if I might have the chance to
12 consult with Mr. Pugsley before we have to make our decisions.

13 CHAIRMAN

14 Are there any other, I'd like if possible, and I sense that Ms.
15 Gould doesn't find this a very enlightening experience and I'm
16 sure you'd like to, of course, to conclude your evidence as soon as
17 possible, Ms. Gould.

18 MRS. GOULD

19 I'd like to but I'm okay.

20 MR. MURRAY

21 Perhaps I could step out and be back within five minutes.

22 CHAIRMAN

23 Fine. Okay. Who's next? Mr. Barrett? And I would ask
24 counsel if, I ask it often, particularly bearing in mind Ms.
25 Gould's interpretation of repetitive questions that, which is

1 be repeat offenders?

2 A. Some of them would be, yes.

3 Q. And you've indicated, I suggest would this in any way
4 perhaps, on his part, be frustration on his part? So you would
5 detect it as frustration.

6 A. It could be frustration but the frustration was not always
7 shown to repeated offenders that were not native people and
8 I saw lots of non-native people appear repeatedly. Like I can
9 even think of names right now that I saw appear five and six
10 times, that wouldn't even come to us as native court workers,
11 just sort of gives them the moral support they needed and
12 they were treated a little differently in that they were
13 treated more courteously and with more patience or
14 whatever.

15 Q. I'm sorry, these were native people?

16 A. Non-native people. Non-native, I can think of a few non-
17 native people that used to come to us because there was
18 nobody else there to help them. There was nobody else there
19 for them to get some moral support from or some advice from
20 or, and, or go to Legal Aid for or they didn't want to go to
21 Legal Aid again.

22 Q. Mrs. Gould, on remand day, could you give me some idea as to
23 the percentage of natives or lower socioeconomic group,
24 would they make up the majority of people on remand day?

25 A. That's really almost impossible for me to answer because at

1 any given time the courtroom was, had a lot of, a cross-
2 section of people from every, almost every walk of life, every
3 socioeconomic...

4 Q. I take it though...

5 A. Background.

6 Q. I take it that remand day in Sydney was a busy day in court.

7 A. It was normally busier than...

8 Q. Other courthouses?

9 A. Um-hmm.

10 Q. Now you've testified you felt Mr. MacNeil treated individuals,
11 I believe you said, I'm going to phrase it, a higher
12 socioeconomic status with more courtesy.

13 A. Um-hmm.

14 Q. Would these people be represented by defence counsel?

15 A. Some of them would be and some of them would not be. I'm
16 thinking of times where I saw him dealing with people that
17 were not represented by counsel on a level that I thought was
18 quite human and compassionate.

19 Q. Did you ever take your complaints to the Attorney General's
20 Department, your concerns with Mr. MacNeil?

21 A. No. I don't remember. I don't think so. No, I remember
22 discussing it a couple of times with the Union of Nova Scotia
23 Indians board of directors and I might have even brought it
24 up at one of our advisory board meetings that we do have a
25 problem with a few people and these are the people. I know

1 we did that. We had those discussions, but whatever material
2 I, it didn't help very much. Sometimes it would help just for
3 a little while. Like it seemed like he was trying but just
4 couldn't do it.

5 MR. BARRETT

6 Those would be all my questions, My Lords.

7 12:28 p.m.

8 MR. BARRETT

9 Those would be all my questions.

10 MR. MURRAY

11 We would have no questions on behalf of John MacIntyre.

12 EXAMINATION BY MR. PINK

13 Q. Mrs. Gould, just a couple of things. My name is Darrel Pink
14 and I represent the Attorney General's Department. As I
15 understand from your testimony, you were working with
16 the department with Mr. Crane and with the advisory
17 committee to try and get the program improved, is that
18 correct?

19 A. That's right.

20 Q. And Mr. Crane was very sympathetic and helpful in your
21 endeavours?

22 A. Yes, he was. He...he helped us in many ways. Like he
23 helped us in trying to get more funding and trying to get
24 better trained. He assisted us in trying to get the various
25 departments that were under him to recognize us workers

1 as more, ah, I, in fact, got the opportunity to, ah, I suggested
2 it one time and it came about to shadow some of the people
3 that worked under him, like the parole and probation
4 services and to help them provide...in providing services to
5 non-native communities and the native community to learn.
6 He was a really helpful person.

7 Like there was almost nothing that I would...there was
8 no time that I called on Jim Crane and...I'm not ashamed to
9 say I don't know and I'll go and find out, or I was never
10 afraid to go look for help, and poor Jim, I called on him more
11 often than I can count, and he was...he would always come
12 through for us.

13 Q. And the purpose of the advisory board was to take the
14 problems you were having with the courts, with the
15 prosecutors, with other people in the system, talk about
16 them and try and figure out how to better deal with it and
17 improve the program, is that correct?

18 A. That's correct, but not only with those, because there was
19 not always a problem with those people that you just
20 mentioned, o.k. or those people in those positions you just
21 mentioned. But also to try and provide a better service to
22 the native communities, to try and better educate them. We
23 were...just before the program started to phase out, we were
24 talking...we were doing a lot of prevention work, as in the
25 light of trying to...my mind keeps going blank on me. I only

1 slept for two hours last night.

2 Q. Just take your time.

3 A. We were trying to provide a prevention service by
4 educating them as to, you know, the consequences of some
5 of their actions, what it may be.

6 Q. Sure.

7 A. And, trying to prepare them by letting them meet some of
8 the people within the systems, that they were not all bad
9 guys against good guys or, you know, it was just all...we
10 should be all working together. And I used to work really
11 hard to try and get people to accept probation officers,
12 parole officers, even wardens, as not all bad guys. And that
13 helped them in being more comfortable when they came on
14 our community and when we had to go to the, I mean, when
15 we had to go with a native person to them, it made the
16 native person a little more comfortable.

17 Q. Was there some resistance within your own community to
18 the program?

19 A. No, not to the program. Some people within our community
20 preferred to deal with one person as opposed to the other
21 within a program, but not to the program itself. In fact, I've
22 been out of it for almost sixteen years and I still get people
23 coming with, ah, especially some of the older ones, with, hey,
24 "Why aren't you still doing this?" or, "Hey, I know you're not
25 doing this but can you help with this area or that area?" I

1 think they miss it.

2 MR. PINK

3 That's all, thank-you.

4 MR. PRINGLE

5 We have no questions, My Lord.

6 MR. CHAIRMAN

7 Mr. Ross.

8 EXAMINATION BY MR. ROSS

9 Q. Mrs. Gould, my name is Anthony Ross and I would ask you
10 just one or two questions about your experience in court as
11 it related to the treatment of black people in your presence.

12 A. Right.

13 Q. I take it that you...when you were in court you saw black
14 people being processed from time to time?

15 A. Yes.

16 Q. And the general comments which you made with respect to
17 an attitude towards Indians. Does that same thing apply to
18 black people in...as you recall?

19 A. To a certain degree I would say, yeah, but to a lesser degree
20 because the...it seemed to me that the black person felt more
21 confident sometimes in speaking up for themselves as
22 opposed to the native person who would, ah, and this is
23 what used to bother me. I'd see the native person quite
24 often just withdraw instead of stand up and sort of like to
25 defend himself or re-explain themselves or something like

1 that, and I have seen a black person clarify a point for
2 themselves in court.

3 MR. ROSS

4 Very good, thank-you. That's the extent of my questions.

5 MR. CHAIRMAN

6 Mr. Wildsmith.

7 EXAMINATION BY MR. WILDSMITH

8 Q. Bruce Wildsmith, for the record, representing the Union of
9 Nova Scotia Indians. One area that was not touched on is the
10 question of juries. Did you have occasion to observe native
11 people being tried in front of juries?

12 A. Yes, I have.

13 Q. Do you have any observations about how juries appear to
14 respond to a native accused?

15 A. It's hard. I always found it hard, when I was in court that
16 was in front of a jury I just would find it hard to pick up
17 any vibrations because like there was never...I never saw a
18 jury with a native person on it.

19 Q. Yes.

20 A. I don't know if there was one on the Donald Marshall case
21 because I was just...I wasn't...I didn't go to court at that time
22 and I never...I didn't...I've never heard or found out. But I
23 never saw a jury with a native person on it, and when...the
24 juries that I can think, now, I got to put myself and picture
25 something here. I see this jury and they're all sitting there

MS. GOULD, EXAM. BY MR. WILDSMITH

1 and they're listening and their faces are almost non-
2 expressive and, you know, and then they go out and they
3 come back in, and I can't comment because I just have no
4 contact with people on juries. You just sit and watch them
5 and...

6 Q. No comment or no observation.

7 A. No.

8 MR. WILDSMITH

9 Thank-you. That's the only question.

10 MR. CHAIRMAN

11 Thank-you very much, Mrs. Gould, you've been a very
12 intelligent witness. I thank you for coming.

13 MS. GOULD

14 Thank-you.

15 MR. CHAIRMAN

16 Two o'clock.

17 INQUIRY ADJOURNS - 12:36 p.m.

18 INQUIRY RESUMES - 2:09 p.m.

19 MR. CHAIRMAN

20 All right.

21 MR. SPICER

22 The next witness is Mr. Endres.

23 MR. REINHOLD ENDRES, duly called and sworn, testified as follows:

24 EXAMINATION BY MR. SPICER

25 Q. What's your full name, please, Mr. Endres?

1 A. My name is Reinhold Maurice Endres.

2 Q. That's E-N-D-R-E-S.

3 A. Right.

4 Q. You graduated from Dal Law School in 1975.

5 A. Correct.

6 Q. Where did you serve your articles?

7 A. I served articles with a firm that was called Hopkins, Dillon
8 and Associations in Bedford.

9 Q. Okay. Did you practise with them at all after you finished?

10 A. No.

11 Q. Where did you go then?

12 A. I started with the Attorney General's Department
13 immediately after my articling.

14 Q. Would that have been March of '76?

15 A. That's right.

16 Q. Okay. In what capacity?

17 A. I started as Crown Prosecutor in Dartmouth.

18 Q. For how long did you do that?

19 A. About two and a half years.

20 Q. Subsequently to that?

21 A. Following my prosecutor's duties I transferred to the head
22 office, and I was active in criminal appeals for almost two
23 years.

