

1 Q. So I take it that you did not exclude criminality as being a
2 possible explanation for the fabricated testimony, is that a
3 fair statement?

4 A. Well, I guess I didn't exclude anything as being a possible
5 reason for it and hopefully that the...that would come out in
6 the course of a reference.

7 Q. But specifically my question though is, if you didn't exclude
8 anything I take it you did not exclude criminality on the
9 part of the police officers as being an explanation.

10 A. Well, since I didn't exclude anything then I would not have
11 excluded criminality.

12 Q. And then I take it though you at no time, having had this
13 conversation about interrogation of MacIntyre and
14 Urquhart, at no time after your conversation with Mr.
15 Edwards did you suggest that any of this matter be picked
16 up again.

17 A. No, because I did not think that I had excluded it from being
18 picked up. I'm not an investigator and I have the highest
19 regard for the RCMP, and I thought that they would follow
20 through on every possible approach on the matter quite
21 frankly. I didn't think that they were requiring any
22 permission to do anything. They had a job to do and I
23 thought that they would follow through with it.

24 Q. And when you spoke with the RCMP liaison person,
25

1 Superintendent Christen I think it was at the time, did he
2 not at any time suggest to you that they were awaiting
3 further instructions as is indicated in the report of Staff
4 Sergeant Wheaton?

5 A. No, I don't recall Superintendent Christen expressing any
6 opinion that they're awaiting further instructions on
7 questioning MacIntyre or Urquhart.

8 Q. Or investigating the possibility of criminality.

9 A. That's correct.

10 Q. And I take it you merely then acquiesced to letting the
11 situation stand as you knew it was, without knowledge of
12 whether there was or was not an investigation.

13 A. I did not know that there was one and I...

14 Q. You didn't know...

15 A. ...at this point time I was leaving it to the RCMP to
16 investigate whatever they had to investigate. I knew that if
17 we're going by a reference that we would certainly have to
18 get this in at some stage.

19 Q. But you made no further inquiries so that you simply
20 acquiesced as to whether they did or didn't was something
21 that they could decide.

22 A. Yes, that's correct.

23 Q. And with respect to information about improprieties or the
24 failure of Crown counsel to disclose, I take it neither you nor
25 anyone in the Department took any steps to find out what

1 may have transpired that caused Crown counsel to not make
2 matters available to the defence at any stage of these
3 proceedings.

4 A. That's correct. I took no steps and I'm not aware of
5 anybody else within the Department taking such steps.

6 Q. Not even request a memorandum of...from Mr. Veniot as to
7 what he may or may not have known.

8 A. No, at that point in time, no, we did not request any memo
9 from Mr. Veniot who was not even with us at that time.

10 Q. Let me take you back briefly to the meeting you had with
11 Chief MacIntyre, which is described in Volume 17. Do you
12 have that there?

13 A. Yes, I do.

14 Q. Is that the only occasion that you met or discussed the
15 matter with Chief MacIntyre?

16 A. Yes, that's the only occasion.

17 Q. And I take it from your answers to questions posed to you
18 by Mr. MacDonald that his visit was unannounced and, as
19 well, the Chief was not a close associate of yours.

20 A. That's correct.

21 Q. And I take it that from the fact that he arrived carrying the
22 Marshall file it was clear to you that that was the subject
23 matter he wished to discuss with you.

24 A. Well, he came carrying a file and he discussed Marshall with
25 me.

1 Q. Anything else discussed to the best of your recollection?

2 A. No, nothing that I'm aware of.

3 Q. How long was the meeting?

4 A. I would think it was a meeting that may have been about
5 thirty minutes, maybe forty-five at the most, it was not a
6 long meeting.

7 Q. And would it be fair to say that during the course of that
8 meeting that Chief MacIntyre pressed upon his...pressed
9 upon you his views that Mr. Marshall was, in fact, guilty of
10 the offence?

11 A. It was quite evident that Chief MacIntyre felt that Mr.
12 Marshall was guilty of the offence from that meeting.

13 Q. And would it...would it also be fair to say that the thrust of
14 that meeting was his attempt to satisfy you that the
15 investigation had been thorough and there was ample
16 evidence to support the conviction?

17 A. Well, he was pulling out statements and talking in terms
18 that there had been ample evidence to support the in...the...

19 Q. The conviction.

20 A. The conviction originally.

21 Q. And indeed, his suggestion was the RCMP had, for some
22 reason, gotten off on the wrong track or were coming to the
23 wrong conclusions.

24 A. Well, he felt that the RCMP were coming to the wrong
25 conclusion on it.

1 Q And I take it the purpose of his presence and discussion
2 with you was to obtain from you some kind of commitment
3 to review the RCMP reports or their conclusions carefully, to
4 say the least.

5 A. I think he wished to convey to me his views of the...I would
6 suspect with the hope that we would look at the RCMP
7 conclusions closely.

8 Q Did he express to you at all any concern for his own
9 position?

10 A. No, he did not.

11 Q Would you agree, sir, that it's unusual at least for a
12 policeman to have gone to the lengths of Chief MacIntyre to
13 personally put his own private view of the propriety of a
14 conviction forward?

15 A. I have not had it done before.

16 Q And in that sense it's at least unusual.

17 A. Yes.

18 Q Now when Chief MacIntyre produced the statements you
19 had not seen, did you request that he leave a copy with
20 you?

21 A. No, I did not.

22 Q You were aware that those statements were of some
23 considerable significance. You hadn't seen them before.

24 A. I had not heard of them before. I was under the impression
25 that the RCMP had the Sydney Police file on the matter, so

1 my main concern was to call them and ask them where were
2 they and had they heard of them before.

3 Q And I take it you made no suggestion to the Chief at that
4 time that he just simply leave the file with you.

5 A. No, I did not want the file left with me.

6 Q Did he offer to?

7 A. No, he did not offer.

8 Q Did you raise with him that he should turn over the file that
9 he had in his possession to the RCMP?

10 A. No, I did not because I did not know at that time whether
11 they had that file and the statements I was shown, as I
12 recall, were photocopies so...

13 Q When he produced these statements though that you at least
14 had not seen, did you suggest to him that these matters had
15 best be brought to the attention of Wheaton or anybody else
16 who was involved in the reinvestigation?

17 A. No, I felt that it was better that I contact the RCMP and find
18 out what they knew about it and if they didn't that they
19 should take the steps to get that information.

20 Q Now, did Chief MacIntyre seem to you to be fully appraised
21 of what the RCMP were doing and what some of their
22 conclusions were?

23 A. He seemed to have a fair understanding of what was
24 transpiring at the time.

25 Q Did he say from whom he had received that information?

1 A. No, he did not.

2 Q. Did that concern you at all?

3 A. No, it didn't concern me. Police have a habit of talking back
4 and forth to one another and that did not concern me.

5 Q. Did you have any conversations at all with Urquhart during
6 this period?

7 2:29 p.m.

8 A. No, I didn't.

9 Q. Did you receive any correspondence from either of them?

10 A. Not to the best of my recollection.

11 Q. Did you keep any memoranda or any written materials at all
12 in relation to your discussions with anyone in the
13 Department or with outsiders about the Marshall case?

14 A. No.

15 Q. Is there any reason, sir? Is it your habit to not keep any
16 written notation of any kind in relation to discussions of this
17 kind?

18 A. I make notations on my legal pad at the time. I may keep
19 that for a short period of time until something has...if a
20 question was asked until I got, to remind me...until I got an
21 answer back. But, no, it has not been my practise to keep
22 notations of the fact that I've met with somebody or what
23 exactly was said at those meetings.

24 Q. And I take it you had no records of any kind in relation to
25 the Marshall case that you caused to be created.

1 A. That's correct.

2 Q. Let me ask you to turn with me to Volume 28, page 14. I
3 understand that this is the first written directive, is that
4 correct, in relation to disclosure and Crown counsel's
5 obligation to disclose or is there an earlier one?

6 A. Well, there should be an earlier one because it's...the earliest
7 one arose with Mr. How when he was the Attorney General.

8 Q. And was it in substance quite different than this?

9 A. No, it was not any different. I think this one was updated
10 because Mr. Giffin had come into the position and perhaps
11 the words might be different, but the purport of the
12 disclosure policy is the same.

13 Q. So, in 1980, then...

14 A. 1980-81.

15 Q. '80-81. Defence counsel were entitled to all statements
16 made by a witness to the proceeding that the Crown
17 intended to call. Do I have...

18 A. Yes.

19 Q. And before getting into that one again, in terms of the '86
20 memorandum that again is the case subject to a discretion
21 on the part of the Crown where it is felt disclosure be
22 contrary to the interests of justice. Other than...do you see
23 that, page 16?

24 A. Yes, I do.

25 Q. Other than paragraph number 1, which is "When there are

1 reasonable grounds to believe in the possible destruction of
2 evidence," et cetera, what other grounds do Crown attorneys
3 in the Province exercise their discretion against disclosure
4 when "It would be contrary to the interest of justice"?

5 A. I can't think of any other grounds, and I can only assume
6 that in drafting this that it was felt that if for some reason
7 there was something that wasn't covered in grounds one and
8 two that it would give some opening for prosecuting officers
9 to refuse this disclosure. But I don't know what other
10 grounds there could be.

11 Q. Would you have any idea in what percent of cases today
12 Crown counsels elect to non-disclose under that provision?

13 A. No, because I have not dealt with the prosecuting officers, as
14 such, for a number of years.

15 Q. Would you have any idea whether or not there is with any
16 regularity complaints being received by the Department
17 with respect to non-disclosure by Crown counsel?

18 A. I've been advised by Mr. Herschorn that there have been, I
19 recall, two or perhaps three cases where that complaint has
20 been made. In one of them Crown counsel simply did not
21 have the information. The police had not provided it to him
22 at that stage. They were not ready. They had not
23 completed their laboratory tests. Another one I think there
24 is a difficulty where the prosecutor felt that the witnesses
25 might be intimidated. I think that the third was on that

1 same vein.

2 Q. I'd like to put to you, and I...the testimony of Judge
3 Cacchione, who as of 1986... I take it you're aware of who
4 Judge Cacchione is?

5 A. Yes, I am.

6 Q. You are aware, sir, that he practised as criminal counsel in
7 the Province of Nova Scotia.

8 A. Yes, I'm aware of his background.

9 Q. And if I could ask you just to bear with me for a moment.
10 I'm looking at Volume 64, pages 11426. He describes his
11 experience as being:

12 Q. Were you aware that the policy, at least,
13 of the Department was to provide full
14 disclosure?

15 A. There had been rumours that that was the
16 policy. There had been rumours that there
17 was a policy manual that espoused full
18 disclosure. I never experienced full
19 disclosure, I can assure you of that.

20 And Judge Cacchione in his evidence, if one reads it, does not
21 distinguish his experience right up to 1986 when he left
22 practise for the Bench. Can you provide any explanation, sir,
23 why his experience is so different from the Attorney
24 General's, as you describe it, directive?

25 A. No, I can't quite frankly. I don't know what Judge Cacchione
considered to be full disclosure on matters, and if he felt

1 that he wasn't getting full disclosure I don't know why he
2 didn't make a complaint to somebody in the Department on
3 the matter.

4 Q. Well, he does say as...I can't, I don't have the page reference
5 handy, that indeed he did complain and the response he
6 always got from the Attorney General's office through Mr.
7 Herschorn, and he says, pages 11426 again.

8 Q. Did you have occasion then to make any
9 complaints to the superiors in the
10 Department, either formally or informally?

11 A. I, yes, I recall speaking with Mr.Herschorn
12 on several occasions, I recall
13 speaking with Mr. John Wade on several
14 occasions, I recall speaking with Mr. David
15 Thomas on many occasions, and the reply
16 would always be the same. It's up to
17 the prosecutor to decide. It was a fairly
18 wishy-washy attitude.

19 So, His Honour's experience with the complaint procedure at
20 the Department was, at least from his perspective, less than
21 satisfactory.

22 A. I realize that he has testified to that and I...and I know
23 comments that Mr. Herschorn has made to me since seeing
24 that, and Mr. Herschorn said that...he has told me that Judge
25 Cacchione never spoke to him on the matter except briefly
asking about Crown disclosure at a seminar at which they
were both panelists. But you will have to get that really

1 from Mr. Herschorn, but that is what I have been told by
2 Mr. Herschorn.

3 Q. That raises the, a last point is that there is some suggestion
4 that on that panel Mr. Herschorn had with him the written
5 formulation of the guidelines and declined to produce them
6 to Mr. Cacchione.

7 A. Well, I don't know why he wouldn't.

8 Q. And further that they are not distributed to the defence bar.

9 A. No, they were not distributed to the defence bar to the best
10 of my knowledge, but there is no doubt that they were in
11 existence and anytime I was asked about them I simply
12 pulled the page out of the volume of advice to prosecuting
13 officers and photocopied it and gave it to whoever wanted it.

14 Q. Can you offer, sir, any explanation why the community in
15 most need of protection, most in need of being able to waive
16 the guidelines around and saying "Produce" wouldn't have
17 had those guidelines distributed to them, and that's the
18 defence bar?

19 A. No, I can't offer any explanation. I don't know if it was a
20 decision made by someone in the Department that they
21 should not have them or what the reason was for that, quite
22 frankly.

