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

Volume 81

Held: June 27, 1988, in the World Trade and Convention
Center, Halifax, Nova Scotia

Before: Chief Justice T.A. Hickman, Chairman
Assoc. Chief Justice L.A. Poitras and
The Honourable G. T. Evans, Q.C., Commissioners

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Mr. Donald C. Murray: Counsel for Mr. William Urquhart

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Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the
Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.
and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
MacAlpine

Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
for Staff Sgt. Wheaton and Insp. Scott

Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for
the Union of Nova Scotia Indians

Mr. E. Anthony Ross: Counsel for Oscar N. Seale

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black
United Front

Court Reporting: Margaret E. Graham, OCR, RPR

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June 27, 1988

A

INDEX - VOLUME 81Chief Richard Walsh

Examination by Mr. MacDonald	14259
9:55	14270
10:15	14281
10:37	14294
Examination by Ms. Edwardh	14302
Examination by Mr. Pugsley	14311
Examination by Mr. Pink	14312
Examination by Mr. Ross	14313
11:05	14315
Examination by Mr. Wildsmith	14317
11:20	14325
Submission - Ms. Derrick	14326
Submission - Mr. Murrant	14339
Reply - Ms. Derrick	14346
12:43	14349
Ruling	14350

EXHIBIT LIST

Exhibit	Description	Page	Volume
92	Four pages of Mr. Smith's handwritten	6833	37
93	Mr. Smith's record of polygraph examinations	6833	37
94	Copy of Donald L. Burgess' job description dated 1983	7134	38
95	A-5 with related notes and RCMP correspondence	7150	38
96	Copies of pages of Sgt. Cole's notebook	7225	39
97	Copy of Melinda MacLean's file	7243	39
98	Volume 29	7484	41
99	Volume 34	7484	41
90A	Photocopy of handwritten notes by Staff Sgt. Wheaton (typed version in Exhibit 90)	7490	41
90B	Original of Staff Sgt. Wheaton's notes (original in Exhibit 90)	7491	41
100	Statement of G.A. Ebsary dated April 19, 1982	7492	41
101	Statement of Donald Marshall, Jr. to Cpl. Carroll dated Feb. 18, 1982, taken at Dorchester Penitentiary	7493	41
102	Affidavit dated September 1982 of Staff Sgt. Wheaton	7495	41

Exhibit	Description	Page	Volume
103	Statement of Roy Newman Ebsary February 23	7574	41
104	Cpl. Carroll's handwritten notes	7581	41
105	six excerpts from <u>Cape Breton Post</u> dated May 29, 31, and June 1, 2, 3, and 5, 1971	7656	42
106	Volume 37. Transcript of June, 1984 examination for discovery of Heather Matheson, <u>John F. MacIntyre v. Canadian Broadcasting Corporation.</u>	7656	42
100A	Original of Greg and Mary Ebsary's state- ment	8014	44
88A	Copy of Staff Sgt. Wheaton's written notes	8163	44
107	Calender for years 1800 to 2500	8229	45
108	Photocopy of Staff Sgt. Wheaton's notes	8230	45
109	Diagram drawn by Staff Sgt. Wheaton of John MacIntyre's office with seating plan of meeting of April 26, 1982	8231	45
110	Three pages from discovery evidence of Heather Matheson	8277	45
111	RCMP guide for contact with media	8280	45
112	Correctional Services records of Donald Marshall, Jr. (Volume 35)	8516	46
113	Stephen Aronson's correspondence re fees (Volume 27)	8530	46

			C
105A	Article from <u>Cape Breton Post</u> concerning Donald Marshall's remand	8587	47
114	Original of Donald Marshall, Jr.'s statement taken at Dorchester Penitentiary, March 9, 1982		50
115	Supt. Scott's notes, 1982	9251	50
116	<u>Cape Breton Post</u> issue, June 19, 1986 one page		50
117	R.C.M.P. Operational Manual, one page	9303	51
118	Letter January 8, 1980 from Inspector Scott to Chief A. Christmas	9453	51
119	Mr. Urquhart's resumé	9476	52
120	Criminal record and fingerprint records of Robert Patterson	9551	52
121	Mr. Roy Ebsary's fingerprint record from Sydney Police Department, April 9, 1970	9614	52
122	Copies of portions of Criminal Code of Canada	9651	53
123	Volume 30 of Marshall Inquiry docs.	9651	53
124	Volume 31 of Marshall Inquiry docs.	9651	53
125	Volume 32 of Marhsall Inquiry docs.	9651	53
126	Copy of letter dated May 10, 1983 from the Chief Justice of Nova Scotia to Minister of Justice	9651	53
127	Notes of Mr. Ron Fainstein	9693	53

128	Report of Federal-Provincial Task Force	9762	53
129	Brian Williston's telephone notes	9864	54
130	Collection of newspaper articles	9893	54
131	Volume 38 of Marshall Inquiry docs.	9899	54
132	Vol. 28 - Correspondence, October December, 1984, 1986	10081	55
133	Single sheet of paper in S. Aronson's Handwriting - "meeting with Junior" September 3, 1981	10081	55
134	Volume 39, compilation of material court of appeal files	10082	55
136	Copy of sec. 4. of the Public Service Act	10337	57
137	Cabinet documents	10456	57
135	Volume 33	10462	57
139	Letter June 1984 from F. Cacchione to Attorney General's Department	10486	57
138	Telex from R. Giffin to Crosbie April/85	10528	58
142	Package of documents	10692	59
143	<u>Toronto Star</u> report of December 27, 1985	10703	59
140	RCMP contracts	10726	59
141	Volume 41 - correspondence from the Attorney General's Department re Indian Affairs	10735	59

144	Letter - 1983 - from Edmund Morris to the Union of Nova Scotia Indians	10741	59
145	References from Hansard, 1982-1983	10771	60
146	Article by Alan Story, <u>The Toronto Star</u> June 9, 1986	10914	61
148	Job description for director prosecution	11245	62
147	Prosecuting Officers Act, Chapter 240 (1967)	11250	62
149	Evaluation form of government of N.S.	11277	62
151	Photocopies of expense vouchers paid by Crown on behalf of Donald Marshall	12060	68
152	Edwards' notebook - Volume 17 - Summary of meeting of Frank Edwards and Staff Sergeant H. Wheaton	12206	69
150	1978 and 1986 Police - National Parole Board - re Claims of innocence.	12495	70
153	Draft report prepared by Staff Sergeant Barlow - 83/06/16 - 2 pages	12747	71
154	RCMP Service history of Superintendent A.E. Vaughan	12855	72
155	Role of criminal operations officer for Nova Scotia - 1 page	12857	72
156	Relationships with RCMP prepared by Superintendent A. Vaughan - 6 pages	12857	72
157	Federal/Provincial task force report on compensation of wrongfully convicted imprisoned persons	13202	74

158	Federal/Provincial guidelines	13202	74	F
159	Position description for director of criminal, Province of Nova Scotia, 1985	13282	74	
160	Three job descriptions, 1975.	13282	74	
161	Letter - March 16/87 to Mr. Gale from Department of Justice, Canada	13491	76	
162	Letter - Department of Justice to Attorney General's Department re Nova Scotia Indians Legal Aid needs and a research proposal (marked but not entered)			
163	Letter - June 21 1988 from K.S. Psychological Services re Donald Marshall	14327	81	

JUNE 27, 1988 - 9:35 A.M.

MR. CHAIRMAN

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6
When we adjourned on Wednesday past, I had indicated we would hear an application from Ms. Derrick at 9:30. However, Mr. Justice Poitras has been delayed and will not be here until 10:30 or 11:00. So we will proceed with hearing other testimony and then hear the application at that time.

MR. MACDONALD

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Also, when we adjourned on Wednesday, My Lord, I indicated to you the tentative line-up for today of witnesses. I had hoped that we may have been able to secure the attendance of Michael Harris. Unfortunately, we've not been able to do that, to obtain his attendance voluntarily. At the request of his counsel, I have undertaken on behalf of Commission counsel, that we would examine Mr. Harris with respect to one item only, and that is the item Your Lordships indicated you were interested in having him speak to. And, specifically, that is the alleged attempt to hide the first statement of Patricia Harriss. I also undertook on behalf of Commission counsel we would object if anyone attempted to broaden the scope of the examination and deal with other areas. Various other counsel have given the same assurance, not all, but some. But despite that, we've not been able to secure the voluntary attendance of Mr. Harris. So I'll follow Your Lordships' directions and issue a subpoena and seek to enforce it in the Province of Newfoundland.

COMMISSIONER EVANS

Will there be any restrictions on him then?

1 MR. MACDONALD

2 With no restrictions in Newfoundland, I take it. We will be
3 hoping to examine any area we like to.

4 MR. CHAIRMAN

5 The restrictions we had imposed were primarily designed to
6 facilitate Mr. Harris' attendance at the hearing before us and to
7 avoid the expense, which may be considerable, of having evidence
8 taken outside the Province of Nova Scotia.

9 Such being the case, the restrictions will not apply when
10 taking evidence in Newfoundland.

11 MR. MACDONALD

12 Thank you, My Lord, and we will take the steps to put the,
13 or be asking to put that in motion and secure a time to examine
14 Mr. Harris in Newfoundland, assuming we can get the approval of
15 the Newfoundland Supreme Court.

16 My Lords, the evidence today then, the only witnesses we
17 have will be members of the Sydney Police Force. You may recall
18 that when those individuals were giving evidence in Sydney, any
19 questions directed to the present practice; that is, the practice or
20 changes in practices that may have occurred between '71 and the
21 present time, those questions were stopped with the indication
22 that those witnesses would be recalled. I'm recalling those
23 witnesses today for that purpose only, to deal with changes that
24 may have occurred in the system and the processes in Sydney. I
25 understand... It's certainly my belief that those witnesses have

1 been examined with respect to their role at the time of this
2 occurrence and that they are not to be re-examined or examined
3 in any way with respect to the evidence they've already given.

4 MR. CHAIRMAN

5 That was the position taken by Commission at the time.
6 Some counsel attempted to cross-examine these witnesses as to
7 the present practice when we were sitting in Sydney. As I recall
8 it, decided that all the evidence relating to the arrest and
9 incarceration, et cetera, of Donald Marshall, Jr. would be heard and
10 was heard at that time with full cross-examination by all counsel
11 present who wished to so cross-examine. But we had decided
12 that, for the purpose of continuity, we would hold in abeyance
13 their evidence with respect to any changes which may have taken
14 place in the Sydney Police Department since 1971.

