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

Volume 76

Held: June 8, 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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June 8, 1988

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MR. GALE, EXAM. BY MR. MacDONALD

1 JUNE 8, 1988 - 9:30 a.m.

2 MR. MacDONALD

3 Good morning.

4 MR. GORDON GALE, previously sworn, testified as follows:

5 EXAMINATION BY MR. MacDONALD

6 Q. Mr. Gale, could you tell me just generally the involvement
7 Mr. Coles used to have on a day-to-day basis with criminal
8 law matters?

9 A. He didn't seem to have any day-to-day involvement with
10 criminal law matters. He certainly spoke for the Department
11 at provincial and federal/provincial meetings of deputy
12 ministers, and generally without any great consultation on
13 matters. I found that from time to time he would become
14 interested in some particular aspect of criminal law. He
15 might go through me or he might go directly to somebody
16 else on the matter.

17 Q. But his normal practise was to leave it to the other people in
18 the department.

19 A. The day-to-day matters, yes.

20 Q. Thank you. Do you have Volume 32, please, page 190? And
21 this is a letter from you to Chief Justice MacKeigan referring
22 to a telephone conversation with the Chief Justice and with
23 respect to a newspaper article that was written by Mr.
24 Donham. Would that be a normal function of the Attorney
25 General's office to provide legal opinions to the Court?

MR. GALE, EXAM. BY MR. MacDONALD

1 A. No, this was an unusual matter, but the Chief Justice had
2 called and he was concerned about the matter. He thought
3 that contempt proceedings should be instituted and his view
4 was, and it's my understanding also, that contempt
5 proceedings ex facie are initiated by the Crown.

6 Q. You weren't surprised then that the Chief Justice, what...was
7 he suggesting to you that contempt charges should be laid or
8 that you consider whether they should be laid?

9 A. He was suggesting that our Department should look at the
10 matter and look at it see whether or not we thought
11 contempt...a contempt charge should be laid.

12 Q. You concluded that the article was borderline, is...

13 A. Yes, that's correct.

14 Q. The article is found on page 178 of this volume, Mr. Gale,
15 and that's the article that you found to be borderline
16 contemptuous.

17 A. To the best of my knowledge it's the article, yes.

18 Q. What was it about the article that you considered to be
19 contemptuous, in the sense of what? Is it un...is Mr. Donham
20 saying something that is incorrect or untrue or in what way
21 is it contemptuous?

22 A. I...as you know, I said that at best it was borderline. I didn't
23 find it to be contemptuous, but it seemed to me that it
24 skirted on the issue of scandalizing the Court by holding it
25 out to...up to ridicule.

MR. GALE, EXAM. BY MR. MacDONALD

1 Q. And in that sense contemptuous, scandalizing the Court.

2 A. In that sense of contempt. That was the closest I could come
3 to it and that...and quite frankly I did not think it fell within
4 that, that I express myself in terms that it was, at best,
5 borderline.

6 Q. Well, borderline at least connotes that it could be
7 contemptuous.

8 A. Yes, some Court might find or some other lawyer might well
9 find that there is sufficient basis for that. But in my opinion
10 I did not think it crossed the boundary into the cases that I
11 had looked at, and I think those were referred to in my
12 letter of June 9th on page 190.

13 Q. On page 179 of this volume, it's a memo from yourself to Mr.
14 Coles, where you refer to the fact that you had spoken with
15 Chief Justice MacKeigan advising him that you would not be
16 instituting contempt proceedings. But then you note the
17 Chief Justice referred to a broadcast on the CBC by Mr.
18 Donham and suggested he may like to look at that to see if it
19 would warrant contempt proceedings.

20 A. Yes, my recollection why I sent this letter on June 9th, I
21 think I had... perhaps had gotten back to the Attorney...to
22 the Chief Justice to tell him that a letter was coming and he
23 had also indicated that we should look at this broadcast.

24 Q. Did you get a transcript of that broadcast?

25 A. As I recall there was not a transcript made available to us.

MR. GALE, EXAM. BY MR. MacDONALD

1 Q. Following on page 180 is a...

2 A. Well, I guess there is, one was made available to us then.

3 Q. Do you...do you know if you reviewed that transcript to see
4 if...and respond to the Chief Justice whether you considered
5 anything in the broadcast to be contemptuous?

6 A. I think I may...I can't tell you with any certainty. I may
7 have read this. I know I didn't...I'm quite certain I did not
8 get back to the Chief Justice on this...that particular one. He
9 didn't phrase it in terms of "get back to me", but simply take
10 a look at that.

MR. CHAIRMAN

11
12 And that's referred to in the last paragraph on page 191 of
13 the letter from Chief Justice MacKeigan.

MR. MacDONALD

14
15 The request that it be looked at, yes, My Lord.

MR. GALE

16
17 Yes.

MR. MacDONALD

18
19 That's in that letter.

20 Q. If you go back to page 190, your final sentence you indicate
21 that...or you state that, "It is not our intention to launch
22 contempt proceedings unless you and the members of the
23 panel in Marshall have different views." What do you mean
24 by that? Are you going to let them...the Court tell you
25 whether you should launch contempt proceedings?

MR. GALE, EXAM. BY MR. MacDONALD

1 A. No, I was not going to let the Court tell me whether to
2 launch or not. I guess I was being extremely deferential to
3 the Chief Justice on the matter, and also my views saying
4 that if there's some case that I've missed amongst...my
5 thought was that if there was some case I had missed among
6 the ones that I had indicated in my letter that, you know, it
7 was open to him to draw the Department's attention to a
8 case that may have been missed.

9 Q. Just so I understand your conclusion though. Having read
10 the article of Mr...written by Mr. Donham, it was your
11 conclusion that it was not contemptuous and that it did not
12 hold the Court up to ridicule.

13 A. Not within the parameters of what I understood to be the
14 case law.

15 Q. So there would be no foundation for a contempt proceeding.

16 A. That was my...

17 Q. In your view.

18 A. ...view, yes.

19 Q. Thank you.

MR. CHAIRMAN

21 Mr. MacDonald, would you...I'm at a loss to follow the
22 relevancy of this particular line of questioning.

MR. MacDONALD

24 The relevancy of it.

25

MR. GALE, EXAM. BY MR. MacDONALD

1 MR. CHAIRMAN

2 Yes.

3 MR. MacDONALD

4 I'm trying to determine what the relationship is between
5 the Attorney General's Department and the Court, My Lord. There
6 is a, I understand from Mr. Gale's discussion in the first instance,
7 or his evidence the other day, the Court may call him from time to
8 time and say, "What's the latest ruling in this sort of area?" or so
9 on. I am just trying to determine why the Court would be in
10 touch with the Attorney General's office to get an opinion on this
11 type of matter.

12 MR. CHAIRMAN

13 My understanding is that if the Court has reason to believe
14 that someone may have said something or done something that
15 may constitute contempt of Court there are several avenues open.
16 One, the Court may of its own initiative retain counsel at the
17 expense of the state to be advised in due course that counsel
18 would, if he or she deemed it appropriate, institute contempt
19 proceedings. Two, simply draw to the attention of the Attorney
20 General the areas without comment, the areas that are causing
21 them concern for an opinion. Three, some people argue that an
22 Attorney General has an obligation of his or her own initiative to
23 move. And four, that if it's in a civil action either of the parties to
24 the action may, again at their own initiative, institute an
25 application to Court to have the person cited for contempt. And

MR. GALE, EXAM. BY MR. MacDONALD

1 fifth, in the face of the Court, we note, you know, I think there's
2 some law on that.

MR. MacDONALD

3
4 Q Is that...Mr. Gale, would you...is that an accurate summation
5 of the legal system...situation in this Province?

6 A. Yes, it is.

MR. MacDONALD

7
8 Thank you, My Lord, that was very succinct.

MR. CHAIRMAN

9
10 You'll find the case in the Newfoundland and P.E.I. Reports.

MR. MacDONALD

11
12 Yes.

13 Q Just one other topic I want to deal with in this volume, Mr.
14 Gale, and it's...if you turn to page 203, it's a memo from Mr.
15 Herschorn to the Attorney General with a copy to you.
16 We've already discussed in some detail the...whether
17 charges should be laid against various individuals, and I
18 don't propose to go into that again. The second point though,
19 whether a public inquiry ought to examine the role of the
20 Sydney Police. That was a topic being discussed at the
21 Attorney General's office in the summer of 1983, is that
22 correct?

23 A. Yes, it is.

24 Q And it was the position of the Deputy Minister that there
25 should not be any such inquiry, is that...would you agree

MR. GALE, EXAM. BY MR. MacDONALD

1 with that? Or is that your recollection?

2 A. Well, my recollection is that both the Deputy and the
3 Minister were of the view that there might well be an
4 inquiry but that that decision would not be made until all
5 legal matters that they saw affecting the Marshall case were
6 dealt with or disposed of.

7 Q. Let me take you to page 272 of this volume, which is a
8 memorandum from, again from Mr. Coles to Mr. How, and
9 it's...the second page has a handwritten date on it of October
10 the 25th of 1983.

11 A. Yes.

12 Q. Have you ever seen that memo?

13 A. Not at the time, no.

14 Q. And...but you have seen it since.

15 A. I can't say that I've seen it since. I think this may be the
16 first time I've seen this particular memo.

17 Q. Let me ask you then to look at paragraph numbered 3 on
18 page 2 where Mr. Coles is saying that, "It would appear that
19 no useful purpose would be served by any such inquiry."
20 That's an inquiry into police activity. "Nor would the public
21 interest be served, in my opinion, by such an inquiry." Did
22 Mr. Coles ever express that view to you, that he did not
23 believe an inquiry could serve any useful purpose?

24 A. Yes, I have heard him express that opinion that it may not
25 be. It just seemed to be an opinion that...of the type that

MR. GALE, EXAM. BY MR. MacDONALD

1 you would set up for argument as to whether there should
2 be or shouldn't be. Somebody takes the contrary view and
3 presents an area for argument back and forth.

4 Q. And is that what you understand Mr. Coles was doing? He
5 was just setting up the contrary view so that all areas, all
6 aspects could be considered.

7 A. Well, that was my understanding at the time, yes.

8 Q. Was it your understanding that he did, in fact, support the
9 view that a inquiry should be held?

10 A. Well, I cannot say with any definite opinion that he
11 supported or didn't support an inquiry. That was certainly
12 discussed and the pros and cons of an inquiry, or
13 whether...what would an inquiry do, whether the police
14 practises had changed sufficiently over that period of time
15 that there was really no need for one or whether those
16 practises might still be continuing.

17 Q. Okay. Let me ask you to go to Volume 20, please.

MR. CHAIRMAN

18
19 Before we leave that, Mr. Gale. Upon reading the
20 memorandum of the Deputy Minister to the Attorney General I
21 would assume that, regardless of any discussions that may have
22 taken place, that this constitutes his formal response to the
23 request that was very properly made by the Attorney General
24 right after the Appeal Court's decision came down on the
25 reference when he listed three areas that he needed advice from,

MR. GALE, EXAM. BY MR. MacDONALD

1 from his officials, one being whether a public inquiry ought to
2 examine the role of the Sydney police and the prosecuting officer.
3 And sitting in the chair of the Attorney General upon receiving
4 the memorandum of...on page 272 from his Deputy Minister, it
5 seems to me that the only conclusion he could reach would be that
6 the Deputy Minister is, as the permanent head of the department,
7 is advising the Attorney General that there should not be a public
8 inquiry. Wouldn't you...is that a fair assessment on my part?

MR. GALE

9
10 Yes, I suppose that is a fair assessment, except that I know
11 that Mr. How would keep thinking about matters, his views from
12 time to time might well change and he may well have had further
13 discussions with Mr. Coles and this is a very highly fluid situation
14 at the time. I don't know that the positions taken were inflexible
15 but...

MR. CHAIRMAN

16
17 Would you agree with me that that...that memorandum ...

MR. GALE

18
19 With the premise that you have put forth, My Lord, yes.

MR. CHAIRMAN

20
21 Well, I want to be sure that I'm putting forward an accurate
22 premise. Yesterday we looked at the memorandum from the
23 Attorney General to his Deputy taken apparently very promptly
24 following the decision of the Court of Appeal, saying "Please
25 advise me, one, whether criminal charges are warranted against

MR. GALE, EXAM. BY MR. MacDONALD

1 certain people; two, whether there should be a public inquiry;
2 three, the question of compensation." And these are all legitimate
3 questions that I would expect an Attorney General to ask for
4 advice on from his Deputy. Now, he gets the advice in writing.
5 Doesn't that place the Attorney General then in a position,
6 regardless of any discussions that may be going on around the
7 Department that he's aware of or he's been involved in, in a
8 position wherein he...if he is to recommend to government that a
9 public inquiry be initiated that he has to overrule the head of the
10 department, the department head, which is not a very...

MR. GALE

11
12 Yes. He would have to overrule the Deputy head of the
13 department.

MR. CHAIRMAN

14
15 And that in itself is often fraught with hazards, isn't it?

MR. GALE

16
17 It can be.

MR. CHAIRMAN

18
19 Yes, yes. Thank you.

MR. MacDONALD

20
21 Thank you, My Lord.