23 Q. As a policy directive would it be considered confidential to
24 Crown counsel?

25 A. Well, some people considered it confidential but I did not

1 see any way possible that this type of policy directive could
2 be legitimately withheld from anybody under our Freedom
3 of Information Act.

4 Q. But it was withheld, was it not?

5 A. Not by me, it certainly...

6 Q. By others.

7 A. ...any time I was asked I gave it.

8 Q. By others in the Department.

9 A. It may have been. I...you have said something about Mr.
10 Herschorn. I don't know what his stance on that was.

11 Q. Do you know what Mr. Coles' stance on it was?

12 A. No, I don't know what Mr. Coles' stance was on it.

13 Q. Let me then just confirm with you though that it is your
14 impression that at least some of the senior members in the
15 Department did take the view that it was confidential, and
16 further that it ought not to be made public, although you
17 took a different view.

18 A. Well, I had had raised with me whether or not it was a
19 confidential document. In my view it was not. I don't know
20 if they continued to take that stance or not.

21 Q. Who raised it, sir?

22 A. Oh, I think there may have been some discussion by Mr.
23 Coles...by Mr. Herschorn with me. I may have had some
24 questions from some prosecutors.

25 Q. Did...

1 A. But only to the extent that I would be answering questions
2 in Mr. Herschorn's absence on these things. We substitute
3 for one another.

4 Q. I take it though, sir, you are aware and you have already
5 said that to the best of your knowledge it was not
6 distributed. So it...

7 A. I have no knowledge of it.

8 Q. ...would be widely held.

9 A. I have no knowledge of it having been sent out to the Bar of
10 Nova Scotia.

11 Q. Let me then ask you just a couple of more questions about
12 the disclosure regime presently enforced. I take it there is
13 no mention in the disclosure regime that facts otherwise not
14 held by way of statements that are in the possession of
15 Crown counsel that are of assistance to the defence pursuant
16 to these guidelines, the Crown does not have to hand over
17 but for it's broader legal obligation.

18 In other words, if Crown counsel were aware that a witness
19 had a lengthy psychiatric history, they may indeed be aware
20 of that as a result of a police investigation or comments
21 made that are not reduced to a statement form, and that
22 would not be made available to defence counsel on the basis
23 of these guidelines.

24 A. Well, these guidelines don't deal with that particular issue. I
25 would hope that it would be made available.

1 Q. In light of the experience in this case, where such material
2 was not made available at the initial trial when one of the
3 witnesses was involved and did have a psychiatric history,
4 what's wrong with specifying that those kinds of facts
5 should be made available and why isn't it...

6 A. Well, I don't know that there's anything wrong with
7 specifying that those facts be made available. I know that
8 these were certainly discussed with prosecutors, have been
9 brought to the attention of prosecutors at the annual Law
10 Day that the department has for its lawyers, and one section
11 of that was prosecutors. It certainly...the new memo was
12 brought to their attention and that our policy was that of
13 full disclosure unless it was going to intimidate a witness.

14 Q. So, if I understand you then correctly, that is not in any way
15 intended to detract from the overriding principle of full
16 disclosure.

17 A. It's not intended to detract.

18 Q. Can you assist in explaining the last portion of the disclosure
19 regime relating it to Mr. Coles' concern in his letters that I
20 posed to Mr. Edwards earlier that there is something
21 obviously of extreme importance in not disclosing police
22 reports to defence counsel? First of all, would I be correct in
23 assuming that police reports include also factual
24 observations by police officers?

25 A. Yes, I suppose police reports can include factual

1 observations by police officers. It can include suppositions
2 that they're making, some of which later on they have
3 discarded and adopted another position on a matter. Some
4 police officers are copious in their memos to file and you can
5 follow them through and see how their whole approach has
6 changed through an investigation.

7 Q. Well, I don't understand the term police report to mean a
8 memo to a file. I would think police officers may make
9 many notes either in a notebook or elsewhere as they
10 proceed along in an investigation without that being
11 formally included in a "police report".

12 A. Well, the police report that we're referring to and that is
13 commonly accepted around here is that it would be an
14 occurrence report and there is a continuing running log of
15 what has happened and their views as they go along on the
16 matter, expressions of opinion on some matters that are not
17 within the purview of the police and really have nothing to
18 do with the investigation that they're handling.

19 Q. But in cases where the police report includes material
20 observations of a crime scene, of other matters, why not,
21 and this is the question, why not have a disclosure regime
22 making that available as long as extraneous opinions that
23 could be embarrassing to the officer or the police force are
24 removed.

25 A. Well, that's what the instruction says.

1 Q So, then if I understand this instruction correctly, it is not
2 intended, I mean it is intended to fundamentally amend the
3 earlier instruction of the Deputy that said virtually the
4 police report will not be given out.

5 A. It amends it, yes.

6 Q And, I take it then that the present regime permits a
7 prosecutor to give out those police reports at their discretion
8 subject to reviewing it for removing confidential or
9 extraneous matters. Would that be...

10 A. That gives...the prosecutor has that discretion, yes.

11 Q And so police reports may now be given to the defence.

12 A. They may be, however, it's my understanding that the police
13 don't like some of their reports, the fact that they could end
14 up in defence hands so that the report that we get doesn't...it
15 given to the prosecutor; it doesn't really have to be vetted
16 that much.

17 Q I don't understand. If the obligation of Crown counsel is to
18 provide information pursuant to the directive, what does it
19 matter where the police like it or not? I mean they, the
20 police officers...

21 A. It doesn't make any difference, but the police have their file
22 and what they give to Crown counsel is a brief for Crown
23 which will contain out of their file what they wish to put
24 into it.

25 Q And that's what's the present practise now.

1 A. That seems to be the present practise to my understanding.

2 Q. Is that expurgated version that doesn't contain the full
3 occurrence a concern to you in the Attorney General's office
4 in the sense that Crown counsel is not getting the
5 information they need?

6 A. I'm not aware of it having caused any particular concern at
7 the moment. It's possible that it could in the future.

8 Q. The one last area I'd like to go through with you, if I could,
9 is this question of disclosure to Mr. Aronson. As you
10 testified yesterday you were well aware of a letter written
11 by Mr. Aronson to you requesting disclosure, that he wanted
12 the report done by Staff Sergeant Wheaton, is that correct?

13 A. Yes.

14 Q. And that, as far as you were concerned, there was a policy
15 position in the department that meant Mr. Aronson could
16 not have that.

17 A. Yes.

18 Q. I thought you testified this morning, sir, that that policy
19 position was, in fact, not formulated until Mr. Coles in a
20 somewhat, well, leaving aside the characterizations, Mr.
21 Coles wrote the letters to Mr. Edwards and a final position
22 on, quote, "police reports" was then taken by the
23 department. Do you recall that testimony?

24 A. At that time the position was put into the...into a written
25 form. Before that I had understood that the position of the

1 department and the policy was that the police reports would
2 not be given to defence counsel.

3 Q. I had understood you to say this morning that there was a
4 more general kind of discretion prior to it being so-called
5 written in stone by Deputy Coles.

6 A. Well, I suppose there may have been a... slightly more
7 discretion on it, but at that point in time I was not satisfied
8 that I had a full police report on the matter and until I was
9 satisfied that we had a final police report, I was going to
10 follow the policy of not providing a police report, and I don't
11 know after that whether I would have given Mr. Aronson
12 the report, although subsequently I did agree with Mr.
13 Edwards that the...he be given whatever Mr. Edwards
14 thought was necessary.

15 Q. Can you explain why you didn't even, sir, have the courtesy
16 to write Mr. Edwards, I mean, Mr. Aronson, and say to him
17 that when a final report was prepared you would consider
18 his request?

19 A. As I recall it, Mr. Aronson was in to see me and he was told
20 that when the...a final report was considered received then
21 we would deal with the request.

22 Q. Well, certainly when he writes the federal
23 government...when he writes to you on March 13th, he then
24 writes the federal government on March 26th saying he's
25 got no cooperation from you. Is it your evidence, sir, that

1 you told him during that time period that material would be
2 made available to him forthwith?

3 2:51 p.m.

4 A. I told him that when we got the final report, then we would
5 see what material would be made available to him.

6 Q. And during this time period, I take it you were well aware
7 there were, in fact, statements, but you did not offer those
8 statements to Mr. Aronson, is that correct?

9 A. That's correct. I did not offer those statements at that
10 particular time and he didn't ask for statements. He kept... He
11 seemed to know what was going on. He seemed to know the
12 existence of things. He was asking for a report. He wasn't
13 asking for the statements. I assumed that he knew what the
14 statements were.

15 Q. Did you ask him? Do you recall having any conversation
16 saying, "Mr. Aronson, I take it you got those statements"?

17 A. No, from the way he was going on, I assumed that he knew
18 about them. I considered that this matter at this particular
19 time was at the investigation stage. That a final report in this
20 particular matter would then determine, in effect, what would
21 otherwise be whether a charge would be laid. But, in this
22 case, as to what action would be taken on the matter.

23 Q. But I don't want to misunderstand you, sir. You're not
24 suggesting that you formed the opinion or conclusion that Mr.
25 Aronson had the statements?

1 A. No, I formed the conclusion that he was fully aware of what
2 was going on, but I assumed... If he had asked for the
3 statements, as such, I might well have dealt with the matter
4 differently. But I was not prepared to give him the police
5 report until... or let him see it until such time as we had
6 received a final report from the police.

7 Q. And I take it that was your position, even though in broadly
8 defined terms, the Attorney General's guidelines, as they then
9 were, called for production of witness statements regardless
10 of whether there was a request or not, in an ordinary criminal
11 case?

12 A. In an ordinary criminal case, after a charge had been laid,
13 then there would be the production of it, and I'm trying to
14 make the analogy in this case that, though this did not lead to
15 a charge, but the final report would then allow the
16 Department to determine what it was going to do and that
17 would be, in effect, the same as a charge and, at that time, the
18 decision would be made as to what would be provided to him.

19 Q. Well, Mr. Marshall is the one who is now seeking redress
20 through his counsel and it is not necessarily the Attorney
21 General's Department that will be the final arbitrator, you'll
22 agree? It was for the Minister of Justice, in part, to decide
23 whether some independent action would be taken at the
24 federal level.

25 A. At that time, you're talking about?

1 Q. Yes.

2 A. Oh, I was quite...

3 Q. Around the time period.

4 A. I was quite aware that the Attorney General was only, a
5 matter... and it would be as to what recommendation would
6 be made to the Minister of Justice. It had to be the Minister
7 of Justice's decision as to what action he would take.

8 Q. So why not give to Mr. Aronson some of the essential tools he
9 would need to make effective representations to the Minister
10 of Justice as to what is the best avenue for his own client?

11 A. Only on the basis of what I have told you. I can't tell you
12 anything more. You can ask the question a thousand times. I
13 can't give you a different answer to it.

14 Q. Were you aware that the effect of your own decision was to
15 make it more difficult for Mr. Aronson to make
16 representations to Ottawa about what ought to transpire?
17 Surely that would be apparent to you at the time.

18 A. Well, I thought what Mr. Aronson wanted was an
19 investigation, a review of the whole matter and that's what
20 we were embarked upon. Our views were not divergent on
21 that point.

22 Q. Well, he may have taken different conclusions, and let me
23 take you to Volume 31 at page 38, to his letter to the
24 Department of Justice to Ottawa, to Mr. Fainstein, where he
25 writes at the bottom...

1 A. Page 38, did you say?

2 Q. Yes, and turning to the body of the letter at page 40, the last
3 paragraph:

4
5 On behalf of my client, I should like you to
6 consider this letter as an application for a free
7 pardon. It is my understanding that a free
8 pardon is given only when the innocence of a
9 convicted person is established and is in fact a
10 recognition of his innocence. In support of this
11 application, the R.C.M.P. reports of March 16,
12 1982 and subsequent reports by them are called
13 in aid.

14 He doesn't even have them, Mr. Gale.

15 A. No, he doesn't have them, but they certainly were available to
16 the federal government, the Minister of Justice.

17 Q. In order for counsel to be effective, sir, would you agree that
18 one has to have the information so that you can make
19 representations effectively, which would draw to the
20 attention of the federal government why, from your
21 perspective, you felt a free pardon was more appropriate and
22 justified on the basis of the reports, even if took a different
23 view of it. Mr. Aronson would have had to have that.

24 A. Undoubtedly, he would at some stage. At this particular point
25 in time, we, I was of the view that Mr. Aronson knew what
was going on. He seemed to be fully aware of what was in the
case and what had been done and I had no problem in

1 discussing it with him. But, and he was not stonewalled by
2 me, and I really don't understand Mr. Aronson's comments.
3 But, no, he was not given the reports.

4 Q And when you say that "he wasn't given the reports," you'll
5 agree, sir, that he was not given the reports at any time prior
6 to the reference and the form of the reference being
7 determined.

8 A. That's correct.

9 Q So his contribution was, of course, made without benefit of
10 knowing what the contents, or the precise contents of the
11 reports were. That's obvious, correct?