15 MR. MACDONALD

16 I have Chief Richard Walsh with me, and also Inspector
17 Ambrose MacDonald. I propose calling Chief Walsh. There may
18 be areas that I will question on that Chief Walsh feels Inspector
19 MacDonald can bring better evidence to the Commission and I've
20 asked him in those circumstances to advise me and I will deal
21 with those with Inspector MacDonald later, if necessary.

22 So I call Chief Walsh, please.
23
24
25

RICHARD WALSH, duly recalled and still sworn, testified as

1 follows:

2

3

EXAMINATION BY MR. MACDONALD

4

Q. Now, sir, for the record, you are Chief Richard Walsh.

5

A. Yes, sir.

6

Q. And you are Chief of the Police of the Sydney Police

7

Department.

8

A. Yes, sir.

9

Q. When did you take that position?

10

A. I was sworn in January 1st, 1985.

11

Q. As I've just indicated, Chief Walsh, it's my intention to deal
12 with changes, if any, that may have occurred between 1971
13 and today with respect to certain areas. And with each of the
14 areas, if you can give us some idea if there has been change
15 and when the change may have been introduced. To the
16 extent you can, that will be helpful. The first area I'd like to
17 deal with is with respect...

18

MR. CHAIRMAN

19

Before you start, Mr. MacDonald, who did you succeed in the
20 office of Chief?

21

MR. WALSH

22

I succeeded Michael J. MacDonald as Chief of the Sydney
23 Police Department. He had been Chief from June 1st, for six
24 months of that year in '84.

25

1 MR. MACDONALD

2 Q And Mr. MacDonald, or Chief MacDonald, succeeded John
3 MacIntyre?

4 A. That's right, sir.

5 Q I want to talk about the hiring procedures that are in place.
6 Our understanding, Chief, from the evidence given to date, is
7 that the requirement or the qualifications to become a police
8 officer in Sydney that existed in the early seventies and
9 before that time, was that a person had to have a minimum of
10 Grade Ten education and I don't know that there was any
11 other particular qualification required. There was some
12 suggestion that knowing aldermen may have been of some
13 benefit. Would that be a capsule summary of the situation
14 that did exist?

15 A. Yes, sir, that would be correct.

16 Q And what are the circumstances today, Chief, with respect to
17 qualifications of people who are hired for the Sydney Police
18 Force?

19 A. Well, to be a candidate for the Sydney Police Department
20 today, the individual must be a graduate of the Atlantic Police
21 Academy, or an accredited police college, or he must have had
22 previous police experience.

23 Q What is the Atlantic Police Academy and where is that
24 located?

25 A. That is located in Charlottetown, Prince Edward Island.

1 Q. Is that an academy that is somehow accredited by a group of
2 policemen or police commissions or something?

3 A. It is funded by the three provinces -- New Brunswick, Prince
4 Edward Island, and Nova Scotia, to graduate people for the
5 field of policing.

6 Q. Is that what was formerly known as "Holland College"?

7 A. The Atlantic Police Academy, or Holland College, both, more or
8 less, they're interacting, but that is what they are referred to.

9 Q. You also indicated that someone with previous experience
10 could be hired. That's previous police experience, is it?

11 A. Yes, sir.

12 Q. Have you, in fact, hired people with that qualification as
13 opposed to graduates of the Atlantic Police Academy?

14 A. Yes, in my tenure, we have hired two members of the
15 Mounted Police. We've also hired men from other police
16 departments who were local people and who wanted to
17 return home and had the qualifications.

18 Q. And are people hired all at the initial level, a constable or
19 maybe introduced at a higher level?

20 A. In some cases, we hire men as "casuals". When a man comes
21 on the force initially, he's hired as a third class constable and
22 then he has to go through periods of probation and increases
23 in pay and so on.

24 Q. When was that change introduced, Chief Walsh?

25 A. I think probably in the late seventies. I'm not accurate on the

1 timing of that, but I would think it would be in the late
2 seventies.

3 Q. Just prior to your time as chief?

4 A. Prior to my time, yes.

5 Q. Are you able to say who was chief at the time it was
6 introduced?

7 A. I would say that John F. MacIntyre was the chief of the day.

8 Q. Let me then talk about training that's given to a new police
9 officer that's brought onto the force. We understand from the
10 evidence given that very little training, if any, was given in
11 the past. It may have amounted strictly to being given the
12 equipment, such as a flashlight and a pair of handcuffs, and
13 say, "Go out on patrol," perhaps with an older officer. Would
14 that be an accurate summary of what the situation used to
15 be?

16 A. Yes, sir, it is.

17 Q. Would you tell us what the situation is today with a new
18 recruit?

19 A. Well, probably it would better if I capsuled the police
20 department today as it is. In that period of time, there was a
21 chief and a deputy chief. Today, we have the chief, we have a
22 deputy chief, we have an inspector of administration, a patrol
23 inspector, and an inspector in charge of criminal
24 investigations. At one time, we had a staff sergeant that
25 probably did most of those functions. Today, we do have a

1 staff sergeant as a sixth person in the management field and
2 we manage by a team concept of management.

3 Q. When was that organizational change introduced?

4 A. Well, the organizational change came about as a call for a
5 restructuring of the Sydney Police Department back in 1979
6 by the then Chief John F. MacIntyre. And the Nova Scotia
7 Police Commission were called in to do a study on the
8 department and make recommendations with the idea of
9 extra staffing. I feel at that time that with probably 67 men,
10 that the job of policing a department was too much of a strain
11 for just the chief and the deputy and they needed more help
12 at the time. I would suggest that that was the reason for
13 calling for the restructuring.

14 Q. It was Chief MacIntyre then who asked for a study to be
15 carried out?

16 A. To the best of my knowledge, yes. That it would be to his local
17 Board of Police Commissioners, to whom he was responsible,
18 and they sanctioned that and the Nova Scotia Police
19 Commission did do a study.

20 Q. And as a result of that study, the current set-up came into
21 place?

22 A. Yes, as a result of that study, they recommended that
23 promotional routines would be inaugurated in the department
24 to get away from a seniority system. And early in the 1980,
25 promotional routines were carried out in the department and

1 after they were over, then the three inspectors were put in
2 place.

3 Q. Prior to that time, promotion was based on seniority, is that
4 correct?

5 A. Yes, sir.

6 Q. That was the only criteria?

7 A. Yes, sir.

8 Q. What is the change? What is promotion today based on?

9 A. The change today is there is a promotional routine in place
10 were men compete and different values, exams, interviews,
11 testing, seniority, interviews that incorporate in the people
12 from the Nova Scotia Police Commission. In the last number
13 of years, it has been Mr. Bedgood, who has now retired. And
14 after everything was compiled, the leading candidates were
15 given the positions.

16 Q. Let me just go back then to the people you've identified. The
17 role of the Chief and the Deputy Chief, have they changed?

18 A. In my case, I put the responsibility for running the
19 Department on the Deputy Chief, answerable to me, although I
20 am the final say in the decision-making and so on. But I
21 pretty well give him a free hand to run the Department. The
22 Inspector of Administration is directly responsible to me. The
23 Inspector in charge of Criminal Investigations is responsible
24 to the Deputy Chief and, in turn, to me. The Patrol Inspector
25 is also responsible to the Deputy Chief.

1 Q. So the only one, the only two people reporting directly to you
2 in this structure are the Deputy Chief and the Inspector of
3 Administration.

4 A. That is right, sir.

5 Q. The Deputy Chief today is John Mallowney?

6 A. Yes, sir.

7 Q. Who is the Inspector of Administration?

8 A. Inspector Roy Young.

9 Q. And the Inspector Patrol?

10 A. Arthur Woodburn.

11 Q. And the Inspector of Criminal Investigation?

12 A. Inspector Ambrose MacDonald.

13 Q. And did all of those people obtain their current position as a
14 result of this process you've described, where they go through
15 an examination, investigation, interviewing technique?

16 A. Not exactly. In 1980, after the initial promotional routines
17 were conducted, I was made an Inspector of Administration.
18 Inspector MacDonald was made an Inspector of Patrols. And
19 the man who was in charge of the detective section at that
20 time, W. A. Urquhart, was made Inspector of Criminal
21 Investigations. In 1985, I was appointed as Chief of Police by
22 full council. The Deputy Chief is appointed at the Board of
23 Police Commissioner level. Deputy Chief Mallowney was
24 appointed by the Board of Police Commissioners.

25 Q. And that's the Sydney Board?

1 A. And that's the Sydney Board.

2 Q All right, let's go back to my initial question then. The type of
3 training that's given to a new recruit today. You say it
4 changed but you had to, first of all, describe the set-up. What
5 is the type of training given to a new recruit?

6 A. Well, the type of training has basically changed over the last
7 number of years because the format has been continually
8 changed at the Atlantic Police Academy. Today, cadets who go
9 in come to a department for three months on-the-job training
10 through the summer months where they are guided by field
11 trainers, who are also trained at the Atlantic Police Academy
12 to deal with these youths when they come to us. And these
13 men are under the supervision of these field trainers over
14 that period of time. And during that period of time, we try to
15 give them or let them spend time in just about every section
16 of the department. We take them out on patrols. We try to
17 put them into our ident. section, to understand what is going
18 on. We try to place them in a detective section and to work
19 along on the job to give them just about every aspect of the
20 job while they are on that field trainers... with their field
21 trainers. So that when they can return to the classroom that
22 they have a pretty fair basic knowledge of the department in
23 which they worked and what is expected and so on.

24 Q. When a cadet then graduates from the Atlantic Police
25 Academy, are you satisfied that he is then able and ready to

1 take on the full responsibilities as a third class constable?

2 A. No, at that point in time, we do receive applications from
3 people from time to time and we put them on file. And when
4 we come to the point where we are going to hire, usually we
5 call in these applicants to give them an opportunity to
6 compete by written exam, interviews. And in those
7 interviews, it would be probably two officers from our
8 department. In the past years, it was with Mr. Bedgood from
9 the Nova Scotia Police Commission to sit in on these
10 interviews. And after everything was compiled, then we
11 tried to look at the top candidates.