22 Q In Volume 20, Mr. Gale, on page 57. This is a memorandum
23 from Staff Wheaton to the Officer in Charge in Halifax in
24 1986. And it's the second last paragraph that's of interest to
25 me, where he says that if he were interviewed on CBC he

1 would undoubtedly cast the Department of the Attorney
2 General in bad light, and it would also bring forth the fact
3 that he feels Chief John MacIntyre should be charged
4 criminally with counselling perjury. Did you...at any time
5 were you advised by Staff Wheaton that he considered that
6 such charges should be laid against Chief MacIntyre?

7 9:52 a.m.

8 A. I have never spoken or been in contact with Staff Wheaton
9 and I have never been advised by the RCMP at any time that
10 such charges should be considered.

11 Q. No one ever advised you of that.

12 A. No, no one ever advised me.

13 CHAIRMAN

14 Can we assume, therefore, Mr. Gale that you, this
15 memorandum was not brought to your attention.

16 A. No, this memorandum was not brought to my...

17 MR. MacDONALD

18 Q. Well let me just show you a couple of other documents, Mr.
19 Gale, and see what was brought to your attention in 1986. If
20 you start with page 72 of this Volume 20 where, it's a letter
21 to you from Superintendent Vaughan and we'll come back to
22 that but you'll see in the first paragraph it says he is
23 attaching a copy of his memorandum of June 12th, '86 and
24 the subsequent response from Staff Wheaton. Now can we,
25 perhaps we'll just go to those documents and see what was

1 advised to you. On page 60 is Vaughan's memorandum of
2 June 12th, do you see that?

3 A. Yes, I do.

4 Q. And that's what was enclosed in the letter to you.

5 A. Correct.

6 Q. And in the second paragraph it says, "I also wonder why he
7 would now make a recommendation that Chief MacIntyre
8 should be charged criminally with counselling perjury." So I
9 just refresh your memory that obviously you were aware at
10 that time of Staff Wheaton's view. Correct?

11 A. Yes, by that time I was aware of Staff Wheaton's view but I
12 had not been aware of it prior to that.

13 Q. I appreciate, I just was concerned, your answer to the Chief
14 Justice a moment ago may have indicated that you were
15 never aware of it. You were certainly aware of it in 1986
16 when you received Superintendent Vaughan's memo.

17 A. Yes. When I received Superintendent Vaughan's memo,
18 certainly, yes.

19 Q. Thank you. And then if you go to page 63 which is the other
20 document that was enclosed with Vaughan's letter to you,
21 that is from Staff Wheaton. Would you have read that
22 document?

23 A. Yes, I would have read that document.

24 Q. And, in particular, on page 65 the first full paragraph on that
25 page where it says,

1 These three people (and he's talking about
2 Harriss, Chant and Pratico) all say the same
3 thing. That they were counselled to commit
4 perjury by former Chief John MacIntyre.

5 A. Well I read the, Superintendent Vaughan's letter and the
6 attachment so I would have read that with it.

7 Q. Let me direct your attention to the final paragraph of Staff
8 Wheaton's letter, or memo. He talks about the investigation
9 being divided into three phases, the first being the proving of
10 Marshall's innocence, the second Ebsary's guilt and he says,

11 The third phase, which has not been completed,
12 is the investigation of former Chief MacIntyre. I
13 respectfully submit that an offence has been
14 committed by the former chief and it bears
15 further investigation.

16 Now you were aware at that time of the view of Staff
17 Wheaton in 1986 that a further investigation should be
18 carried out.

19 A. Yes, in '86 after receiving Vaughan's letter, yes.

20 Q. Thank you. Now just before I go to Vaughan's letter while
21 we're here, just turn back to page 61 and 62. That's a
22 memorandum from Sergeant Bentley to the Chief Officer in
23 the RCMP and it's the final paragraph on 62 that I want to
24 direct your attention to where he says,

25 Perhaps I might suggest that the Department of
 the Attorney General be approached with the

MR. GALE, EXAM. BY MR. MacDONALD

1 idea that all murder investigations in the City of
2 Sydney be handled by this force, not the City
3 police. I believe we, meaning our force, had to
4 take over another murder investigation since the
5 Marshall case simply because the Sydney police
6 did a lousy job.

7 Were you ever approached by the RCMP with the suggestion
8 that all murder investigations in Sydney be conducted by that
9 force?

10 A. No, I was not.

11 Q. Have you ever given any consideration within the Department
12 to such a policy being implemented?

13 A. I recall that Mr. Edwards was very annoyed about an
14 investigation that had been done on a murder case by the
15 Sydney Police Department and that he expressed that
16 annoyance to Mr. Herschorn and that during that he was
17 suggesting that maybe the RCMP should do all murder
18 investigations.

19 Q. That was Mr. Edwards' suggestion.

20 A. That is...yes.

21 Q. Yes. But has the Department ever given any serious
22 consideration to that suggestion, that all murder
23 investigations in the City of Sydney should be under the
24 guidance of the RCMP?

25 A. Not to my knowledge has the Department given serious
 consideration to that. The policy of the Department is that
 police forces of municipalities that are cities have and will

1 continue to do their own murder investigations. That certain
2 towns would be allowed to do murder investigations and
3 others would not be allowed based on recommendations that
4 were received from the RCMP.

5 Q. So there, depending on where one lives in the province, a
6 murder investigation may be conducted by the RCMP or the
7 local police.

8 A. Yes. That was the...

9 Q. That's the policy you said.

10 A. The position of the Department until we cease to have any
11 control over policing in the province.

12 Q. That's up until last year. Now your job description said,
13 includes formulating policies, policy in all matters relating to
14 policing. Have you ever considered a policy that there should
15 be, sort of, standard investigative techniques employed in
16 murder investigations or serious crimes, and that all serious
17 crimes in the province, say, should be under the direction the
18 RCM Police.

19 A. No, I have not considered that policy other than to amend a
20 policy that was in existence that murders, rapes and attempts
21 of both, except for the three cities in the province, were to be
22 investigated by the RCMP with the amendment to the
23 Criminal Code doing away with rape, per se, and changing the
24 concept of that of sexual assault. It was then decided in
25 consultation with the RCMP that the policy should be

1 amended so that, well certainly that rapes and attempts rapes
2 had to be taken out and that sexual assaults would not
3 replace them.

4 Q. Let me go back to the letter to you from Superintendent
5 Vaughan which is found on page 72. I take it that was an
6 unsolicited letter, Mr. Gale, is that correct?

7 A. Yes, I did not solicit the letter.

8 Q. Thank you. And in that letter Mr., or Superintendent
9 Vaughan is describing why, in his view, a further
10 investigation should not, is not warranted at this time. Is that
11 correct?

12 A. That's correct.

13 Q. And you agreed with that, did you, with that conclusion,
14 having read the reports from Staff Sergeant Wheaton and the
15 report from, or, and Vaughan's own memo of June the 12th.

16 A. Superintendent Vaughan's memo to me seemed to put the
17 matter forth in their view and I didn't have any reason to
18 disagree with it at that particular point in time but I felt that
19 the matter should go to the Deputy and be dealt with at his
20 level.

21 Q. So you turned it over to the Deputy.

22 A. Yes, I did.

23 Q. And did you discuss it with the Deputy?

24 A. No, I turned it over to him. I told him this was
25 Superintendent Vaughan's report that I thought that if it was

1 going to be responded to it should be responded to by the
2 Deputy.

3 Q. You're the liaison man with Vaughan, why would you put this
4 up to the Deputy?

5 A. Well in reading it, the press that was going on at the time
6 seemed to be dealing with "Gale tells RCMP hold in abeyance"
7 and, quite frankly, I thought there'd be a conflict of interest
8 in my writing back to Superintendent Vaughan and saying,
9 "Great, I concur with your letter."

10 Q. Okay.

11 A. So I decided that it should be dealt with at the Deputy's level
12 and he could go to the Minister if he wished on it, or have
13 somebody else deal with it but I didn't think it was fit and
14 proper for me to deal with the matter.

15 Q. Did you ever have any discussions yourself with Vaughan
16 about your, or about the suggestion that you had told the
17 police to hold matters in abeyance?

18 A. Well Superintendent Vaughan had interviewed me about how
19 we were dealing with the matter at that time. How we were
20 proceeding with it. I would expect that when he interviewed
21 me that the, it was carried in the press at that time that he
22 may, we may well have discussed the in abeyance issue.

23 Q. Was that before he wrote this letter to you of August the 1st,
24 1986?

25 A. Yes, I would say it was because at that time I simply told him

1 my view of what I had said at the time. That there was no
2 attempt to hold anything in any type of unlimited abeyance.
3 That, and I've explained that to you yesterday. That if, that
4 he should deal with the matter and take whatever action he
5 thought the matter warranted.

6 Q. The, on page 72, Superintendent Vaughan's letter, the second
7 paragraph where he says,

8 Regrettably your suggestion of (I guess that's the
9 5th of, or the 20th of May 1982) to hold the
10 matter in abeyance was unintentionally
11 misinterpreted to mean that the investigation
 from a police perspective should be stopped.

12 And he goes on to say in his last sentence, "It should not have
13 been construed in any way as precluding a police
14 investigation at a later date if such was deemed necessary
15 and warranted." Was that just repeating to you what you had
16 told him earlier in your discussions?

17 A. Well I don't think so. I maintain the position now that I did,
18 that I explained yesterday that when Mr. Edwards had
19 suggested that the, certain members of the Sydney Police
20 Department be interviewed that it was pending getting the
21 direction from the, the Order from the Attorney General. And
22 at that time it didn't make sense to me to interview them
23 until they had gotten the full report, or the full file from the
24 Sydney Police Department, and had a chance to look at it. The
25 date that's referred to here I think is where the thing

1 appeared in the correspondence from the RCMP but certainly
2 it was, I told Superintendent Vaughan basically what I've told
3 you during this testimony.

4 Q. Okay, thank you. On page 97 of that volume, Mr. Gale, is the
5 reply to the letter from Superintendent Vaughan to you and
6 it's signed by the Deputy, Mr. Coles. Did Mr. Coles ever, I
7 think you've told me he did not discuss with you the contents
8 of Vaughan's letter, is that correct?

9 A. That's correct.

10 Q. And he didn't ask you if you agreed with the conclusions.

11 A. No, I just told him that I would prefer in this case that
12 somebody else deal with it. I was giving it to him and that I
13 would prefer somebody else dealt with the matter.

14 Q. Do you know if he discussed it with any of the other people in
15 the Department?

16 A. No, I don't know if he did or not. I knew the letter went out
17 because...

18 Q. Did you agree with....

19 A. He told me.

20 Q. Coles', with the conclusion of Mr. Coles? That the RCMP were
21 correct and should be supported in their conclusion.

22 A. Well yes, I agreed with it. I had indicated before that it was
23 my own view that we were accepting their advice as to
24 whether or not they felt there was a, something to investigate
25 or whether they would investigate the matter. To that extent,

1 yes, I agreed with their conclusions.

2 Q. Thank you. I want to deal just for a few minutes with
3 Volume 41, please. Now...

4 COMMISSIONER EVANS

5 What page?

6 MR. MacDONALD

7 I'm going to start at page 1, My Lord.

8 Q. This volume, Mr. Gale, has been assembled and deals with two
9 issues involving natives. One is the Native Court Worker
10 program and is the other is native policing. And I want to
11 direct your attention to certain things and get your comment.
12 Now your job description in 1975 and I understood prior to
13 that, was that you were responsible for all legal matters
14 relating to native peoples. That's an accurate statement of
15 your job description, isn't that correct?

16 A. Well that was in the job description.

17 Q. Now in practice what responsibility did you take for legal
18 issues involving natives?

19 A. The only legal issue that I ever got involved in to any extent
20 involving native people was that of policing.

21 Q. The Court Worker program, you had no involvement with at
22 all?

23 A. I was aware of some bits of it. The only involvement that I
24 can see that I had was to reply at Mr. Coles' request to letters
25 that he received.

1 Q. Were you aware that such a program was implemented in the
2 province for a period of time?

3 A. I was aware that there was some type of Native Court Worker
4 program going on within the province. The matter seemed to
5 be dealt with by the Deputy, Mr. Coles, and it seemed to be
6 being implemented mainly under Mr. Crane's section, that of
7 Correctional Services.

8 Q. The Exhibit 160 which was the job description for those years
9 included the job description for Mr. Crane and it made no
10 reference to the native matters at all. But he took that over,
11 was it at the, because of Coles, Mr. Coles that...

12 A. Well I presume he did. He was the one that seemed to know
13 about the matter and but other than having, you know, a
14 nodding acquaintance with the fact that there was a Native
15 Court Worker program going on and that there, and being
16 aware that there were some discussions going on with it, I
17 really had no knowledge of the matter other than that. I had
18 no input into it.

19 Q. But it would be a legal matter relating to native people.

20 A. Well, in part it's a legal matter, in part it's a service matter.
21 The job, as I recall, in some ways was left to the, it would be
22 performed by a probation officer in our own service.

23 Q. Let me just take you to some of the letters in this volume,
24 then, and get your, where your name appears, and we can
25 find out why you were involved.

1 First of all, on page 1, it's a letter to Mr. Pace from the then
2 Minister of Justice in Ottawa who says that a...in the first
3 paragraph, "That experience with a Court Worker program
4 in Alberta has shown that such a program can perform an
5 extremely valuable service, both for native people and the
6 legal system generally." Was this letter ever brought to
7 your attention?

8 10:15 a.m.

9 A. No, I cannot recall ever having had this letter brought to my
10 attention.

11 Q. Are you able to comment whether the system that was
12 implemented in Nova Scotia did perform an extremely
13 valuable service for native people and the legal system
14 generally?