12 A. His contribution was made without knowing the precise
13 contents of the reports, yes.

14 Q Now once Mr. Aronson had been given the burden of carrying
15 forward the application of reference to the Court of Appeal,
16 did you have any discussions at all with respect to his fees?
17 And I take it you have recalled one occasion where you
18 suggested to Mr. Coles that he could be treated the same way
19 one would treat an appeal to the Supreme Court of Canada, in
20 undertaking to...

21 A. I made that suggestion to Mr. Coles at one stage, but after
22 that, I did not become involved in the question of what fee he
23 would be paid or by whom.

24 Q Were you ever consulted in any way about it or was...

25 A. No, I was not.

- 1 Q. Your advice sought in relation to it?
- 2 A. No, I was not.
- 3 Q. With respect to the question of compensation, do you recall
4 being consulted, given your position in the Department, as to
5 what the principles of compensation ought to be, how one
6 would look at the problem, what the different ways of
7 viewing it, anything? Were there any discussions of that kind
8 and character that you participated in?
- 9 A. No, did not participate in anything in compensation except the
10 initial meeting with Mr. Justice Campbell, where he indicated
11 when he might be starting or what facilities he might need
12 and I think I wrote for two reports and that was my
13 involvement in compensation.
- 14 Q. Do you recall there being any discussions at the highest level
15 in the Attorney General's office that you were either privy to
16 or aware of dealing with the policy part of compensation and
17 the obligation of the Attorney General?
- 18 A. Certainly none that I was privy to and I'm not really aware of
19 any. I really did not know what was going on in the
20 compensation area of it. Mr. Coles told me that Mr. Endres
21 was going to handle it and that was it.
- 22 Q. Did you have any conversations with Mr. Endres?
- 23 A. No, I did not.
- 24 Q. You testified yesterday that you would be concerned, I think
25 was the term you used, that Mr. Edwards formulated the view

MR. GALE, EXAM. BY MS. EDWARDH

1 that in order to quote "sell the Court of Appeal an acquittal in
2 this case," he would have to take a position that there was no
3 miscarriage of justice. Do you recall using the term that you
4 would be concerned about that kind of view? I think you
5 said it would be better if he wouldn't ask for a new trial.

6 A. Well, I don't know why he... It bothers me that he would
7 have to take that tact. I think the Crown is there to put forth
8 a position and if, unfortunately, the Court doesn't buy the
9 position you're putting forth, you'll have to take what the
10 Court gives you. But I don't see the purpose of changing just
11 to have an acquittal. That might have caused some
12 awkwardness because, at that point in time, if a new trial had
13 been ordered, the Attorney General would have had to stay it
14 and make some comment.

15 Q. You... There's, I suppose, a matter of more substance to Mr.
16 Edwards' concerns which one could read that he was so
17 concerned at how the Court would view this situation that he
18 felt he could only go forward reasonably and say, "Well,
19 really, this was Marshall's own fault, so we've got to live with
20 an acquittal." Do you view that reading of the Court as correct
21 or erroneous?

MR. PINK

22
23 My Lord, how can he say what the... How can he read the
24 Court? He wasn't present. He's already said that.
25

MR. GALE, EXAM. BY MS. EDWARDH

1 MR. CHAIRMAN

2 That's a good point. Mr. Edwards' evidence, as I recall it,
3 was when he was asked that same question, "How did you arrive
4 at that?" He says it's a feel you get as a trial lawyer and you
5 won't find it in the transcript. Now I don't know what that means,
6 but... I think I do.

7 MS. EDWARDH

8 One of those intangibles that...

9 MR. CHAIRMAN

10 Intangibles that, and that he, his main concern was that
11 there not be a new trial ordered because that would be, would not
12 give Donald Marshall, Jr. an opportunity to be heard. Because it
13 obviously then, the Attorney General would have to stay any
14 further proceedings.

15 MS. EDWARDH

16 Fine, My Lord. I'll leave that.

17 BY MS. EDWARDH

18 Q. One last area, sir, I'd like to address and that is that raised by
19 your discussions with the Court with respect to the article
20 written by Mr. Donham at Volume 32, and there's just one
21 aspect of it I'd like you to comment on. I take it... I'd like
22 you to turn to page 179. That there really is no dispute that
23 the Attorney General performs a very important watchdog
24 role to insure that matters which are contemptuous are dealt
25 with and whether it's at the request of the Court or something

1 that the office itself has observed. That's certainly part of the
2 historic functioning of the Attorney General's office. Is that a
3 fair statement?

4 A. Yes.

5 Q. And my query to you is that after deciding that the article
6 itself was, at best, borderline, which I take it really means
7 that at its highest, it's borderline, you're then asked by the
8 Chief Justice about a broadcast and I want to just raise with
9 you this comment:

10 The Chief Justice suggested that the Attorney
11 General might write to the CBC to request a
12 transcript of that broadcast in the hope that in so
13 doing it might have some salutary effect.

14 I take it when you say that "writing would have some
15 salutary effect," that was your suggestion as opposed to the
16 Chief Justice?

17 A. I think that's my view of the matter, that he might, that
18 writing to the... Requesting a transcript might have some
19 salutary effect. I don't know whether... I don't think the Chief
20 Justice suggested that.

21 Q. And would you agree, sir, that what is not proper for the
22 Attorney General to do is to, without reason, write for
23 transcripts so that there can be "a chilling effect" on the part
24 of the press? That would be quite beyond what the proper
25 scope of the Attorney General's duties and obligations are?

1 A. Well, it was not a... I think a suggestion that that might have
2 that effect but, no, it was not that reason. The Chief Justice
3 had indicated that perhaps we should get a transcript of the
4 matter.

5 Q. I'm referring to your reasons now, sir. You said that, in fact,
6 it was our reason that you thought it might have some
7 salutary effect, leaving aside the Chief Justice. I'm asking you
8 whether or not it would be proper in your view for the
9 Attorney General, not intending to proceed or to damage, but
10 to write and call for transcripts so that it would have a, quote,
11 "chilling effect" upon the media?

12 A. Well, if the Attorney General has a problem with the media, it
13 should be taken up in a proper legal position. I guess the.. It's
14 not a, it's not proper to carry a cudgel just simply to beat the
15 press, media into submission.

16 Q. And it's not proper to demand transcripts in circumstances
17 where the only purpose is that it'll have a chilling effect on
18 the media.

19 A. Well, it was not... I guess it was a view that I expressed at the
20 time. It was not that it might have that, but the purpose for
21 writing for the transcript was to review it so we would have
22 the transcript and review it to see whether or not, in fact,
23 there was anything of a contemptuous nature.

24 Q. And so your evidence then, sir, is that your purpose was not
25 to have a chilling effect.

MR. GALE, EXAM. BY MS. EDWARDH

1 A. That was not my purpose. I guess I gratuitously added that it
2 might have a chilling effect on it.

3 Q. I'm sorry, I...

4 A. I say I guess I gratuitously put in the memo that it might
5 have a chilling effect on the media. Certainly...

6 Q. And that would be salutary.

7 A. Well, yes.

MS. EDWARDH

9 Those are my questions. Thank you.

MR. CHAIRMAN

11 Mr. Pugsley?

EXAMINATION BY MR. PUGSLEY

12
13
14 Q. Mr. Gale, I'm Ron Pugsley and I'm acting for John MacIntyre.
15 I want you to direct your attention to the meeting you had
16 with John MacIntyre at the Attorney General's Department in
17 April of 1982. Do you recall what day that was, sir, what day
18 of the month it was?

19 A. My own view is that it was April 15th, because it was the
20 16th that I started making inquiries. So I'm quite, I'm
21 satisfied in my own mind that it was the 15th of April.

22 Q. And that would be Thursday, the 15th of April.

23 A. Yes, it would have been a Thursday.

24 Q. It's my instruction that Chief MacIntyre came to Halifax for
25 the purposes of seeing the Attorney General, arrived at the

1 office at nine o'clock in the morning, happened to bump into
2 you in the hall, had a conversation with you concerning the
3 reason for his visit and you advising him the Attorney
4 General was out of town, you inquiring as to what was the
5 nature of the reason for the visit, and the Chief describing the
6 Marshall matter, and you saying you had some jurisdiction in
7 that area, and so that's the reason you happened to meet with
8 him. Does that sound like a reasonable...

9 A. That is not my recollection. My recollection is that he arrived
10 and I was told that he wanted to see me and that I saw him.

11 Q. I see.

12 A. My recollection does not accord with his.

13 Q. It's further my instruction that the reason he advanced to you
14 for his visit was the leaks that had been appearing in the
15 media and also the criticism of the Sydney Police Force, in
16 particular, that had been appearing in the media. Do you
17 recall him expressing concern to you about that?

18 A. Not specifically at that meeting. I know that concern was
19 expressed at some stage about the leaks in the media, that
20 there was far too much information going to the media. But
21 I'm not sure who raised it with me.

22 Q. I see. Are you able to say that he definitely did not bring
23 that topic up at the meeting, or that you just do not recall?

24 A. I can't say that he, definitely that he did not bring it up. As
25 I've testified before, the main thing that remains in my mind

MR. GALE, EXAM. BY MR. PUGSLEY

1 from that meeting is the fact that two statements were
2 brought forth that I had not recalled hearing of before and
3 that's really what holds that particular meeting in my mind.
4 If that hadn't occurred, I don't think I could say anything
5 about the meeting.

6 Q. The statements according to the notes of Frank Edwards were
7 the statements taken in November, 1971 of Greg and Mary
8 Ebsary, is that your recollection of the statements that were
9 referred to?

10 A. I believe that those were the statements. The passage of time,
11 I've had to reconstruct that and I guess the best I can do is to
12 accept that Mr. Edwards' note on that is correct, that those
13 were the two statements. Because going through the file, it
14 appears that those statements would not have been known to
15 me at that particular time from the reports that I had gotten.

16 Q. Yes, and you had already received the report of Harry
17 Wheaton that was furnished some time in March.

18 A. Yes.

MR. PUGSLEY

19
20 Thank you, Mr. Gale. That's all the questions I have.

MR. MURRAY

21
22 No questions.

EXAMINATION BY MR. PRINGLE

23
24 Q. Mr. Gale, my name is Al Pringle. I have a few questions for
25 you on behalf of the R.C.M. Police. Much less, I can happily

1 say, since my friend, Ms. Edwardh, has examined you. And
2 we'll try and keep it to new areas, My Lord. With respect to
3 the matters in 1982, Mr. Gale, I draw your attention to
4 Volume 34 at page 109.

5 A. Yes, I have it.

6 Q. Have you got that? That's a letter to you of June 3rd, 1982
7 from Superintendent Christen, correct?

8 A. Yes.

9 Q. And the last paragraph in that reads:

10 As this completes our investigation into this
11 matter, your further direction will be awaited.

12 Correct?

13 A. Correct.

14 Q. Did you ever give any further direction to Superintendent
15 Christen with respect to the matters of looking at the Sydney
16 City Police conduct?

17 A. No, I did not give him any further direction. They told me
18 their investigation in the matter was complete. I assumed
19 that they had investigated what they felt had to be
20 investigated.

21 Q. Did you ever give the R.C.M. Police any further direction with
22 respect to the matters of the Seale/Marshall matter at all
23 after June of 1982?

24 A. I think the only advice after that was the, communicating to
25

1 them that a meeting was held with Mr. Rutherford, that Mr.
2 Edwards would be looking after the matter.

3 Q. On the reference.

4 3:15 p.m.

5 A. On the reference.

6 Q. Right.

7 A. I suppose then the next thing is the later letter asking them
8 to give us their comments on the police practices at the time.

9 Q. Yes.

10 A. And also advising them that the Ebsary matter was part and
11 parcel of their mandate.

12 Q. No, but before that there was one other time that they came
13 to see you and asked your advice as to whether there was
14 any further direction, and I refer you to page 113 of Volume
15 34. Have you got that?

16 A. This is the handwritten memo.

17 Q. Yes. Do you recall having a meeting with the acting CIBO
18 officer on September of 1982, that would be possibly Mr.
19 Zinck? Do you recall being asked...

20 A. Well, I don't recall it. I have met with Inspector Zinck or
21 now Superintendent Zinck.

22 Q. Right.

23 A. From time to time, yes, but I can't tell you the dates.

24 Q. Okay. The contents of that memo which is for September
25 24th, 1982, is that the RCM Police were going to discuss with

MR. GALE, EXAM. BY MR. PRINGLE

1 Mr. Gale on September 24th, 1982, as to whether there was
2 anything further in the...the present standing of the file,
3 correct? And the note that we see at the bottom, and I'll
4 just read it to you and ask you to comment on it, is "Spoke
5 with the acting Criminal Investigation Officer, our file to be
6 concluded unless further investigation requested by Crown."
7 Do you recall such a meeting with the acting Criminal
8 Investigation Officer and do you recall telling him that there
9 was nothing further to be done unless there was further
10 investigation requested by the Crown?

11 A. No, I don't recall making that statement.

12 Q. You don't keep any notes.

13 A. On that particular point. No, there are no notes kept of those
14 meetings.

15 Q. You don't deny that the meeting took place?

16 A. I don't deny it took place. I can't tell you if it did or didn't.
17 I have no reason to...

18 Q. Suspect that it didn't.

19 A. To suspect that it didn't. If the CIB officer wasn't available
20 from time to time, the assistant would come over.