24 Q. So, that gets us to around 1980 or so, '81.

25 A. Roughly 1980, yes.

1 Q. Okay. After you concluded working in criminal appeals,
2 what did you do next?

3 A. I then started to work in civil law, in civil litigation
4 primarily.

5 Q. At that stage of the game when you started were you doing
6 trial work?

7 A. Yes, I was.

8 Q. Okay. And for how long did that go on?

9 A. I am still doing that now.

10 Q. What is your title?

11 A. At this point?

12 Q. Yes.

13 A. I am director of civil litigation.

14 Q. As a director of civil litigation, do you get involved in the
15 actual cases yourself?

16 A. Yes, I do. It depends on the nature of the case.

17 Q. Okay. For how long have you been director of civil?

18 A. Since 1986.

19 Q. During the years that you've been doing civil, for how many
20 years prior to becoming director were you involved in civil
21 litigation?

22 A. Just after I finished doing criminal appeals work.

23 Q. That is what, '81, '82?

24 A. 1980, the end of 1981, beginning of 1982.

25 Q. To who do you report in the Department of the Attorney

1 General?

2 A. We have an executive director. His name is Mr. Conrad,
3 Gerald Conrad.

4 Q Right.

5 A. I report to him directly.

6 Q During the time that you were Crown Prosecutor, what types
7 of cases would you be prosecuting?

8 A. Any kind of criminal case under the Criminal Code of
9 Canada, not provincial offences, except for the rare case.

10 Q Now, would that have been from '76 until middle of '78 or
11 so when you were doing that sort of work?

12 A. That's right.

13 Q During that period of time, what did you understand the
14 nature of the obligation to disclose to be, to defence counsel?

15 A. I don't recall that we had at that point in time any specific
16 direction as to the nature of disclosure with defence counsel.
17 It was a matter that I addressed individually myself.

18 Q What was your practise?

19 A. Generally I was quite receptive to meet with counsel to
20 disclose to them on the basis of the Crown Sheet, which I
21 obtained from the police, of course, the nature of the case
22 against the accused.

23 Q Would you disclose statements of...in your possession to
24 defence counsel?

25 A. It would vary. Sometimes I would, sometimes I would not.

1 It depends just on what counsel was looking for.

2 Q. If counsel didn't ask, would you think it was your obligation
3 to disclose in any event?

4 A. No.

5 Q. Did you have any discussions with any of your superiors in
6 the Attorney General's Department concerning that
7 viewpoint, that is, that you didn't feel you had a positive
8 obligation to disclose?

9 A. I do not recall that as being an issue, so I would have had no
10 occasion to obtain any instructions.

11 Q. Do you know whether or not your policy was consistent with
12 the policy of other prosecutors operating in the Halifax-
13 Dartmouth area at the time?

14 A. I don't know that, but I would expect that individual
15 prosecutors had approached the matter differently.

16 Q. In your understanding was there any policy at all in effect
17 between the years 1974 and 1976?

18 A. When I started in 1976 I certainly was not aware of any
19 policy on disclosure with defence counsel.

20 Q. Were you given any advice by superiors in your department
21 as to what your obligation was?

22 A. No.

23 Q. So how did you come to the conclusion that it was
24 appropriate not to disclose unless the material was
25 requested?

1 A. Well, it's just a matter of the way things worked out. I
2 wouldn't...as a matter of fact, I would not make any
3 disclosure unless defence counsel would ask for it.

4 Q. Right.

5 A. In other words I would not go to the defence lawyer and
6 say, "Would you like to see the Crown file?"

7 Q. Were you ever subject to any criticism as a result of
8 embarking on that policy by...

9 A. Only, I'm sorry.

10 Q. By anybody in the Attorney General's Department?

11 A. No, not at all.

12 Q. By any defence counsel?

13 A. Yes, I was going to say, some defence lawyers did not
14 particularly appreciate my willingness, sometimes
15 unwillingness to disclose. There were occasions when I did
16 not disclose statements.

17 Q. What would be the basis of your unwillingness to disclose?

18 A. Well, it depended on the lawyer, frankly. I do recall that
19 there were occasions when a defence counsel had made,
20 what I considered to be, inappropriate use of statements
21 which were really not relevant to the case at all. I had an
22 occasion like that and in that event I was more cautious the
23 next time. In other words, I was not as forthcoming with
24 information.

25

1 2:15 p.m.

2 A. But, invariably, the Crown sheet would be disclosed. Not the
3 paper, per se, but...necessarily, but I would disclose what is in,
4 what was in the Crown sheet.

5 Q. Verbally?

6 A. Yes. I would tell the lawyer, "This is what it says in the Crown
7 sheet."

8 Q. If the lawyer asked to see the Crown sheet, would you oblige?

9 A. Normally I would, yes,

10 Q. Would there be circumstances, again, where you wouldn't?

11 A. Yes.

12 Q. What sorts of situations?

13 A. Again, it would have depended on my relationship with the
14 lawyer, frankly. There were very few cases when I would
15 not make disclosure. There were very, very few.

16 Q. During your time as prosecutor, would you have had contact
17 with the police?

18 A. Yes, of course.

19 Q. And which police force would you be dealing with?

20 A. The Dartmouth City Police.

21 Q. Are you able to comment on whether or not the Dartmouth
22 City Police thought it was their obligation to lay a charge or
23 whether they would consult you before that was done?

24 A. The Dartmouth City Police and I had a very close working
25 relationship and unless, and except in the case of a very

1 routine charge, they would invariably come to me and ask for
2 my advice before charges would be laid.

3 Q. Would there be circumstances where you would suggest to
4 them that there weren't grounds to lay a charge?

5 A. Yes.

6 Q. Would they accede to that view?

7 A. Yes.

8 Q. Invariably?

9 A. Always.

10 Q. Was it your view that you had the right to decide whether or
11 not a charge was laid?

12 A. No, no, that was not my view. It was my position to advise
13 the police on whether the facts that they had accumulated
14 were sufficient to lay a charge. But if the police had wanted
15 to go ahead against my advice, that would have been their
16 right.

17 Q. But as a matter of practice it just never happened.

18 A. It never did, that I recall.

19 Q. Did you deal with the RCMP at all?

20 A. No.

21 Q. No. When you took over doing civil work, included in that
22 work would you negotiate settlements from time to time?

23 A. Yes, I would if there were such negotiations, but they were
24 very rare.

25 Q. What sorts of cases would you be involved in on the civil side

1 in the AG's Department?

2 A. Today, I am primarily involved in, almost exclusively, in
3 constitutional cases. That is, cases under the British North
4 America Act including the Charter of Rights.

5 Q. What about when you first started?

6 A. When I first started, I did any litigation that was assigned to
7 me and a lot of that would amount to Chambers applications
8 where there would be no disputed facts.

9 Q. What was your experience in the years '83 and '84 with civil
10 cases involving damages? That is, where a party was
11 claiming damages?

12 A. I'm sorry, I'm not sure if I can understand what...

13 Q. Well, what I'm asking is whether or not you had any
14 experience in '83 and '84 with cases in which you might be
15 asked to settle a case on the basis a quantum of money was
16 involved in the settlement.

17 A. Yes, I would have had cases where a settlement was arranged
18 ultimately. In other words, claims in tort or whatever,
19 perhaps contract, where the matter did not go to court.

20 Q. Would you take instructions with respect to settlement of
21 those claims from superiors in your Department?

22 A. No, I don't think, not in the normal case. The ones that I can
23 think of, they were all relatively minor cases and I would
24 have recommended a settlement to, if anything, I would have
25 recommended a settlement to my superior who would have

1 been Conrad at that time as well.

2 Q. Prior to your recommendation of the settlement, would you
3 have had complete carriage of the matter on your own then?

4 A. Oh, yes.

5 Q. Was there a dollar figure beyond which you had to
6 recommend settlement?

7 A. In past cases?

8 Q. Yes.

9 A. Not that I recall, no. No, see, I would be working pretty much
10 independently on a case. And if I came to the conclusion that
11 it would have been, that it would be in the best interest of the
12 government to settle rather than go to court, then I would
13 make a recommendation to my superior and I would
14 recommend to my superior what I consider, what I would
15 consider to be an appropriate range for settlement.

16 Q. Upon what basis would, generally, would you arrive at what
17 you consider to be an appropriate range of settlement?

18 A. Well it's not that difficult in the ordinary tort situation. You
19 have a kind of case where you would get, say, a motor vehicle
20 case against the Department of Transportation. We know a
21 person was injured, injuries are worth a certain amount.
22 There are tables for that purpose. We know what an arm is
23 worth, what a leg is worth and so on and so forth. We know
24 what a car is worth. So in the ordinary event, it is not
25 difficult to determine an approximate range of what a tort

1 claim is worth.

2 Q. Right. In order to arrive at that range, it would be necessary
3 for you to research the relevant law to figure out what the
4 range would be.

5 A. Yes. You do it by precedent.

6 Q. If you had, if your view was that the range was 10 to
7 \$20,000, would it be fair to say that you'd try and settle it as
8 close to 10 as you could?

9 A. Yes, perhaps even lower. Sure.

10 Q. And would it be fair to characterize that as, in the negotiation
11 of the normal civil case, you would be seeking to settle it for
12 as little as you could?