15 A. No, not of my own personal knowledge of it. I knew there
16 was some type of program there. I didn't know what fully it
17 was doing or how much assistance it was being to the two
18 sectors of...

19 Q. Let's go to page 8. That is a letter signed by you where it
20 says you have been reviewing the file on the Native Court
21 Worker program. And you go on to say that, "The Attorney
22 General had taken the matter to Cabinet and received
23 approval in principle." Do you recall this involvement, your
24 involvement in getting...having such a program
25 implemented?

- 1 A. I don't recall any involvement in getting the program
2 implemented whatsoever. I think this letter to Mr. Miller is
3 one that I was asked to write to look at the matter and just
4 explain the...set out the chronology of events that had
5 occurred.
- 6 Q. Let's look at page...
- 7 A. The position of the Department.
- 8 Q. Look at page 11. That's a memo from the Deputy to you
9 enclosing the draft agreement for the program and asking
10 you to review it and make comments. Would you have done
11 that?
- 12 A. I would have looked at it. I don't know what comments I
13 would have made and it would have been from a solicitor's
14 point of view as to the adequacy or inadequacy of the
15 agreement.
- 16 Q. On page 23 there is a year-end report setting out what had
17 taken place during the year 1974 in the program. It's noted
18 to be submitted to Mr. Crane. Would that have been
19 reviewed by you?
- 20 A. I doubt it, unless it was necessary to look at it to answer
21 some letter.
- 22 Q. Would Mr. Crane in the organizational structure, would he
23 be reporting to you or who would he be reporting to?
- 24 A. The Deputy.
- 25 Q. Directly to the Deputy.

1 A. Yes.

2 Q How many people were reporting to the Deputy directly?

3 You were the Director of Criminal.

4 A. I was the Director of (Criminal), which I translate...

5 Q Yes.

6 A. ...into director of criminal law, quite frankly.

7 Q There was no Director of Prosecutions then.

8 A. No, there was no Director of Prosecutions at that time. That
9 was part and parcel to the position that I held. Mr. Crane
10 was Director of Corrections. There was a Director of
11 Administration, who was Mr. MacDonald. There was a
12 director, two directors on the civil side. I think one was
13 called Director of Solicitor Services, I think was Mr. Conrad
14 at that time, and somewhere along here, I can't recall just
15 when, but the late Mr. Cavanaugh was director of the...of
16 civil law for the department.

17 Q At that time being Director of Criminal, responsible for
18 prosecution, would you not have had some...some sort of
19 information going out to your field people that if these court
20 worker, native court worker staff were taking part in the
21 process in the courts?

22 A. I think there was something went out, but as I recall it it
23 was not under my signature. It was...I think it may well
24 have been Mr. MacDonald's signature.

25 Q Have you ever looked at the job description for the court

1 worker, and it's on page 31?

2 A. Well, I looked at it the other day, certainly when I was
3 given this volume to look at. I may or may not have looked
4 at it at the time. I just can't recall. I was only involved in
5 this matter in a most peripheral way. Yes, I've written some
6 letters, but normally my recollection is that I had to go and
7 find out about things, and I had to consult Mr. Crane to find
8 out what was going on with the program.

9 Q. Let me take you to page 43. That's a letter from Mr. Coles,
10 to the Deputy Minister of the Department of Social Services,
11 but it's copied to various people including you.

12 A. Yes, I note that.

13 Q. And it's referring to a conference he had attended on native
14 people and the criminal justice system. And he says in the
15 third paragraph,

16
17 Perhaps more than anything else the conference
18 did point out the need for attitudinal changes on
19 the part of those involved in the criminal justice
20 system and the need for the system itself to be
21 more sensitive to native peoples who come in
22 conflict with the law.

23 Was anything done within the Department to respond to
24 that need?

25 A. Not that I'm aware of.

Q. Was there any discussions of any kind of any changes that
could be made to respond to that need?

- 1 A. Not that I was involved in.
- 2 Q. Any...did Mr. Coles ever comment to you as the person
3 responsible for prosecutors that there was such a need and
4 there had to be attitudinal changes?
- 5 A. No, he has not...he had never talked to me on that point.
- 6 Q. As the man in...as the man responsible for prosecutors at
7 that time did you take any step to see that the prosecutors
8 out in the field could do something to respond to that need
9 or to make the required changes?
- 10 A. No, there were no active steps that I took on the matter.
- 11 Q. Thank you. That court worker program only existed for a
12 couple of years, were you aware of that?
- 13 A. I'm aware that there was a program that existed for a while
14 that there, negotiations that went on afterwards about
15 expanding that program, that those seemed to my
16 recollection came to naught, that there seemed to be a
17 fundamental difference of opinion between the province and
18 the federal government about funding. That there was also
19 the view of the Attorney General, based on his
20 understanding of the position of the Union of Nova Scotia
21 Indians, as to how the funding was to be allotted. That he
22 was not prepared to have a program that dealt with only
23 one segment of the native population. I think there was a
24 difference as to...between the Union of Nova Scotia which
25 represented the status Indians, that they had a difference of

1 opinion with the, to my recollection, with the non-status and
2 métis. I believe at that point in time that the Union of Nova
3 Scotia Indians were also taking the view that they did not
4 want to accept provincial monies, that they...the monies that
5 were...the provincial contribution was not to be used for
6 status Indians. That as part of their stance and the only
7 reason I understand this to this limited degree is because of
8 my involvement in the policing issue, but part of their
9 stance was that they...they wanted to deal with their rights,
10 and they considered to be obligations of government with
11 the federal government first, and then having dealt with
12 that they would come back and deal with the provinces on
13 the pre-Confederation matters.

14 Q. Did any of your prosecutors ever report to you, in any way,
15 that this court worker program was a good thing, it was
16 helpful to the Court, it was beneficial to the natives?

17 A. I have no particular recollection of that. Whether or not
18 any did, I'm not sure, quite frankly.

19 Q. On page 146, Mr. Gale, there's a memorandum for the
20 Executive Council of the Province signed by Mr. How but
21 apparently prepared by...

22 A. Mr. Coles.

23 Q. Mr. Coles.

24 A. Or no, I'm sorry.

25 Q. Mr. MacDonald.

1 A. Prepared by Mr. MacDonald.

2 Q. Right. And describing the fact that...or seeking approval for
3 some money for this program. Did you have any
4 involvement with the preparation of these documents?

5 A. No, I had no involvement with that at all.

6 Q. And on...and on page 178 is a memo from yourself to Mr.
7 How. Is this dealing with the court worker program?

8 A. Yes, it was dealing with the court worker program.

9 Q. You were just responding to something that no one else,
10 someone else was away, is it?

11 A. I presume that Mr. Coles was away or that he may have
12 come into me and said, "Answer this memo from the
13 Attorney General for me."

14 Q. Now, the policing, the native policing, you do have some
15 knowledge about that.

16 A. Yes, I have some knowledge about that.

17 Q. Tell us about that then would you, please, what your
18 knowledge is and what programs were implemented?

19 A. Well, the...up to a certain point in time the native policing
20 had been done by Band constables who were constables
21 appointed by the Band Council. Those people were generally
22 appointed as special constables under the RCMP Act ,
23 although, by the Commissioner, they were not members of
24 the RCMP but it had the long term of supernumerary special
25 constable. But it didn't give them any rights or give them

1 any membership within the RCMP.

2 There was then a proposal by the federal government,
3 that seemed to gain some acceptance, that...the one that was
4 primarily dealt with or that I dealt with was having
5 reservations policed by special constables who were
6 members of the RCMP and who would also themselves be
7 native persons, that those constables would operate out of
8 the existing detachments and that they would be part of the
9 detachment covering the area in which the reservation was
10 located. There was a proposal by the federal government
11 that that would be a cost-shared policing concept and that
12 the Province would, in fact, pay the greater portion and the
13 federal government the lesser, but that there would be a
14 contribution for training for some period of time which
15 would, in effect, have the Province paying the lesser amount
16 and the federal government paying the greater amount of
17 the policing costs for these special constables. There were
18 discussions that I attended with the Union of Nova Scotia
19 Indians about this matter. They were long, protracted, went
20 over a period of some time.

21 As I recall, the Union of Nova Scotia Indians were not
22 fully satisfied with this type of policing concept. That they
23 wanted another concept which had been suggested in a
24 report from the...prepared for the federal government,
25 whereby there would be what I could only term to be a

1 municipal type of police force on the reservation, and that
2 would be appointed by the Band Council, as I understood it,
3 or in the alternative that there be a sort of province-wide
4 police force and the concept, there was one of bringing in a
5 force called the Amerindian Police from Quebec. And they,
6 in fact, to my understanding, were a native police force in
7 Quebec that operated on a number of reserves within
8 Quebec.

9 As I recall it, the Union of Nova Scotia Indians seemed
10 to feel that they were not in favour at all of the special
11 constable program, but that they would leave it to each
12 Band to determine if it wanted to enter into such an
13 agreement. A number of Bands, and I think probably
14 three, if memory serves me right, did enter into such an
15 agreement, and that seemed to work out satisfactorily and,
16 in fact, later we had requests for...from those Bands to
17 increase the number of special constables and there were
18 requests from perhaps two other Bands to institute that
19 program. By that time the agreement seemed to have
20 lapsed that we had with the federal government, the
21 Department of Indian Affairs, and there seemed to be some
22 difficulty in having them and even when I...the last I've
23 ever had to do with it they have not come forth with their
24 position as to what they will do with...in regard to their
25 participation in policing native lands.

1 Q Well, is there no special policing in effect today on native
2 lands, at least until the...as far as you know, there isn't any,
3 is that correct?

4 A. Well, yeah, there is policing on native lands. The Province,
5 well, the last I had to do with it was still carrying on with
6 the original number of special constables...

7 Q Okay.

8 A. ...on native lands, but it would not expand the program until
9 some agreement was reached as to the contribution and
10 position of the Federal Government on the matter.

11 Q And that now would be in the hands of the Solicitor General.

12 A. That is now in the hands of the Solicitor General and I...I
13 don't know what has been done since then.

14 Q Okay.

15 A. Except I can say that at a meeting of Deputy Ministers as
16 late as May there was a request by Deputy Ministers of
17 other provinces to urge the Deputy Solicitor General and the
18 Deputy Minister of Justice of Canada to use their best offices
19 to see if an agreement could be forthcoming in the near
20 future.

21 Q Okay. I'm going to show you an exhibit that's been marked
22 161.

23 EXHIBIT 161 - LETTER - MARCH 16, 1987, TO MR. GALE FROM
24 DEPARTMENT OF JUSTICE, CANADA

25 Q It's a letter to you from the Department of Justice, Canada

1 seeking provincial support for a study to be carried out to
2 determine the needs of...dealing with natives and the legal
3 system, and indicating that the federal government would
4 pay all of the costs of such a study. It's indicated on page 2
5 in the first full paragraph. What happened with this
6 request, Mr. Gale?

7 A. The only thing that I can recall on this request is that since
8 it was a study, what they wanted to...somebody identified
9 that they could meet with, that I turned it over to the
10 Deputy Attorney General to have him determine who, in
11 fact, would be the person dealing with the matter. I felt
12 that at that point in time that I had another...a number of
13 other commitments and if it was going to be me that some of
14 those commitments might have to be transferred elsewhere,
15 or that the person to meet with them would have to be
16 somebody else. Quite frankly, my section has been that the
17 lawyers that work with me are going full out on criminal
18 appeals and have little time to become involved in other
19 matters. We have had one lawyer who has been dealing
20 with some other matters but we have found that it was
21 causing problems in trying to get the criminal appeals dealt
22 with and I gave it to the Deputy, and I have not heard back
23 on the matter. I don't know what has happened to it.

24

25

1 10:37 a.m.

2 Q. Have you ever responded to the letter other than just to
3 acknowledge it?

4 A. I may have acknowledged it but other than that I don't think
5 I've responded to it. I don't have any recollection of having
6 done so.

7 Q. Mr. Coles, then, would be the one who could tell us what
8 happened with this, is that correct?

9 A. I would assume that he can. The letter would have been sent
10 to me because, Mr. Prefontaine is in charge of Policy and
11 Planning in the Department of Justice in Ottawa and he
12 contacts people that he thinks are, or that are, have been
13 attending these federal, various federal/provincial meetings
14 from the provinces. I have been attending on behalf of Nova
15 Scotia and now it's myself and Mr. Conrad, but it may be, I
16 know it's the assistant Deputy Minister, Deputy Attorney
17 General of Ontario that attends them and...

18 Q. But you turned the document over to Mr. Coles.

19 A. Yes.

20 Q. And he's the only one who can tell us what happened with it.
21 Thank you.

22 A. Well I can't tell you.

23 Q. Okay. Let's go, finally, to Volume 28, please. Now 28 is a,
24 and do Your Lordships have Volume 28?

25

MR. GALE, EXAM. BY MR. MacDONALD

1 CHAIRMAN

2 Yes.

3 COMMISSIONER POITRAS

4 What page?

5 MR. MacDONALD

6 I'll be going starting from the beginning, My Lords, moving
7 along.

8 Q. Now Volume 28, page 1, Mr. Gale is a letter from you to Mr.
9 Edwards indicating that the Deputy wanted to know, wanted a
10 report why the police report was given to Steve Aronson.