21 Q. Okay. Thank-you. You had at this time, I believe, you
22 testified.

COMMISSIONER POITRAS

23
24 Excuse me, Mr. Pringle.
25

MR. GALE, EXAM. BY MR. PRINGLE

1 MR. PRINGLE

2 Sorry.

3 COMMISSIONER POITRAS

4 What is the date of that meeting, please?

5 MR. PRINGLE

6 The date indicated on the memo, My Lord, on page 113 of
7 Volume 34 which is Exhibit 99 is the 24th of September, 1982,
8 that's found in the middle paragraph, "Would discuss with Mr.
9 Gale and advise you on 82-09-24." Now, that's an assumption that
10 the meeting took place on the same day in fairness to the witness.

11 MR. CHAIRMAN

12 Well, if you move to the next line it would indicate it did.
13 '82.

14 MR. PRINGLE

15 Yes, that's quite so, My Lord, the next line indicates that it
16 did take place on that day.

17 MR. CHAIRMAN

18 Or 28th.

19 MR. PRINGLE

20 28th, the 28th.

21 Q. And you have no recall of that, Mr. Gale, at this time?

22 A. No, I have no recall of it. I can only say that if they asked
23 about it it was my view that the matter was with Frank
24 Edwards and if he needed more investigation he would tell
25 them.

MR. GALE, EXAM. BY MR. PRINGLE

- 1 Q. Right. What were you asking the RCM Police to do in May
2 13th, 1983, and I refer you to Volume 20, page 4?
- 3 A. Volume 20.
- 4 Q. Yeah.
- 5 A. Page 4.
- 6 Q. Yes, please. In particular the third paragraph and you
7 talked about this yesterday and I must say I was a bit...I
8 didn't understand exactly what it was that you said that you
9 were asking the RCM Police to look at in May of 1983 by
10 that memo.
- 11 A. I was asking them to give us their views as to the nature of
12 the investigation of their police conduct originally, whatever
13 views they had on the propriety of the practises and
14 procedure at the original investigation.
- 15 Q. Yes. And you would have taken care in writing that memo
16 to use concise words to convey whatever direction you
17 wanted to the RCM Police?
- 18 A. Well, I had spoken to Superintendent Christen on the matter
19 and he wanted a letter on it. I'm not sure that I...the words
20 were chosen with...to stand up under microscopic
21 examination, because Superintendent Christen had already
22 verbally been advised as to what we were looking for.
23 Something...
- 24 Q. What were you looking for? Were you asking them to do
25 anything besides read their files?

MR. GALE, EXAM. BY MR. PRINGLE

1 A. Well, I was asking them to give us their opinions.

2 Q. No, but were you asking them to do that on the basis of
3 anything other than reading their files, reviewing what
4 pieces of paper they had accumulated the previous year?

5 A. I was asking them to give us their opinions. Whether that
6 be by reading their file or by anything else that they had in
7 their knowledge.

8 Q. Specifically, were you asking them or do you state here that
9 you intended to ask them to conduct any further
10 investigation as a result of that letter of May 13th, 1983?

11 A. I wasn't asking them to conduct further investigation. I
12 asked them for their...their views on the matter.

13 Q. Fine, thank-you. Because at that time, and I believe you
14 have testified earlier, you had in mind there would be some
15 kind of an inquiry and it was your thoughts that possibly
16 any investigation with respect to conduct would be done
17 through the Police Commission and not the RCM Police. Is
18 that correct?

19 A. That's right, because at that time I had no reason to suspect
20 in my own mind that there had been a...anyone held the
21 view that there had been any criminal conduct.

22 Q. Exactly. I'd like to refer you to Volume 32 at page 209.
23 That's Exhibit 125. 209. Now, that's a handwritten note
24 dated July 8th, 1983. It refers to a meeting between
25 "Gordon Gale, Martin Herschorn and I", and "I," I believe, is

1 the Attorney General at the time, Mr. How, and I think he
2 testified to that. Do you recall the meeting of July 8th, '83?

3 A. Well, I know there was a meeting with the Attorney General
4 to discuss, I think, the memorandum that Mr. Herschorn had
5 prepared as to...

6 Q. Yes. And the notes reads, in part, "Decided not to press any
7 charges against Marshall or the other witnesses and will
8 hold action re the Sydney police force until we know the
9 outcome of the civil action Marshall has brought against
10 them." Do you recall that being discussed?

11 A. I know that the Attorney General then had the view that an
12 inquiry would not be appropriate until such time as all legal
13 matters affecting the case were disposed of, and I suppose
14 at that time that that was the action that was...

15 Q. Including the civil action. You thought that was a matter
16 that should...

17 A. Well, the Attorney General held the view that the...he was
18 not going to...

19 Q. Okay.

20 A. ...hold an inquiry until any legal proceeding involving this
21 matter was completed.

22 Q. I'd like to go back in time to 1971 for a bit and just talk
23 about some of the matters there and some of the evidence
24 you gave with respect to that. I gather, sir, that you're not
25 really certain as to exactly when you assumed the duties

1 that Judge Anderson had held as director of criminal. You're
2 not exactly sure when you started doing that work.

3 A. I know that when he left after some very little time I asked
4 what would happen with the...the police matters and the
5 Deputy told me, well, just continue on and try and deal with
6 the matters until some decision is made on it.

7 Q. Who was dealing with it? Who was dealing with it, you or
8 someone else?

9 A. Well, there was myself. There may have...I may have
10 involved one or two other members of the department, and
11 certainly there was the Deputy.

12 Q. Uh-hum.

13 A. Dealing, I...to my recollection, with inquiries on police
14 matters.

15 Q. You don't have a clear recall of those days, I take it.

16 A. No, I have not been born with the facility of recalling that
17 long ago, quite frankly.

18 Q. But you did reply to the Chief Justice yesterday on a specific
19 question that you thought at the time, you understood, that
20 all the correspondence was going to the Deputy Attorney
21 General at the time, Mr. MacLeod.

22 A. Oh, I know that was the practise in the department at that
23 time that all the correspondence went into Mr. MacLeod's
24 office and it was distributed out to the members of the
25 department as he saw fit.

MR. GALE, EXAM. BY MR. PRINGLE

1 Q. And you gave that evidence at Volume 75, page 13341. But
2 I'd like to refer you to some evidence that's given by Mr.
3 MacLeod when he testified before the Commission. And this
4 is found in Volume 39, pages 3718 and 3719. Now, basically
5 Mr. MacLeod testified that, in fact, when he took over the
6 job as Deputy, he inherited a situation where all the
7 correspondence was coming to him. He found that workload
8 a bit too much, so he set up the director of criminal and the
9 director of civil, and so on, for the very purpose, in part, of
10 having the correspondence going through them. So I
11 suggest to you that at the time in 1971 the mail, indeed,
12 would be coming in to the various directors and not directly
13 to the Deputy.

14 A. I can only go by what I recall of the matter and that the
15 mail coming in went to the Deputy's office and then he
16 would distribute it originally to...it would be sent off to the
17 persons dealing with it, and at a later stage, and I don't
18 know exactly when, he would then have his secretary
19 give...after he had, perhaps, had seen it, I don't know
20 whether he looked at it all or not, give the criminal matters
21 to Mr. Anderson and the civil matters, I believe, to Mr.
22 Cavanaugh at that time.

23 Q. All right. Were you aware, sir, and I'm referring to were
24 you aware in 1971, that the RCM Police were called in by
25 the Attorney General's Department...

1 A. No, I was not aware of it.

2 Q. Judge Anderson testified before the Commission here that
3 he felt that that occurrence was common knowledge within
4 the group, the criminal law group at the department. Did
5 you ever discuss that?

6 A. Well, there was not a criminal law group within the
7 department.

8 Q. Well, let's take the group then of the senior people like
9 yourself, Mr. Anderson and the few that you've described
10 here...earlier here today that would be there. Judge
11 Anderson thought it was common knowledge within that
12 group, I assume, that the RCM Police had gone to Sydney.

13 A. Well, I don't...

14 Q. That's in Volume...

15 A. ...have any knowledge of it and I am quite satisfied that I
16 never knew anything of it. I don't...there is nothing in this
17 matter that twiggged anything when I first heard of the
18 reinvestigation and that was a lot closer to the matter then
19 than it is now, but I found it very difficult to try and
20 assume, hold the fort position of Judge ...

21 Q. Yes, we're not talking about that.

22 A. When Judge Anderson left, because with criminal matters I
23 found that he kept those to himself and very...he was very
24 close...

25 Q. Right.

1 A. to his chest about about them.

2 Q. He also testified, Mr. Gale, and this is Volume 50, page 9150
3 that he would talk with you three to four times a day about
4 various matters, do you recall that, having that much contact
5 with Mr. Anderson in 1971, Judge Anderson?

6 A. Oh, I can't recall having contact three or four times a day
7 with him about criminal matters. Certainly, there is a
8 practise of getting together in a coffee break time, Judge
9 Anderson lived on the way that I took home and he was
10 with me every evening getting a lift home. I would have
11 reason to contact him about some provincial summary
12 conviction matter or about some appeal.

13 Q. Yes. You agree that this matter in 1971 of somebody coming
14 forward and saying someone else did the murder would be
15 unusual?

16 3:30 p.m.

17 A. Yes, it would be unusual.

18 Q. Would you expect it to be discussed amongst the senior
19 people in the Department if they were seeing each other three
20 or four times a day, driving home with each other, and so on?

21 A. No, I would not have expected it to be discussed by Judge
22 Anderson, because he was very close-mouthed about what
23 was going with police investigations. And if I didn't need to
24 know about it, I certainly wasn't told about it.

25 Q. But it's his testimony, and this is Volume 50, page 9142,

1 9151, 9139, that he thought it was common knowledge and
2 that it, in fact, had been discussed. But you weren't privy to
3 any of those discussions, if they did take place.

4 A. If they took place, I certainly did not know about them.

5 Q. Fine. Are you aware or were you ever aware that Judge
6 Anderson was aware of the results that the Department, the
7 Attorney General's Department, through Judge Anderson, was
8 aware of the results of what the R.C.M. Police did in Sydney in
9 November of 1971?

10 A. No, because I knew nothing of the matter. I knew nothing of
11 it until the reinvestigation and, at some stage there, of finding
12 out.

13 Q. You were never told that either, what the results were.

14 A. No, I was not told what the results were.

15 Q. And for my friend's sake, I'm referring to Volume 50, page
16 9142, 9147, and 9148. Were you ever aware of what the
17 mandate was? You've talked about discussions with Mr. Coles
18 and so on about the R.C.M. Police in 1971. Were you ever
19 aware of what they were asked to do, what Al Marshall was
20 asked to do in 1971 before he went to Sydney?

21 A. No, I don't know what he was asked to do. I was not aware of
22 the matter and I haven't been able to find any written
23 material to indicate what the mandate was.

24 Q. Well, I suggest to you that what he was asked to do, and this
25 is Judge Anderson's testimony, was to do a polygraph and

1 nothing more, that that witness recalled.

2 MR. PINK

3 My Lord, Mr. Gale has said, I don't know how many times in
4 the last minute, that he doesn't know anything about what
5 happened in 1971. How can my friend keep asking him, putting
6 these propositions when he's already said he doesn't know what
7 occurred?

8 MR. PRINGLE

9 Well, I think, in part, I keep asking him because I recall
10 some reference this morning about some discussion that this
11 witness said he had with Mr. Coles about the 1971 matter and so
12 on.

13 MR. CHAIRMAN

14 That's subsequently.

15 MR. PRINGLE

16 That's subsequently.

17 MR. CHAIRMAN

18 In the eighties.

19 MR. PRINGLE

20 That's correct, My Lord, and I did ask him if at any time he
21 knew what the mandate was. However, he's answered that he did
22 not at any time.

23 MR. CHAIRMAN

24 He didn't know.

25 MR. PRINGLE

1 Know what the mandate was and I won't pursue that any
2 further and I suppose, in a way, I was trying to get some
3 reference on the record to what the mandate was. My friend is
4 quite right in rising.

5 MR. CHAIRMAN

6 That's right. It' just shows how prudent and alert your
7 learned friend is. He picked it up before I did.

8 BY MR. PRINGLE

9 Q. One further area, Mr. Gale, in Volume 32 and I refer to page
10 302 and that's Exhibit 125. Actually on page 301, Mr. Gale,
11 there's a title on this document. It's called "PRESS RELEASE
12 CONCERNING THE CASE OF DONALD MARSHALL, SECOND
13 DRAFT, JANAUARY 17, 1984." Did you have anything to do
14 with the first, second, or third draft press release of January,
15 1984 by the Department?

16 A. No, I did not.

17 Q. Have you ever seen them before?

18 A. I can't recall seeing it before, quite frankly.

19 Q. You don't recall being consulted in any way with respect to
20 the matters...

21 A. Oh, I may have been asked questions, but I didn't... I'm not, I
22 wasn't aware there was a press release. Certainly I'm aware
23 that the Attorney General made various comments at many
24 times on the Marshall case. But this, I have no rec... I was not
25 consulted on this one. I may have been asked questions but

1 it was not a case of doing any... knowing that it was a press
2 release.