13 A. That's quite right, yes.

14 Q. If you had...

15 CHAIRMAN

16 I take it in that regard you're no different from any other
17 practicing lawyer.

18 A. I hope not.

19 CHAIRMAN

20 At least if my memory serves me accurately.

21 MR. SPICER

22 Q. When was your first knowledge of the Donald Marshall
23 matter? Your first involvement in that?

24 A. My first involvement is easier to quantify than my first
25 knowledge, which is it?

1 Q. Well, let's start with the first knowledge you had of Donald
2 Marshall matter.

3 A. That is a difficult question to answer. I knew generally that
4 the Donald Marshall case, if I may call it that, was about, it
5 was in the Department, it was being dealt with by people in
6 my Department, but I had no involvement with the case per
7 se until April, late April or early May of 1984.

8 Q. You say you had some knowledge of it, the fact that it was
9 being dealt with by people in your Department prior to that.
10 Did you have any discussions with people in the AG's
11 Department about the Marshall case prior to becoming
12 directly involved in it?

13 A. Undoubtedly I had casual discussions with persons such as
14 Martin Herschorn and others perhaps, yes, but I don't recall
15 anything specific about that.

16 Q. The first document, if you could look in Volume 32 at page
17 274.

18 A. Yes.

19 Q. There's a note from yourself to Gordon Coles. Would that
20 have been your first formal involvement in the Donald
21 Marshall matter?

22 A. November 1983. I don't, no, this would not have been my,
23 that would not have been involvement in the Donald Marshall
24 matter, per se. I really think my involvement did not
25 commence until April or May of 1984. What this letter

1 records is simply my findings upon examining the records
2 and talking to the people at the Prothonotary's office of the
3 status of the Donald Marshall case, the civil case, against the
4 Chief of Police in Sydney. But this did not involve me, per se.
5 If I recall correctly, and this would be a normal thing for me
6 to do, the Deputy Attorney General, in that case would have
7 contacted me and said, "What is the status of this case?" I
8 would go through my routine channels and I make an inquiry
9 and then report back to him. But that's really all I did in that
10 case.

11 Q. And is it your recollection in this case that the procedure that
12 you just discussed, that is, being contacted by the Deputy
13 Attorney General, is probably what happened here?

14 A. I don't recall him contacting me and I don't see anything to
15 that effect here but I expect that's what happened. And it's a
16 normal matter for him to do that. He will do that quite
17 frequently in anything that relates to civil matters, any civil
18 claim that he's interested in, he would contact me in the
19 normal course.

20 Q. Prior to this notation, November of 1983, do we take it then
21 that you didn't have any involvement at all in the setting up
22 of the reference that went to the Court of Appeal?

23 A. Oh no, I had no involvement.

24 Q. How did you come to be first involved then in the Marshall
25 matter?

1 A. It was sometime after the Government announced the
2 Campbell inquiry and that would have been in March of 1984.
3 It was sometime after that that the Deputy Attorney General,
4 Mr. Coles, asked me to come to his office and I don't know if it
5 was in the latter part of April or in the early, very early part
6 of May. He asked me to come to his office and asked me
7 whether I had, whether I was interested in participating in
8 the Campbell inquiry.

9 Q. Right. What was your response?

10 A. I expressed an interest.

11 Q. Yes. Was there anything else discussed at that time, at that
12 particular meeting?

13 A. Just in general, I asked him, of course, what sort of role I
14 would play and we had a general discussion about that.

15 Q. And what did he describe your role to be?

16 A. The Deputy Attorney General told me at that time that my
17 role would be to safeguard, protect or to represent the public
18 interest, essentially. Not, per se, the Government, I do recall
19 that much. But the public interest.

20 Q. All right. Can you explain to me what the distinction was in
21 your mind between safeguarding the public interest and the
22 Government?

23 A. Yes, I asked about that myself and what I recall about it is
24 this that I was to insure that the Campbell inquiry would
25 have before it all the relevant information in order to make

1 the... to come to a conclusion on the matter of compensation.
2 So it was not a partisan role, that is, to ensure that the
3 Government was being represented, but a more independent
4 role, to ensure that the Campbell inquiry would have all the
5 relevant information.

6 Q. In order to enable the Campbell Commission to make a
7 reasoned decision?

8 A. To make a proper decision with all the facts. And that
9 included, by the way, cross-examining witnesses that might
10 have been called before the Campbell inquiry.

11 Q. Was there anybody else present at that meeting? Just
12 yourself and Mr. Coles?

13 A. I don't recall anyone else being there.

14 Q. What was your next involvement?

15 A. I've had, there was no further involvement until sometime in
16 the middle of May of 1984 when a meeting took place
17 between Mr. MacIntosh, who was counsel to the Campbell
18 inquiry, the Deputy Attorney General, Mr. Cacchione and
19 myself.

20 Q. Perhaps you could turn to page 425 of Volume 33. It's the
21 next volume.

22 A. Yes.

23 Q. Are those your notes?

24 A. Yes.

25 Q. And those are notes of the meeting to which you just

1 referred?

2 A. Yes.

3 CHAIRMAN

4 I missed the page number.

5 MR. SPICER

6 Sorry, 425, My Lord.

7 Q. We've heard previous testimony concerning this meeting and
8 I think it's fair to say that one of the things that came out of
9 that meeting was that Mr. Cacchione suggested why don't we
10 save ourselves a lot of trouble and just try and work this out.

11 A. That's quite right.

12 Q. Okay. And I note on page 431, next to the notation, "Felix -
13 Marshall now in need of psychological assistance. It may be
14 advantageous for him to settle now." At that point in time
15 then, did Mr. Cacchione disclose to he meeting what sort of
16 shape Mr. Marshall was in psychologically?

17 A. Yes. To the point of my note. No more. What is said to the
18 right of "Felix" would be approximately what Mr. Cacchione
19 offered at the meeting and that is simply that his client was
20 in need of psychological assistance and that it may be
21 advantageous for him to settle. Those were the words of Mr.
22 Cacchione at the meeting.

23

24

25

1 2:30 p.m.

2 Q. At the bottom of the page you just have a...and it's
3 something that's marked "Note", "With a structured
4 settlement we would keep this whole thing private!" and an
5 exclamation mark. What was the point of that?

6 A. It was my idea and as it turned out that was an idea that
7 was shared by Mr. Cacchione and apparently his client as
8 well, very much so, that we were into a private forum to
9 negotiate something and that we should keep that private
10 and between us, because it was a private settlement. It was
11 not the anticipated public inquiry of the Campbell
12 Commission. So I would have preferred, and that is the
13 effect of my note, that all of our discussions in the course of
14 attempting to negotiate a settlement would be kept
15 privileged or private. But as I indicate that was shared and
16 it was...it's made clear in later notes by my friend, Mr.
17 Cacchione.

18 Q. And on page 434, again, is that your writing?

19 A. Yes, it is.

20 Q. Okay. And that's a meeting between yourself, Mr. Coles and
21 Mr. Giffin on the same date, May 16th.

22 A. That's right. We were simply reporting to the Minister the
23 result of our meeting.

24 Q. And at that meeting, about halfway down, you have a
25 notation, "We have no particular mandate, no figures were

1 mentioned." Did you have any sense at all that there was
2 any limit?

3 A. Moneywise.

4 Q. Yes, moneywise, yeah.

5 A. No.

6 Q. What was it that was being discussed, then, when you say
7 you had no particular mandate?

8 A. What we exposed the Minister to was simply the idea that
9 there might be room to negotiate a settlement rather than
10 going ahead with the Campbell inquiry. And we
11 recommended to the Minister that we might explore that,
12 and he agreed and said, "Go ahead and try it," but that is as
13 far as his instructions went at the time. He did not say to us
14 try to settle it at any particular figure or anything of the
15 kind.

16 Q. Did you have a sense at that point of what your direction
17 was?

18 A. No, I had none really except to say that on...in the course of
19 the meeting that we had in the presence of the Campbell
20 Commission counsel with Mr. Cacchione present on the same
21 day, a figure was mentioned of \$1-million. So I had some
22 idea as to the parameters within which we were operating.

23 Q. And at that meeting, to which you just referred, Mr.
24 Cacchione also mentioned some other figures, did he not, on
25 page 430. He brought to your attention the New Zealand

1 claim, 430 at the bottom of the page.

2 A. That's right.

3 Q. 1.3 million. Did you understand to be 1.3 million New
4 Zealand dollars?

5 A. I assumed that's what it was.

6 Q. Okay.

7 A. But at that meeting, as well, there were other figures
8 mentioned.

9 Q. Yes.

10 A. As you will see in my note.

11 Q. Yeah.

12 A. And I would have been aware at that time of the New
13 Zealand inquiry because I had done some reading and some
14 research in that respect as to what other inquiries may have
15 taken place, not in Canada because I could not find any
16 precedents in Canada, but otherwise in the rest of the world.
17 And I was aware, for example, that there were, at that point,
18 on the 16th of May, that there were at least three reported
19 inquiries in England, two of which resulted in awards, to my
20 knowledge, one of which was seventeen and half thousand
21 pounds, the other one a hundred thousand dollars. I was
22 aware, as well, of a case in Japan where a person had
23 served thirty-four years in jail and was then compensated
24 to the tune of three hundred thousand dollars roughly. So,
25 yes, I had some idea about the figures in my own mind, but

MR. ENDRES, EXAM. BY MR. SPICER

1 I had certainly not conceptualized anything.

2 Q. At the time that you met on the 16th with Mr. Giffin and Mr.
3 Coles did you advise them of the sort of ranges that you had
4 just been talking to us about?