11 That you were just relating what the Deputy wanted to know,
12 is that correct?

13 A. That's correct.

14 Q. Now you told us yesterday that you knew that Aronson was
15 getting those reports.

16 A. Well I had told Mr. Edwards that I had no objection to him
17 getting the reports that Mr. Edwards thought were necessary
18 to allow him to be able to conduct the appeal properly.

19 Q. And did you tell that to the Deputy when he wanted to know
20 what happened, why they were given to Aronson, they were
21 given with, to assist Aronson in conducting the appeal and
22 they were given with your knowledge.

23 A. To the best of my knowledge I told the Deputy that Mr.
24 Edwards may well have given the police reports to Mr.
25 Aronson to assist him with conducting the appeal and that I

MR. GALE, EXAM. BY MR. MacDONALD

1 had agreed that that would proper. That he should have
2 access to them, the ones that Mr. Edwards felt he should have
3 access to to enable him to prepare the appeal properly.

4 Q. Notwithstanding that the Deputy wanted the report from
5 Edwards, is that correct?

6 A. That's correct.

7 Q. And let's go to Edwards' report which is on page 2. And I
8 want to direct you, actually, to page 3, some of the comments
9 of Mr. Edwards. He says on the top of that page that he
10 believes, "It was proper, given the very unusual
11 circumstances of this case to give Mr. Aronson a copy of the
12 report." You would agree with that.

13 A. Yes, it was an unusual case and it turned out that Mr. Aronson
14 had carriage of the appeal so I think he had to know, in
15 considerable depth, the case.

16 Q. In the next paragraph he says, "This case has engendered and
17 continues to engender considerable suspicion about the
18 disclosure practices of the police and the Crown." Do you
19 agree with that statement?

20 A. Well there has certainly been considerable comment in the
21 media about disclosure practices.

22 Q. Let me take you to the next paragraph of Mr. Edwards'
23 comments.

24
25 A disclosure of the report should cause us to re-

MR. GALE, EXAM. BY MR. MacDONALD

1 examine the role of the Crown during a police
2 investigation. In hindsight it is clear to me that
3 the decision to question or not to question Chief
4 MacIntyre should have been solely the
5 investigator's prerogative.

6 Do you agree with that?

7 A. Well it was entirely up to the investigator whether to
8 question or not to question him, yes.

9 Q. Okay, now Mr., did you, I take it gave that report to Mr. Coles.

10 A. I got the letter in from Mr. Edwards. I looked through it
11 quickly and gave it to Mr. Coles. He was the one that was
12 asking the questions and I don't think I spent any time on it.
13 It was just a matter of glancing at it and sending it up to Mr.
14 Coles.

15 Q. Did you tell Coles that you agreed with Edwards' position?

16 A. Well I think in, at some stage I had told Mr. Coles that I
17 certainly agreed with Frank that Mr. Aronson had to have
18 access to more than might normally be given because of the
19 nature of the case and the fact that he had the carriage of the
20 appeal under the reference.

21 Q. Let's go to page 4 which is Mr. Coles' response, Mr. Gale, a
22 copy to you. You would have read this at the time?

23 A. Yes, I would have read it at the time.

24 Q. And on page 2 of that letter Mr. Coles is setting out a, I take it
25 to be a policy of the Department. Is that your understanding
26 that that is the policy?

MR. GALE, EXAM. BY MR. MacDONALD

1 That police reports prepared and delivered for
2 the use of the Attorney General, his Deputy as an
3 agent, are not to be copied to other persons
4 without the expressed authorization of the
5 Attorney General or your superiors.

6 A. That's correct.

7 Q. That is a correct statement of policy?

8 A. Yes.

9 Q. But Edwards did have the expressed authorization of his
10 superior, specifically from you.

11 A. I, yes, he was told by me that what he thought was necessary
12 for Mr. Aronson to be able to conduct the appeal properly
13 should be made accessible to Mr. Aronson.

14 Q. Now that, there continued to be a flow of letters back and
15 forth on this. I'm not going to take the time to go through it
16 but I just want to confirm that you were telling Mr. Coles all
17 along that Edwards had acted properly and with your
18 authority in disclosing that report to Aronson.

19 A. Well I recall at the time telling him that I didn't have any
20 difficulty with Mr. Edwards disclosing matters to Mr. Aronson,
21 that the nature of the case is the fact that he had the conduct
22 of the appeal, made it imperative that he understand the case
23 and if Mr. Edwards thought some of the police reports would
24 help him do that then he could have access to that.

25 Q. I want to take you specifically, though, to page 9, which is one
 of the replies from Mr. Coles. My concern is the third
 paragraph where he's talking about the threat at one time to

1 take, the threat to take Mr. Edwards off the appeal. He says,

2
3 That my concern in having you continue to
4 represent the Crown in the hearing under
5 Section 617(b) resulted upon learning of the
6 position which you were taking on behalf of the
7 Crown which, in my appreciation of the situation,
8 was not the proper position for the Crown to
9 take, a view concurred in by other senior
10 members of the Department.

11 Now, the view of Mr. Coles at the time, he wanted to take
12 Frank off because he was advocating a position that Coles did
13 not consider to be proper. Was that concurred in by you?

14 A. No, it was not concurred in by me.

15 Q. Was it concurred in by Martin Herschorn?

16 A. I think Mr. Herschorn may have been more sympathetic to
17 Mr. Coles' position that I was.

18 Q. There was no other senior member of the Department
19 participating.

20 A. No, not at that meeting, no.

21 Q. Page 16 of that volume, Mr. Gale, sets out what I understand
22 to be the disclosure policy now in effect for the prosecutors in
23 Nova Scotia, is that correct?

24 A. I believe that this is the current one, yes.

25 Q. And you're familiar with the contents of that document?

A. Basically, yes.

Q. Under that document would Mr. Edwards be entitled to
release the police reports to Mr. Aronson if a similar situation

1 arose?

2 A. Well there is also another memo which says that they, the
3 police reports themselves are not to be released. That what is
4 to be released is the Crown sheet and any statements and any
5 documents or copies of documents or exhibits.

6 Q. Under this policy would the defence in the Donald Marshall,
7 Jr. case have been given copies of the first statements of
8 Chant and Pratico?

9 A. Yes, if they were in the possession of the...

10 Q. Of the Crown.

11 A. Prosecutor. The Crown as opposed to police.

12 Q. And if there had been such a written policy in effect in 1971,
13 I take it that the prosecutor in the field would know he's
14 supposed to give those statements out.

15 A. Yes. Certainly if this policy had been written in 1971 there
16 would have been no question.

17 Q. You believe they should have been given out.

18 A. Yes, it's my view that they should have been given out if the
19 prosecutor knew about them.

20 Q. Why wasn't there written policies in those days?

21 A. I don't think there were any written policies anywheres in,
22 across Canada in those days on the matter. I may be
23 mistaken about that. Certainly we were a small operation.
24 The prosecutors were people in private practice who received
25 an annual retainer to act as prosecuting officer. The position

MR. GALE, EXAM. BY MR. MacDONALD

1 of the director was one of responding to any requests that
2 they had, most of those people from any recollection I have,
3 were very independent people and did the job and didn't
4 really come to anybody in the Department for anything.

5 Q. In all the discussions you've had with other people in the
6 Department over this Donald Marshall case, all the various
7 meetings you've participated in, all the discussion, have you
8 ever heard anyone in the Department say that at least part of
9 the blame here, part of the reason Mr. Marshall went to jail is
10 because of the failure of the Attorney General and his agents
11 in the field to perform their duties.

12 A. I think to be fair that if that has come up in a conversation
13 that if these things had been given that things would,
14 undoubtedly, have been different. But it was only along the
15 lines that, you know, that sort of thing isn't going to happen
16 anymore because we have disclosure and we've had a written
17 policy on it since approximately 1980.

18 Q. Only in that sort of context...

19 A. Yes.

20 Q. Has it come up.

21 MR. MacDONALD

22 That's all I have, thank you.

23 BREAK - 10:51 a.m.

24

25

MR. GALE, EXAM. BY MR. BARRETT

1 INQUIRY RESUMES -11:22 a.m.

2 MR. CHAIRMAN

3 Ms. Edwardh.

4 MS. EDWARDH

5 Yes, My Lord. Mr. Barrett has indicated to me that he just
6 has a couple of questions to ask, and a matter that he would like
7 to attend to a twelve o'clock. So, I'm certainly content to change
8 the order.

9 MR. CHAIRMAN

10 By all means, we encourage... There's a bonus for anyone
11 who has a couple of questions to ask.

12
13 EXAMINATION BY MR. BARRETT

14 Q. Yes, Mr. Gale, my name is David Barrett and I represent the
15 Estate of Donald C. MacNeil. Mr. Gale, you've testified that
16 the Crown disclosure practises in the early 1970's were not
17 as complete as they are today.

18 A. That's correct.

19 Q. And these practises of fuller disclosure have evolved over
20 the past seventeen years.

21 A. Well, I think they've evolved, yes, over the last seventeen
22 years, and within our department over the last eight or nine.

23 Q. And, sir, my question, as director of criminal prosecutions
24 did you ever receive a complaint concerning Donald C.
25 MacNeil's disclosure practises?

MR. GALE, EXAM. BY MS. EDWARDH

1 A. No, I had not.

2 MR. BARRETT

3 Those would be my questions.

4 EXAMINATION BY MS. EDWARDH

5 Q. Maybe more than just a couple. I'd like to pick up, if I
6 could, Mr. Gale, with a comment that you made at the very
7 end of your testimony in response to some questions from
8 Mr. MacDonald. You said that you had occasion in the
9 department to hear the comment made that the Attorney
10 General's office or his agents bore some responsibility in
11 relation to the wrongful conviction of Donald Marshall, is
12 that correct?

13 A. I had...there had been some indication that if the...some of
14 the documents, statements had been given out at the
15 beginning and the defence counsel had been made aware of
16 some of the matters at the beginning, there...this matter may
17 have well taken a different turn.

18 Q. Indeed, we can tell from the documents filed that that was
19 certainly a position that was suggested by Mr. Edwards.

20 A. Yes.

21 Q. That was the effect of non-disclosure as best he understood
22 it, correct?

23 A. That's my understanding.

24 Q. Now, my question to you, sir, is did you ever hear Mr. Coles
25 make either of two comments? The first is the Attorney

1 General's office or some of its agents bore some
2 responsibility for what happened to Mr. Marshall. Did you
3 ever hear him say anything like that?

4 A. No, not in those terms. The terms were that if, in particular,
5 the 1971 RCMP report had been made available to defence
6 counsel, then things would have undoubtedly had a
7 different conclusion.

8 Q. So, I take it from your conversations with Mr. Coles then, he
9 took the view that had there been disclosure of that 1971
10 report, then there might well have been a different result at
11 the first appeal.

12 A. That was my understanding of his view.

13 Q. And, therefore, that the office of the Attorney General did
14 bear some direct responsibility because that matter had not
15 been disclosed prior to the first appeal?

16 A. Well, he discussed it in the terms that I've indicated and I
17 don't recall him saying that...specifically that the office of
18 the Attorney General or the Department of the Attorney
19 General bore some responsibility in it, but...

20 Q. It would flow logically though, would it not, sir?

21 A. It may well.

22 Q. Did you ever hear Mr. Coles suggest at any time that the
23 alleged conduct of the police officers in their interrogation of
24 the witnesses was, if not criminal, at least highly improper?
25 Would you...

1 A. In discussing the matter, he was of the view that the...the
2 conduct might have been improper but in his view that that
3 conduct would not have continued to the present day. There
4 were different personalities there.

5 Q. Well, let's just pursue that. I would take it that forceful and
6 improper conduct of police officers is a matter of concern to
7 the Attorney General's office generally?

8 A. Yes.

9 Q. Yes.

10 A. And more particular at that time since we had more
11 responsibility for policing.

12 Q. And do you know, sir, whether you or anybody else in the
13 Attorney General's office ever went to discuss this kind of
14 conduct that was alleged to any body of policing authority,
15 to the Nova Scotia Police Committee...Commission, to anyone
16 else who might have some direct contact with municipal
17 police forces in Nova Scotia?

18 A. There was no formal conversation with the Nova Scotia
19 Police Commission, but it was our view that under the Police
20 Act that this sort of matter would be dealt with by the Nova
21 Scotia Police Commission with the present legislation.

22 Q. Well, one would assume it would only be dealt with, sir, if,
23 in fact, there was an allegation made or there was conduct
24 that came to light through some investigation.

25 A. Yes, that's correct.

1 Q Do you know whether anyone conducted any investigation
2 at any level to determine whether those kinds of methods
3 were still in use in Nova Scotia, by anyone?

4 A. No, I don't know that anyone did conduct any study.

5 Q So, on what basis, to the best of your knowledge, sir, would
6 Mr. Coles have come to the conclusion that this was no
7 longer in issue?

8 A. I suppose on his...whatever basis that he might have had for
9 thinking that this type of matter was dealt with by the Nova
10 Scotia Police Commission, however, the Commission is small
11 and at best has a minimum staff to deal with matters.

12 Q So, in other words, they would not have a great capacity to
13 deal with those kinds of matters?

14 A. Only on their...no, because...only on their consultations with
15 particular police forces. I think there are three directors
16 there and each was a consultant to police within a certain
17 area of Nova Scotia and whether or not that would be raised
18 by them or not, I don't know.