3 Q. One thing that it probably does help us confirm at page 306,
4 in the third draft of the press release of January 17th, 1984 is
5 the reference to the Attorney General's files concerning the
6 prosecution of Donald Marshall being destroyed in January of
7 1979 after a period of seven years in accordance with the
8 approved records retention schedule. Were you asked about
9 that?

10 A. Well, the question was asked by the Deputy Attorney General
11 and the records people went through and found out that the,
12 those files had been destroyed at that time in accordance with
13 the retention schedule.

14 Q. One further reference, and I guess, again, this is probably for
15 the record, but I think it needs to be put on the record.
16 Volume 40, which is Exhibit 40. It's the R.C.M. Police contract,
17 My Lord.

18 A. I don't have it.

19 Q. Perhaps I could just read to you what I have. I'm referring to
20 page 29. Have you got it now?

21 A. I have it.

22 Q. Okay. Volume 40, page 29, My Lords, is the contract, R.C.M.
23 Police contract in existence at the relevant time 1982, is that
24 correct, Mr. Gale?

25 A. Yes, I believe so. It says it's entered into on the third day of

1 November '81.

2 Q Right. Refer to page 33, Paragraph 7. And that reads:

3 The provincial police services shall not without
4 the consent of the Solicitor General be required
5 to provide municipal police services in any
6 municipality having a population of more than
7 1500.

8 And you understand to be correct?

9 A. Yes, there is this 1500 limit that if a municipality had over
10 that, then it would have to make some arrangement for
11 policing, whether it be by the R.C.M.P. or creating its own
12 police force.

13 Q Yes, and Paragraph... Subparagraphs 2 and 3 of Paragraph 7
14 also deal with that aspect, is that correct?

15 A. Yes.

16 MR. PRINGLE

17 Those are all the questions I have. Thank you.

18 MR. ROSS

19 My Lords, I assure you I have only a few questions.

20 **EXAMINATION BY MR. ROSS**

21 Q Mr. Gale, I am the Anthony Ross you heard about and I'd like
22 to ask you one or two questions on behalf of Mr. Seale. It's
23 about the 1982 investigation. I guess you are aware that Mr.
24 Seale was particularly concerned about the reputation of his
25 son?

- 1 A. Yes, I'm aware of that.
- 2 Q. And, as a matter of fact, he came to see you about it at one
3 point.
- 4 A. He saw myself at one point. He saw the Attorney General, too.
- 5 Q. Yes, and as a matter of fact, he also called you from time to
6 time?
- 7 A. I have received calls from him, yes.
- 8 Q. And I take it from what we have seen that it was the position
9 of the Department that there was no reputation to be
10 protected, is that a fair statement?
- 11 A. No, I don't think that's a fair statement.
- 12 Q. Then I take it, sir, then there was a reputation to be
13 protected, am I correct then?
- 14 A. I don't...You've posed a question that puts one in a Catch-22
15 situation. There was the matter of having the matter
16 reinvestigated. He wanted some type of counsel to act on
17 behalf of his son because he wanted his reputation protected.
- 18 Q. I see, and I take...
- 19 A. And we indicated that we were not in a position to do that,
20 that the evidence would be called as it appeared. If he
21 wanted someone there, then perhaps he might ask the Court
22 on the reference to give him some type of standing so that
23 counsel could be present on behalf of the Seale family and
24 Sandy Seale.
- 25 Q. Sure, and that was actually communicated to Mr. Seale, wasn't

1 it?

2 A. To the best of my knowledge, it was, yes.

3 Q Yeah, but we all recognize that there was no way that he was
4 going to get standing. Was that a nice way to tell him to go
5 away?

6 A. I don't think it was... on a reference as we originally thought
7 of it, there might well be an ability for him to have some
8 standing.

9 Q I see, and that was the genuine position of the Department?

10 A. It was not a case of trying to deceive Mr. Seale, but Mr. Seale
11 was a very emotional man and he was quite concerned with
12 his son's reputation and I could well sympathize with him on
13 that, but he seemed to, at one point, believe that the
14 Department would not go out of its way to damage his son's
15 reputation, but at the same time, he would come in and he did
16 come in to the Attorney General's office with tape recordings
17 of media broadcasts and calls that he had from the media. So
18 Mr. Seale's emotions seemed to be being dragged back and
19 forth continuously on the matter.

20 Q I appreciate all of that but what I can't get past is the
21 information, the advice given to him by the Attorney
22 General's Department to go and get a lawyer and see whether
23 or not he could get standing. Were you serious?

24 A. I was serious on the view that if the matter was going to go
25 ahead as we had thought it was, that he might well have

MR. GALE, EXAM. BY MR. ROSS

1 standing in that regard. After that, he saw the Attorney
2 General and I did not feel it was my right to say anything
3 more than what the Attorney General had said on it. I guess
4 that's the best I can answer you on that point.

5 Q. I see. I note in Volume 17, Frank Edwards' notes, at page 15,
6 that there's a note on November the 8th, 1982 and Mr.
7 Edwards writes:

8 Gordon Gale called this morning to advise that he
9 has just spoken with Mr. Seale. Latter concerned
10 that I was not being straight with him and
11 wondering what I was going to do to protect his
son's reputation.

12 Now this is November, 1982. I understand the reference was
13 heard in January of 1983. Consistent with your recollection?

MR. CHAIRMAN

14
15 December.

MR. ROSS

16
17 Q. Sorry.

18 A. At which page are you reading from, Mr. Ross?

19 Q. Page 15 of Volume 17.

20 A. 15?

21 Q. Yes. So the reference was in December of '82.

22 A. Oh, yes, I see that.

23 Q. Yeah, but between this inquiry of Mr. Seale about the
24 reputation of his son and the time of the reference, you would
25 agree with me there was very little, if anything, could be

1 done.

2 A. There was little, if anything, but he seemed to feel that Mr.
3 Edwards was not dealing with it properly. And since I was
4 not dealing with the reference, I asked Mr. Edwards to talk to
5 Mr. Seale and see what, if anything could be done on the
6 matter.

7 Q. But isn't it fair that by that time you had known that Mr.
8 Edwards and Mr. Seale weren't seeing eye to eye and there
9 was very little that could be accomplished by Mr. Edwards
10 dealing with Mr. Seale?

11 A. Well, I know that there were times when Mr. Edwards and
12 Mr. Seale did not see eye to eye. Mr. Seale seemed to
13 vacillate back and forth on the matter. But Mr. Edwards had
14 conduct of the matter and I thought he was the one he should
15 talk to and, if there was some misunderstanding, that that
16 would hopefully get back, could be dealt with by the Attorney
17 General, if there was something that could be done.

18 Q. I see. I don't propose to pursue that point. Coming back very
19 quickly on just two short sections on this disclosure policy.
20 You indicated that as far as the policy manual, the Attorney
21 General's policy manual for prosecuting officers, that this
22 information could be obtained through the Freedom of
23 Information Act? That was your evidence?

24 A. It was my evidence that I saw no reason not to disclose the
25 matter because I saw no way that one could properly say that

1 it was protected by the Freedom of Information Act.

2 Q. Wouldn't it be easier just to put two copies in the barrister's
3 library?

4 A. Well, it may have been easier to put the notice in the Nova
5 Scotia Barrister Society Law News. Why it wasn't done, I
6 don't know.

7 Q. I see. And as far as disclosure itself is concerned, it still
8 appears as though disclosure is discretionary. Something that
9 is left up to the prosecuting officer. Is there any appeal from
10 the discretionary decision of the prosecuting officer as
11 regards to what to disclose and what not to disclose?

12 3:45 a.m.

13 A. Well certainly the Attorney General has the final decision as
14 to what will be disclosed or won't be disclosed and certainly
15 one can take it up with the Attorney General.

16 Q. Wouldn't it be a lot more practical, then, to have the Director
17 of Prosecutors to enclose a list of the items that they do not
18 propose to disclose so that defence counsel could then know
19 what they want to argue about?

20 MR. PINK

21 My Lord, my friend, first of all, I think has misrepresented
22 the terms of the policy. The policy is clearly written in terms
23 that "shall", the Crown shall make full disclosure and if there's
24 not going to be disclosure then that has to be referred to the
25 Director and I think everything else flows from that.

1 CHAIRMAN

2 That's true. What is it you're after, Mr. Ross?

3 MR. ROSS

4 There's just one or two things on disclosure for the benefit
5 of the practice.

6 CHAIRMAN

7 I realize that. And we've accomplished a great deal.
8 Everyone, if any defence counsel in Nova Scotia is not aware of the
9 policy now then they don't deserve to be defence counsel.

10 MR. ROSS

11 Well that might be true, My Lord, but as a matter of fact
12 some of us practice here and there are some of these intangibles
13 which...

14 CHAIRMAN

15 Well, the intangibles, we can't make anything on that.

16 MR. ROSS

17 I appreciate that and I'm not going to pursue it, My Lord.

18 Q. Tell me something, Mr. Gale, are you aware of a study that
19 was done between 1975 and 1979 of the administration of
20 criminal justice in the Province of Nova Scotia?

21 A. Between 1975 and 1979?

22 Q. Yes. Yes. My understanding is that...

23 A. I have no recollection of one in that time.

24 Q. No recollection of any study.

25 A. Not within that time frame, no.

press

Margaret E. Graham Discovery Service

298 PORTLAND STREET, DARTMOUTH, N.S. B2Y 1K4
PHONE: 469-5734

To: All Solicitors

From: Margaret Graham

Re: Daily Transcripts

In Volume 76, the headers at the top of pages 13606 to 13610 should have read EXAM. BY MR. WILDSMITH, instead of EXAM. BY MR. ROSS. Attached are the correct pages for insertion into your volume.

I apologize for any inconvenience this has caused.



M. Graham

MR. GALE, EXAM. BY MR. ROSS

1 Q. I see, I guess then I can't ask you anything about it.

2 MR. ROSS

3 Thank you very much, Mr. Gale.

EXAMINATION BY MR. WILDSMITH

4
5 Q. Mr. Gale, my name is Bruce Wildsmith and I'm here for the
6 Union of Nova Scotia Indians. I'd like to begin by turning
7 back to your job description, Exhibit 160, and to Item 3 on
8 that. You testified yesterday at page 13283 in the transcript
9 that Item 3, you thought was added at a later date after your
10 original appointment in 1972?

11 A. Yes.

12 Q. Perhaps you could indicate when it was, to the best of your
13 recollection, and how and why it came to be added to your job
14 description?

15 A. The only reason I know it was added to my job description is
16 because I was starting to deal with matters concerning native
17 policing.

18 Q. And at whose direction was it added to your job description?

19 A. Well, this is just a list of duties prepared by the Deputy
20 Attorney General. I presume he put it there, it was prepared
21 by him.

22 Q. So you believe that it came from the Deputy Attorney
23 General, Mr. Coles?

24 A. Yes.

25 Q. And can you give me an approximate date?

MR. GALE, EXAM. BY MR. WILDSMITH

1 Q I see, I guess then I can't ask you anything about it.

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3 Thank you very much, Mr. Gale.

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10 original appointment in 1972?

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20 Attorney General. I presume he put it there, it was prepared
21 by him.

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23 General, Mr. Coles?

24 A. Yes.

25 Q. And can you give me an approximate date?

MR. GALE, EXAM. BY MR. ROSS

1 A. I think it's probably around 1975, quite frankly.

2 Q. And how long did it continue to be one of your duties?

3 A. Oh, it has been stuck on my job description for some time.

4 I'm not quite sure. It's not there anymore. I had long ago
5 made it plain to the Deputy Attorney General that it was not a
6 function that I saw myself performing. That I saw myself
7 acting in the criminal area and that those things dealing with
8 policing, those things that might be criminally oriented, I
9 could see him assigning to me, but those matters which were
10 constitutional or civil in nature, I didn't have the expertise to
11 deal with them, nor the resources to be able to handle them.
12 And that whenever those arose, I made arrangements that
13 they be dealt with the Deputy by people who had some
14 knowledge in those fields.

15 Q. If I understand you correctly, you're saying that this was
16 assigned to you without your, without consultation or
17 agreement on your part.

18 A. That's correct.

19 CHAIRMAN

20 Job descriptions are often prepared to catching the eye of
21 Treasury Board, I think.

22 A. Well that is more so, My Lord, in regard to the Exhibit 159.

23 CHAIRMAN

24 It sometime...

25 MR. WILDSMITH

MR. GALE, EXAM. BY MR. WILD SMITH

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21 Treasury Board, I think.

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25 MR. WILD SMITH

1 Fair enough.

2 Q And I think you partly answered one of my other questions
3 which was when it says all legal matters relating to native
4 people, it doesn't just include criminal matters but it includes
5 constitutional matters, family law matters, land claims, treaty
6 rights, taxation, every matter.

7 A. Yes. And, quite frankly, I made my objections known to Mr.
8 Coles and whenever any matter came up that was not within
9 a criminal area, there was no problem in getting it given to a
10 person who dealt in that area, or had more expertise in it.

11 Q I take it you would agree that it's somewhat anomalous for a
12 Director of Criminal to have responsibility for all matters
13 concerning Indians?