12 Q. But the decision having been made to hire one of these top
13 candidates, are they then given any additional training or are
14 they then considered to be qualified and able to...

15 A. No..

16 Q. Immediately become a third class constable and perform all
17 the duties?

18 A. We try to help that officer along and, in the future, what I do
19 plan to do is to have that field trainer continue to guide these
20 people after they come to the job. This is something that
21 wasn't done in the past, although they were very helpful to
22 the new cadets. But I see it now that I would like for the
23 function of the field trainer to continue for some period of
24 time to give the individual every benefit that can be given to
25 a new man.

1 Q. The field trainer, you said, has also received training from the
2 Atlantic Police Academy?

3 A. Yes, they will not supply cadets for you unless you have field
4 trainers in place to guide them. And those field trainers must
5 have gone and taken a course at the Atlantic Police Academy,
6 and they would prefer that you have a field trainer for every
7 cadet.

8 Q. How many field trainers... How many people in your force are
9 qualified as field trainers?

10 A. I believe I have five, four or five.

11 Q. Thank you. What type of continuing training or education is
12 made available to the members of the Sydney Police Force?

13 A. Well, since 1980, '81, we have been sending many of our
14 people to the Atlantic Police Academy. We had a little
15 difficulty because we are obligated by a contract to our
16 people, Local 758. So when Inspector MacDonald and I
17 became inspectors, we had to work very closely together. He
18 was the Patrol Inspector responsible for keeping the strength
19 of the Department on the streets and so on. So what we had
20 to do was we had to take a look at where we were and
21 seniority plays a big part, even today. That a preference for
22 detail work must be given to the senior man, providing that
23 he's suitable and capable. So what we decided to do was to
24 start at the top of the No. 1 constables and work down. And
25 we started by sending four people to the Atlantic Police

1 Academy the first part of the year and four at the end of the
2 year. And other courses that we could get from other areas,
3 like the Canadian Police College, we tried to fill those in, too.
4 Always keeping in mind that if we had all kinds of money, we
5 could not send as many people at one time because we had to
6 keep our strength at a certain level. And that is how we have
7 proceeded down through the years. I did not indicate to you
8 that in the management field in 1980, initially I was sent to
9 the Canadian Police College to be enrolled in the senior police
10 administration course and before the end of the year, I was
11 sent back again on the Executive Development course, which
12 is another management course. Inspector MacDonald
13 followed close behind with the SPAC as we call it, and the EDC.
14 Inspector Young has also received SPAC training. My Deputy
15 Chief, John Mallowney, has SPAC and EDC. Our Staff Sergeant,
16 and I didn't come back to the Staff Sergeant. You might have
17 thought that we've lost him in the shuffle, but also my Staff
18 Sergeant has been trained with SPAC at the Canadian Police
19 College. And this is something that we are ongoing with our
20 people as time permits. I didn't get back to the Staff Sergeant
21 because in the original study by the Nova Scotia Police
22 Commission, they indicated that the position of Staff Sergeant
23 was redundant and when the man who was the Staff Sergeant
24 would retire, that that would be taken away. However, I felt
25 that there was use for a Staff Sergeant, a very good use for it,

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 and I met with the union executive and I proposed to them that if
2 they would agree with me, that I would recommend to the Board
3 of Police Commissioners that the position of Staff Sergeant be
4 reinstated, if they would agree that would it be a management
5 person. They agreed to that. I recommended it to the Board of
6 Police Commissioners and they accepted it. And that is why we
7 have a management team of six.

8 9:55 a.m.

9 Q. What does the staff sergeant, what's, what are his general
10 responsibilities?

11 A. His main function is looking after our cars, servicing. Dealing
12 with the men from time to time, time off, vacations, all that
13 sort of thing. Uniforms. Seeing that they're well dressed.
14 Requisitioning and so on.

15 Q. Who is the staff sergeant today?

16 A. The staff sergeant today is Murray MacIntosh.

17 Q. What is the Canadian Police College?

18 A. The Canadian Police College, as I said before in my earlier
19 testimony is the greatest thing that ever happened to
20 Canadian policemen. It's a college in Ottawa where police
21 come from all over the country to be trained. It's run by the
22 Mounted Police and it's an exceptional, it's an exceptional
23 place for learning for a police officer in many fields, from
24 major crime, ident., administration courses, management
25 courses, drug courses. Just a wonderful institution.

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 Q. Do you know when that came into effect?

2 A. No, sir, not offhand.

3 Q. The senior police administrator's course to which you
4 referred, how long a course is that?

5 A. That course was five weeks at that time and the executive
6 development course was six weeks.

7 Q. Are there courses put on by other authorities or institutions
8 to which your members have access?

9 A. Yes. We have sent one man to the Ontario Police College at
10 Aylmer to be trained in investigating commercial crime,
11 Sergeant John MacInnes, he holds a degree in business. Also
12 we have sent another officer to the Ontario Police College to
13 study technical surveillance. We have sent men to the
14 Canadian Police College to train in the field of ident. and
15 currently we have three officers working in ident. not
16 because the need is that great but for coverage, but we have
17 three members trained. Two of the management team today
18 are graduates of the Canadian Police College in the field of
19 ident., so we have two people in management positions,
20 Sergeant MacIntosh and Inspector Ambrose MacDonald, who
21 have graduated with that.

22 Q. How does someone become a member of the investigative
23 division as opposed to the patrol division?

24 A. Well today in, under Inspector MacDonald, he is the inspector
25 in charge of the criminal investigations and he has two

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 sergeants working as investigators along with two corporals.
2 But those men, when they're, they're positions by their
3 promotional routines.

4 Q. Do they all come from the patrolmen initially?

5 A. Yes. Yeah, usually. They come from the patrols. And today
6 we have decided that because of communications and a better
7 understanding of all phases of the operation we have taken
8 detective sergeants and we have placed them on as shift
9 commanders so that they would be there to guide the officers
10 in the case of major crimes and so on. And we find that the
11 lateral move is starting to pay great dividends for us. In
12 other words what I'm saying is that we are trying to pass the
13 experience on by rotating people and not leaving them in
14 positions too long.

15 Q. What type of training is given to an officer who moves from
16 the patrol phase into the investigative branch of your
17 department?

18 A. We might move an officer momentarily in there and with the
19 first opportunity we would probably try to send them to
20 Ottawa to be enrolled in a major crime. We have utilized the
21 College of Cape Breton for in-service training in different
22 fields like law and law enforcement. We have had the value
23 of, say for example, Assistant Crown Prosecutor in Sydney,
24 Brian Williston, who has given up his time to help teach and
25 guide our people in what he sees as the need is in those fields.

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 To explain the Charter of Rights, the Bail Reform Act, and the
2 Young Offenders and so on. Today in our department in
3 working in conjunction under Inspector Ambrose MacDonald,
4 with his detective section, we have created a youth division.
5 We have a sergeant in charge, a corporal, and two officers.
6 The sergeant in charge is the man responsible, he is also the
7 media relations person. One officer is strictly an investigator,
8 another officer works in the field of crime prevention.
9 There's presently four people. The Young Offenders Act
10 initially was brought into play, I felt at that time that
11 probably if it had been eased in it would have been more
12 comfortable to work with but from day one we've tried to
13 apply ourselves and we have a very good working
14 organization today dealing with young offenders. Our
15 department, the Sydney Police Department, on the Island of
16 Cape Breton, helped initiate an alternative measures program
17 to deal with young offenders, that there is an alternative,
18 whether in the courts or outside of the courts and that seems
19 to be working very well. And personally if I had a lot of
20 manpower I would certainly channel more people in that
21 field.

22 Q. What is the relationship today between the investigative
23 branch and the patrol branch? We've had the impression
24 from evidence given that in the early 70s that were operated
25 quite distinctly and didn't even seem to talk to each other.

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 Would you agree with that assessment in the early 70s?

2 A. Well I never had that problem as far as talking with anybody
3 and the men who were there but it would seem that there
4 might have been a breakdown in communications, and that
5 they probably did not convey to the patrols exactly what they
6 were doing. Today, I like the lines of communication to be
7 open. Inspector MacDonald, who will address some of this
8 later, he inaugurated a daily report going from the detective
9 section to the patrols letting them know what's going on, what
10 is coming in on the reports and so on. So really the
11 communication is open today. I feel there is a good rapport
12 and men who want to go out and work and apply themselves
13 and do the job, they are going to be candidates somewhere
14 down the road for positions in a detective section.

15 Q. Is there a briefing at the start of each shift telling the
16 patrolmen what's going on, what sort of things the inspec-,
17 the investigating branch are working on, what they're looking
18 for, this sort of thing?

19 A. Yes, there is a briefing before each shift and that, once again
20 that's another thing that was inaugurated by Inspector
21 MacDonald and probably later he can address some of those
22 things for you.

23 Q. Does the Sydney Police force still patrol the Membertou
24 Reserve?

25 A. Yes sir, we do.

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 Q. Is that under a special agreement?

2 A. Yes, there is. There is a special agreement with the
3 Department of Indian Affairs with the band council in
4 Sydney. We met a short time ago and new contracts are
5 being drawn up.

6 Q. Is there any special training or instructions given to your
7 members who may be involved in patrolling or policing the
8 Membertou Reserve?

9 A. No, I would like to see the Membertou Reserve policed as any
10 part of the City of Sydney.

11 Q. Are there any courses given, I may have the phrase wrong,
12 but is it called cross-cultural training?

13 A. No, we have never had any dealings in cross-cultural
14 training. We have never sent people on courses of that type.

15 Q. Are there such courses available to your knowledge?

16 A. I believe there is.

17 Q. Where would they be held?

18 A. I don't know if that would be at the Atlantic Police Academy,
19 probably, I'm not sure on that, Mr. MacDonald.

20 Q. Have you ever made a request of your, let me back up a
21 minute. In order to send your members on various courses
22 and learning experiences, do you require the approval of the
23 Commission, or is that just something you look at?

24 A. No, the day-to-day operations has been left with me and
25 these decisions are made at our level.

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 Q. Have you ever given any consideration to having any
2 members of your force take this cross-cultural course
3 training?