19 Q Well, if it was a matter of substantial concern in the
20 Attorney General's office that this kind of conduct not
21 continue, would you at least agree, Mr. Gale, that it would be
22 important to ensure that someone from the Attorney
23 General's office went out to whatever appropriate
24 authorities there may be to ascertain whether there were
25 any complaints and what was being done to ensure that

1 such conduct did not take place again?

2 A. Well, there would have to be some type of information on
3 which you'd have to base your opinion, and if that required
4 going out or whatever it required.

5 Q. And I take it from your evidence, sir, you know of no one
6 going out or making contacts or trying to elicit information
7 that would establish one way or the other that, in fact, this
8 conduct was not occurring.

9 A. I know of no one doing it. I don't know who Mr. Coles may
10 have contacted.

11 Q. I appreciate that. To your...to the best of your knowledge,
12 no one did it.

13 A. I have no knowledge of anyone doing it.

14 Q. You weren't asked to do it.

15 A. I was not asked to do it, no.

16 Q. Now, Mr. Coles had no experience as a prosecutor in the
17 field, is that correct?

18 A. That's correct.

19 Q. Did he ever undertake pros...did he ever undertake
20 appearing on behalf of the Attorney General at the appellate
21 level?

22 A. No.

23 Q. So, would then it be fair to say he stayed in the office, in
24 effect? He wasn't involved in...

25 A. He stayed out of court, yes.

1 Q. Stayed out of court. And in terms of his style as the Deputy
2 head of the department, would it be fair to describe his style
3 as being certainly hands on in areas that he was directly
4 interested in?

5 A. If he was directly interested in a matter he'd be taking...

6 Q. He didn't ...

7 A. ...part.

8 Q. ...hesitate to become involved.

9 A. He didn't hesitate to become involved or express his
10 opinions or at times give directions without any particular
11 consultation with anyone that I'm aware of.

12 Q. So then, if one were to translate that remark, I take it when
13 you say he was quite capable of giving directions without
14 consultation, he would give directions in areas that might
15 well fall under someone else's bailiwick without
16 consultation?

17 A. Yes.

18 Q. And would it be fair to say that at least some members of
19 the department felt that he could be on occasion quite high
20 handed in his approach to decision making?

21 A. Yes, there are members of the department that have felt
22 that.

23 Q. And, in fact, if one were to look at his style, would it be fair
24 to say it is typical of how he dealt with the question of the
25 prosecution of the shoplifter, which Mr. Edwards was

1 concerned with, so for example, he did not consult with Mr.
2 Edwards at all in simply ordering him to withdraw the
3 charge? Is that correct?

4 A. To my knowledge now he did not consult with him. At the
5 time I was told that he had made inquiries and I was to
6 contact Mr. Edwards and convey his message to drop it.

7 Q. You were told to convey the result.

8 A. That's right.

9 Q. You had no information that indicated that he had discussed
10 the matter with Mr. Edwards?

11 A. I had no information that he had discussed it with Mr.
12 Edwards. He gave me a brief capsule of what the matter
13 was about and that was it.

14 Q. Would you agree, Mr. Gale, that from the perspective of a
15 fairly senior Crown working in the field who is in touch with
16 local conditions, in touch with what the needs of the
17 community are, that in the ordinary course it would be
18 viewed as quite high handed to receive such a direction
19 without consultation?

20 A. Well, one would expect to have some consultation because of
21 the...I've always found that you have to make some
22 inquiries to ascertain some information yourself to
23 determine whether what is being told to you is correct,
24 because sometimes it's diametrically opposed.

25 Q. Indeed, in other words, representations might be made on

1 someone's behalf at a high level without indicating, for
2 example, that this person had been before the courts a
3 number of times in the past or indeed had had charges
4 withdrawn in the past, correct?

5 A. Oh, yes, I've had people come into me claiming to be
6 innocent, very innocent people, that are dragged up in the
7 system only to find that they have a record literally as long
8 as my arm.

9 Q So, that in order to assess any request, whether on
10 humanitarian bases or any other basis, and also whether it
11 is in the interest of the administration of justice to actually
12 withdraw a charge, you'll agree then that the one person in
13 the best position to advise in respect to that would be Crown
14 counsel who had carriage of the case?

15 A. Well, he would certainly be one that you would consult to
16 find out about it, because he presumably would have the
17 best knowledge of the matter.

18 Q Yes.

19 A. Although you may not agree with him...his assessment of the
20 conclusion of it though.

21 Q No quite so, but he's certainly the voice which one would...at
22 least...

23 A. Would want to hear.

24 Q Would want to hear from. Now, we know that, in fact, Mr.
25 Edwards from his own testimony, sir, refused to drop the

1 charge in question. In terms of dealing with issues
2 involving morale of members of the Crown's office or agents
3 of the Attorney General in the field, will you agree with me
4 that in order to preserve the integrity of the office of Crown
5 counsel, that directions of the kind that were given in that
6 particular case ought not to be given without full
7 consultation?

8 A. Well, yes, I'll agree that there should be full consultation on
9 the matter, yes.

10 Q. With the Crown who has carriage.

11 A. With the Crown that has it or the senior prosecutor for that
12 area.

13 Q. Right. And that was not done in this case to the best of your
14 knowledge.

15 A. I have no knowledge of it having been done.

16 Q. Other than the direction you conveyed.

17 A. Yes.

18 Q. Would you agree, sir, that such directions emanating from
19 the Attorney General's office in circumstances where local
20 Crown counsel may have a quite different policy, for
21 example, tending to prosecute all shoplifters, give the
22 appearance at least to the community that there is political
23 interference from the Attorney General's office?

24 A. I suppose it's capable of that. I don't know that I...at least in
25 the case of the Attorney General's office became involved in

1 it, but I don't know that I can necessarily follow the latter
2 part of your proposal. I suppose that depends on the person
3 viewing it.

4 11:37 a.m.

5 Q. Well when Crown counsel appears in a courtroom and says,
6 without offering any explanation, "I am directed by the
7 Deputy Attorney General of the province to withdraw this
8 charge and have no further comment, Your Honour," don't you
9 think that would give any observer in the courtroom the
10 sense that there was interference? And also, distance
11 established between Crown counsel and the direction he was
12 getting?

13 A. Oh yes. I can agree with that portion.

14 Q. Now you also stated, and I don't intend to pursue this but I
15 want to just clarify a couple of questions my friend posed to
16 you and I don't want to, I don't want you to mention any
17 names or the individual involved. You discussed, as a result
18 of a question posed to you by Mr. MacDonald, that there was
19 one occasion that the Deputy Attorney General had ordered
20 police reports to go directly to him. Do you recall that?

21 A. To go directly to the Department, yes.

22 Q. To the Department.

23 A. Yes.

24 Q. Not to him personally?

25 A. He wanted the reports to be sent to the Department to be

1 looked at by me. And that he also wanted to be fully, to see
2 those reports.

3 Q. And I take it in the ordinary course they would have gone to
4 a Crown prosecutor in the field if the police had wanted
5 advice.

6 A. In the ordinary course they could have gone to, yes, to the
7 prosecutor in the field or, as I have on occasion, have come to
8 people within the Department, including myself for advice.

9 Q. Now...

10 A. But that is usually at the officer level that's coming to me. I
11 have not dealt with the people below the inspector level in
12 being requested for advice.

13 Q. I'm trying to understand actually and the purpose of my
14 question is to identify what was unusual about the process...

15 A. What was unusual...

16 Q. You said there was one...

17 A. Is that normally if one asks, if the police are investigating a
18 matter then while they will provide us with reports, if it's
19 considered by them to be a serious matter or a matter which,
20 for some reason, is going to engender comment, that the
21 Attorney General might want to have answers for, that in
22 those cases they will send reports to us but normally any
23 advice that they want along the way is gotten by having the
24 investigator approach the prosecutor in the particular area
25 where the investigation is occurring.

1 Q. Was it made clear to the police in this case, without
2 mentioning any names, that prior to proceeding with any
3 laying of charges that they were to have the approval of the
4 Attorney General's office? Was that implied...

5 A. Well I had thought that it was clear to Superintendent
6 Christen that the reports were to come to us and when they
7 were in a position to lay charges to tell us so, that we would
8 then have a prosecutor appointed and prior to that anything
9 that they wanted they were to approach our office on.

10 Q. And do I take it from your comment when you thought you
11 had thought that the police may have misunderstood that
12 they were to feel free to lay charges when and if they chose
13 to in relation to the subject matter they were investigating.
14 They felt some constraint imposed by the Attorney General.

15 A. I, they had reached a point where one of the investigators
16 had taken the matter to a prosecutor and that that became
17 known to the Deputy and to the Attorney General and the
18 Deputy was considerably annoyed that the matter had been
19 taken to a prosecutor and directed me to call that particular
20 office, or to call the RCMP and tell them to get that file back
21 and if they had any questions about proceedings, needed any
22 advice that they were to deal with me initially and whoever
23 else in the Department I saw fit to involve.

24 Q. Yes. My question though, Mr. Gale, was was it your
25 understanding that as a result of that direction that the RCMP

MR. GALE, EXAM. BY MS. EDWARDH

1 no longer felt free to lay a criminal charge when they saw fit
2 but, rather, felt constrained by the supervision and
3 involvement of the Attorney General's office. So as to have
4 your approval, in effect.

5 A. Well I think in that particular case they were looking for
6 approval but that the RCMP had the view that there should be
7 a charge laid whereas the, our office had the view that there,
8 no charge should be laid. That matter was carried to the
9 Commissioner's office in Ottawa to my understanding.

10 Q. Okay. And I think we'll be dealing with any more details of
11 that process at a later date.

12 MS. EDWARDH [To Mr. MacDonald]

13 Is that fair? We're going to be looking at that.

14 MR. MacDONALD

15 I think so.

16 MS. EDWARDH

17 Maybe.

18 Q. Now I'd like to go back to a comment you made, sir, as a
19 result of a question posed by Mr. Barrett[sic]. You made the
20 remark that disclosure practices were different in 1971. Is
21 that correct?

22 A. That's correct.

23 Q. And you will agree with me, sir, that although there were no
24 guidelines in force and the Attorney General had not, indeed,
25 promulgated any directives nor made perhaps his own

1 personal views known at that time, that it was always clear,
2 and had been clear from the 1950s that Crown counsel had an
3 obligation never to suppress evidence that could be of
4 assistance to the defence.

5 A. That is the law, yes. That was the law in effect at that time.

6 Q. That's not a question of the niceties or discretionary
7 guidelines, indeed, that was the law governing Crown counsel.

8 A. Yes.

9 Q. And its obligation to the court. And so then statements that
10 could directly assist the defence in resisting an allegation of
11 the Crown ought to have been made available to the defence
12 in 1971. Correct?

13 A. Yes, that's correct.

14 Q. Now, one unrelated matter. As a result of the experience that
15 the office of the Attorney General has had in relation to the
16 Marshall case, do I take it it is still, or is now the practice, to
17 completely destroy files in relation to criminal appeals after
18 21 years? Is that correct?

19 A. I know that there's a retention schedule. I believe it is now
20 21 years, I'm not certain.

21 Q. And would you agree, sir, that that may mean, indeed, that
22 people who are still serving sentence in relation to murder
23 charges, particularly first-degree murder charges, would have
24 their files, in effect, destroyed while they were still serving
25 sentence, while they were still in custody.

- 1 A. That is possible, yes.
- 2 Q. Logical. I mean if you're convicted of first-degree murder,
3 subject to the review provisions of 15 years...
- 4 A. Well subject to whatever this review position...
- 5 Q. Right.
- 6 A. Takes. The course it takes.
- 7 Q. But as it stands today, in principle one is not eligible for
8 parole until the 25-year period has passed, correct?
- 9 A. That's correct.
- 10 Q. And so that in the ordinary course, except for this exceptional
11 review procedure, one would expect to see those individuals
12 still in custody and just coming up for their first parole in 25
13 years.
- 14 A. Correct.
- 15 Q. And there will be no files in the Nova Scotia Attorney
16 General's office, correct?
- 17 A. If the retention schedule is 21 years...
- 18 Q. Assuming it is for a moment.
- 19 A. Assuming it is, yes.
- 20 Q. Do you have any difficulty with that, sir, given this case and
21 also the nature of the files kept and what use might be made
22 of them in terms of anything from parole to reconsideration
23 of a conviction ultimately?
- 24 A. Well, quite frankly, I haven't, until you raised it, really
25 thought of it. I had always thought, if possible, more, charges

1 of a certain seriousness should be kept for an unlimited
2 period, quite frankly.

3 Q. Yes. So, in fact, it would be preferable that at least with
4 respect to that very small class of individuals who are still
5 within the custodial, or in the penal system, that those
6 matters should be always available to counsel who might
7 have to deal with them 25 years later.

8 A. Yes, it would be nice to know you can be sure that they were
9 there.

10 CHAIRMAN

11 Q. Mr. Gale, in fixing that period of 21 years for the retention of
12 files in serious cases such, well murder, I guess is the, first-
13 degree murder, was there any consultation with the other
14 provinces. Do you know whether Nova Scotia keeps them,
15 retains them longer than other provinces or not as long?

16 A. No, I don't know, My Lord. The decision to change the
17 retention schedules was done by our records people. I think
18 that there is input by the Deputy but I don't know whether
19 they had any consultation with other provinces as to their
20 policies.