14 A. Yes.

15 Q Do you think there was an assumption on Mr. Coles' part that
16 all Indian legal matters are criminal?

17 COMMISSIONER EVANS

18 Why don't you ask Mr. Coles?

19 A. Well, I don't know what the assumption on Mr. Coles' part
20 was at the particular time. I think you have to ask him what
21 that assumption was.

22 Q Fair enough. And can you indicate whether you've had any
23 contact with native people outside of your official duties?

24 A. No, I have not had any contact with native people outside my
25 official duties.

1 Fair enough.

2 Q. And I think you partly answered one of my other questions
3 which was when it says all legal matters relating to native
4 people, it doesn't just include criminal matters but it includes
5 constitutional matters, family law matters, land claims, treaty
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23 contact with native people outside of your official duties?

24 A. No, I have not had any contact with native people outside my
25 official duties.

1 Q I'd like to turn your attention to the letter that appears in
2 Volume 31 at page 126 written by Mr. Edwards to Mr.
3 Herschorn and, in particular, to the last couple of lines at the
4 bottom of page 126. There Mr. Edwards is saying that, "The
5 police investigators certainly were not motivated by malice
6 toward either the accused or, has been suggested in some
7 reports, prejudice towards his race." Was that a statement
8 that you agreed or disagreed with?

9 A. It's a statement made by Mr. Edwards, who is from the
10 Sydney area, that I accepted. There was nothing to indicate
11 that there, it was otherwise to me. I...

12 Q. You accepted it at face value?

13 A. I just accepted it at face value. He, in my view, was in a
14 better position to know that I.

15 Q. Was that one of the subjects in your mind for discussion in
16 calling Mr. Edwards in for the meeting, I believe January the
17 25th or 6th?

18 A. No, that, I suppose, is something that might have been raised
19 at it, but that meeting soon came down to a contest of the
20 Crown will offer a position, the Crown will offer no position...

21 Q. Yes, and I think you've gone over that in great detail with
22 other counsel and my only question to you was whether that
23 was a subject that was on your mind for discussion with Mr.
24 Edwards to verify or otherwise.

25 A. No, it was not on my mind to verify it at that meeting.

MR. GALE, EXAM. BY MR. WILDSMITH

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22 other counsel and my only question to you was whether that
23 was a subject that was on your mind for discussion with Mr.
24 Edwards to verify or otherwise.

25 A. No, it was not on my mind to verify it at that meeting.

1 Q. Did you have any knowledge of any investigation or any
2 information on this subject of possible prejudice by police
3 investigators?

4 A. No, I had no knowledge of any specific investigation on the
5 matter. I accepted from Mr. Edwards the statement that he
6 made because I thought he was...

7 Q. If we assume..

8 A. In a better position.

9 Q. If we assume that Mr. Edwards had no more information that
10 you had on the subject, would you agree with me that it
11 would be improper to represent that or make it a point of
12 emphasis as he suggests in the letter to the Appeal Division?

13 A. Well, if he had no more information than I had on the matter,
14 I don't think I would have made a representation on the
15 matter to the Appeal Division. I think I testified yesterday
16 that I did not understand really why that particular
17 submission was being made.

18 Q. Thank you. Let's move on the Court Workers Program. You
19 were asked some information about it by Commission counsel,
20 Mr. MacDonald and I don't have a transcript of your remarks
21 on this since it was this morning but I had the sense, which
22 maybe you can correct or verify, is that you were laying some
23 blame for the fact the there was not a Court Worker Program
24 in place today at the doorstep of the Union of Nova Scotia
25 Indians. Did I misinterpret you about that?

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22 maybe you can correct or verify, is that you were laying some
23 blame for the fact the there was not a Court Worker Program
24 in place today at the doorstep of the Union of Nova Scotia
25 Indians. Did I misinterpret you about that?

1 A. I'm not trying to lay the blame at anybody's doorstep except
2 to indicate that there seemed to be some difference of opinion
3 as to which funding should be used where and the Attorney
4 General having expressed the view that unless it was for all
5 native people, he was not going to get into, involved in one
6 that dealt with status Indians as opposed to non-status and
7 Métis.

8 Q. Perhaps you could take a look in Volume 41 at page 73 and
9 indicate whether or not this is the kind of matter that you
10 were referring to in your earlier testimony. In particular, I
11 think the first paragraph of that letter. It's not written by the
12 Attorney General, but is it what you were referring to?

13 A. Yes.

14 Q. Now you notice that that was in 1976.

15 3:57 p.m.

16 A. Well, it could be. The copy I have is blurred as far as the date
17 goes. It may be a "6".

18 Q. You see the third line, they're referring to March the 8th,
19 1976, in the body of the letter?

20 A. Yes.

21 Q. That part is clear. If you look now to page 148, you'll see a
22 letter by the same gentleman, Mr. MacDonald, referring to the
23 re-establishment of the Court Worker Program. And if you
24 look at page, back a few pages at page 143, you can see
25

1 attached a memorandum to the Executive Council relative to
2 the re-establishment of the Native Court Workers program.

3 So would you agree that in 1979, whatever problems might
4 have arisen with respect to representing non-status Indians
5 or accepting contribution of provincial monies had dissipated?

6 A. I assume that they must have if the government, if the
7 Attorney General was recommending that it be re-
8 established.

9 Q. And if you turn to page 203, you'll see that the Attorney
10 General at the time was prepared to accept \$5,000 from the
11 Union of Nova Scotia Indians to be the provincial contribution
12 to the program. Did you have any knowledge of that
13 yourself?

14 A. No, I have no knowledge of it. I was not involved with the
15 matter, other than the, I think two letters and I believe one
16 memorandum I wrote on it.

17 Q. So in light of the testimony you gave this morning and what
18 we've just looked at today, can you offer any reason as to
19 why there is not a Native Court Workers Program in place in
20 the province?

21 A. I can't answer the question because I have not dealt with the
22 Native Court Worker Program and I have no knowledge of
23 why there is or is not one.

24 Q. Thank you. Would you turn to page 198 now in that volume?
25 This letter concerns a bill for the services of a court

MR. GALE, EXAM. BY MR. WILDSMITH

1 interpreter. Did you know whether or not interpreters were
2 being used with Micmac defendants in Nova Scotia in the
3 period leading up to October, 1979?

4 A. No, I know that interpreters have been used for various cases,
5 but those arrangements are made with our administrative
6 section and I have no reason... I have no reason to know
7 whether it was with Micmac people or people speaking any
8 other language.

9 Q. Well, it is referring to Micmac defendants and services
10 provided by the Union of Nova Scotia Indians.

11 A. Well, I can see that here, but you asked me if prior to that
12 time did I know if there were interpreters being provided.

13 Q. What I'm wondering is if you had knowledge of the fact that
14 interpreters were being provided in the Criminal Courts?

15 A. I had knowledge of the fact that interpreters were being
16 provided but not knowledge as to what groups or what
17 languages interpreters were being provided because that was
18 something that was dealt with in our courts and registry
19 section.

20 Q. So with respect to Indian defendants, you had no knowledge
21 as to who was providing the services and at whose expense?

22 A. That's correct. Except that I know that if interpreters were
23 arranged for by our Department, they were normally paid for
24 by our Department. That was the understanding I had.

25 Q. I'm sorry, did you say if they were requested by your

MR. GALE, EXAM. BY MR. WILDSMITH

1 Department, they were paid for by your Department?

2 A. If a request was made to our Department for an interpreter
3 and one was obtained, then that service would be provided...
4 paid for by the Department, was my understanding. Because
5 I had had requests sometimes from prosecutors that they had
6 an individual that spoke a certain language and where were
7 they going to get an interpreter and I would tell them to call
8 Mr. MacDonald and make the arrangements there because the
9 Department, as I understood it, had contact sources and that
10 the Department would pay for those services.

11 Q. Do you have any recollection of ever being contacted with
12 respect to that concerning a native or Indian accused?

13 A. No, I have no recollection of ever being contacted in regard to
14 a native.

15 Q. Okay, let me direct your attention to the policing question
16 now. I think from your earlier testimony, you indicated that
17 that was an area that you had some activity and some active
18 responsibility, is that correct?

19 A. Yes, I was involved in that.

20 Q. The major proposal that the Union of Nova Scotia Indians put
21 forward is, I think, something you referred to as a municipal
22 type of police force. Is this what you understand to be often
23 referred to as Option 3A?

24 A. Yes.

25 Q. And could you just elaborate for a moment on what it is you

1 understand Option 3A to be?

2 A. My understanding is that the Band Council would appoint
3 police officers who would have full police powers and in the
4 same way that a municipality appoints a police force to police
5 the municipality.

6 Q. And, therefore, that police force would have some
7 responsibility to the Indian community?

8 A. Yes.

9 Q. And, as well, that police force and police officers would have
10 full authority to enforce all laws—federal, provincial, band by-
11 laws as well on Indian reserves?

12 A. Yes, that's what my understanding was.

13 Q. And their jurisdiction was restricted to Indian reserves?

14 A. Yes, my understanding is that it would be, yes. In the same
15 way as a municipal force's jurisdiction is restricted.

16 Q. Can you tell us why today we don't have that system in place
17 on Indian reserves?

18 A. The Attorney General felt that under the Police Act that he
19 had a responsibility to be answerable for police actions, that
20 he would not, in fact, be able to exercise any jurisdiction in
21 regard to such a police force. That if there is, as I understood,
22 as I recall, there was some suggestion that there be some
23 financial contribution to such a police force. That since we did
24 not make any contribution to municipal policing, that we
25 would not make any to the Indian police force that we're

1 talking of.

2 Q. So the two...

3 A. Those are basically, I think, the reasons.

4 Q. So the two reasons are lack of accountability to the Attorney
5 General of Nova Scotia and a reluctance, if I can put it that
6 way, on the part of the province to contribute to financing,
7 policing, on Indian reserves. Is that correct?

8 A. To financing a municipal type of policing on Indian reserves,
9 yes.

10 Q. Maybe I missed something in the distinction you're drawing.

11 A. Well, later..

12 Q. What do you mean by...

13 A. On the other option, the province did agree to financing,
14 partial financing of...

15 Q. R.C.M.P. special constables?

16 A. Yes.

17 Q. Am I correct in saying that under the policing agreement now
18 with the R.C.M.P. that the province has, Indian reserves are
19 policed, at least outside of municipal units, outside of cities,
20 by the R.C.M.P. under that provincial policing service?

21 A. That's correct.

22 Q. And, therefore, am I correct in believing that policing on
23 those Indian reserves is now being paid for by the province?

24 A. Yes, it's paid. The provincial share, of that contract is paid for
25 by the province and those policing on the reserves falls to the

MR. GALE, EXAM. BY MR. WILDSMITH

1 detachment having the geographical area on which the
2 reserve is located.

3 Q. Fair enough. And you just referred to, I think, the provincial
4 share. Is it the case that the cost of the R.C.M.P. policing as a
5 provincial police force is not paid for entirely by the
6 province?

7 A. That's correct. There's a funding formula there where the...

8 Q. Can you tell us what it is?

9 A. I think by 1991, that it rises to the fact that the province
10 pays 70% of the actual cost of the R.C.M.P. and that that has
11 been rising, I think, at the rate of 2% a year.

12 Q. Since 1981?

13 A. I believe so, but I... There may have been at a lesser
14 percentage rate at one...

MR. CHAIRMAN

15
16 It used to be 40% at one time, years ago.

MR. GALE

17
18 A. I believe so, it may have been. But under this contract... I
19 think there is a certain percentage rate for a certain number
20 of years and then beyond that, it rose at a different rate. But,
21 in any event, the province each year has been paying a
22 percentage of the actual cost of the R.C.M.P. under the
23 contract.

24 Q. Okay. Now coming back to this question of the Attorney
25 General as being concerned about not having ultimate

MR. GALE, EXAM. BY MR. WILDSMITH

1 authority over the Indian police force. I think I understood
2 your testimony yesterday, it appears in the transcript at
3 13329, as you saying the R.C.M.P. was not ultimately
4 accountable to the Attorney General of Nova Scotia. That,
5 ultimately, the R.C.M.P. were accountable to the Commissioner
6 in Ottawa.

7 A. Well, they ultimately, I guess, are accountable to the
8 Commissioner in Ottawa, but there is an accountability of the
9 Commissioner to the Attorney General under the contract on
10 certain issues. There's certainly a satisfaction of the Attorney
11 General that there is a sufficient administrative set-up within
12 the R.C.M.P. to insure proper training and monitoring of the
13 actions of the members of the R.C.M.P.

14 Q. Well, is it your evidence that the R.C.M.P. is ultimately
15 accountable to the Attorney General of Nova Scotia?

16 A. Well, for those...

17 Q. Services provided for in the R.C.M.P. policing agreement?

MR. PINK

19 My Lord, the contract between the R.C.M.P. and the province
20 is in evidence and it speaks for itself. And if he's going to ask Mr.
21 Gale to comment on it, perhaps he could at least put it in front of
22 him. But I'm not even sure what benefit it is to have him
23 comment.

MR. WILDSMITH

24
25 Well, from my stand-point, there is a benefit.