4 A. That course, the name you say, cross-cultural, when these
5 men go to Ottawa, some of our senior officers and so on, part
6 of the courses in Ottawa deal with minorities and dealing with
7 minorities and so on. And my answer to you was that I have
8 never sent anybody on a course specifically for that purpose.

9 Q. Okay. But then are you saying your understanding is that
10 anyone who has gone to the Canadian Police College would
11 have been exposed to that type of thing in any event?

12 A. In the senior police administration course and executive
13 development course, yes. Other specific courses, they would
14 be dealing only with the subject material required for the
15 course.

16 Q. Have you, then, having taken the senior police administrator's
17 course, have you yourself been exposed to that type of...

18 A. Yes.

19 Q. Experience?

20 A. Yes.

21 Q. And has it been of assistance to you in carrying out your
22 duties in Sydney?

23 A. Well I feel, as I said before, we grew all up in a multi-cultural
24 area in the City of Sydney and I feel quite comfortable
25 dealing with other people, or other minority groups and so on.

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 I would like to think I have an excellent rapport with the
2 black community and I'm certainly trying to keep an
3 excellent rapport with our native people.

4 Q. Thank you, Chief. I want to deal with the procedures that
5 would be followed in Sydney in investigating a major crime so
6 that we can have some idea of what would be done today. I
7 think we're all fairly familiar with what did or did not take
8 place in 1971. Let me deal then with a situation similar to, in
9 fact, to what we had in 1971 where there is a violent stabbing
10 in the Wentworth Park resulting 24 hours later in a death.
11 I'd like you to tell me your understanding of what would take
12 place today. First of all, for the officers who arrive on the
13 scene finding a victim lying in the street and having been
14 stabbed.

15 A. Top priority today would be to secure the scene area, to
16 render assistance to the injured party. Then there would be
17 follow up by a detective and there would be follow up by
18 Ident. Services or whatever was needed and in the event of
19 loss of life in my city for whatever reason, I am to be notified
20 immediately. And if there was...

21 Q. Would you be notified immediately...

22 A. No.

23 Q. In the event of a major, a violent stabbing, not death though.

24 A. In the event of a major crime of that type, Inspector
25 MacDonald is to be notified and I, in turn, would be notified

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 by him if he felt that it was necessary.

2 Q. Would there be someone assigned to be in charge of that
3 particular matter, to coordinate the efforts of everyone?

4 A. Yes, Inspector MacDonald would perform that function as
5 Inspector of Criminal Investigation.

6 Q. You said the scene would be secured. What do you mean by
7 that?

8 A. The scene would be protected, possibly taped off until the
9 arrival of Ident. and detectives or detectives Ident.

10 Q. Are your men, your patrolmen advised of that or trained in
11 that respect that they are to remain on the scene until the
12 Detective Division arrives?

13 A. Yes, that was part of our in-service training. To convey to our
14 officers what is expected of them when they first arrive on
15 the scene. Another thing that we have done is if there is a
16 major crime then the first man on the scene is immediately
17 moved to work with the detectives to render them assistance
18 as being the first person there and to help them with their
19 investigation.

20 Q. What instructions, if any, are they given with respect to the
21 witnesses that may have been around the scene? That is
22 your patrolman.

23 A. To secure the names of the witnesses.

24 Q. Is that it? Do they take statements or just secure names?

25 A. The statements would probably be taken immediately by the

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 detectives on arrival. These people, certainly would be
2 interviewed and statements taken at that time, not putting it
3 in a hold pattern for 24 hours.

4 Q. You talked about Ident. Services, what is that?

5 A. Well our men are trained in Ident. at the Canadian Police
6 College in fingerprinting and lifting prints and different
7 phases of identification. Dusting, fuming, raised prints and so
8 on and this is another field that I would rather leave to the
9 expert, Inspector MacDonald.

10 Q. Would you feel more comfortable if he dealt with all of the
11 procedures followed?

12 A. Probably at this time. I have a general knowledge of what is
13 going on but coming from the man who is in charge and what
14 is in place, I feel that he could probably give you a better
15 explanation than I can.

16 Q. I'll leave that and deal with Inspector MacDonald. I want to
17 talk about the record system at the Sydney Police, what type
18 of system is in place to keep your records of crime, of people
19 who commit crimes and what type of procedure is in place to
20 recover the information that you have in your system. Can
21 you talk generally about that?

22 A. Well we have a data-file system in place. It was initiated in
23 1981, January 1, 1981, when it was put into play. There are
24 problems with it because information there would have to be
25 secured almost manually going back to cards and so on.

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 Today, as opposed to 1971 in the field of armed robberies and
2 fraud, we rely on the Mounted Police. We do secure
3 information through the Mounted Police, through their PIR
4 system which we are not involved in.

5 Q. Through their what system?

6 A. PIR system.

7 Q. PIR?

8 A. PIR. That's an information system.

9 Q. Okay. And what type of system is that?

10 A. Information is fed into that from all over the country as a
11 source of information coming from all police forces and it can
12 be retrieved quickly. But we do not have access to that on
13 our own. That is, one field along with many others, services
14 that are rendered to us by the Mounted Police. For example,
15 if we need that type of information, fine, we can have it. If
16 the need the services of say, for example, the police dog we
17 can have it. We are currently working together with joint
18 forces operation on drugs. Over the past number of years,
19 along with the Cape Breton chiefs and the present inspector of
20 the Mounted Police, Don Webster, we have initiated Crime
21 Stoppers in the Cape Breton area. But getting back to your
22 information, information would still be difficult to get unless
23 you went through the federal force.

24 Q. Let me give you a specific example because this is something
25 that's bothered many of us in this particular case. I've put

1 Volume 16 in front of you there, Chief Walsh, it's that large
2 red volume. And if you'd look at page 1 of that volume. That
3 is an occurrence report of April 8, 1970, and it deals with an
4 event involving Roy Ebsary where he was picked up with a
5 large knife and as you note at the bottom, he was
6 subsequently convicted of the concealed weapon offence and
7 sentenced or fined \$100. And if you go to page 105 of the
8 same volume, that's a, do you have that, Chief? 105.

9 10:15 a.m.

10 A. Yes, sir.

11 Q That's a copy of the record card for Roy Ebsary, I believe
12 taken from the Sydney police files. And if you see the second
13 entry on that card, it refers to that particular charge of Roy
14 Ebsary, Section 83 of the Criminal Code. And do you see up...
15 There's a column entitled "Book No. 52782", do you see that?

16 A. Yes, sir.

17 Q My understanding of the system would be that you could
18 then go and find in the book, No. 52782, that occurrence
19 report that we just looked at, is that correct?

20 A. No, I don't think it would be the occurrence report. You'd
21 probably see the entry made after a court appearance. As
22 indicated to me, he was charged with Section 83 C.C., \$100 or
23 two months in the fine [sic] and he convicted by John F.
24 MacDonald, Judge John F. MacDonald. I think that's what you
25

1 would find in that particular book.

2 Q. That's all you'd see in the book, would you? How would you
3 get back to find this document then that was on page one that
4 we've already looked at? How do you get to that?

5 A. Well, in those days, the reports that were taken were filed
6 away in books and just kept on file. You'd have to go back
7 and go through all the log sheets for that period of time to
8 retrieve that information.

9 Q. Now let me pose this to you. If you assume you had this
10 violent crime occur last night in Wentworth Park and
11 someone told you this morning that there was a person in the
12 park, small man, gray hair combed back, dressed like a,
13 looked like a priest and he had stabbed somebody. Would
14 there be any way today for you to review or to put an
15 instruction out to your records people that would lead you
16 back to this report that we've got on page one? Assuming
17 that happened, that report was filed last year, a year ago?

18 A. No, I think it would be very difficult. We'd almost have to go
19 back through our materials. Today we enter people on CPIC,
20 but what goes on CPIC is the charges and so on. But there is
21 no indication when you get it back from CPIC other than the
22 individual and that he was charged with a certain offence, but
23 it doesn't go into detail. So that would be, that would not give
24 you that answer. If this person had been entered in some
25 way through a system such as PIR, that information would be

1 readily available.

2 Q If it was entered on this PIR System. But the Sydney Police
3 are not participants...

4 A. We do not have... No, we're not a participant in that.

5 Q Is there any particular reason that the Sydney Police does not
6 participate in that system?

7 A. We have our own computers in Sydney but, no, there's no
8 reason because I have never tried to be involved in PIRS.
9 Possibly if this were recommended through my Board of
10 Police Commissioners, maybe they would give me the go-
11 ahead to do it.

12 Q "PERS", is that a list of initials? Is it "P-E-R-S" or something?

13 A. It's a police information service presently used by the
14 Mounted Police, but I have very little technical knowledge of
15 it to explain it, other than I know that our detectives on
16 several occasions have gone through the Mounted Police in
17 the Sydney and retrieved information as far as MO's on
18 robberies and MO's on fraud. Now whether we could do the
19 same thing with this particular type of incident, I really don't
20 know. If it were a person and this was their first offence,
21 then probably that information would not be there in any
22 case, unless they had been involved with the federal force or
23 some other force which feeds the federal force.

24 Q Would you agree that it would be very helpful to the Sydney
25 Police or to the investigators in the Sydney Police to be able

1 to get back relatively quickly the information already in your
2 system concerning crimes committed in your city and the MO
3 of people who committed those crimes?

4 A. Most definitely. Most definitely. We have our own
5 computers in Sydney, but anything that we would enter on
6 that would be accessing what we had here. We are not to that
7 stage yet because we do not have enough civilian personnel.
8 Even though that's one of the things that was recommended
9 in the study by the Nova Scotia Police Commission, that is one
10 area where I feel that we have not arrived as of yet.

11 Q. You talked briefly of your relationship with the R.C.M.P. and I
12 understand you to say that it's a very good relationship.

13 A. Oh, yes, yes, very good relationship with the Mounted Police,
14 working relationship, and it's a relationship that I want to
15 continue. I've had that, in my time, with Inspector Harry
16 Murphy, I don't know if he's present here today, former
17 Commanding Officer of Sydney Subdivision. And the present
18 Inspector, Don Webster. As I told you a few moments ago,
19 along with the other Cape Breton Chiefs, we initiated
20 Crimestoppers in Cape Breton, which is a first for the
21 province, and also we have a joint forces operation on drugs.