5 A. No, I don't recall that.

6 Q. Was any inquiry made by either Mr. Giffin or Mr. Coles as to,
7 well, what's the ballpark here?

8 A. No. No, Mr. Coles would have been aware of the one million
9 dollar figure because that came up in his presence, but no,
10 there would have been nothing more mentioned.

11 Q. Was the work that you did, with respect to researching
12 these other cases and claims in other countries ever reduced
13 to any kind of a memo to the Minister or to Mr. Coles?

14 A. No, and I don't want to overstate the case. I researched it in
15 a general way. It was not a research project that I, ah, I was
16 not...as things developed, and they developed very quickly
17 after that first meeting on May the 16th, I just did not get to
18 the point of researching the matter completely so as to
19 produce anything in writing.

MR. CHAIRMAN

20
21 Mr. Endres, at page 430, we're...your note at the bottom
22 after the one million, what does the rest of that mean?

MR. ENDRES

23
24 The note about actuarial figures?
25

1 MR. CHAIRMAN

2 Yeah.

3 MR. ENDRES

4 That one. It says "Actuarial figures are short of \$400,000
5 but then there are all these nebulous areas." These are...this is
6 what Mr. Cacchione informed us of in that...I understood him to
7 say that he had an actuarial appraisal of the loss of wages that Mr.
8 Marshall suffered during the course of his imprisonment and that
9 those figures were somewhere in the area of \$400,000. I
10 understood him to say, that is what my note is supposed to reflect,
11 that Marshall lost about \$400,000 of earnings in those eleven
12 years that he had been deprived of his freedom.

13 MR. SPICER

14 Q. On page 437, is that your handwriting?

15 A. That is my writing, yes.

16 Q. Okay. What is that note a record of?

17 A. It's record... that note on May 17, '84, simply records a
18 conversation I had with the Deputy Minister who informed
19 me that the Minister had spoken to colleagues at Cabinet, I
20 assume, and that he had been told to go ahead and
21 determine if a negotiated settlement could be achieved.
22 And in that respect I had detailed...more detailed
23 discussions with the Deputy Attorney General who
24 instructed me to contact Mr. Cacchione and to establish the
25 groundwork for a possible settlement. It also records that

1 we were to treat these discussions in private, and I
2 understood that that was important, not simply as I
3 explained before because this was to be a private
4 negotiation, but also because of the existence of the
5 Campbell Commission at the time. We certainly did not
6 want to create the appearance that there was a competing
7 kind of a forum being set up and create all kinds of
8 difficulties in that respect for the Campbell inquiry. We
9 were doing this, as it turns out later, with the concurrence
10 and the support of the Campbell inquiry.

11 Q. You say, "I should contact Felix Cacchione, ask that he give
12 us his position in writing and tell him that we are prepared
13 to try and negotiate a settlement by way of ex gratia
14 payment."

15 A. That's important, ex gratia, and I underlined it.

16 Q. Yeah.

17 A. The importance there, of course, is that we would not
18 assume any responsibility. We would not accept any legal
19 responsibility to pay anything. The matter was to be dealt
20 with on an ex gratia basis, that is simply recognition of a
21 hardship, of suffering which the government felt compelled
22 to compensate in some fashion without any acceptance of
23 responsibility or liability.

24 Q. Was it your view at the time that there was any
25 responsibility on the part of the government?

MR. ENDRES, EXAM. BY MR. SPICER

1 A. It was my view at the time, and I expressed that several
2 times to my superiors, that there was a very marginal claim
3 against the government. In other words, I was not
4 intimidated by the prospects of a civil suit. If there were a
5 civil action against the government I was of the view it was
6 a very marginal one.

MR. CHAIRMAN

8 How does an ex gratia payment differ from any other
9 negotiated settlement? All...most settlements are without
10 prejudice.

MR. ENDRES

12 That's right.

MR. CHAIRMAN

14 On the question of liability, aren't they?

MR. ENDRES

16 That is a very good point. All settlements that I would ever
17 have carried out where I paid money in the end would have been
18 ex gratia. And even if there was a threat of legal action, even if
19 there was a legal action in place, the settlement would have been
20 ex gratia at any rate because it would have been made on denying
21 liability. There's no sense in accepting liability and then trying to
22 negotiate. That's not a feasible way to go about it. So I think
23 you're quite right. The payment's ultimately always ex gratia.

MR. CHAIRMAN

25 For some reason I thought ex gratia was a phrase used to

MR. ENDRES, EXAM. BY MR. SPICER

1 keep auditors general happy because often there would be
2 a...money would not have been voted in estimates to cover or
3 alternatively to avoid creating a precedent within the public
4 service.

MR. ENDRES

6 The latter, I understand, certainly is a very important factor
7 in that respect. One does not want to create a precedent out of
8 settlements of any kind. I don't know about the matter with the
9 auditor general. I'm not familiar with that aspect. It may well
10 have something to do with that. The way I understood it when I
11 said to Mr. Cacchione the settlement will be ex gratia, what I
12 wanted to communicate was simply that there was no recognition
13 of any legal responsibility here whatsoever. Now...

COMMISSIONER EVANS

15 If all your settlements were made on that basis...

MR. ENDRES

17 Quite right.

MR. CHAIRMAN

19 As they are in the private sector.

MR. ENDRES

21 Yes.

MR. CHAIRMAN

23 You're simply saying we'll pay you some money but we're
24 not...we're not admitting liability, we want a complete release.

MR. ENDRES

1 That's right.

2 MR. CHAIRMAN

3 You want to be sure there's nothing different in these
4 negotiations than others that...

5 MR. SPICER

6 Q. Would it not be that in the normal civil case though, ones
7 that you referred to a couple of minutes ago, these tort
8 cases, you could go and look in a book and get a range as to
9 what would be reasonable. Notwithstanding the fact that
10 you eventually ended up paying it, in your words, ex gratia.

11 A. One has more guidance in the ordinary tort case, of course,
12 yes.

13 Q. You also said a couple of minutes ago that you think advised
14 people in your department that any case against the Crown
15 was marginal, I think, to use your word.

16 A. Yes.

17 Q. What factors would there have been in your mind that
18 would even have given rise to a marginal claim against the
19 Crown?

20 A. There are cases on record in malicious prosecution, for
21 example. That would have been the one that comes to mind
22 now and that is probably what would have come to my
23 mind then. Malicious prosecution is a recognized tort that
24 allows a person to sue the Crown, Crown Prosecutors in some
25 cases, but there is a very restricted, a very limited avenue

MR. ENDRES, EXAM. BY MR. SPICER

1 in that respect, and it is a rare case where the Crown has
2 been successfully sued in malicious prosecution. So yes,
3 there is such an action, for example, against the prosecutor,
4 and I could have envisaged that Mr. Cacchione may have
5 filed a claim against a Crown Prosecutor who was involved
6 in the prosecution initially of Mr. Marshall, but I was not
7 terribly concerned that that claim would be successful
8 ultimately because of the very narrow aspect on which you
9 can succeed in malicious prosecution. It has to be
10 fraudulent in other words. The prosecutor would have to
11 act, conduct himself in a fraudulent manner before you can
12 succeed in malicious prosecution against a Crown.

MR. CHAIRMAN

13
14 Yeah, I appreciate, I understand that. There was also an
15 action at one point, I think, against either the City of Sydney or
16 Chief of Police John MacIntyre.

MR. ENDRES

17
18 Chief of Police. Yes. There was when I was...when I became
19 involved in the matter, I think at that point still there was a civil
20 action on the books against the Chief of Police in Sydney and
21 perhaps the Town of Sydney, the Town of Sydney, City of Sydney.

MR. CHAIRMAN

22
23 What's your opinion with respect to that action insofar as
24 any Crown responsibility was concerned?

25

MR. ENDRES, EXAM. BY MR. SPICER

1 MR. ENDRES

2 I did not see the Crown responsible in that action at all. The
3 Crown was not named as a party. This was strictly, and this is the
4 one that is referred in that letter that we looked at originally, I've
5 forgot the page. There were only...the Crown is not a party, so I
6 did not consider that to be of any consequence to us.

7 MR. CHAIRMAN

8 So in approaching it initially from the question of liability,
9 and properly so, your mandate was to look at any legal liability
10 imposed upon the Crown in the right of Nova Scotia.

11 MR. ENDRES

12 That is correct. That was my only concern. And that is...that
13 was borne out subsequently by the release that we obtained from
14 Mr. Marshall through his counsel, which releases the Crown, but
15 not the...not Sydney or the Chief of Police.

16 MR. CHAIRMAN

17 All right.

18 MR. SPICER

19 Q. Would your attitude as to the marginality of the case against
20 the Crown have been any different if it had been a fact that
21 the Crown had failed to disclose to defence counsel the new
22 evidence that came to light ten days after Junior Marshall
23 was convicted?

24 A. Yes and no, I...as I indicated the suit of...the tort of malicious
25 prosecution exists but it exists in very narrow parameters,

1 and if that had been known to me I would have had to
2 determine then whether that may constitute a fraud of some
3 sort that would bring in that particular claim. I did not
4 contemplate that.

5 Q. Did you have any information to that effect at the time you
6 were thinking about it?

7 A. No, none at all. No, I had not idea about that.

8 Q. You go on to say in the next paragraph of your note on page
9 437 that the...the period of time that was to be dealt with
10 was the period starting with the date of incarceration
11 following conviction.

12 A. Yes.

13 Q. Was that the period of time that you focused on throughout
14 the period of negotiations?

15 A. That was the underlying instruction to me to arrange a
16 settlement to compensate Mr. Marshall for his time...for the
17 time of his incarceration. But I do not recall that we dwelled
18 on that in any way. In other words, I do not recall any
19 particular exchange between Mr. Cacchione and myself once
20 we got into the negotiations themselves to the effect that
21 which time period are we talking. At that point we were
22 talking dollars.