MR. GALE, EXAM. BY MR. WILDSMITH

1 MR. CHAIRMAN

2 What's the benefit?

3 MR. WILDSMITH

4 The benefit is, he's on one hand saying that the problem
5 with an Indian police force is they're not accountable to the
6 Attorney General. Now I'll come back to that in more detail but...

7 MR. CHAIRMAN

8 Don't. Don't. Carry on.

9 MR. WILDSMITH

10 ...he gave testimony yesterday that the R.C.M.P. were not.
11 And I want him to clarify whether there is, in fact, a dual
12 standard in some sense.

13 MR. CHAIRMAN

14 My understanding is that the R.C... The Attorney General of
15 the province is responsible for law enforcement within the
16 province. He or she may discharge that responsibility either
17 through municipal or provincial or federal, or the R.C.M.P. So I've
18 always assumed, tell me if I'm wrong, that as far as the
19 enforcement of law in the province, the R.C.M.P. is accountable to
20 the Attorney General, is that not correct?

21 MR. GALE

22 They're accountable to the Attorney General for the
23 enforcement of the law. If they're not enforcing it, they have to
24 explain to him why...

25

MR. GALE, EXAM. BY MR. WILDSMITH

1 MR. CHAIRMAN

2 That's right.

3 MR. GALE

4 They're unable to do so.

5 MR. CHAIRMAN

6 Their accountability to the Commissioner would be for their,
7 I suppose, their behaviour as policemen, whether they polish...

8 MR. GALE

9 We hear, under the contract, all disciplinary matters. All
10 administrative matters are dealt with, remain the responsibility of
11 the R.C.M.P.

12 MR. CHAIRMAN

13 Right. Does that answer your question?

14 MR. WILDSMITH

15 Q. In part. Perhaps the explanation should be directed to his
16 comment yesterday. It appears in the transcript at 13329,
17 and the question asked by Mr. MacDonald was:

18 Q. As the Nova Scotia police force, is the
19 R.C.M.P. ultimate direction and control of the
20 Attorney General?

21 And your answer was:

22 A. No, they're under contract to form, to be the
23 Nova Scotia police but perform that function,
24 but the ultimate control of the force is still
25 with the Commissioner in Ottawa.

MR. GALE, EXAM. BY MR. WILDSMITH

1 Q. Cont'd

2 Now could you clarify whether or not the RCMP are ultimately
3 under the direction and control of the Attorney General?

4 A. If it's matter of..

5 4:12 p.m.

6 MR. PINK

7 Again, My Lord, maybe he could at least have the contract
8 so he's not just dealing from memory. Page 32 of Volume 40,
9 Clauses 3 and 4 of the contract spell that out.

10 CHAIRMAN

11 Well, if it does then why do we have to have it repeated?
12 That's always subject to emergency powers.

13 MR. WILDSMITH

14 Well I'll move on the...

15 Q. Was it your testimony, Mr. Gale, that one of your
16 responsibilities was to negotiate this contract?

17 A. No, one of my responsibilities was not to negotiate this
18 contract. I did not negotiate this contract.

19 Q. So coming back to the Indian policing question, I'd like to
20 direct your attention to a letter written by Attorney General
21 Pace, it appears in Volume 41 at page 106. Now is this the
22 letter that expresses the view, I think, that you've just
23 articulated. It was dated April the 4th, 1978, third paragraph
24 refers to the concept being really a municipal police force.

25 A. Yes.

MR. GALE, EXAM. BY MR. WILDSMITH

1 Q. And it goes on to say that the Police Act, the province does
2 not provide for this concept and accordingly the Attorney
3 General...

4 A. This is the view I was trying to articulate, yes.

5 Q. Was that letter written in consultation with you in any way?

6 A. The Attorney General discussed the policing matter with me.
7 He had his own view, he wrote the letter.

8 Q. I see. What was your view?

9 A. Well I, at that time, didn't take issue with him that certainly,
10 that the, if that was the position he wanted to take, I was not
11 going to take issue with him on it.

12 Q. Did you hold a contrary view?

13 A. I don't know at this point in time whether I did or not. I was
14 following his directions and doing his bidding.

15 Q. Let me refer you to page 135...

COMMISSIONER EVANS

17 What different would it make if you had a view and he had
18 a contrary view, he is the Minister and he sets out the policy and
19 you follow the policy, isn't that it?

20 A. That's correct.

MR. WILDSMITH

22 Well, with respect, My Lord, the reason I'm asking the
23 question is he's, the Attorney General's expressing a view about
24 the Police Act and the reasons why a police force could not be put
25 in place.

MR. GALE, EXAM. BY MR. WILDSMITH

1 COMMISSIONER EVANS

2 Right.

3 MR. WILDSMITH

4 And my interest is in examining the reasons that were
5 articulated. Now possibly if it's just a question of...

6 COMMISSIONER EVANS

7 Ask the Minister. That's where you get that information.

8 MR. WILDSMITH

9 Well, I asked the Minister when he was here and he had
10 very limited recollection. Then if you trace these documents, he
11 ceases to be Attorney General when a response to his letter is
12 sent. I'd like to direct Mr. Gale to the response that was received
13 from the Minister of Indian Affairs. It's found at page 135 and
14 addressed to Mr. Pace's successor.

15 Q. And I direct your attention to the third paragraph in the
16 letter at page 135. It says, "The RCMP, Department of Justice
17 and my own Department (meaning Indian Affairs) have
18 reviewed the matter very carefully and it is our combined
19 opinion that legislative authority exists to accommodate the
20 Indian request." And then there's a reference to Section 34 of
21 the Police Act and the concept of special constables appointed
22 by the Attorney General of Nova Scotia. Is this a letter that
23 you saw?

24 A. I may have seen it, I don't know. I can't tell you whether I
25 saw it or not.

MR. GALE, EXAM. BY MR. WILDSMITH

1 Q. Do you have any view about the correctness of the federal
2 minister's position?

3 A. Well, certainly there's the ability under the Police Act to
4 appoint special constables and I suppose if the government as
5 a policy, wanted to do that, they could so do it.

6 Q. So you're suggesting the power is there under the Police Act if
7 the will is there to exercise it?

8 A. Yes. There have been special constables appointed for
9 various provincial enforcement bodies.

10 Q. Thank you. I direct your attention to page 217 in here now.
11 217. There's a letter written by Mr. Coles referring to the fact
12 that Attorney General approved in principle the concept of
13 option 3A that we've been referring to. Was this discussed
14 with you?

15 A. I think the only thing that I had on this particular matter was
16 the direction of Mr. Coles to follow up on it. I don't recall
17 being advised or having this matter discussed with me.

18 Q. Yes. And you'll see your name in the third paragraph saying,
19 "I'm asking Mr. Gordon Gale of this Department to follow up
20 on the subject and arrange a meeting." So it appears to me as
21 though you were being assigned by Mr. Coles the
22 responsibility to follow-up on this option 3A - policing. That
23 much is correct, is it?

24 A. He's asking, saying that he's asking me to follow up on it, yes.

25 Q. Now if you turn back a page, two pages really, you'll see a

MR. GALE, EXAM. BY MR. WILDSMITH

1 letter that followed this one from the Union of Nova Scotia
2 Indians to Mr. Alan Clarke in the Department of Social
3 Services. Do you understand Mr. Clarke to be the coordinator
4 for the Province on native issues?

5 A. Yes.

6 Q. And you'll see that, top of page 216, the position of the Union
7 is that what, all that is required is a letter confirming that
8 option 3A is considered a valid program.

9 A. Yes, I see that.

10 Q. Do you recall if a letter of that nature was ever sent?

11 A. I have no specific recollection of a letter being sent.

12 Q. And what about with respect to Mr. Gale's instructions to
13 follow up on this. Do you recall anything being done to follow
14 up on the notion of option 3A - policing?

15 A. Well, it was Mr. Coles' instructions to follow up and they were
16 to me. No, I can't specifically recall what was done. I know
17 that around this time there, I think it was around this time
18 that there may have been a proposal to consider the
19 Amerindian Program.

20 Q. That's an example of a 3A, option 3A program?

21 A. Yes.

22 Q. Would you turn to page 233. See if this might help refresh
23 your memory at all. It's a month or so later than the previous
24 correspondence and it referred to Mr. Coles and it says,
25 "Attached (from the Union of Nova Scotia Indians) are our

1 brief comments on option 3A for our report to Policy Board."

2 Now am I correct in thinking that about this time in 1980 the
3 issue of option 3A - policing, was going to the Policy Board of
4 the Province of Nova Scotia?

5 A. I can't answer your question. I don't know whether it went
6 to Policy Board or not.

7 Q. So does this mean that you were not informed of that issue?
8 It was all Gordon Coles.

9 A. I found that at stages that Mr. Coles was dealing with the
10 matter and that I was not being advised of what was going
11 on. That the matter also seemed to be getting involved with
12 Mr. Clarke's office and with the tri-partite committee.

13 Q. Were you a member of the tri-partite committee?

14 A. No, I was not a member of that. I was asked to attend, I
15 believe two meetings, because there was a couple of subjects
16 dealing with the policing on them and to report what the
17 position of the Attorney General was on those matters.

18 Q. Just to, two follow-up questions. This reference to Policy
19 Board, could you explain for the record whether Policy Board
20 was a Cabinet or whether it was an executive branch of
21 government. What was Policy Board?

22 A. It was considered to be a department but Policy Board itself
23 was made up of a number of Cabinet ministers who sat and
24 determined policy questions. There was also a Management
25 Board that had another group of Ministers who sat and

1 determined financial questions. And sometimes things would
2 have to go through both and then go to Cabinet before they
3 would be dealt with.

4 Q. If it did go to Policy Board as this memo suggests, it's likely it
5 went then to a committee or group composed of Cabinet
6 ministers?

7 A. It would first, undoubtedly have had the civil servants that
8 work for Policy Board, but I would normally expect that it
9 would get onto the agenda of the Ministers and be dealt with
10 in one way or another.

11 Q. And I direct you to the, one passage on page 234. At the end
12 of the first paragraph it suggests, "Funding is expected solely
13 from the federal government for this limited police force on
14 reserves similar to existing arrangements in Quebec." Was it
15 your understanding that the Union of Nova Scotia Indians
16 simply wanted a letter of approval in principle but expected
17 all the money to come from the federal government?

18 A. Well, at this point in time I'm not really familiar with this at
19 that point in time. I certainly know that there was, the
20 position that I had understood the Union was taking was that
21 they wanted federal funding and they did not want provincial
22 funding.

23 Q. I turn your attention now to page 275 which is the minutes of
24 one of these tri-partite committee meetings that you just
25 mentioned dated June the 13th, 1983.

1 A. Um-hmm.

2 Q. And this was a meeting in which you were in attendance and
3 you're reported as saying in the second paragraph, "Mr. Gale
4 indicated the service is not a provincial responsibility but a
5 federal responsibility but they're willing to assist in the
6 program stating a preference for 3B," and then saying at the
7 end, "Apparently if this method of policing (meaning the
8 Amerindian policing in Quebec, option 3A) was adopted, they
9 would not be accountable to the provincial Attorney General."
10 So you are articulating the same reason there, is that correct?
11 Are these minutes correct?

12 4:25 p.m.

13 A. Yes, I have no reason to doubt that they're not correct and the
14 position I would have articulated is that that I was told to
15 articulate by the Minister.

16 Q. By the Minister or Deputy Minister or both?

17 A. Or by the Deputy Minister.

18 Q. Do you recall which?

19 A. It would be one or the other, I don't recall which one it was.

20 Q. Do I take from your evidence the suggestion that in going to
21 this meeting, you had received instructions or directions from
22 a superior to put forward the view that 3A was not an option
23 because...

24 A. I would not have stated it, if I had not received directions on
25 it. I was simply reporting the position of the Attorney

1 General, according to the directions I had received. Now
2 whether they came from the Deputy or from the Minister
3 himself, I can't at this point tell you.

4 Q. Well, you will recall the letter that I referred you to from
5 Minister Faulkner, expressing a different viewpoint about the
6 powers under the Police Act. Do you know whether or not
7 any research or any legal opinion was formed on which was
8 the correct view about accountability to the provincial
9 Attorney General?

10 A. Not that I'm aware of, and I can only assume that...Whether
11 there was or there wasn't, Mr. Faulkner's viewpoint was not
12 accepted by the Attorney General.

13 Q. Now as I go through Volume 41, I referred you to this notion
14 that perhaps Option 3A went to Policy Board in and about
15 early 1980. I've now referred you to some minutes that are
16 in June of 1983. Can you tell us, and I don't see any other
17 documentation on this issue between 1980 and 1983. Can
18 you help us out as to what transpired over that
19 approximately three-year period on this issue of Option 3A?

20 A. No, I can't help you out on it. I know that, originally, I had
21 had a series of meetings with the Union of Nova Scotia
22 Indians and that they were certainly dealing with the matter.
23 I know that there was a delegation that consisted of some
24 people from the representatives of the Amerindian police that
25 were with the Union people and, no, I cannot assist you on it.

1 I know that for a period of time I had some active
2 involvement in the matter and, at other periods, it was a
3 matter of just communicating what the Department's position
4 on the matter was. I can only assume that, in some of these,
5 Mr. Coles or the Minister must have decided to deal with
6 them themselves or through others.