22 Q. Let me talk about your relationship then with the Crown
23 Prosecutors. What is the relationship between the Crown and
24 your police force, first of all, during the investigation staff of
25 it? And I'm concerned about major crimes, Chief Walsh, if we

1 can restrict ourselves to that?

2 A. Well, our relationship has always been very good with the
3 Crown counsel and I think, in retrospect as I look back, that
4 probably the police depended too much on Crown counsel.
5 That has been a point that the present prosecutor, Frank
6 Edwards, and myself and my management team addressed
7 some time ago after a case in Sydney where he felt that he
8 had not been privy to full disclosure. I think his biggest
9 argument, as he conveyed to me, was that he did not want the
10 police to perceive him in the role of a police officer. That his
11 job was Crown counsel to advise and not to be called into
12 police investigations. In other words, when the investigation
13 is completed and you need my advice and you want to seek
14 my advice, then fine, I will be available. We have disagreed
15 on some points. We have disagreed on some points. I think
16 probably I see things from the perspective of a police officer.
17 He sees things from the perspective of a Crown attorney who
18 has to prosecute cases. And, in all fairness to Frank Edwards,
19 he is an excellent prosecutor. I have questioned him different
20 times on different cases and he's given me an explanation. In
21 one recent case in Sydney, he felt that he was not privy to full
22 disclosure and, therefore, he could not give that to legal
23 counsel for defence and he was pretty perturbed about that
24 particular thing. Some time after a trial, a second trial that
25 was successfully concluded, my management team, Frank

1 Edwards, Martin Herschorn from the Attorney General's
2 office, Mr. Whalley, City Solicitor, we sat down and we went
3 over what had happened and I think after maybe a two-hour
4 meeting, I think we left that with both sides understanding
5 where we should be coming from. He made many points. We
6 made others, but I think we left a very good feeling that we
7 had, in other words, cleared the air.

8 Q. If I can just interrupt you for a moment. That is the case to
9 which Mr. Edwards made reference when he gave evidence
10 before this Commission where after Counsel, both the Crown
11 and defence counsel had addressed the jury, a lady in the
12 courtroom approached Mr. Edwards and told him that what
13 he was saying was incorrect and that she, in fact, had seen the
14 deceased the day after he was supposed to have died.

15 A. Yes, that's...

16 Q. That's the case, is it?

17 A. Yes, sir, that's exactly the case.

18 Q. And did you, with that case, after the mistrial had been
19 declared, was that case given to the R.C.M.P. for an
20 investigation?

21 A. The Mounted Police were called in. Because of the
22 circumstances in the case, Mr. Edwards indicated to me that
23 he felt that he would like for the Mounted police to take a
24 look at that case. He contacted the Attorney General and the
25 decision was made there at that level, that the Mounted Police

1 would review the case, which they did. But the only problem
2 I had with that is that the Mounted Police, I had received a
3 call, I believe it was on July 8th, 1985. I was off for a few
4 days and I was wanted at the Office of the Crown Prosecutor.
5 So when I arrived there on that evening, he discussed the
6 case at hand and he told me that he had been in touch with
7 his superiors in Halifax and that the Mounted Police were
8 coming in to review the case. And, at that point, I felt that I
9 had been given an ultimatum, that they were coming in, the
10 decision had been made. My only quarrel with Mr. Edwards
11 at that time is if you wanted the Mounted Police, the federal
12 force to come in, all you had to do was ask. However, the
13 decision was made and the Mounted Police did come in. But,
14 in the final analysis, a conviction was secured on the basis of
15 the evidence that was secured by my department members.
16 Also, the Mounted Police were favourable in their comments
17 as to how the investigation had taken place. And maybe I can
18 explain what happened between, why Mr. Edwards had the
19 feeling that he was not privy to full disclosure. I think what
20 happened there was that there were ladies who indicated that
21 they had seen the deceased alive on the day that was
22 theorized to be the day of the murder. The detectives
23 interviewed two, possibly three witnesses. The third, they
24 didn't get. That should have been completed. It wasn't.
25 However, in the course of the investigation, with technical

1 surveillance and finally an admission, confession, and so on, at
2 that point in time, I think my people were going in another
3 direction and realizing that the evidence of these women or
4 what they could give was irrelevant to what they were doing.
5 Look, they felt that they had it all wrapped up and this was
6 not of major importance at that time. Hindsight is a
7 wonderful thing. They should have discounted that before
8 continuing in the direction they went. They did go in the
9 right direction, but as a result of that, Mr. Edwards, for some
10 reason, did not know about it and when he was in a trial
11 situation and on the final day of the trial, this lady came
12 forward and said, "Hey, look, what you just said is not right."
13 He was really perturbed. But I would suggest to you that
14 there was no way that this was a deliberate act by my people.
15 It was just that they were moving in another direction. They
16 were satisfied they had what they needed and this is one of
17 these things that happened.

18 Q. Was there any written statement taken from those ladies that
19 you're aware of?

20 A. There was no written statement taken from the lady that
21 came forward. I believe it was all verbal, Mr. MacDonald,
22 from two of the ladies and the third lady was, could not be
23 contacted to take a statement from her.

24 Q. Was it ever suggested to you during the subsequent review
25 by the R.C.M.P. or the meeting to which you refer that your

1 officers had deliberately held back information from the
2 Crown?

3 A. No. No, that was never indicated at all.

4 Q. Was it ever suggested that there had been less than full
5 disclosure to the Crown of all the written material that you
6 had available?

7 A. No, that was not a suggestion either. I don't know why Mr.
8 Edwards was not privy to this information. I just can't
9 explain that.

10 Q. During the meeting that you had with the members of the
11 Attorney General's staff, was the full circumstances of this
12 case disclosed and discussed?

13 A. Yes, we discussed it in some length. I think we had a meeting
14 of approximately two hours and, as I have said, after the
15 meeting was over, I think that we had a better understanding
16 of where everybody was coming from.

17 Q. Are there instructions given to your police officers concerning
18 the disclosure practices that should be followed with the
19 Crown?

20 A. Oh, yes, yes. Once again, I say this might have happened but
21 there was never a deliberate attempt or any reason to
22 withhold any information from Mr. Edwards.

23 Q. What are the instructions that are given to your men
24 concerning disclosure to the Crown of the information
25 available to the police?

1 A. Everything that we have should be put in the hands of the
2 Crown counsel so that he can make an accurate assessment of
3 how he's going to proceed with the case.

4 Q. Your relationship with the Crown, are there occasions, and let
5 me give you a general caveat, Chief Walsh. I'm not looking
6 for names of other people, but if you can talk about
7 occurrences generally without identifying anyone, I'd ask you
8 to follow that practice. Are there occasions to which you can
9 refer where members of your force and the Crown prosecutor
10 have disagreed whether a charge should be laid or
11 prosecuted?

12 A. Yes, I think the one which comes to mind quickly is an
13 incident where a youth was shot in the City of Sydney by a
14 homeowner who indicated that he was defending his
15 property.

16 Q. He was defending his property?

17 A. Yeah, and that was the indication from this individual. He
18 shot a youth and he hit him in the leg, struck him in the leg
19 and he was hospitalized. However, he would not cooperate
20 with our investigators to give them a statement of any kind.

21 Q. The youth wouldn't?

22 A. The youth would not. That case was reviewed by Mr.
23 Edwards and it was his decision that he would not proceed
24 with charges under those circumstances.

25 Q. Did the police wish to proceed with charges?

1 A. Yes, we wished to proceed with charges. I indicated that to
2 him and that was part and parcel of our discussion. That was
3 one of the topics. After we had gone through that, Mr.
4 Herschorn reviewed the situation and he concurred with Mr.
5 Edwards that, under the circumstances, that charges should
6 not go ahead. I think over the years we've been... Well, when
7 you talk to Mr. Edwards and he says, "Look, you come looking
8 for my advice. I process what you give me and I make a
9 decision. If you're not willing to accept that, then why are
10 you seeking my advice?" So it almost puts you in a Catch-22.
11 The police did not lay the information at that time, which I
12 feel that probably... I do feel that the police should have laid
13 the information and whether Mr. Edwards, as Crown counsel,
14 wished to refer it or not or go ahead with it or not, that was
15 his decision to make. But we did not lay any information in
16 that case. We discussed it and we were given reasons as to
17 why the case would not go forward.

18 Q. Has that been the practice of your department, if the Crown
19 believes that a charge shouldn't be laid, for whatever reason,
20 then it will not be laid.

21 A. In most cases, yes, pretty well always. If the Crown counsel
22 is not happy that we have sufficient grounds, or if he can give
23 us a reasonable explanation, yes, that's the way it's been.

24 Q. In the case to which you've referred, though, with the
25 gunshot wound, did you believe you had been given a

1 reasonable explanation?

2 A. Yes, as I sit back and think it over, yes, I feel that I was.

3 Q. And do you now agree that the proper course was followed
4 not to lay a charge?

5 A. I don't know. I have mixed emotions on that and, like I said
6 before, I'm perceiving it from the position of a police officer.
7 He is looking at the case from the position of a Crown
8 attorney.

9 Q. Well, let me follow up. Do you, are you saying that from a
10 police officer's point of view, a charge should have been laid
11 there and leave it to the Crown to decide whether to
12 prosecute or not?

13 A. Yes.

14 Q. Thank you. Why would it differ from a police officer's point
15 of view, if you can answer this, why do you think he would
16 have a different perspective from a police officer's viewpoint
17 than the Crown would have?

18 A. Well, Mr. MacDonald, I'm not legal counsel. I know the people
19 in my City and I have a pretty good background knowledge
20 on people and so on and their backgrounds and so on and I
21 just didn't feel good about this. Mr. Edwards told me point
22 blank, "Look, I'm not laying charges or taking cases to the
23 courts just to take you off the hook so that you have a good
24 public image or just because you feel that you're under
25 pressure." And I certainly indicated, "Look, I'm not under

1 pressure. I just don't like what I saw and I don't want my
2 city to become a Dodge City." That's...

3 Q. Become a what city?

4 A. A Dodge City.

5 Q. A Dodge City, okay. Thank you. Had there been any other
6 cases that you are aware of where the police wanted to
7 prosecute and the Crown didn't and the police acquiesced and
8 went along with the Crown's view?