23 Q. Right.

24 A. And, ah...

25 Q. But did your instructions ever change as to the period that

1 was to be covered by the compensation?

2 A. No. No, no.

3 Q. Perhaps then I could just ask you, I'm just going to skip
4 ahead for a second so that I can see that... If you could flip
5 ahead to page 532 of that volume for a second. That's not
6 the signed version but there is a signed version in the file,
7 but is that the release or copy of the release that was
8 eventually signed... I'm sorry, it is the one that was
9 eventually signed by Mr. Marshall.

10 A. Yes.

11 Q. I direct your attention to page 2 of that release, it's on page
12 533 and the paragraph, "Now therefore..." The last three or
13 four lines. "...from any action, cause of action, claims for
14 damages or demands ever had arising in any way from the
15 arrest and incarceration of Donald Marshall, Jr."

16 A. Uh-hum.

17 Q. Does that not cover a period greater than the period of
18 incarceration following conviction?

19 A. Yes, it does.

20 Q. And if your instructions hadn't changed why does the
21 release release the Crown from the pre-incarceration period
22 as well?

23 A. Well that would have been the normal procedure in the
24 course of negotiating a claim. I may focus on a particular
25 event, but when it comes to settling the claim and before the

1 payment is made I would want to protect the Crown from
2 any possible future claims. That is a normal procedure from
3 my point of view, and that is the way I would normally
4 conduct myself. That is to get a complete protection,
5 complete shelter in return for the payment of monies which,
6 by themselves, may only compensate for a particular event.

7 Q. Right. You're very specific though in the release in using the
8 words, "From the arrest and incarceration of Donald
9 Marshall, Jr." Were you focusing at the time the release was
10 drafted on any issues arising out of his arrest?

11 A. I was not, no. My intention was to protect the Crown and
12 shelter the Crown from any civil claims in the future arising
13 from any matter with Don...with Mr. Marshall.

14 Q. How is that, Mr. Endres, consistent with your instructions,
15 which as I understand you to tell me it never changed, but
16 the compensation that was to be paid was to cover the
17 period starting with the date of incarceration?

18 A. Well, I think it's consistent in that my instructions were to
19 arrange a settlement of compensation for a certain period of
20 time.

21 Q. Yes.

22 A. My instructions were not to obtain a release for that
23 particular event. On the contrary I think my notes will
24 disclose at some point that we several times over spoke of a
25 complete and final release which would have meant, of

1 course, a release covering all aspects of the matters relating
2 to Mr. Marshall.

3 Q. You referred to the complete and final release, indeed, on
4 page 437. This is the page we've been looking at on that
5 meeting of May 17. "We should require..." down at the
6 bottom, "...a complete and final release if payment can be
7 agreed upon." Was that your instruction from the Deputy?

8 A. I couldn't be sure now if that was an instruction or if that
9 was just a note that I made for myself. It wouldn't surprise
10 me if it was an instruction, but I'm not sure. But I know
11 that the matter of the release came up in meetings with Mr.
12 Cacchione, of course it came up several times, and I do recall
13 making a note to that effect. I don't know where it would
14 be in the book.

15 Q. I'll take you through your notes.

16 A. All right.

17 Q. But in any event, in...at this point in May of 1984 your
18 instruction was that the period was the date of incarceration
19 following conviction and either by way of instruction or a
20 note to yourself you were at that time thinking you should
21 require a complete and final release.

22 A. Oh, yes, no, I rather would not want to go into any
23 negotiations for a settlement unless I could come back with
24 a complete release that would release the Crown from any
25 future claims. That...unless someone instructed me

1 otherwise, that is the way I would proceed.

2 Q. Was there any discussion at this meeting on May 17th,
3 between yourself and the Deputy, of the sorts of principles
4 that might be applicable in arriving at a compensation
5 settlement?

6 A. Not that I recall, no.

7 Q. Did you ever have that sort of discussion with Mr. Coles?

8 A. We did subsequently, upon receiving Mr. Cacchione's first
9 proposal for a settlement, which was the \$550,000 proposal,
10 certainly we had discussion then.

11 Q. The next page, sir, on page 438, May the 18th. Again, is that
12 your writing?

13 A. Yes.

14 Q. Okay. And what does that note record?

15 A. That's just then returning to Mr. Cacchione upon the meeting
16 which had taken place two days before to inform him that
17 we were prepared to entertain discussions towards a
18 settlement to see if we could agree on an ex gratia amount,
19 that the negotiations were to be in confidence and without
20 prejudice, or I assume what I meant there was that he
21 could...he was still free to pursue whatever avenues were
22 open to him.

23 Q. Uh-hum.

24 A. That the claim was to start with...from the date of
25 imprisonment and it was to exclude punitive damages and

1 that must refer to the pre-imprisonment period, that is the
2 manner in which Mr. Marshall would have been dealt with by
3 the police. That the final figure was to take into account an
4 interim payment which would have been rendered at that
5 point upon the recommendation of Mr. Justice Campbell in the
6 amount of \$25,000. And that Mr. Marshall was to, Mr.
7 Cacchione was to provide us with a proposal in writing, yes,
8 and that's the letter I refer to which then subsequently
9 arrived. I asked for a written proposal that would allow us to
10 advance into the negotiations to settle. And I obtained that
11 subsequently.

12 2:51 p.m.

13 Q. This is a notation of what you advised, Felix, I take it, is it?

14 A. That's right.

15 Q. Okay. And I take it then from your note that you advised
16 him that the discussions were to relate to a period that
17 started from the date of imprisonment?

18 A. Not so much the discussions but what I told him was that...

19 Q. Negotiations?

20 A. The negotiations are to be in confidence and that the claim,
21 that is the claim for compensation...

22 Q. Right.

23 A. Is to start from the date of imprisonment. But discussions
24 could have ranged much wider.

25 Q. Were you trying to convey to Mr. Cacchione that, in

1 determining a reasonable claim to be made on behalf of
2 Junior Marshall, that he should consider that period to
3 commence with the date of imprisonment and forget about
4 everything that predated that?

5 A. That was certainly the subject of discussion at the initial
6 meeting at which the Deputy Minister was present and there
7 was considerable discussion about that. I recall that Mr.
8 Marshall's lawyer, Mr. Cacchione, was very much concerned
9 about the pre-imprisonment period and wanted that very
10 much to be an important, significant factor in whatever may
11 have happened subsequently, whether it was the Campbell
12 inquiry or any negotiations. But I recall, as well, that the
13 Deputy Attorney General was very insistent that
14 compensation be restricted to the period of incarceration.

15 Q. Did he ever articulate to you why he was so insistent on that
16 position?

17 A. Why the Deputy Attorney General was so...

18 Q. Yes.

19 A. No, but he didn't have to because the Campbell Commission
20 was set up within those parameters. The Campbell inquiry
21 was to address, the way I read the charter, was to address the
22 period of incarceration.

23 Q. It's fair to say, though, isn't it, that there was a bit of dispute
24 about whether or not that was the ambit of the Campbell
25 Commission.

1 A. There was. And, yes, and even counsel for Mr. Justice
2 Campbell entered into that discussion and there was some
3 question as to whether or not Mr. Justice Campbell ought to
4 state his position as to what the parameters of the inquiry
5 might be and if they were too broad for the Government that
6 the Government may wish to say something about that and
7 so on. Yes.

8 Q. Do I take it, then, that your answer is that Mr., you've never
9 discussed with Mr. Coles why he was so insistent on the claim
10 starting from that particular point in time, that is, the date of
11 incarceration.

12 A. I don't recall any particular discussion to that effect with Mr.
13 Coles. As I say, I really didn't need it.

14 Q. At this point in time, on May 18, do I take it then that what
15 you've done at this point by calling Felix Cacchione was
16 essentially to initiate the process of discussion?

17 A. Yes, I wanted him to put his case in writing.

18 Q. Okay.

19 A. And I did that by telephone deliberately because I did not
20 want to take the first step.

21 Q. At that point, I just want to ask you some general questions
22 about the knowledge and the information that you had,
23 around this time in the middle of May, you had some
24 knowledge of Junior Marshall's condition, psychological
25 condition.

1 A. I had some but very, very sparse.

2 Q. And during the course of the negotiations, did you pick up
3 more knowledge?

4 A. No, not really. I was aware that he was having difficulties in
5 adjusting, if I can put it that way. And I was made aware
6 that he was obtaining, or in the process of obtaining
7 counselling. But beyond that I don't really recall much
8 discussions.

9 Q. When Felix Cacchione gave testimony, he indicated, page
10 11526 which respect to that issue, "There's no doubt in my
11 mind that Mr. Endres was fully aware of his (being Junior
12 Marshall's) precarious psychological situation." Would you
13 agree with his view of that?

14 A. I would have been, not totally. I would have been aware that
15 Mr. Marshall was having difficulties in adjusting to a lifestyle
16 out of prison, and that does not surprise me. Any person who
17 spends 11 years in jail is going to find it very difficult to
18 adjust to a lifestyle outside of that setting. So no one had to
19 tell me that. On the other hand, I do not believe, and my
20 recollection does not help me, does not tell me otherwise, that
21 I was under the impression at the time that he was in
22 extremely dire straits, no, and, of course, I'd never met Mr.
23 Marshall.

24 Q. Right. Mr. Cacchione said on page 11525, "I told him (saying
25 he told you), 'The guy is falling apart. He's cracking up.'" Do

1 you remember?

2 A. He may have said that, yes. Yeah.

3 Q. In any event, you had some knowledge of Mr. Marshall's
4 psychological condition during the time you were negotiating
5 a settlement.

6 A. No question.

7 Q. Did you ever convey that information, that is, the information
8 concerning Mr. Marshall's condition, to the Attorney General,
9 Mr. Giffin?