21 Q. Is there legislation in Nova Scotia governing the retention of
22 records generally?

23 A. Yes, there is an act and there is a committee set up and
24 retention schedules have to be approved by that committee
25 and any changes have to be approved by that committee.

MR. GALE, EXAM. BY COMMISSIONERS

1 Q. And I suspect it's the same as it is in most places, the keepers
2 of the records want to get rid of them for space reasons and
3 other people want, the archivists want to keep them...

4 A. The archivists want to keep certain ones but they don't want
5 to take all the ones that the others wants to get rid of.

MS. EDWARDH

7 The inevitable.

COMMISSIONER EVANS

9 Q. Is there any exception, though, I did not understand, Mr. Gale
10 that you were fully aware of what the retention schedule was.

11 A. No, I'm not fully aware of what it is.

12 Q. And, therefore, you would not know whether there was an
13 exemption with respect to murder convictions...

14 A. No, I really, quite frankly, don't because there's one thing that
15 does not interest me is filing. I send it out with the
16 understanding that when I want it back I get it. How it
17 happens I really don't want to know.

CHAIRMAN

19 Well less than that, we can ascertain that without any
20 difficulty.

MS. EDWARDH

22 Q. One, just to follow up then in terms of an area I raised with
23 you at the beginning of my cross-examination, Mr. Gale. In
24 terms of your style as opposed to Mr. Coles, do I take it, sir,
25 that it was your view and I think you indicated this

1 yesterday when Mr. Edwards was conducting the reference,
2 that once competent Crown counsel was handling a matter as
3 far as you were concerned they were largely free to exercise
4 whatever discretion they had and conducted proceedings as
5 they saw fit. You wouldn't ask to review a draft factum or
6 anything like that.

7 A. No, I do not review factums with the people that I have. I
8 have complete and utter confidence in them and I know that
9 if there is a contentious matter that they will seek advice on
10 it and normally I am involved in those.

11 Q. So I take it then that your style of non-interference is in some
12 way distinguishable from Mr. Coles. You two work differently.
13 Is that a fair statement?

14 A. Yes, we work differently. We're completely different
15 personalities.

16 Q. Now what puzzles me and let me ask you to turn to Volume
17 28 which is the correspondence in relation to disclosure. I
18 may read it incorrectly and, please, correct any
19 misunderstandings. It is very clear, sir, that you act as an
20 agent, in effect, for Mr. Coles by writing to Mr. Aronson, I'm
21 sorry, writing to Mr. Edwards asking for some explanation of
22 why the report was made available, correct? That's at page 1,
23 your letter.

24 A. Well I was acting, yes, at Mr. Coles' request to give us an
25 explanation as to how, why and under what conditions the

1 report was made available.

2 Q. Now did that request go through you because you were
3 responsible, in effect, for appellate matters instead of Mr.
4 Herschorn who would have been responsible for prosecutors?
5 Why you instead of Mr. Herschorn?

6 A. Well I guess because I had had more involvement with the
7 Marshall matter than Mr. Herschorn on it and at that time I,
8 Director of Criminal was still responsible overall for
9 prosecutors although Mr. Herschorn, as the Assistant Director,
10 was mandated by the Deputy to deal with prosecutors on an
11 ongoing basis.

12 Q. So then at page 2 when Mr. Edwards writes back, and if you
13 look at paragraphs 1 and 2 of his letter to you, you will see
14 that he says he has no, this is the second paragraph, that he
15 has no independent recollection of actually giving the report
16 to Mr. Aronson.

17 A. Um-hmm.

18 Q. Refers to a letter which reminds him that he obviously did
19 and then he goes on and says he cannot recall the specific
20 occasion and he can't be specific exactly about what he told
21 Mr. Aronson. And then he puts forward a general explanation
22 of his reasons for making the decision he made but he fails to
23 point out that he, of course, had received express authority
24 from you as well, although you have testified to that effect.
25 So it must have slipped his mind. Fair statement?

1 A. Yes, I think it's a fair statement.

2 Q. As a result of that letter, you then, I take it, deliver it to Mr.
3 Coles, who then writes what I think, in fairness, could be
4 described as a fairly scathing letter to Mr. Edwards and he
5 says:

6
7 I was surprised, to say the least, that you should
8 think that you have either the authority or
9 prerogative to release a confidential report to
Mr. Aronson or anyone else.

10 And then he points out at the very end that there is no
11 authority to release such documents without approval by the
12 Attorney General or superiors in the Department. My
13 question to you, Mr. Gale, is I'm going to suggest that it is
14 impossible for you to have communicated your views to Mr.
15 Coles that you, indeed, had given authority to Mr. Edwards for
16 Mr. Coles to have written this letter, unless he just chose to
17 completely disregard you.

18 A. Well, after the passage of time, one can never be exact on
19 what was done. It was my, still is my view that, at the time, I
20 said that Frank had asked about the matter and I told him
21 that anything that he thought the, Mr. Aronson should know
22 about, then access should be given to him on that. I suppose
23 it was understood that if the police report was simply full of
24 suppositions by the investigator, that that would not go but...

25 Q. We're not talking about...

1 A. The ones that were factual would certainly, he'd have access
2 to.

3 Q. We're not talking about a report full of suppositions. You and
4 everyone else knows that Sergeant Wheaton's report had
5 much more than just suppositions in it.

6 A. I'm talking if there were any portions of his report that were
7 purely supposition that those might...

8 Q. Might have been deleted.

9 A. Deleted.

10 Q. But, in any event, if your...

11 A. But Mr... Go ahead.

12 Q. It's your recollection, I take it, though that you, and you have
13 a fairly clear one, that you conveyed to Mr. Edwards that he
14 did have authority in the circumstances of the Marshall case
15 to release such a document.

16 A. Yes.

17 Q. Why didn't you say to Mr. Coles, "Excuse me, sir, if you've got
18 a problem with what the messenger did, deal with me." Why
19 leave Mr. Edwards out in the field to get what I think can
20 only be regarded as a scathing letter from the Deputy
21 Attorney General? And it goes on.

22 A. Well, it has been my, it has... I have found over the years that
23 Mr. Coles will formulate his own views, no matter what has
24 been said to him, and he will take the view that he wants on
25 the matter. I don't think that there had ever been a real

1 written direction that police reports could never be given out
2 before. This precipitated it.

3 Q. Is it fair... I'm sorry.

4 A. I guess the difficulty is that both Mr. Edwards and Mr. Coles
5 are very strong-minded individuals and...

6 Q. No, but, sir, I'm asking you about your responsibility. You are
7 in charge of, broadly speaking, have some connection and
8 responsibility for the prosecutors who are working in the
9 field. They are making decisions and now this, Mr. Edwards is
10 getting what can only be regarded as a scathing letter from
11 the Deputy Attorney General, and yet you've authorized him
12 to do exactly what he did. And my question to you, sir, don't
13 you have any responsibility, moral or otherwise, to stand
14 between people like Mr. Edwards in the field and the Deputy
15 Attorney General, who mistakenly is accusing him of doing
16 something without reference to his superiors?

17 A. Well, perhaps I should have been more active in the matter.
18 I had thought that Mr. Coles understood the position and that
19 this was a typical flash-up between Mr. Coles and Mr.
20 Edwards, who seemed to have a problem. Whenever they got
21 together, they conflicted in their views.

22 Q. Would it be fair to say that not only does this flash-up
23 represent a problem that may have occurred between Mr.
24 Edwards and Mr. Coles, but, indeed, this is an example, at
25 least, of Mr. Coles choosing to act regardless of the advice you

1 gave him and the responsibility you were, in fact, taking for
2 the incident?

3 A. Well, certainly Mr. Coles would make up his own mind on
4 things and he would, whatever he believed the matter to be,
5 no matter what he had heard.

6 Q. Regardless of your advice to him.

7 A. Regardless of what I might say to him, he would have a
8 different opinion, and that's the one he would go with.

9 Q. If I could ask you then to turn your mind, sir, to the issue of
10 policing. And I may be confused or unclear about the precise
11 nature of your responsibilities in the Department. But,
12 broadly speaking, I understand that you received R.C.M.P.
13 reports but you also had, as a general area of your concern,
14 particularly because the Solicitor General's office was not
15 separate, issues of policing policy. Is that a fair statement?

16 A. Yes, but those are dealt with on the basis of an issue would
17 arise and something would be, and it would be dealt with.
18 Our Department always seemed to be in the position or
19 reacting to matters.

20 Q. So would it... And that's one of the questions, in fact, that I
21 want to deal with you is whether or not there was enough
22 manpower in the Attorney General's office to take any
23 proactive positions with respect to policing and standards and
24 education and what kinds of police misconduct might impinge
25 upon the prosecutorial process.

1 A. Not in my view there has not been. At that time, there were
2 six people within head office that had anything to do with
3 criminal law, aside from the Deputy. And that was myself
4 and Mr. Herschorn and four appeal solicitors.

5 Q. So your concerns, then, would get prompted, I take it, by
6 specific incidents or matters that were brought directly to
7 your attention.

8 A. That's correct.

9 Q. Well, then let me deal specifically with the question of the
10 competence of the Sydney Police Force. We know, I take it,
11 from your evidence earlier that you were not appraised of
12 Bentley's suggestion, which is Volume 20 at page 62 that:

13
14 The quality of investigation of the Sydney Police
15 Force was of such a kind or character that they
16 ought not to be entrusted with any other murder
17 investigation.

18 Okay, you were not aware of that particular view from
19 Bentley, but you were aware of that precise view from Mr.
20 Edwards. Is that the effect of your evidence this morning,
21 sir?

22 A. Yes.

23 Q. Would you agree with me that it ought to be the subject
24 matter of grave concern in the Attorney General's office when
25 a municipal police force is viewed by a senior prosecutor as
literally incompetent to conduct a homicide investigation?

1 A. Yes, it should be viewed as a serious matter. This particular
2 one is a matter of not discovering an exhibit that they had
3 and failing to follow up on three witnesses, who were
4 peripheral to the matter, but, well, they had tried on a couple
5 of occasions to contact them and had been unsuccessful and
6 they had just ceased any further contact and any attempts.

7 Q. Well, when did you have this conversation with Mr. Edwards?
8 Do you recall roughly in what year he would be expressing
9 this concern?

10 A. I have the view that it may have been around 1985 that that
11 particular case was being dealt with. 1985, 1986,
12 somewheres in there.

13 Q. So it's relatively recent. We're not going back to 1972 or
14 1973.

15 A. No, we're not going back.

16 Q. Well, so you had then from, at least Mr. Edwards, his view
17 that in terms of exhibits and following through investigations
18 and things like that, there were serious problems. You were
19 aware of the reports that had been filed by Wheaton in 1983
20 about police practices in Sydney, broadly speaking? That was
21 critical of...

22 A. Well, yes, the right that... Well, I don't know. I guess it was
23 '83, the one that I had written and Superintendent Christen
24 replied to with all the attachments.

25 Q. Now, and you get that, I take it, in 1986, in fairness to you,

1 sir, although it's based on a... It's a May '83 report that is
2 given to you in 1986, is that correct? Or did you have it in
3 '83? I'm sorry, there's one report in '86 that you do get. I
4 think that's clear from your testimony this morning.

5 A. Yes.

6 Q. There's also an earlier report in 1983.

7 A. I think that's where I had written out... Are you referring to
8 the one where I had written out asking them for their
9 comments on the practices and procedures?

10 Q. Yes, that's correct. You had obviously had occasion to read
11 that as well.

12 A. Yes.

13 Q. So, in 1983, you know that the R.C.M.P. have serious concerns
14 about investigative techniques used by the Sydney Police
15 Force way back at the time of the Marshall investigation. In
16 1985 or '86, you know Frank Edwards still had serious
17 concerns about the Sydney Police Force. Let's try again. You
18 knew then that there were concerns stemming from the
19 conduct of the police in '71. You knew, as well, there were
20 concerns expressed in 1985 about the standards of the
21 Sydney Police Force and their capacity to conduct a homicide
22 investigation. And my question to you, sir, is were any steps
23 taken at all or have there been since to deal with the question
24 of the education of specifically the Sydney Police Force, any
25 questions of whether their mandate to conduct homicide

1 investigations should be removed from them. And if not, why
2 not?

3 A. I'm not aware of any steps that have been taken. Why not?
4 Because of the view that was taken within the Department
5 was that the City of Sydney is responsible for the police force
6 there. That the Nova Scotia Police Commission is supposed to
7 be available as advisers. That we had received no request
8 from the City of Sydney to, or that the Police Commission had,
9 to our knowledge, received no request from the City of
10 Sydney to conduct any type of an appraisal of the force. That,
11 in fact, municipal police have been considered by our
12 Department to fall within the purview of our Police
13 Commission rather than the Department itself becoming
14 involved.

15 Q. But you have...

16 A. And there has been... There have been perhaps twice
17 municipal training, police training plans proposed by the Nova
18 Scotia Police Commission that Cabinet has not seen fit to
19 accede to.

20 Q. Did you support them?

21 A. Oh, I cer...

22 Q. The Attorney General's office, did it support those plans?

23 A. Well, the Attorney General submitted them. So I would
24 presume he supported them.

25 Q. Let's hope so. But you had testified earlier that if the R.C.M.P.

1 were to suggest, for example, that they take over municipal
2 policing, let's say homicide investigations, then the Attorney
3 General's office would consider that.

4 A. Yes, if the R.C.M.P. suggested it because, certainly, that would
5 have an impact on the contract, the number of personnel
6 required to police.