9 A. There might have been, but I don't know if I can recall right
10 now, but that is certainly not a major problem.

11 Q. We've had evidence before this Commission, Chief Walsh,
12 about a case that's been referred to as "a shoplifting case" in
13 Sydney where the Crown wished to prosecute. I assume
14 whoever laid the information wished to prosecute but a
15 direction was received from the Attorney General's office in
16 Halifax not to prosecute. Do you have any personal
17 knowledge of that case?

18 A. No, other than I have probably read it somewhere, but I don't
19 have any personal knowledge of that.

20 Q. When you say you've "probably read it", are you referring to
21 what you've read in the media as a result of this Inquiry?

22 A. Probably.

23 Q. Thank you. Are you aware of any other case in your
24 experience where the Crown wished to prosecute or the police
25 wished to prosecute, but directions had been received from

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 Halifax not to prosecute?

2 A. No, sir.

3 Q. In your experience, have you ever considered that
4 prosecutions had not proceeded because of political reasons?

5 A. No, sir.

6 Q. Personal reasons?

7 A. No.

8 Q. Other than what you consider to be legal reasons, whether
9 you agree with them or not.

10 A. That's right, sir.

11 Q. I want to deal, finally, with an issue concerning hiring and I
12 want to talk about minorities on the police force. First of all,
13 how many members of the police force are there at the
14 present time who are black?

15 10:37 a.m.

16 A. I would have to say that we have two officers, although one
17 presently is on long-term disability.

18 Q. What's the full complement of the force, first of all.

19 A. 67.

20 Q. So two blacks, one is on...

21 A. Long-term disability.

22 Q. Long-term disability.

23 A. Yes, he was a 23, almost 24-year veteran who is on long-term
24 disability.

25 Q. Are there any native members of the police force?

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 A. No, sir.

2 Q. Has there even been to your knowledge?

3 A. No, sir.

4 Q. Are there any women members?

5 A. No, sir.

6 Q. Are there any members of the force that are disabled?

7 A. No, sir.

8 Q. Has any attempt been made, to your knowledge Chief Walsh,
9 to take any type of affirmative action to secure members of
10 the police force who are minorities?

11 A. Yes, I was involved with, through the Atlantic Association of
12 Chiefs of Police. We had a program going where we were
13 trying to get visible minorities into the field of police work.
14 Approaches had been made to the colleges to try and gain
15 their interest to go into the field of policing. That's something
16 that we receive Federal funding for and as a result of that, I
17 believe that there are six from the Province of Nova Scotia
18 presently at the Atlantic Police Academy including one youth
19 from Sydney, Nova Scotia.

20 Q. Now are those six, are they a mixture of minorities?

21 A. Well, they're probably a mixture of minorities. There are
22 some black officers from Halifax. There's one black officer
23 from Sydney and I feel that there are some, I don't know
24 about women, there are women enrolled but I don't know if
25 they would be involved in this particular program. I think

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 they originally started with about ten and the number
2 dropped down for various reasons to about six. But I believe
3 there are six enrolled presently at the Atlantic Police
4 Academy.

5 Q. During the time he gave evidence before this Commission, Mr.
6 Whalley, the City solicitor, referred to an affirmative action
7 plan in force in Sydney and to an agreement between the City
8 and the Nova Scotia Human Rights Commission. Were you
9 ever made aware of such an agreement?

10 A. I am aware of such an agreement and Alderman Frank
11 Starzomski, who I think is involved with that, certainly
12 encouraged that at the level of the Board of Police
13 Commissioners.

14 Q. The agreement requires that there be a plan of action each
15 year set to obtain new members of the visible minorities as
16 City employees and I assume that would include policemen.
17 Are you aware of any plan of action in effect, other than the
18 one that you've referred to with the Atlantic Police Chiefs, to
19 secure more minorities as members of the Sydney Police
20 Force?

21 A. No. No, whatever is going to be done is probably left in my
22 hands to be done as chief constable.

23 Q. And have you specifically been asked by the Police
24 Commission in Sydney to take any plan of action to increase
25 the number of minorities on the police force?

CHIEF WALSH, EXAM. BY MR. MacDONALD

- 1 A. Well my mayor has continually recommended or suggested or
2 invited people from the native community to get involved in
3 the field of policing and he would encourage that. Usually
4 when I go anywhere and I meet with a board and we're
5 dealing with this particular subject, the first thing they ask
6 me is, "Chief, why don't you have any women on your force?"
7 The answer is very simple, they haven't applied. If you were
8 to apply it to native people, they haven't applied. As I said,
9 we have different nationalities on our force, you know, we
10 had Polish officers. We don't have a Ukrainian, although
11 there are many multi-cultures in the City and so on, but
12 personally, Mr. MacDonald, I don't care what color a man is.
13 If he can do the job for me and he has the credentials, I'm for
14 him.
- 15 Q. Are there minimum entrance requirements for the Atlantic
16 Police Academy?
- 17 A. Yes...
- 18 Q. Does one have to have a Grade 12 education, for example, to
19 get in?
- 20 A. Well the way they do it at the Atlantic Police Academy, they
21 have a format, I know that I have copies of it, and you're
22 given "x" number of points for every category. Like if you
23 were a college graduate you would get "x" number of points.
24 If you were a, say for example, a Grade 12 graduate, you'd get
25 "x" number of points. If you're a Grade 12 G.E.D, "x" number

1 of points. And it all depends.

2 Q. What's a "G.E.D."?

3 A. General upgrading to get your Grade 12 education...

4 Q. Okay.

5 A. Possibly for a student who had to drop out of school or an
6 older person who wanted to go back and re-enroll, that type
7 of thing.

8 Q. Do you think it would be good to have members of your police
9 force, more members who are black?

10 A. Sir, it is my opinion that the population of my city should
11 reflect the multi-culturalists in that city.

12 Q. Sorry, the population of your force, did you mean to say?

13 A. The population of my force should reflect, in its numbers, the
14 population of our city from the multi-cultural and that that is
15 black, Ukrainian, Polish, Newfoundlander or what have you, I
16 would like to see all there.

17 Q. So would you then like to have members of the native
18 community on the police force, provided they're qualified?

19 A. Yes, I certainly would. I feel that that would break down
20 barriers that you cannot break down without their
21 involvement. It's the same with the black community. If we
22 have the black officers there I feel that, look, that's
23 communications. And also I'm not against women. I feel that
24 there are certain types of crime that happen where a female
25 police officer would be very beneficial, especially in cases of

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 crimes against women, indecent assault and so on, where a
2 female police officer could be very compassionate and
3 probably secure a better relationship with the victim, as
4 opposed to a woman being say, for example, indecently
5 assaulted by a man, and then she has to turn around and
6 explain to another man, who is one of the same species who
7 just attacked her, as opposed to sitting down and talking to a
8 woman. So, you see, I have no problem with any of these
9 things. If these people are qualified.

10 Q. Your concern is that people be qualified.

11 A. That's right, sir.

12 Q. Would you be prepared, and this is obviously something you
13 can't commit to, Chief, but I'm trying to get your perception,
14 would you be prepared to take members of visible minorities
15 onto the police force who may not be as well qualified but to
16 train them. Somebody, for example, that had the same
17 qualifications as policemen used to have in the early 70s,
18 Grade 10 education, for example, and nothing else.

19 A. Well with the policy that I have in place, I wouldn't have a
20 choice. As I stated, the policy of the force today. I support
21 minorities and there are many things as chief of police that I
22 have not reached yet. There are things that I want to do. I
23 want to see more civilian employees in my force. I would like
24 to see civilian employees on the desk to put police officers out
25 in the field where I feel they should be, as opposed to be

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 confined. There are many aspects that I haven't gotten to.

2 Q. Many of the changes that you've talked about came as a
3 result of that study that was carried out by the Nova Scotia
4 Police Commission.

5 A. Yes, they made many recommendations and many things
6 were done. I think the one thing that really hasn't
7 materialized is the civilian employees. Other things we have
8 done on our own. We have looked at our department. We
9 wanted to know where we went wrong, how we could
10 improve things, where we could do things better and that's
11 what we've been trying to do. And the emphasis strictly on
12 training. And one point before I leave, I try to impart to our
13 police today that the rights of the individual in our society are
14 paramount. And if the police do not play the game by the
15 rules then they will not win their cases in a courtroom.

16 Q. And Chief, you're very familiar with the circumstances of the
17 Donald Marshall, Jr. case. You've heard the evidence and is
18 there, in your view, could the same thing happen again in
19 Sydney?

20 A. I don't think that could happen today with all the safeguards
21 that we have, with your Charter of Rights, with your Young
22 Offenders, your Bail Reform. No, I can't see it happening
23 again. I just can't.

24 MR. MacDONALD

25 Thank you. Those are the questions I have, My Lord.

CHIEF WALSH, EXAM. BY MR. MacDONALDCOMMISSIONER EVANS

1
2 Mr. MacDonald, I wonder if you would cover the size of the
3 force today as compared to '71 with the population of Sydney in
4 '71 as compared to today to give some ratio.

MR. MacDONALD

5
6 Q. What is the population of Sydney today, Chief Walsh, do you
7 know what that is?

8 A. The population of Sydney today is approximately 30,000. We
9 have a complement of 67. Back in '71 I would think that our
10 complement would maybe be 58 or 59. Our complement of
11 men do not reflect the population in our city. We are catering
12 to possibly 120,000 in the surrounding areas and that has an
13 affect on why we have the numbers. Like within a radius of
14 13 miles from Sydney you have New Waterford, Glace Bay,
15 Dominion, North Sydney and Sydney Mines and Sydney is the
16 focal point.

17 Q. Does Sydney police other areas outside its own municipal
18 boundaries? Does your police force...

19 A. No, the Mounted Police are in the center but those people all
20 come to Sydney. It would not be uncommon today to, say for
21 example, handle a three-car accident where one person might
22 be from New Waterford...

23 Q. I see.

24 A. Sydney Mines and North Sydney and no Sydney person
25 involved.

CHIEF WALSH, EXAM. BY MR. MacDONALD

1 Q. Sydney being the commercial focal point...

2 A. Focal point.

3 Q. That people attract. The population of Sydney in 1971, do
4 you have any idea of that?

5 A. Probably the same. It seems that our population is starting to
6 dwindle but I think probably the reason for that is people are
7 starting to move out of the city and build on the outskirts of
8 the city.