10 A. I don't recall that I did that, no.

11 Q. Would you think that that would be a matter that would be of
12 interest to the Attorney General?

13 A. I didn't think so at the time, no, no.

14 Q. Why not?

15 A. It is a, well, for several reasons. I had very little concrete
16 information in my hands to determine for myself just what
17 Mr. Marshall's state of mind was, his condition was. But
18 beyond that, we were really looking in terms of figures,
19 money, and I don't think the, that any particular
20 psychological or physical condition would have really changed
21 anything. We were, at that point, starting to negotiate dollars.

22 Q. And also in May of '84, the Court of Appeal certainly had
23 rendered its decision concerning Mr. Marshall. Did the
24 comment of the Court of Appeal concerning Mr. Marshall's
25 responsibility for his conviction play any part, in your mind,

1 in the way you negotiated with Mr. Cacchione?

2 A. What comments?

3 Q. That he was, these words aren't used, but essentially that he
4 was the author of his own misfortune, substantially
5 responsible for the conviction.

6 A. I was aware of this aspect of the decision of the Court of
7 Appeal when I went into the negotiations, and that statement
8 would have made some, would have had some role in the
9 course of the negotiations, yes. But not a great, not a great
10 role.

11 Q. Would that have been something that would have been a factor
12 in your mind in looking at dollar figures in terms of what Mr.,
13 what might be a reasonable figure ...

14 A. Indirectly, I undoubtedly, although I don't recall it
15 specifically, I undoubtedly raised that at one point or another
16 and said look what the Court of Appeal said to the effect that
17 your client carries some blame in this matter. I'm quite sure
18 I would have said that although I don't specifically recall that.

19 Q. Mr. Cacchione had indicated at page 11528 that, "The feeling I
20 got from the comments that were made (that's during the
21 negotiations) were that that decision, in large part, loomed
22 over the negotiations." Did you have any sense that it was,
23 had that much of an effect that it "loomed over the
24 negotiations"?

25 A. I wouldn't subscribe to that, not in that way, no. Because

1 once we get into the negotiations and we have a figure on the
2 table of roughly half a million dollars, my concern was really
3 to see where the bottom line might be. And I did not do that
4 by way of very specific arguments or propositions to say,
5 "Well look, your client is partly to blame for his own problems
6 so, therefore, let's deduct \$50,000." That is so unspecific and
7 so, it's useless really. We were really battling about figures
8 more than principle.

9 Q. Would the Court of Appeal decision, or those comments, at
10 least be a tool, I suppose, in a sense, when you're negotiating
11 with Cacchione.

12 A. Yes. I'm quite sure I mentioned it and made use of it.

13 Q. Sure. Were you proceeding on the basis that the Crown
14 carried no blame?

15 A. Yes, I would have made that point. Again, I don't specifically
16 recall it, but I'm quite certain I would have made the point
17 that this is, the Crown accepts no liability in this matter and,
18 indeed, in that respect I do recall it. The Commission had
19 been set up by that time to determine, to inquire into and
20 determine compensation level. So we had a forum already
21 that the government felt relatively comfortable with for
22 determining the thing that we tried to negotiate. I would
23 have said to him, "Yes, we have no blame, no responsibility
24 perhaps or we have nothing to lose perhaps." I don't know,
25 something like that.

1 Q. Would you have ever said to him, "Look, if we can't work this
2 out by settlement, we'll just go back to the Commission."?

3 A. Oh, for sure. I recall that definitely. I used that in argument
4 during the negotiations and that was my conviction. That if
5 we could not settle at a figure that personally I felt
6 comfortable with, that we would go to the Commission, to the
7 inquiry, and we'd have it determined there.

8 Q. Did Mr. Cacchione ever express any views to you as to
9 whether or not he had any worries or concerns about going
10 back to the Commission?

11 A. Yes. He was concerned about going to the Campbell
12 Commission and I recall specifically one of his concerns, which
13 was the original discussion about the parameters of the
14 Commission. The Deputy Attorney General saying that the
15 Commission would be restricted to determining compensation
16 for the term of imprisonment. Mr. Cacchione, of course,
17 wanting to go behind that or into the area of arrest and
18 prosecution. And the, what I recall particularly then about
19 this is that Mr. Cacchione was concerned that there would be
20 tremendous delays. That there would be all sorts of legal
21 battles before the Commission would even get off the ground
22 to hear evidence and his client probably did not want to wait
23 that long. So that was one big concern that they expressed.
24 And another concern was that the Campbell inquiry, of
25 course, was set up to determine and recommend a figure to

1 Government. And I, undoubtedly, raised that with my friend
2 at the time and said that even if they came out on top of it in
3 the course of nego-, in the course of the Campbell inquiry, and
4 the inquiry recommends a certain figure, that's not to say that
5 the Government will accept it and will pay. So, yes, there's no
6 question that Mr. Cacchione was concerned about going to the
7 Commission inquiry while I was not very much concerned
8 about the inquiry. I would have gone to it.

9 Q. Right. And if I understand your comments correctly, indeed,
10 it was his concern about going to the inquiry was something
11 that, in a sense, could be turned around, and you could say,
12 "Well, even if they do recommend this, the Government may
13 not pay it."

14 A. That's right. That was my understanding. That this was a,
15 the Commission was to recommend a figure to Government.

16 CHAIRMAN

17 Q. Is that a realistic concern? I mean the Government sets up a
18 commission of inquiry to ascertain and establish a reasonable
19 award. I would find it difficult to accept that any government,
20 having set up this inquiry, would ever reject the amount of
21 the award. Certainly not if, maybe if it was too low, but not if
22 it was what the government considered to be too high.

23 A. You're quite right. It was a small point to my advantage if it
24 was anything, but it's something I raised and it doesn't, I do
25 recall something like that being responded when I raised it.

1 That politically, it would be suicide for the government to
2 ignore a recommendation of a commission that it had set up
3 itself. Now, again, I knew of no precedent in that respect and
4 I really was not terribly concerned about it. But it's
5 something I raised as being of some value to me at the time. I
6 agree with you that on analysis it would have been of little
7 value in order to advance my position, or our position.

8 Q. The other point you mentioned, and I think Mr. Cacchione
9 mentioned it as well, that there was concern on his part at
10 least, and maybe on yours as well, that there would be delays
11 caused by protracted litigation and what sort of litigation
12 were you fearful of? By whom?

13 A. There were concerns about protracting the inquiry, the
14 Campbell inquiry, whether it was litigation, I think that term
15 was used and may have been used unwisely because what I
16 had in mind at the time is that there could certainly be all
17 kinds of obstacles in the way of the Campbell inquiry. If the
18 Campbell inquiry had made it known that the parameters for
19 its inquiry including the arrest and the prosecution, for
20 example, it may well be that the Government would have not
21 accepted that and would have done something it. Now I'm
22 not so sure. Well, what the government could have done, of
23 course, is to simply cancel the inquiry. That would have been
24 a difficult move. What the government could have done as
25 well, and that is where litigation actually comes in, is to go to

1 court and ask for a court to interpret the terms of the
2 reference so there could have been litigation there. That
3 could have gone to appeal and we would have looked at a
4 year to resolve that at least. Even for the, in these two courts.
5 Yes, so I think there was some concern about tremendous
6 delays, some of which were litigation-related.

7 Q. Although somewhere in this volume it seems to me there,
8 maybe it's a letter from Mr. Coles to Mr. MacIntosh saying if,
9 in effect, if Commissioner Campbell has any doubts as to the
10 scope of his mandate, that he should bring them to the
11 attention of the Government of Nova Scotia ...

12 A. Yes.

13 Q. And ask that the terms of reference be amended accordingly.

14 A. Yes, the Deputy Attorney General, Mr. Coles, wrote a lengthy
15 letter to Mr. MacIntosh, I believe it was addressed to
16 counsel...

17 Q. Yes.

18 A. And that was exactly about the point of whether the
19 Commission, or if the Commission had any doubt about the
20 parameters for the inquiry, that that should be made known.
21 I understand that Mr. Coles is very concerned about the
22 extent to which the Campbell inquiry would go. He felt very
23 clear, in his mind, and that's not surprising because he
24 drafted the documents by which the inquiry was set up. He
25 was very clear in his mind that the Campbell inquiry was to

1 concern itself with compensation for the term of
2 imprisonment only. But you see in my note that I made, May
3 the 16th of '84, the original long note I made on the original
4 meeting with Mr. MacIntosh and the Deputy and so on. I was
5 concerned about the Deputy's request, repeated request, that
6 if Mr. Justice Campbell had any problems or concerns about
7 the terms of reference, he ought to make them known.
8 Frankly, I thought we should just go ahead and see how it
9 develops, argue the point in front of the Commission if
10 necessary, and if it cannot be resolved there, we could then
11 try and do something about it. In other words, I quite did not
12 share his view that Mr. Justice Campbell should simply come
13 forward say "I think my terms are this." I rather thought
14 that wasn't necessary.

15 Q. But surely if, and I suspect this happened on many inquiries,
16 that after the commission of inquiry commences its
17 deliberations or even preparatory to that, if they feel that the
18 mandate is too restricted that they go back to the government
19 and say, "Will you clarify this and here's what we would like
20 to see." And it would be a very rare occasion where that
21 request would be denied, I would think.

22 A. Yeah.

23 Q. It may not be important now but it seemed, listening to Mr.
24 Cacchione's evidence, that there was a lot of concern around
25 the negotiating table that the final resolution of compensation

1 by the Campbell inquiry would be delayed because of
2 protracted litigation and I'm not sure that that's...

3 A. He was certainly concerned about that. There is no doubt in
4 my mind, that he was very concerned that there could be...