7 Q. But in light of the concerns expressed by the R.C.M.P., even if
8 it didn't go so far as to suggest, to your knowledge, that the
9 Sydney Police shouldn't be doing homicide investigations, in
10 light of those concerns and in light of what Frank Edwards
11 said to you, why weren't the R.C.M.P. called in to at least
12 evaluate whether they ought to conduct homicide
13 investigations. Or did you understand...

14 A. Because it would not be a function of the R.C.M.P. to make
15 such an evaluation. It would be a function of the Nova Scotia
16 Police Commission.

17 Q. Well, how were they supposed to recommend then? You said
18 if the R.C.M.P. recommended or suggested that they should
19 take over homicide investigations, the Attorney General's
20 office would look at that.

21 A. If they made such a recommendation to the Attorney
22 General's office, then that matter would have been referred
23 over to the Chairman of the Nova Scotia Police Commission
24 with the request that his Commission conduct a review, a
25 study, give us their views as to whether that was necessary

1 or what action should be taken.

2 Q. And so then, logically, the R.C.M.P., if they made the
3 suggestion, would be making it without any direct mandate to
4 have reviewed the practices of a force.

5 A. That's correct.

6 Q. And one would then have expected the Nova Scotia Police
7 Commission to have addressed the question of the
8 competence of the Sydney Police, if there was going to be any
9 serious issue about that.

10 A. That's correct.

11 Q. And, to your knowledge, have they?

12 A. Not to my knowledge.

13 Q. Anybody in the Attorney General's office ever bring to the
14 attention of the Police Commission that they might or ought to
15 consider doing so?

16 A. I don't know. I haven't myself.

17 Q. Indeed, would it be fair to say that, at least with respect to
18 Mr. Coles, he felt that that was not necessary?

19 A. That would be my understanding of Mr. Coles' position, that it
20 was not necessary.

21 Q. Now let me deal with the, specifically with the question of
22 leaving the investigation of the Sydney Police Force in
23 abeyance, as we've come to describe the term. I take it you
24 would agree that it was clear to you that both Mr. Edwards
25 and Harry Wheaton felt that, and this goes into April and May

1 of 1982, felt that the final remaining part of the investigation,
2 if it can be called that, was to interrogate or question Chief
3 MacIntyre and Sergeant Urquhart in relation to what had
4 happened in 1971?

5 A. Well, I can agree that in April Mr. Edwards thought that... Was
6 the one that told me that he thought that the R.C.M.P. should
7 now question Chief MacIntyre and Mr. Urquhart.

8 12:11 p.m.

9 Q. Well, let me just break this down then. You were aware,
10 were you not, sir, that Mr. Edwards agreed and took the
11 view that that should be done? That was his view as well.

12 A. I was aware from him that it was his view, that I can recall,
13 yes.

14 Q. And then were you aware that he was saying that he
15 concurred in that or took the same approach with respect to
16 that as the RCMP did?

17 A. No, my recollection of the matter is that he indicated that he
18 thought that the time had come when the RCMP should go
19 and question Chief MacIntyre and perhaps Inspector
20 Urquhart.

21 Q. Certainly there was no suggestion by Mr. Edwards that the
22 RCMP was resistant to that.

23 A. No, there was no suggestion on his part that they were
24 resistant to that.

25

MR. GALE, EXAM. BY MS. EDWARDH

1 MR. CHAIRMAN

2 There is a suggestion in Edwards' notes that he earlier urged
3 the RCMP, Wheaton, to investigate...to go and interview and
4 Wheaton didn't want to go or...

5 MS. EDWARDH

6 There's a suggestion with respect to the file. There's an
7 ongoing discussion...

8 MR. CHAIRMAN

9 This is prior to the order of the Attorney General.

10 MS. EDWARDH

11 Yes, yes.

12 MR. PUGSLEY

13 Isn't there a note on February 23rd where he phoned him at
14 eleven o'clock at night and said, you're not...the investigation is
15 not complete until you question MacIntyre.

16 MR. CHAIRMAN

17 Yes.

18 MS. EDWARDH

19 Yes, here it is. It's at...

20 MR. CHAIRMAN

21 Maybe I was wrong. I gleaned from Edwards' evidence that
22 there was a resistance on the part of Wheaton to do that at that
23 time.

24 MS. EDWARDH

25 Yes. I'm going to suggest there's another cast that one could

MR. GALE, EXAM. BY MS. EDWARDH

1 put on it, but certainly I'm just interested in...

MR. CHAIRMAN

2
3 Or at least that's Wheaton's evidence. I'm not sure that
4 Wheaton agrees with Edwards' evidence on that but...

MS. EDWARDH

5
6 Q. Certainly there was a...from your understanding, Mr. Gale, I
7 take it Mr. Edwards' said nothing about the RCMP having a
8 reluctance to proceed with the investigation although they
9 were concerned with in whose bailiwick they might be and
10 on whose toes they might step. Is that a fair way of
11 characterizing the concern expressed to you?

12 A. Well, I have great difficulty remembering the matter in
13 specific detail. I can recall that Mr. Edwards indicated that
14 he thought that MacIntyre and Urquhart should be
15 questioned by the RCMP, and that's where I said I didn't
16 think that that should happen at that particular point in
17 time, that they should await the Attorney General's order,
18 get the full file, look at it and then, before they took any
19 further action.

20 Q. But my...let me see if I can just break this down though.
21 From the information as best you recall it today, would it be
22 fair to say that the reluctance that was articulated by Mr.
23 Edwards involved a concern, legitimate or otherwise, on the
24 part of the RCMP that they have very clear authorities
25 emanating from the Attorney General with respect to the

1 full file. That they didn't want to look as though they were
2 just walking in and talking over what had been at first, in
3 their mind, an assistance case.

4 A. Well, I'm not quite sure what was said by the RCMP to Mr.
5 Edwards. I certainly know that at that time they expressed
6 to me the reluctance to...because it had started off as an
7 assistance case and I simply got involved with this...these
8 questions of it wasn't really their case and they had a
9 reluctance to go in and demand everything without some
10 type of order making it clear that it was their case.

11 Q And that was the concern expressed to you by
12 Superintendent Christen.

13 A. Yes.

14 Q Is that correct? And that is why ultimately the order under
15 the signature of the Attorney General was issued.

16 A. That's correct.

17 Q Which effectively fully removed the case from the Sydney
18 Police force.

19 A. That's correct.

20 Q And were you aware of any other reluctance beyond that?

21 A. No, I was not aware of any other reluctance beyond that.

22 Q And I take it at this time, as well, from your evidence
23 yesterday there was some inter-force rivalry around the
24 fact that the RCMP had been used on occasions where
25 municipal police forces were out on strike.

1 A. It had been the policy of the Attorney General that if a
2 municipal police force went on strike the RCMP were made
3 available to the municipality. It was my understanding that
4 that created hard feelings between the members.

5 Q. That were in existence at this time.

6 A. Yes. And not...I'm not sure that it was necessarily Sydney
7 those feelings were. I'm not sure when Sydney had a strike
8 or did not have a strike, but certainly the RCMP were
9 uncomfortable with the position that they had to perform
10 and the reaction of the unionized municipal police.

11 Q. Now let me just go back. It's your clear understanding, I
12 take it, as you've described your recollection, that you, at no
13 time, said anything other than that it would be more
14 appropriate to conduct an interrogation of Urquhart and
15 MacIntyre in circumstances where they had fully appraised
16 themselves of the contents of the file and knew exactly what
17 was there and what was not there.

18 A. That's the best I can say, to my recollection, that certainly
19 there were never any other intentions.

20 Q. And I take it there's no question in your mind that there
21 was a clear context to the statement you made to hold it in
22 abeyance.

23 A. The context was that of asking the questions before the file
24 had been fully turned over.

25 Q. And I take it that you recall as well that the file, or that the

1 order signed by the Attorney General was signed around
2 April the 20th.

3 A. It was signed April 20th.

4 Q. Now was it also clear to you at this time that the questioning
5 of Chief MacIntyre and Urquhart was to take the, to come at
6 it from the perspective of finding out why these young
7 witnesses had lied? To deal with the allegations of actual
8 pressure, impropriety on the part of the police?

9 A. Well, I assumed that that would be one of the areas that
10 they may wish to question them on. I really hadn't turned
11 my mind to all the areas that they might question them on,
12 or just exactly why they wanted to question them.

13 Q. But it was clear that that one would be part of any question.

14 A. That might well be one of the areas that they would want to
15 question them on.

16 Q. Now I'd like you turn, if I could, to Mr. Edwards'
17 understanding, which is... Sorry, I may not have this volume.
18 It's Volume 66, I'll just read this to you, Mr. Gale. Volume
19 66 of the transcript, page 11797. Let me just put to you, Mr.
20 Edwards' recollection, this is 11797.

21 Q. You suggested that the investigation
22 should now focus on the City Police.

23 A. Yes.

24 Q. Now what were you meaning by that?
25

1 A. Well, two things. Number one, that the file
2 should be obtained but more particularly that in
3 my view the time had long since passed when
4 John MacIntyre and Bill Urquhart should have
5 been taken in individually and questioned
thoroughly on their involvement in that '71
investigation by Wheaton and Carroll.

6 Q. What was the response from Mr. Gale and
7 Herschorn?

8 A. Mr. Gale was of the view that that matter could
9 wait, that the...that it was something that could
10 be put off. That the main goal now was to get
11 Marshall before the Court in order to secure his
12 release, and that the problem with the file could
13 be expeditiously dealt with because that would
14 be necessary for the immediate purpose by a
15 direction under the Police Act.

16 Q. So.

17 A. But I mean I didn't argue further with him on
18 that.

19 Q. Did you agree?

20 A. No, I didn't agree. I stated what I thought
21 should happen. He said, "No," he was my
22 supervisor. I wasn't going to say, well, you
23 know, well, "I'm going to order them to go
24 anyway." I didn't have the authority to do that.

25 Do you recall having to tell Mr. Edwards, "No, I'm your
superior"?

A. No.

1 Q. This is a direction.

2 A. No, there was nothing of that type. It was a discussion
3 about the matter and my view was that this was too early to
4 go and ask the questions until the file had been obtained. It
5 just didn't make sense to me without examining the full file
6 to go and ask the questions. Why make two or three
7 attempts? Why not at least have all you could know from
8 the file before you went and asked them?

9 Q. Which, of course, then could have taken place sometime
10 shortly after April, 1982.

11 A. Well, in my view, the letter was going to be signed by the
12 Attorney General and that the, you know, hopefully within a
13 week or so, they would have everything.

14 Q. In which case, the investigation could proceed.

15 A. Yes. Well it could have proceeded any way they wanted it
16 to, in any event. I'm not there to direct the investigation,
17 but when asked that question, it didn't make sense to me.

18 Q. Now Mr. Edwards also had the understanding, which is
19 described at pages 11799, when he was asked the following
20 question:

21 Q. How long was it to be delayed? What was your
22 understanding from Mr. Gale? How long were
23 you to wait before the R.C.M.P. could be turned
loose on the Sydney Police?

24 A. At that point in time, I think all of us were
25 swimming in uncharted water, so to speak, so

MR. GALE, EXAM. BY MS. EDWARDH

1 there was no, to answer your question, there was
2 no specific time frame mentioned. As far as my
3 understanding is concerned, it would be until we
4 had got Marshall before the Court, presumably
5 acquitted, and then had the Ebsary matter dealt
6 with.

7 And later on, I think Mr. Edwards points out that by... He
8 really thinks it was just before, it just involved an
9 understanding that was before Marshall got before the court
10 and that an acquittal had been entered. And that's at page
11 11801. Do you have any explanation, sir, my question to
12 you, as to how on earth Mr. Edwards got this view, which
13 was entirely inaccurate?

14 A. I know over some period of time, and perhaps at that
15 particular conversation, I don't know. I can't say. That
16 there was the view as to whether there should be an inquiry
17 into the actions of the Sydney Police, a formalized inquiry,
18 and it was my view, and I think it was also Mr. Edwards'
19 view that there be such an inquiry. That was not a matter
20 for the R.C.M.P. to investigate, only to the extent that it was
21 necessary for, to understand the role of things for Marshall.
22 If they felt to investigate for the, to continue their
23 investigation on the Sandy Seale murder, that they should
24 talk with those police officers, that was solely within their
25 prerogative.

Q. No, but I...

A. If it was a matter to prepare for an eventual anticipated

1 inquiry, then those types of investigations were done by the
2 people of the Nova Scotia Police Commission.

3 Q. Well, do you think that you may have said to Mr. Edwards,
4 "Listen, we're going to try and get an inquiry under way and
5 that we'll leave the investigation not to the R.C.M.P. but to
6 somebody else." Might you have had that kind of
7 conversation with him?

8 A. Well, if there was an inquiry, then the investigation for the
9 inquiry in itself may well... would not have been by R.C.M.P.
10 officers....

11 Q. I appreciate that.

12 A. It would have been by commission people.

13 Q. Precisely the point, sir. So would you have perhaps told Mr.
14 Edwards that, indeed, that was your view of why the
15 R.C.M.P. shouldn't proceed? That you were going to try and
16 get an inquiry under way and there was no point?