9 MR. MacDONALD

10 Anything else, My Lord? Thank you, Chief Walsh.

EXAMINATION BY MS. EDWARDH

11
12 Q. Let me follow up on some of the questions posed to you by
13 my friend. You've talked about the interest you have, Chief
14 Walsh, in having minorities and women on the force and let
15 me just go one step further with that. What have you done,
16 or what has anyone else who could do anything, done in
17 terms of getting women out of high school into a stream
18 where scholarships and other things could be available, or
19 members from the black community or native community
20 where you can gather together a core number that might
21 have an interest and then facilitate their movement through?

22 A. I personally have done nothing other than my involvement
23 with the Atlantic chiefs in trying to bring some of the multi-
24 cultural people into the field of policing.

25 Q. Are you aware of anyone else who has, in a very proactive

CHIEF WALSH, EXAM. BY MS. EDWARDH

1 way, gone out to get young people interested in police
2 training and facilitate their movement through a course of
3 training?

4 A. Well other than the men that were on the committee with me,
5 Chief Calhoon from Moncton; Chief Blair Jackson from Halifax;
6 Chief Lonnie Murray from Truro and the commander-in-chief
7 of the Newfoundland Constabulary, Ed Coady, and before him,
8 Don Randall. But if you're asking me in Sydney have I have
9 made personal overtures to put this type of thing in place...

10 Q. Yes.

11 A. The answer is "no."

12 Q. And are you aware of any other overtures that have been put
13 forward by any other groups?

14 A. No, not other than probably the Black United Front, who were
15 certainly interested in the multi-cultural thing that was going
16 on.

17 Q. Well perhaps I'll leave that area to Mr. Ross who represents
18 the Black United Front then. I'd also like then to go back to
19 another area you dealt with. In terms of the investigating
20 process, are there any now regulations or rules governing the
21 obligation of either patrolmen or investigators to keep
22 notebooks?

23 A. Yes, they're expected to keep their notebooks. The last time
24 we talked I told you that was one of my failings but it's not
25 one that's going to continue.

10:50 a.m.

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Q Do you... Do we have a shared understanding of the regulation police notebook, at least that I might be familiar with, is that what's in, now in use in Sydney?

A. Yes, an officer could be called upon at any time for a check of his notebook.

Q And with respect to the making of notes, is it part of a police officer's duty to actually make notes of his observations?

A. Yes.

Q To keep a record of what he's been doing.

A. Yes.

Q In his notebook.

A. In his notebook.

Q If he failed to do so, would he be subject to discipline by internal police regulations?

A. Could be.

Q When you say "could be", can you explain how it would pass that he might be, under what basis would he be disciplined?

A. If we call for a check on a man's notebook for some particular reason and it was found wanting, then we could question the individual on it as to why this was not being done. And you always have the Police Act where you can use it to take action against a police officer, whether it's in the form of a reprimand or a fine or whatever.

Q Is there a procedure or has there been a procedure instituted

1 whereby constables or patrolmen have had their notebooks
2 checked so that you have some sense of how well they're
3 doing in terms of notebooking?

4 A. No, I would probably leave that to Inspector MacDonald. I
5 know that from time to time, he did look at people's
6 notebooks and check them and discuss it with them. And,
7 like I said, we have encouraged the use of notebooks,
8 encouraged notekeeping for reference in a court of law where
9 it's always at your disposal to refresh your memory.

10 Q. So you would expect that any supervision of the note-taking
11 process would be done by Inspector MacDonald, at least in
12 terms of the investigators.

13 A. No, not necessarily now, although he might do it at any time
14 with any of his people or people under his command.

15 Q. So not necessarily now. Who else would be...

16 A. The Patrol Inspector could call at any time or the Deputy
17 Chief.

18 Q. So all three would be.

19 A. Any one could call at any time if they felt there was a reason
20 to do so.

21 Q. Do you know to whom the notebook belongs? Is it the
22 property of the force or the personal property of the officer?

23 A. It is my opinion, and I think you'll find it factual, that it is the
24 property of the Department.

25 Q. And does the Department provide a place, a central place

1 where notebooks are kept?

2 A. No, I do not have something like that in place.

3 Q. So they would then in the ordinary course, I take it, be
4 brought home and when finished, where would they be
5 stored?

6 A. Well, they could stored anywhere. If you talk to any police
7 officer, some police officers have all kinds of their notebooks
8 put away in a box some place or really readily accessible to
9 him.

10 Q. The point being, sir, if the police officer were to be, were to
11 die, let's say, in a car accident...

12 A. Could be lost.

13 Q. Could be lost?

14 A. Could be lost.

15 Q. Now in terms of the process of developing community and
16 police relations, is there a public complaints system in place
17 where people who take issue with some aspect of police
18 conduct can go to a party and have that conduct reviewed?

19 A. I will entertain any complaint against any one of my police
20 officers and if I think it's founded, I will either have it
21 investigated and I would deal with it under the Police Act of
22 Nova Scotia.

23 Q. So, I take it, if I were a citizen of Sydney, I would have to go,
24 though, to the police force, to yourself, in order to raise my
25 complaints?

1 A. Not necessarily. At this point in time with the changing in the
2 Police Act, there are other avenues. They could lodge a
3 complaint with the Board of Commissioners... or the Chairman
4 of the Board of Commissioners, which is our mayor.

5 Q. Let me give an example so we know what kind of problem
6 I'm referring to. Let us suppose, for instance, a citizen feels
7 that a police officers has used language which indicates that
8 they are racist and a complaint, one wants to file a complaint
9 to have that attitude dealt with. In the ordinary course, given
10 the structure of policing, they would have to go to you, would
11 they not? There would be no other vehicle to address that?

12 A. It would probably come to me, unless I deal.. Or I delegated
13 somebody to deal with police complaints.

14 Q. But as the system stands now, logically they would come to
15 you and if you hadn't delegated it or didn't delegate it, you
16 would deal with it?

17 A. Yes.

18 Q. And have you ever held a hearing? Have you ever had
19 occasion to hold a hearing in relation to a police complaint?

20 A. I have, when a person comes to me with a complaint of that
21 kind, my first duty is to try and resolve it informally and if
22 that means bringing the complainant together with the police
23 officer, which is usually very, very good, that these people
24 can probably leave the room in a very amiable way.

25 Q. So you first try to resolve it informally?

1 A. I try to resolve it informally and if that can't be done, then I
2 would have it investigated and other steps taken.

3 Q. And I take it the people who would investigate it would be
4 members of the department as well.

5 A. That's right.

6 Q. So there is no real external mechanism outside the
7 department to investigate those kind of complaints?

8 A. There is today because if you're not satisfied, you could call
9 upon the Nova Scotia Police Commission to send in their
10 investigators and examine the complaint.

11 Q. Would it be your view that given their jurisdiction, this is the
12 kind of complaint they would investigate?

13 A. I think they would investigate any police complaint where a
14 citizen was not satisfied.

15 Q. And I take it they hold hearings, et cetera.

16 A. Yes.

17 Q. Now with respect to other investigative procedures that have
18 been examined, I suppose, as a result of what happened to
19 Mr. Marshall, do you know whether there are any rules that
20 have been promulgated in the areas of taking statements
21 from juveniles? Is that left to the discretion of the police
22 officer or are there rules within the department that might
23 govern those kinds of investigative steps?

24 A. Usually in cases dealing with juveniles, it is the juvenile
25 section that would probably or more often deal with these

1 individuals. And my people in my youth organization can
2 deal with it very well and by the rules.

3 Q. But, for example, let's say... Leaving aside that the victim of a
4 homicide may be a juvenile, and even that the primary
5 suspect... Assume that that primary suspect is an adult, so
6 you have your ordinary investigators who are out in the field
7 investigating, and it comes to pass that they find that a
8 number of potential witnesses are juveniles. I take it in the
9 ordinary course, it is the investigators who would continue
10 and interview the juveniles, correct?

11 A. Yes, it would be the investigators. But, in that case, if there
12 were other juveniles involved, then it would probably be a
13 function along with the detective, who would be the youth
14 officer, to assist him in that investigation.

15 Q. Let's assume there aren't other juveniles involved. It's just a
16 situation where you have a witness to a major crime that
17 happens to be a juvenile. Whether there's a victim that's a
18 juvenile or a suspect that's a juvenile, just setting that aside
19 for a moment, are there any special rules governing the
20 interrogation of juveniles outside of dealing with them as
21 accused persons?

22 A. Yes, their parents would be probably called to be with them
23 in the course of that hearing or the taking of a statement, if
24 necessary.

25 Q. Is that discretionary, sir, or is it written anywhere in terms

1 of...

2 A. No, that is the way it has to be.

3 Q. So it's written somewhere?

4 A. That is the guidelines today.

5 Q. That is the guidelines?

6 A. That is the guidelines.

7 Q. And I take it that investigators then would be given that
8 information?

9 A. Oh, yes.

10 Q. Before they launched any investigation as part of their
11 training or as part of their conduct...

12 A. They already know that that is the procedure. I have, as far
13 as young offenders, there is a policy in place and that policy is
14 to be strictly adhered to.

15 Q. Yes.

16 A. I don't have a copy of it with me but I can certainly...

17 Q. No, I understand that the Young Offenders Act requires
18 parents to be present with respect to interviewing someone
19 who is a suspect or may be charged with a criminal offence or
20 offence under another statute. My concern, however, is with
21 the interrogation of just juveniles, should they be a witness to
22 a crime? Are there any rules governing that, leaving aside
23 the YOA?

24 A. They should have a parent or a guardian there with them.

25 Q. Would your force now know that?

1 A. Yes.

2 Q. If so, how would they know?

3 A. Because I have in place a young offenders policy.

4 Q. And that would govern...

5 A. That would govern the dealing with juveniles.

6 Q. Even though they're not charged.

7 A. No.

8 Q. Or it's not...

9 A. There's a policy in place.

10 MS. EDWARDH

11 That answers my questions, Chief Walsh. Thank you.

12

13 EXAMINATION BY MR. PUGSLEY

14 Q. Chief Walsh, is it fair to conclude that while John MacIntyre
15 was Chief of Police of the City of Sydney that he instituted
16 significant and progressive changes in the Police Department?