5 Q. That is, the Deputy Attorney General was...

6 A. No, Mr. Cacchione.

7 Q. Mr. Cacchione.

8 A. Mr. Cacchione was extremely concerned if I, I think that is
9 putting it the right way, he was extremely concerned that
10 there would be considerable delays in determining finally as
11 to what the terms of reference would be for the commission
12 to begin with before the commission would even hear
13 evidence and at that point, too, Mr. Marshall was the one that
14 was going to lead evidence into the inquiry. He was going to
15 be a charge, well, Mr. Marshall and his counsel were going to
16 take charge of the inquiry. They wanted to get on with it, it
17 was pretty clear to me. They wanted to get...

18 Q. I can't understand that, why they would want to get on with
19 either settling or having the Campbell Commission start its
20 work. One more point, and we may already have evidence on
21 this. Were there any negotiations between the solicitor for
22 Donald Marshall, Jr. and the solicitor for the Government,
23 namely you or Mr. Coles, as to the terms of reference, you
24 know, in consultation before the draft was submitted to the
25 Govern-, Lieutenant-Governor-in-Council.

1 A. Before the Commission was set up?

2 Q. Yes.

3 A. No, My Lord. I don't know of any. I know of no
4 communication between Mr. Cacchione and anyone in
5 government that would go towards the structuring of the
6 terms of reference for the Campbell inquiry. If there were
7 such, I'm unaware of it.

8 3:11 p.m.

9 MR. SPICER

10 The letter, I think, My Lord, that you referred to, there are
11 really two of them. There's on 407 from Mr. Coles.

12 MR. CHAIRMAN

13 Yes.

14 MR. SPICER

15 And the one in which he specifically refers to an
16 amendment of the Order-in-Council is at page 435, to Mr.
17 MacIntosh, that's dated May 17th, and it's on page 436.

18 Q. Did you have any discussions with Mr. Coles concerning, in
19 particular, this letter of ...at 435 of May 17th to Mr.
20 MacIntosh?

21 A. No, I had no discussions with him about that. I knew he felt
22 quite strongly about it and he did not need to confer with
23 me on it.

24 Q. Is it fair to say that one of Mr. Cacchione's concerns or
25 overall concerns with the matter going back to the inquiry

1 and the terms of reference of the inquiry and the scope of
2 the inquiry was that he basically was not particularly
3 trusting of the government at that point in time?

4 A. Yes, Mr. Cacchione said to me several times that his client
5 did not trust the government at all, yes. And I'm sure that
6 that would have been related somehow also to the
7 government setting up an inquiry, yes. That would have
8 been viewed, I understood that, with a certain amount of
9 suspicion on the part of Mr. Marshall.

10 Q. Can you give us a sense of what the attitude was in the
11 Attorney General's Department amongst the senior officials,
12 in particular Mr. Coles, towards Junior Marshall at this
13 time?

14 A. I have had few discussions ever with anyone in our
15 Department about Mr. Marshall beyond the kind of
16 discussion that centered on the statement of the Court of
17 Appeal. There is no doubt that I spoke to other people
18 about that particular part of the decision of our Court of
19 Appeal which said that Mr. Marshall had to carry some
20 blame, but I had no specific discussions with Mr. Coles about
21 Mr. Marshall as a person or his character or anything of the
22 kind.

23 Q. What discussions did you have with him concerning those
24 last two pages of the decision of the Court of Appeal?

25 A. Simply that he pointed that out to me, and I knew that

MR. ENDRES, EXAM. BY MR. SPICER

1 already, that the Court had taken the view that Mr. Marshall
2 had to take some of the blame in this matter, in whatever
3 resulted for him.

4 Q Was that a view to which Mr. Coles subscribed as far as you
5 knew?

6 A I think he felt that way, yes.

7 Q Yes. And yourself.

8 A I adopted what the Court said and I accepted that.

COMMISSIONER EVANS

9
10 Even the one that there was no miscarriage of justice, that
11 comment?

MR. ENDRES

12
13 Well, I really don't know what I thought of it. I'm not sure
14 what I think of it now.

COMMISSIONER EVANS

15
16 That's probably not a fair question to put to you.

MR. ENDRES

17
18 It's a... I was not involved in the case in the reference.

COMMISSIONER EVANS

19
20 What I'm more concerned, rather than with your opinion,
21 did that comment not give you a pretty strong basis of argument?
22 Because your position was that there was no legal liability. That
23 was a view you had of this.

MR. ENDRES

24
25 Yes.

MR. ENDRES, EXAM. BY COMMISSIONERSCOMMISSIONER EVANS

1
2 And was that opinion reinforced by the comments of the
3 Court of Appeal that there was no miscarriage of justice?

MR. ENDRES

4
5 Yes, My Lord. I...what the Court of Appeal said did not hurt
6 me in my negotiations. It gave me additional...

COMMISSIONER EVANS

7
8 Support.

MR. ENDRES

9
10 ...strength in my position. No question about that. But as I
11 indicated before though, My Lord, the whole matter in the end
12 really resolved...came down to a matter of dollars. It wasn't a
13 questioning of balancing one strength against another. We were
14 really just concerned about money.

COMMISSIONER EVANS

15
16 The dollars and cents. However you...you have referred to
17 this as an ex gratia payment being made. And during your other
18 negotiations that you would have in tort actions if the government
19 is a hundred percent wrong and you settle on that basis, or even if
20 it's seventy-five percent wrong, do you still put in the release that
21 that is an ex gratia payment?

MR. ENDRES

22
23 Oh, yes. Yeah. The payment would be ex gratia even if we
24 were a hundred percent wrong, which is something I would not
25 conclude in any case because I really, with respect.

1 COMMISSIONER EVANS

2 That would indicate that the government is never wrong.

3 MR. ENDRES

4 No, I would... the approach I'd take, My Lord, is that unless
5 the Court says that the Crown has done wrong we haven't done
6 wrong, quite right. If, of course, the defendant in an intended
7 proceeding can convince us, the Attorney General's Department or
8 government, that there is a grave risk of liability then we would
9 be more tempted and more persuaded to settle. But it's not a
10 question of right or wrong, in my view, until the Court says so.

11 COMMISSIONER EVANS

12 But you always put in ex gratia in any settlement.

13 MR. ENDRES

14 Always. And I don't mean to create the impression that I've
15 negotiated a whole lot of settlements. They're very far in
16 between. We do not negotiate a great number of settlements. But
17 if we do invariably they are always, they would be ex gratia on
18 the basis that we do not accept liability again, as well, and so as
19 not to create a precedent and for what other reasons.

20 COMMISSIONER EVANS

21 All right.

22 MR. SPICER

23 What...

24 MR. CHAIRMAN

25 I don't suppose any lawyer has ever admitted that his client

1 was wrong in negotiating a settlement.

2 MR. ENDRES

3 I'd rather think it would make negotiations difficult if I
4 went in and said, well, "Look I appreciate we did wrong and we're
5 prepared to pay so let's see if we can settle." I'd be in a very
6 difficult spot to negotiate a figure which I would want to
7 recommend to my client in the end. And as far as it goes, even in
8 the case of a tort claim, let's say an injury, a motor vehicle injury
9 again, any settlement that we make does not necessarily
10 compensate the intended plaintiff fully in accordance with what
11 precedent might establish. Indeed, if that's the case, there's no
12 reason to settle. If I have to pay \$40,000 for a lost arm in order
13 to settle and if I know the Court is only going to award \$40,000
14 then I'll probably go to Court, at least I'd recommend to my client
15 to go to Court.

16 MR. CHAIRMAN

17 To save costs.

18 MR. ENDRES

19 That's usually the best place to go at any rate to determine
20 liability.

21 COMMISSIONER EVANS

22 A lot of people don't share that view I don't think today.
23 But you say if you...if the maximum you were going to have to pay
24 was \$40,000 you would always go to Court.

25

1 MR. ENDRES

2 Well, what I'm suggesting is that if negotiations bring me to
3 the point where I have nothing to gain on the part of my client
4 then I will probably close off the negotiations. Naturally the
5 recommendation is that...the decision is up to my superior, but my
6 recommendation would be invariably we have nothing to gain so
7 why not go to Court. I don't know what kind of defence might
8 develop in the course of a proceeding.

9 COMMISSIONER EVANS

10 But you have...are costs not awarded to the successful
11 plaintiff.

12 MR. ENDRES

13 Yes, costs is always a risk that you take, yeah, yeah.

14 MR. CHAIRMAN

15 We're just learning of negotiating tactics. You and I have
16 been away from it for a long time. They're coming back to me
17 very quickly. But so we don't get way off the track here, your
18 position, I take it, was not one of the policy-maker. You were
19 simply acting in the capacity of a solicitor with instructions from
20 your client to negotiate a settlement.

21 MR. ENDRES

22 Quite right, My Lord.

23 MR. CHAIRMAN

24 Questions of policy would be for someone else.
25

MR. ENDRES, EXAM. BY COMMISSIONERS

1 MR. ENDRES

2 Yes, I have no consideration of policy. My purpose was to
3 arrange a settlement at a bottom figure, that is the lowest figure
4 that we could agree upon.

5 MR. CHAIRMAN

6 On the other side of the coin, I presume if you finally agreed
7 with Mr. Cacchione on a figure you would be...it would be
8 incumbent upon you, as a...in your professional capacity, to satisfy
9 your client that the amount that you had agreed to was a
10 satisfactory one and they should pay it.