7 Q. Is it fair then for me to think that whatever you did in
8 respect of this, you were not exercising your own
9 independent judgement, but were relaying the position of Mr.
10 Coles or the Minister?

11 A. That's quite correct.

12 Q. Fair enough. Two other areas, very quickly. I think you
13 testified that Mr. MacNeil, Donald C. MacNeil, was in private
14 practice in about 1971, but was acting as Crown Prosecutor
15 for Cape Breton County?

16 A. He was under a retainer to act as prosecuting officer, to my
17 recollection at that time. He had previously been a member
18 of the Smith government before that, a Cabinet Minister, and
19 upon his defeat, went back and became the prosecuting
20 officer. I'm not sure that he, in fact, had any private practice,
21 but he was on a retainer, to my knowledge, to act in that
22 capacity.

23 Q. Is this retainer an appointment-at-will?

24 A. Well, the appointment is under the Prosecuting Officers Act,
25 which provides that the Attorney General appoints, may

MR. GALE, EXAM. BY MR. WILD SMITH

1 appoint a prosecuting officer but the removal of the
2 prosecuting officer requires a decision of Cabinet.

3 Q. Mr. MacNeil ceased to be Crown Prosecutor at some point
4 between 1971 and 1978, is that correct?

5 A. Well, I know he ceased to become prosecuting officer. I'm
6 not... I can't place a date on it at the moment, but it may well
7 be the...

8 Q. Do you have any knowledge of the circumstances?

9 A. I believe that there were domestic problems.

MR. CHAIRMAN

11 Let's put it another way. Did it have anything to do with
12 discharge of his duties as Crown Prosecutor, to your knowledge?

MR. GALE

14 Not to my knowledge.

MR. CHAIRMAN

16 That's all we're interested in hearing.

BY MR. WILD SMITH

18 Q. Just one supplementary question. Was he removed through a
19 Cabinet Order or through resignation?

20 A. I think that he was removed through resignation that it was
21 requested and, well, that he, in fact, was removed that way.
22 But I can't be certain.

23 Q. Thank you. And just one other area, have you had occasion as
24 Director of Criminal to look at the extent to which inquiries
25 may be made of jury members on any matters?

MR. GALE, EXAM. BY MR. WILDSMITH

1 A. Just through my general knowledge of the law, which, as I
2 recall it, is that you can only make an inquiry of a jury
3 member if it's an offence that is being investigated, such as
4 supporting a juror or bribing a juror in some way.

5 Q. We've had some suggestion that no verification of a juror
6 making a comment that's been reported in the media. Not
7 directly about the deliberations in the case, but a later
8 reflection in 1982, I believe. The quotation attributed to the
9 juror is, "With one red skin and one Negro involved, it was
10 like two dogs in a field." We know that this juror was
11 probably referring to the Marshall case. Do you have any
12 views or can you assist us at all in understanding whether it
13 would be an offence to ask the juror to verify whether he
14 expressed this view?

15 A. Well, it's a view that was expressed outside after the matter.
16 I don't think there's any, in my view, I don't think there's
17 anything wrong, any offence in asking him if he's made that
18 statement. I don't know that you can ask him if he made that
19 statement during the jury deliberations.

20 Q. But you think that it maybe permissible to ask the juror if he
21 made the remark to a journalist, "With one red skin and one
22 Negro involved, it was like two dogs in a field," et cetera?

23 A. My off-the-top-of-my-head view is that I see nothing wrong
24 in asking him if it was made afterwards, if you're talking
25 about it having been made in 1982.

MR. GALE, EXAM. BY MR. WILDSMITH

1 Q. Very good.

2 A. I don't see anything...

3 Q. Thank you.

4 A. To prevent it.

5 MR. WILDSMITH

6 Those are my questions.

7 MR. PINK

8 My Lord, Mr. Gale has been on the stand for two and a half
9 hours. I'm only going to be very short, but does he want a break?

10 MR. GALE

11 No, if you're going to be very short, I'll just bear with it.

12 MR. PINK

13 My Lord, there are a number of areas that my friend, Ms.
14 Edwardh covered that I'm not going to deal with, the areas of
15 general policy that have been dealt with by the researchers and I
16 just wanted to draw that to Your Lordship's attention because I
17 think there are things that have to be clarified, but hopefully they
18 will be through the research projects and I won't deal with them
19 specifically with this witness, who has been interviewed by the
20 researchers and has made his contribution at that level.

21 EXAMINATION BY MR. PINK

22
23 Q. Mr. Gale, could you look at Volume 32 at page 273?

24 A. 273?

25 Q. Yes, that's regarding the issue of an inquiry and the apparent

1 views of Mr. Coles. And Mr. MacDonald directed you to the
2 final paragraph and didn't direct you to the final sentence.
3 And I just wanted to know if the concern expressed or the
4 qualification expressed by Mr. Coles regarding the civil
5 proceedings and the ongoing civil litigation was a matter that
6 was discussed with you or discussed in the Department?

7 A. There was some discussion within the Department that the
8 civil suits might well bring forth all the information that was
9 necessary in this matter and to what extent that might affect
10 the holding, the calling of an inquiry.

11 Q. And, in fact, you looked earlier at the note of July 8th of
12 Attorney General How, where there was also reference to
13 awaiting the outcome of the civil litigation? Do you recall
14 seeing that earlier today?

15 A. Yes.

16 Q. You were asked some questions by Ms. Edwardh regarding
17 the shoplifting charge in Sydney. Would you agree with me
18 that any type of consultation between the Deputy and the
19 prosecuting officer would be dependent upon time and
20 whether there was sufficient time to consult?

21 A. Yes, that would be a factor to take into account.

22 Q. You were asked about the competence of the Sydney Police
23 Department and a review of the competence. That is an issue
24 that's been dealt with by the research staff. But the case,
25 particularly, that was involved that Mr. Edwards spoke about,

1 are you aware that Mr. Herschorn and Mr. Edwards met with
2 the Chief and the officers of the Sydney Police Department
3 and people from the City of Sydney regarding that case?

4 A. Yes, I am aware of that.

5 Q. What was the outcome of those deliberations?

6 A. To my knowledge, that Mr. Herschorn was satisfied that, to
7 the extent that there was any problem, the Chief of Police
8 would insure that it would be rectified and would not occur
9 again.

10 Q. Thank you. There was some suggestion earlier this afternoon
11 regarding Mr. Aronson and you said that Mr. Aronson "was
12 not stonewalled." Can you elaborate upon that? What was
13 your attitude and how did you feel you were treating Mr.
14 Aronson as he was looking for information?

15 A. I thought I was being... I thought at the time I was being fair
16 to Mr. Aronson. That I was quite prepared to discuss the
17 matter. I just wasn't prepared to give him the written report
18 at that particular time. I don't know if I can answer it any
19 more fully.

20 4:39 p.m.

21 Q. Mr. Aronson, in his letter to you of 13th of April 1982,
22 indicates that he reviewed the facts of the case with Mr.
23 Fainstein in Ottawa. From your discussions with Mr. Aronson
24 did you understand that he was familiar with the facts and
25 what the various witnesses were saying?

1 A. Yes. He seemed to have a familiarity with the facts and what
2 was going on.

3 Q. Turn your mind if you could, just for a few moments, to the
4 spring of 1982 while the Attorney General was developing its
5 position. Mr. Ebsary was before the courts at that time and
6 there was some concern as the documents reveal regarding
7 his fitness. What, how was that a factor on the considerations
8 within the Department as to how this matter was to proceed?

9 A. Well it was a factor to the extent that at that particular time
10 we were being told that Mr. Ebsary was unfit to stand trial
11 and might never again become fit to stand trial. But if Mr.
12 Marshall was not acquitted as such but a new trial was
13 ordered that we wouldn't be able to proceed with it, we'd
14 have to stay the new trial of Mr. Marshall and yet we
15 wouldn't be able to try to Mr. Ebsary.

16 Q. And the...

17 A. And that the full facts might never come out in a way that the
18 Attorney General felt that he could comment on them because
19 he can really only comment on the matter to the extent that
20 evidence has been given.

21 Q. Thank you. You indicated that in April 1982 you were
22 awaiting a report from the RCMP. Was there any pressure on
23 you or on the Department to get this matter to a conclusion?

24 A. Well they seemed to be, I was feeling pressure. The Attorney
25 General was asking when they're going to get the, come to a

1 conclusion on it. When could he make some recommendation
2 to the Minister in Ottawa. There was certainly a lot of media
3 contact on it. Pressure is the term I would use. I know I
4 received many calls from the media and I'm certain that the
5 Attorney General also did. I don't know exactly what
6 pressures were being put on the Attorney General from his
7 colleague in Ottawa but the discussions I, the opinions or
8 impressions I got from talking with Mr. Fainstein was that
9 there certainly a desire in Ottawa to see this matter move
10 along quickly so that...

11 Q. Did you indicate that to Superintendent Christen in your
12 discussions with him?

13 A. Yes, I had indicated to Superintendent Christen that, you
14 know, you have, you seem to have reached a conclusion.
15 Everytime I think you're coming in with your final report I'm
16 told that there's another witness you want to interview but is
17 there some stage that you can get the, what is now being
18 referred to as the "red book" report in which would, at least,
19 let us follow through as closely as possible.

20 Q. Did you indicate to Mr. Edwards your concern about the time?

21 A. I'm quite certain that I also had expressed those views to Mr.
22 Edwards, that we would like to be able to get the matter dealt
23 with with some resolution sooner rather than later.

24 Q. Could you look, finally, at, the last volume I want you to look
25 at is Volume 34. My friend, Mr. Pringle, pointed you to the

1 letter at page 109 and the notes at page 113.

2 A. Yes.

3 Q. I'd like you to look at the document at page 114 which is a
4 report authored by Corporal Carroll and on page 115 there's
5 reference in that report to some further investigation being
6 undertaken by the RCM Police as it pertained to Mr. Ebsary.

7 A. Yes.

8 Q. Did you seek or were you, did you seek, sorry, were you
9 requested any specific authorization by the RCMP to carry out
10 any further investigation as it pertained to that report?

11 A. No.

12 Q. And if you could look at page 123, that's a report from, again,
13 authored by Corporal Carroll as it relates to the original
14 Marshall trial and the 1971 re-investigation. Did anybody
15 seek any specific authorization from you to carry out that
16 part of the investigation?

17 A. No.

18 Q. Can you tell us, Mr. Gale, when the first request was made, or
19 when the first suggestion was made that the Police Act be
20 used as a device to obtain the complete the file from the
21 Sydney Police Department?

22 A. Well it could have been the 16th of April or it could have
23 been the 19th. I tend to think on the 16th because they were
24 still gathering opinions and views on it. Certainly...

25 Q. Do you recall whose suggestion it was?

1 A. Oh, it was my suggestion.

2 Q. The letter themselves, there are two letters that are dated the
3 20th of April, one to the mayor of Sydney who was the
4 chairman of the Police Commission and one to the chief of
5 police. The letters are different in their content. Can you
6 explain why?

7 A. Under that provision of the Police Act the first subsection,
8 subsection (1) provides that when the Attorney General
9 withdraws an investigation from a police force that he shall
10 inform the chairman of the municipal board of police
11 commissioners. So the letter to the mayor followed that
12 section. Subsection (2) provides that then the chief of police
13 shall deliver the file to such person as he is directed to so that
14 I then followed the wording of that section and had the
15 Attorney General direct the letter to Chief MacIntyre that he
16 was to deliver the file to the RCMP.

17 Q. So each of the letters simply mirror the language of the Police
18 Act.

19 A. Yes, they were taken using the sections, the language of the
20 Police Act.

21 Q. We've had evidence about the change from 617(c) which you
22 and Mr. Rutherford and others had agreed upon to 617(b).
23 Was there any consultation with you prior to that change?

24 A. No, there was no consultation.

25 Q. And finally, sir, Mr. MacDonald put to you the proposition that

MR. GALE, EXAM. BY MR. PINK

1 the failure to disclose at the time of the original trial was
2 perhaps contributed to a miscarriage of justice. Are you
3 aware that there was any evidence before the Appeal Court
4 regarding whatever, any disclosure that took place in 1971?

5 A. If there is any evidence before the Appeal Court?

6 Q. Yes.

7 A. No, I can't say that I'm aware right now what...

8 Q. And would you agree with me that the...

9 A. That there was such evidence. I don't believe there was but I
10 haven't, I didn't follow through with the appeal to...

11 Q. And would you agree with me...

COMMISSIONER POITRAS

12
13 Won't that be a leading question, Mr. Pink?

MR. PINK

14
15 I won't take it any further then. Those are all my questions.

16 Thank you.

MR. MacDONALD

17
18 I was waiting for that next question. There would have
19 been one but I have no re-direct.

CHAIRMAN

20
21 That's all. Thank you very much, Mr. Gale.

22 WITNESS WITHDREW


23 ADJOURNED TO 9 JUNE 1988 - 9:30 a.m.

24

25

REPORTER'S CERTIFICATE

I, Margaret E. Graham, Court Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.



Margaret E. Graham

DATED THIS 8 day of June

19 88 at Dartmouth, Nova Scotia