17 A. Well, there was certainly the comment that, hopefully, there
18 would be an inquiry and the R.C.M.P. would not be the
19 investigators for that. But his view that the... My
20 understanding of it at the time, and still is, that if they
21 wanted to question them to further the Seale investigation,
22 then by all means, but it doesn't make sense to me to
23 question them until you get the file and look at it.

24 Q. I appreciate that. What I'm trying to do, sir, is try and
25 identify what might be the basis of this misunderstanding

1 that... I appreciate your view, that they could ahead and do
2 it any time they wanted. My question is, do you think you
3 may have had a conversation with Mr. Edwards where you
4 might have said something to the effect that we will try and
5 get an inquiry under way. The R.C.M.P. will not be the
6 investigators in the course of that inquiry, in the ordinary
7 course, and there's no point in sending the R.C.M.P. out to do
8 that now, as a direction from the Attorney General's office?

9 A. Well, certainly, that has been conveyed to Mr. Edwards and
10 I think I have conveyed that to Mr. Edwards that, hopefully,
11 there would be an inquiry and, as far as the investigation
12 for the inquiry was concerned, that would be a matter for
13 the... There would be no point in having the R.C.M.P. do the
14 inquiry investigation because that was not the way things
15 were dealt with by the Commission.

16 Q. And you conveyed that to Mr. Edwards at that time, isn't
17 that a fair statement, sir?

18 A. Well, it may well have been conveyed at that time. It seems
19 to me that the unfortunate part is that the two got crossed
20 in his mind in some way.

21 Q. I understand what you're saying, Mr. Gale. I'm just trying to
22 find out how that may have happened...

23 A. Well, that's the only explanation...

24 Q. What other...

25 A. That I can give for it.

MR. GALE, EXAM. BY CHAIRMAN

1 Q Conversations. And, so if I understand you correctly, sir,
2 what you're saying now is you may well have had, and
3 indeed probably did have, a conversation with Mr. Edwards
4 around this time frame where you discussed not using the
5 R.C.M.P. because they would not be the investigators of, who
6 participated in an inquiry, so I understand you correctly.

7 A. Yes, I think that's fair.

MR. CHAIRMAN

9 Q Just one question, so we won't have to go over it again, and
10 I'll try and clear it up. You had the R.C.M.P. charged with
11 the reinvestigation of the Sandy Seale murder. And we
12 have Mr. Edwards' testimony and his notes, the two months
13 before this conversation or just about, February the 23rd.
14 He had suggested to Wheaton that his investigation, his
15 reinvestigation of the murder of Sandy Seale could not be
16 completed unless Chief MacIntyre was questioned. I
17 presume for the obvious reason that three witnesses had
18 said that, had given statements to Wheaton concerning the
19 method of interrogation that was very vital to this
20 reinvestigation. So that the interrogator would also have to
21 be reinvestigated, had to be questioned, rather. Did Frank
22 Edwards indicate to you during your discussions in April
23 that back in February, he had suggested to the investigating
24 officer, Wheaton, that he question Chief MacIntyre
25 concerning the Seale murder? Now forget the Sydney Police

1 12:29 p.m.

2 Q. Cont'd

3 as a force.

4 A. I have no particular recollection of him saying that. His terms
5 to me were that it was now time that the R.C.M.P. should turn
6 their attention to Chief MacIntyre and Inspector Urquhart
7 and ask, get statements from them.

8 Q. Right, and you said, your recollection is get the file first.

9 A. Well, we were... Yes, get the file first and look at it.

10 Q. But where I'm having difficulty there is that you had
11 indicated earlier that the R.C.M.P., in their investigation of the
12 Sandy Seale murder, could have without asking authorization
13 from anyone, questioned MacIntyre, and presumably
14 Urquhart, with respect to the statements of Chant, Pratico,
15 and Harriss.

16 A. Yes, they could have. I would have thought it would be part
17 of their investigation, and I don't know why they would ask
18 anyone about it.

19 Q. Well, at the time that you spoke to Frank Edwards in April,
20 you were aware that they hadn't done this. He had made you
21 aware of it, didn't he?

22 A. Well, at that time, he was, yes, he was saying he thought it
23 was time that they went to it. So, yes, I would be aware of it
24 at the time.

25 Q. So you say... All right, but before they question the police, it's

1 my opinion they should get the file, and they'll have that file
2 in a few days because the Attorney General is going to order
3 that it be delivered up.

4 A. That's correct.

5 Q. What we are having difficulty in getting an ans... in sorting
6 out is why that would be interpreted by anyone that the
7 R.C.M.P. could not question MacIntyre and Urquhart on the
8 reinvestigation once they got the file.

9 A. Well, I'm unable to comment on that. I don't know why the
10 R.C.M.P. would ask if they could. I don't know why they
11 would...

12 Q. Is it possible..

13 A. Say that, take that attitude.

14 Q. Is it possible that with this loose use of words all the time,
15 looking at the Sydney Police, that some people interpreted
16 that as meaning that the R.C.M.P. were now to go in and do an
17 indepth investigation of the Sydney Police Force as a force in
18 their capacity to do that kind of work, to investigate
19 homicides, rather than simply meaning, and in so hearing
20 that, said, "Well, that also includes questioning him on any
21 matter relating to the Sandy Seale murder"?

22 A. Well, I suppose that is one explanation of it. If there was to
23 be an inquiry, it would be on the, I would have thought,
24 broad enough to deal with the police force, not just the
25 officers.

MR. GALE, EXAM. BY CHAIRMAN

1 Q. See, there may be... You have Edwards saying, "Question Chief
2 MacIntyre," in February. You have discussions between
3 various people talking about holding the questioning of the
4 Chief of the Sydney Police Force or the examination in
5 abeyance. And I guess we'll have to sort out if there were
6 grounds for people to get their wires crossed, but I'm having
7 great difficulty finding... ascertaining as to what
8 interpretations were placed with various people on this.

9 MS. EDWARDH

10 My Lord, I will be more than a couple of questions.

11 MR. CHAIRMAN

12 Well, will you be more than a half an hour?

13 MR. EDWARDH

14 Probably about half an hour to 45 minutes.

15 MR. CHAIRMAN

16 Because we have to finish Mr. Gale by 4:30. I have other
17 fish to fry.

18 MS. EDWARDH

19 Yes, My Lord, we will be done.

20 LUNCH BREAK - 12:30 to 2:08

21 MS. EDWARDH

22 Q. Mr. Gale, let me just go back to the point that we were at just
23 before we broke for lunch. You had stated that at the time
24 you told Mr. Edwards to wait until the Attorney General had
25 issued an order to get the file, that you would probably also

1 have said to him, in any event, the R.C.M.P. were not likely to
2 be the force that would investigate police misconduct when
3 an inquiry was held.

4 A. If the inquiry was going to be on the police force, yes.

5 Q. And I take it, at that time, it was also your hope and, indeed,
6 the hope of Mr. Edwards, that such an inquiry would be held.

7 A. Yes, I think it was, I think the hope of both of us that such an
8 inquiry would be held.

9 Q. And discussions were ongoing in the Department with a view
10 to seeing whether or not an inquiry would be an appropriate
11 vehicle?

12 A. Well, there were some discussions. It was, I think you must
13 realize that this type of matter was a novel matter for the
14 Department and we were feeling our way through it. But it
15 would depend on what the reference was made and
16 concurrent with that, an inquiry into what areas the inquiry
17 would have to go.

18 Q. But from your perspective, it was your view, at least, that you
19 held at that time, that such an inquiry would look at any
20 allegations of misconduct on the part of the police, or how this
21 whole thing had transpired.

22 A. Yes, it was my hope that that would be it.

23 Q. So, indeed, from the Attorney General's perspective, as it's
24 reflected in the notes that Mr. Edwards took, it was, in fact,
25 the view that the investigation ought to be conducted by

1 someone else at an appropriate inquiry, should it take place
2 later?

3 A. An investigation for an inquiry purpose, yes.

4 Q. And, indeed, that was the only purpose that, at that time, you
5 were aware of as being, from your perspective, relevant,
6 correct?

7 A. Yes.

8 Q. You had already formed the view, in other words, that what
9 was not clearly available on the record was any indication of
10 criminality?

11 A. What was available, what I had been led to believe that there
12 was not evidence of criminality. There had been no
13 suggestion of that made to me.

14 Q. So from your perspective, all the information that you had led
15 you to the conclusion that whatever improprieties had
16 occurred, would be examined through an inquiry process.

17 A. Yeah, that would be the best vehicle for examining those.

18 Q. So I'm going to suggest to you, sir, that given those
19 parameters of your understanding that it's entirely likely that
20 Mr. Edwards took your comments as indicating that the
21 investigation into impropriety on the part of the Sydney
22 Police ought not to take place by the R.C.M.P.

23 A. Well, he may have understood it in that way. I was not in
24 any sense trying to preclude any investigation by the
25 R.C.M.P.... If the R.C.M.P. felt that such investigation was

1 necessary to further their investigation of the Sandy Seale
2 murder case.

3 Q. No, but at the same time, you weren't resiling from putting
4 forward your views that such an investigation was not
5 appropriate at this time because an inquiry would well look
6 after the matter. You had received no information to indicate
7 otherwise.

8 A. I had received no information to indicate otherwise.

9 Q. And, indeed, when you got, and I take it you did receive, and
10 correct me if I'm wrong... Could I ask you to look at Volume
11 34 at page 88. Did you obtain or did you have passed to you
12 in your discussions with the R.C.M.P. this report from Staff
13 Sergeant Wheaton, which is endorsed and forwarded on by
14 Scott, Inspector Scott?

15 A. As nearly as I'm able to reconstruct, that this report came in
16 with the so-called "red book".

17 Q. And that would have been in May of '82?

18 A. Yes.

19 Q. And, therefore, I take it it was clear to you, if you turn to
20 pages... Well, I guess the bottom of page 88, and page 89, that
21 what was being attributed to you was that the interviews
22 should be, in fact, held in abeyance and that if the R.C.M.P.
23 from their perspective were to have any further involvement,
24 they would wait further instructions, correct?

25 A. Well, I see that there now. I don't really think that, in all

1 honesty, I... I was so happy at that point in time to get the red
2 book, which had been promised for such a long period of time,
3 that I think I immediately went to it and just glanced at this.
4 It did not strike me at the particular time, this paragraph
5 didn't jump out at me and I didn't latch onto it.

6 Q. Are you saying that you never noted in any way that from
7 the R.C.M.P. perspective, they were waiting instructions?

8 A. No, I really didn't note it that they were waiting instructions.
9 I was more concerned with going on to the red book and
10 looking at it.

11 Q. And so you just missed this entirely.

12 A. Well, it certainly didn't make any impression on me at the
13 time.

14 Q. And, indeed, I'm going to suggest, Mr. Gale, the reason it
15 didn't make any impression on you at the time is quite simply
16 that from the perspective you were working at, you were
17 quite content to let the R.C.M.P. not investigation because, as
18 far as you've indicated, you were still contemplating the
19 inquiry to deal with the matters that the R.C.M.P. would have
20 investigated, alleged impropriety.

21 A. Well, if there were alleged improprieties, yes. Improprieties
22 not extending to illegal acts.

23 Q. And it's your evidence that, at this time, in April and May,
24 you were aware of alleged improprieties, which to the best of
25 your judgement, did not amount to criminality? That's what

1 you're saying?

2 A. I was aware of practices being commented on by the R.C.M.P.
3 that I thought should be looked into by an inquiry.

4 Q. So, indeed, if you had read that, given your view of it, it
5 wouldn't have surprised you at all, because that is, in fact,
6 what you had just said Mr. Edwards. There was no point in
7 having the R.C.M.P. investigate that.

8 A. That was no point in having the R.C.M.P. investigate
9 improprieties, but if they wanted to.. I still wanted to make
10 certain that it's understood that if they wanted to question
11 them on the investigation itself, that that, my only suggestion
12 there was that they await getting the file and looking at it.

13 Q. Now I take it in the course of assessing the nature of the
14 improprieties that had been described to you, you knew that
15 there... And don't let me put words in your mouth, sir, but
16 you knew there were certainly allegations that witnesses had
17 arrived at testimony with no independent observation after
18 police interrogation, is that correct? They said they saw
19 things that they didn't see.

20 A. Well, their subsequent statements say that they saw, said that
21 they saw things that they had not seen.

22 Q. And that at least one of those individuals suggest that they
23 made those statements as a result of threats. Threats about
24 being sent to prison or threats about perjury, do you recall
25 that?

1 A. I understand that one of them said that, was told that he
2 could be dealt with by way of perjury.

3 Q. If he didn't say this, that he could be charged with perjury
4 and then be sent to prison. That was the thrust of what the
5 witness had said in explaining why he gave false testimony,
6 correct?

7 A. That is a thrust you can take from it, yes.

8 Q. And why isn't that extortion? Forget counselling perjury.

9 A. At that particular time, I'm not sure that we necessarily
10 accepted everything that each witness said as to why he or
11 she gave the original story. And that was one of the things
12 that we had hoped to be able to bring out in the reference
13 and one of the reasons we wanted to go under 617 to, in the
14 hopes of being able to bring out all the evidence from the
15 police and from the witnesses and try and determine...

16 Q. Well, whether you accepted it or not, sir, did that allegation
17 raise concerns in your mind at all about criminality?

18 A. No, to be frank with you, at that particular point in time, I
19 guess my mindset was not that that had, was raising
20 allegations of criminality. At that particular point in time, it
21 was hoped that we could go further and examine these
22 matters as the reference proceeded.

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