11 MR. ENDRES

12 That the amount was not excessive. I would certainly want
13 to satisfy my client in that respect.

14 MR. CHAIRMAN

15 Okay.

16 MR. SPICER

17 Q. What bargaining power, in your view, did Mr. Cacchione
18 have on behalf of Mr. Marshall?

19 A. Well, the strength of Mr. Cacchione's case, amongst other
20 things, was really in the degree to which the public had
21 supported Mr. Marshall at that point in time. There was a
22 tremendous amount of public pressure on government in
23 1984 to do something to compensate Mr. Marshall. I saw
24 letters that came in from citizens, uncalled for letters,
25 unsolicited naturally, that said...

- 1 Q. Unsolicited more than uncalled for.
- 2 A. ..."Please, please, pay this man..." I'm sorry.
- 3 Q. You said "uncalled for". I was just wondering what you
4 were getting at there?
- 5 A. "Please pay this man a million dollars," there were all sorts
6 of letters like that that came in. At any rate, I don't think
7 there's any question that there was a certain amount of
8 public pressure on government to do something and to do it
9 quickly to put some money in Mr. Marshall's pocket, and
10 that I think is the reason the Campbell Commission was set
11 up. So that must have been, in my view, that was a very
12 strong bargaining element which I dealt with. There were
13 other concerns, of course, but they seemed to have escaped
14 me at the moment. I...certainly the biggest selling factor
15 that they had was this tremendous support that was
16 undoubtedly in place at that time which favoured Mr.
17 Marshall and which did not favour the government.
- 18 Q. But in the preceding months, certainly in the months
19 subsequent to the rendering of the decision by the appeal
20 court, the Attorney General at the time was taking the
21 position that Mr. Marshall had, to some extent, been the
22 author of his own misfortune and that that publicly was
23 being stated as a factor that had to be taken into account in
24 determining compensation. Did you have any...did you have
25 any discussions with the then Attorney General about that

1 as to whether or not that was a factor that you ought to take
2 into account?

3 A. I was never told or given any specific instructions about
4 factors that I was to employ or use in the course of
5 negotiations, no.

6 Q. What instructions did you receive?

7 A. Very few indeed, very few instructions, and that's not
8 unusual. Invariably I would get instructions only because I
9 asked for them. We would have a meeting, that is I would
10 have a meeting with Mr. Cacchione, certain things would
11 develop, and I would go back to report, and then I would try
12 and feel out the Deputy Attorney General, and subsequently
13 the Minister, as to just how far they are prepared to go, and
14 we did that a few times and I remember at one time I went
15 specifically to get a range of dollars to which I could go in
16 the course of negotiations before I have to come back to ask
17 for more instructions. But it was not a matter of me
18 obtaining a briefing book or a written list of instructions or
19 even a verbal list of instructions to go and negotiate. My
20 simple instruction was try and make a deal.

21 Q. Was...was there any notion that a settlement, because of the
22 circumstances of the case, that is because of Mr. Marshall's
23 wrongful conviction and imprisonment that the settlement
24 should be fair?

25 A. That was not a consideration in my mind particularly, no, no.

1 Not fair in a sense of the dollars being fair.

2 Q. Yes.

3 A. But certainly I was concerned about the fairness of the way
4 in which the money was going to be determined, the dollars
5 would be determined.

6 Q. The fairness of the process but...

7 A. Procedure.

8 Q. ...not the fairness of the result.

9 A. I was certainly concerned about the fairness of the
10 procedure, but I was not concerned whether, ultimately, the
11 figure would be a fair figure, no.

12 Q. Did you have any...did you have any discussions with Mr.
13 Coles as to whether or not he thought that it was important
14 that the final figure should be fair?

15 A. No, not at all.

16 Q. With Mr. Giffin?

17 A. No.

18 Q. With anybody?

19 A. Yes, Mr. Cacchione had originally made a statement to the
20 effect that, well, I think you'll find it in his first written
21 letter to me where he sets out the proposal for \$550,000. It
22 was something to the effect that that seemed...that that
23 would be a fair figure, and that that would be acceptable to
24 the public generally. That was the tone of that particular
25 statement. So the only one that spoke about fairness in

MR. ENDRES, EXAM. BY MR. SPICER

1 terms of the dollars that I recall was Mr. Cacchione.

2 Q. Did you have any sense that the public pressure that you
3 referred to would have any affect on the figure that you
4 would arrive at? That is, the public would not accept a
5 figure below a certain amount as being proper.

6 A. No. No. I felt that any figure that we could agree upon
7 would probably find acceptance in general.

COMMISSIONER EVANS

8
9 Excuse me. You were then isolated, in fact, from this public
10 pressure. The public pressure was on the politicians or on the
11 government.

MR. ENDRES

12
13 Yes.

COMMISSIONER EVANS

14
15 But you were...that was not your problem. You were in there
16 to negotiate a settlement on the best terms that you could get for
17 your client, the government.

MR. ENDRES

18
19 That's quite right, My Lord, yes.

MR. CHAIRMAN

20
21 There was...there is a slight difference in the kind...in the
22 negotiations that you were involved in, and I'm not saying this in
23 any way in the critical sense of your work in that regard. But
24 ordinarily when a...in a tort action it's really the question of
25 liability and the extent of the claimant's damages that you're

MR. ENDRES, EXAM. BY CHAIRMAN

1 concerned about. The liability, we'll say for want of a better word,
2 of the defendant and the extent of the damages.

MR. ENDRES

4 Uh-hum.

MR. CHAIRMAN

6 In this case the question of legal liability really was not of
7 much concern, was it, because you had satisfied yourself from a
8 purely legal point of view, at least based on the grounds of
9 malicious prosecution that you would be able to present a fairly
10 strong case in the event it went to trial. So, you...the...you could
11 almost exclude liability and say this case is being settled because
12 public pressure had indicated to the government that in the
13 opinion of the people of Nova Scotia, Donald Marshall, Jr. should be
14 compensated for his years of incarceration regardless of fault.

15 3:27 p.m.

16 A. Um-hmm. You're quite right. The element of liability did not
17 exist in the course of the negotiations in my mind at least, it
18 did not. It was not a prevalent consideration when we
19 compare that to the ordinary tort case. On the other hand, in
20 the ordinary tort case one does not have, usually, the kind of
21 public support and, indeed, public pressure that Mr. Marshall
22 was able to bring to the bargaining table. So the two balanced
23 each other out in a way. Both of them, of course, go to the
24 strength of the party's case, or Mr. Marshall's case in this
25 particular course of negotiations. In the normal tort case a

MR. ENDRES, EXAM. BY CHAIRMAN

1 lawyer comes and says, "Well, look you know as well as I do
2 that the Crown is liable." Well that's a position of strength
3 from which they negotiate and I try to deal with that but Mr.
4 Marshall did not have that option. He didn't do that because
5 we didn't talk about liability we talked about ex gratia
6 payments. But yet, they did come to me, or to the bargaining
7 table and said, "Well you know that the public is behind Mr.
8 Marshall and you know that they want something done and
9 they want it done quickly and they want it substantial. They
10 want a substantial amount of money to my client." So you're
11 quite right that this was a little different from a tort case, an
12 ordinary tort case. But on the other hand the element that
13 you do normally have in a tort case was substituted in this
14 case by this new public element.

15 Q. You had very little help from Canadian precedents as to what
16 amount you were to...

17 A. I was unable to find any reported Canadian case dealing with
18 compensating a person who had been wrongfully imprisoned
19 and, in fact, other cases that we did come across, some other
20 jurisdictions such as the ones I mentioned, the one in England
21 for example, I don't know which one of the three came to us
22 in four tightly printed volumes which was...

MR. SPICER

24 Hunter.

25 A. Hunter. It was a huge report. And I, frankly, did not read

MR. ENDRES, EXAM. BY CHAIRMAN

1 most of it. I only read a part of it. No, precedent was not, I
2 did not have much support in that respect.

MR. SPICER

3
4 Q. If there was no liability, if you thought that there was no
5 liability on the part of the Crown, was Mr. Cacchione doing
6 anything more than trying to negotiate a donation from the
7 Crown?

8 A. Our negotiations were premised on there being no liability.
9 That is not to say, and I know that isn't the case, that Mr.
10 Cacchione did not feel otherwise. At times he expressed to
11 me that, "Look, we always have this prospect of suing the
12 Crown," and I said, "Yes, you do and do it."

13 Q. Was the public pressure not alleviated to some degree by the
14 setting up of the Campbell Commission?

15 A. Yeah, but too, the Campbell Commission hadn't been set up,
16 again, was a position of strength for Mr. Cacchione because he
17 would say to me, as he probably did, that,

18
19 Look, the Government has made a commitment,
20 publicly, to pay Mr. Marshall monies, it's only a
21 question of how much. So why don't you just
22 agree and pay us (whatever the figure was at
the time) and save the expense of the Campbell
inquiry and everyone would be happy.

23 I considered that to be an argument of strength on their side.

CHAIRMAN

24
25 It's Thursday afternoon and I, we have to adjourn half an

1 hour earlier and we will adjourn until Monday next at 9:30.

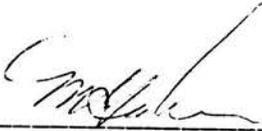
2 There's just one comment I would like to make. It's been
3 brought to our attention that there may have been some
4 untoward events or occurrences in the corridor yesterday
5 following the testimony of one of the witnesses. That disappoints
6 me because we've had an extremely, I think, not only rapport but
7 satisfactory atmosphere within the confines of this room but
8 people have to realize that any witness who comes to this
9 commission comes either as a result of a subpoena or a request
10 and one of the freedoms we have is the absolute freedom to
11 remain silent. And I'm sure that, on sober reflection, that's not
12 likely to occur again.

13 3:32 p.m. - ADJOURNED TO 6 JUNE 1988 - 9:30 a.m.

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25

REPORTER'S CERTIFICATE

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



Margaret E. Graham

DATED THIS 2 day of June

19 88 at Dartmouth, Nova Scotia