17 A. Yes, sir. His request for a study of the department in 1979
18 has certainly led us to where we are today. Inspector
19 MacDonald and myself working under the then Chief
20 MacIntyre, we were part of it back there and we are
21 continuing that process today.

22 MR. PUGSLEY

23 Thank you very much, Chief.

24 MR. PRINGLE

25 No questions, My Lord.

EXAMINATION BY MR. PINK

1
2
3
4 Q. Chief, I'd just like to follow up with you briefly on the one
5 case where you and Mr. Edwards had a disagreement on a
6 charge. It's my understanding that...The shooting case, it's my
7 understanding that you understood that the police had the
8 option to lay a charge in that case?

9 A. Yes.

10 Q. And all that Mr. Edwards told you is that it was his view
11 there was a good defence if a charge was laid.

12 A. Exactly.

13 Q. And the defence entailed the defence property by the
14 homeowner involved who would have been the accused
15 person.

16 A. Yes, sir.

17 Q. And on the facts of that case, the homeowner knew of the
18 people coming to his home. Correct?

19 A. Yes.

20 Q. And made several calls to try and get somebody to deal with
21 the matter.

22 A. Yes, sir.

23 Q. And, in fact, he called the Attorney General.

24 A. I understand that he did.

25 Q. And called the police.

1 A. Yes, sir.

2 MR. PINK

3 Thank you.

4
5 EXAMINATION BY MR. ROSS

6
7 Q. Just one or two questions, please, Chief Walsh. With respect
8 to minorities on the force, would your department be adverse
9 to the involvement of the Black United Front or perhaps the
10 Nova Scotia Human Rights Commission, in cooperation with
11 the Atlantic Police Academy, in recruiting people and taking
12 them from whatever training level they are so that they could
13 secure admission to the College and perhaps go on to become
14 police officers?

15 A. I would not be adverse to that, but I understand, Mr. Ross,
16 that the format in Nova Scotia is going to be changed this
17 year. Presently, the Atlantic Police Academy are doing
18 interviews for the coming season, but I think there is going to
19 be a change in the province where the local police chiefs are
20 going to have more input and I think that some of the testing
21 and so on will be done in the Province of Nova Scotia.

22 Q. I see. As far as the current procedure is concerned and these
23 interviews, I take it the Police Academy will be looking for
24 people with Academy requirements, am I correct?

25 A. Yes, they have a minimum standard.

CHIEF WALSH, EXAM. BY MR. ROSS

1 Q. What I'm speaking about is a situation in which there is a gap
2 between the minimum standard and where the member of
3 the minority group is to see whether or not some form of
4 transition program could be put in place to upgrade members
5 of the minority groups so that they meet this minimum
6 standard at least?

7 A. I would probably have to think that that is already in place.
8 There are certain requirements for the Atlantic Police
9 Academy, but there is opportunity today for an individual to
10 upgrade themselves by taking courses in criminology or
11 whatever may be necessary to bring him to a point where he
12 could be considered to be a candidate.

13 Q. Sure, and is this in cooperation with the Police Academy?

14 A. I have no dealings at that level. What is done there is done
15 by the Academy itself. Some police departments interview
16 their own people and after they do testing, they decide on the
17 number of people and then they send them onwards to the
18 Academy to be trained for that particular police department.

19 Q. And perhaps you can tell me, Chief Walsh, what, if any,
20 procedures are currently in place to deal with allegations of
21 bullying or name-calling of members of minority groups by
22 police officers under your jurisdiction?

23 A. Well, we have the Police Act of Nova Scotia and that's where
24 that would be dealt with, if necessary. Mr. Ross, I already
25 stated that if I receive a complaint of some kind, I would like

1 to look at that complaint, I would like to try and resolve it
2 internally, if possible, which I feel is my first duty as Chief
3 Officer. And if that can't be done, then there are other
4 avenues to follow. And if the individual is not satisfied, then
5 they can call upon the investigative branch of the Nova Scotia
6 Police Commission.

7 11:05 a.m.

8 Q. Yeah, and do you advise the individual complainant that if
9 he's not satisfied that he's got further recourse, the Police
10 Commission?

11 A. Mr. Ross, I've been very successful, and usually I've been able
12 to resolve most of the problems in my office.

13 Q. But the odd one that you didn't resolve, did you...

14 A. I don't think that I've hit one yet that I haven't resolved.

15 Q. Congratulations. Is there a record kept of these complaints?

16 A. Yes sir, we have to report to the Nova Scotia Police
17 Commission each year the number of complaints that you
18 might have had, so that they have a record of it and under
19 the new Act now, complaints that are filed by any individual
20 we have new forms which can be completed by the individual
21 and followed up and the person is certainly is going to get a
22 fair shake.

23 Q. And I take it, sir, that the complaints then, there is a
24 requirement that they be in writing?

25 A. Yes, sir.

1 Q. And when a complaint is made and it's found, it's determined
2 that it was properly founded, is there a record made on the
3 personnel file of the police officer?

4 A. Yes, any charge that's laid against a police officer and
5 followed through with internal discipline, it is on the record of
6 a police officer for a certain period of time.

7 Q. And does that impact in any way on the officer's opportunity
8 for promotion?

9 A. It might have a bearing on assessment by the officers of his
10 department.

11 Q. Well I would like to speak with you just very quickly about
12 50 percent of the black component of your force. The officer
13 who is on LTD, long-term disability...

14 A. One officer is, yes.

15 Q. On long-term disability was with the force 24 years.

16 A. Just about.

17 Q. And when did he go on long-term disability? Within the last
18 five years?

19 A. The first part of this year, sir.

20 Q. And what was his rank at that time?

21 A. He was a constable.

22 Q. Did he attempt any competitions for promotion?

23 A. He was involved in one competition and I believe he missed
24 another competition.

25 Q. When you say he missed it, it was not available for him?

1 A. He was not available.

2 MR. ROSS

3 Thank you very much, Officer.

4 EXAMINATION BY MR. WILDSMITH

5 Q. A couple of points, Chief Walsh. You talked about the Atlantic
6 police chiefs and the fact that, I believe it was through them
7 that six members of the minority from the Province of Nova
8 Scotia were attending the Atlantic Police College this year. Is
9 that correct?

10 A. Yes, sir.

11 Q. And the make-up of those six individuals, are any of them
12 Indians?

13 A. I don't believe so.

14 Q. Okay. Now the Atlantic police chiefs, I take it from your
15 testimony so far, have some degree of control or influence at
16 the Atlantic Police College? Are they the board of directors or
17 an advisory body in any way?

18 A. No, it was a project undertaken by the Atlantic police chiefs to
19 try and open the doors to the Atlantic Police Academy to
20 multi-culturals, not necessarily black. They could have been
21 East Indian or any nationality.

22 Q. I see. So do the Atlantic police chiefs have any formal role in
23 relation to the police college or is this just powers or
24 persuasion that...

25 A. More or less powers of persuasion. Trying to solicit, if you

1 will, or encourage people from multi-cultural backgrounds
2 with expertise to get involved in the field of policing. I think
3 that's where we are.

4 Q. Okay. Fair enough. And with respect to the curriculum at the
5 Atlantic Police College, do you know if there are any courses
6 there dealing with minorities, any cross-cultural training?

7 A. No, I can't answer your question on that. I really can't.

8 Q. And I take it that the Atlantic police chiefs did not, in
9 conjunction with the efforts to bring minorities into the
10 college, develop programs to train other officers in special
11 problems of minority groups.

12 A. No.

13 Q. Okay. Fair enough. Mr. MacDonald asked you some questions
14 about the affirmative action agreement that the City of
15 Sydney has. I have with me a copy of an agreement,
16 memorandum of understanding, dated September 20th, 1985.
17 Is that the agreement that you're familiar with?

18 A. Yes, it is.

19 Q. There are certain items in this agreement which call for action
20 on the part of the City of Sydney and I would take it that for
21 the City of Sydney to act in relation to the police department
22 you would have to have some knowledge about it.

23 A. Yes.

24 Q. All right. And it's your understanding that the affirmative
25 action policy of the City does apply to the police department.

1 A. Yes.

2 Q. The first item that I'm looking at here talks about the City
3 Council issuing a written statement to all employees by way
4 of manual or internal publication announcing the City's
5 commitment for implementation of the affirmative action
6 program. Are you aware of any written statement going to
7 yourself and all other employees in the police department
8 about affirmative action?

9 A. No, I have not received a written statement although I have
10 been encouraged at the Board of Police Commissioners' level
11 from Alderman Frank Starzomski who is probably one of the
12 individuals who put this in place to encourage...

13 Q. Fine. The second item that's on this list says that, "The City
14 Council will direct those responsible for recruiting and
15 training to ensure that this policy is adhered to." Did you
16 receive any direction from the City about recruiting and
17 hiring?

18 A. None other than encouragement.

19 Q. Fine. The third item says, "The City will conduct an employee
20 audit to determine the extent to which minorities are
21 represented in various areas of the City employment." Did
22 you receive a request for information on the representation of
23 minorities in the police department from the City?

24 A. No, not a specific request although the powers that be would
25 know.

CHIEF WALSH, EXAM. BY MR. WILDSMITH

- 1 Q. How would they know?
- 2 A. They would know from first-hand information the numbers
3 and the people who are on the force.
- 4 Q. All right.
- 5 A. Or in the City employ.
- 6 Q. The, another item on the list talks about disseminating
7 information about employment opportunities with a view to
8 recruiting target group applicants. Do you know whether
9 anything with respect to policing has been disseminated to
10 minority groups about employment opportunities in the
11 police department?
- 12 A. No sir, I don't.
- 13 Q. All right. There's another, last item on here I wanted to draw
14 your attention to, talking about, I'm sorry, one previous one.
15 There is another reference to developing short and long-term
16 employment projections with respect to minorities in the City.
17 Did you develop any projections on future hiring of
18 minorities?
- 19 A. No, sir.
- 20 Q. And I take it you didn't receive any requests then from the
21 City to provide such projections.
- 22 A. No, sir.
- 23 Q. And the final item refers to evaluation meetings held the
24 beginning of each year to consider new plans of action and to
25 evaluate the previous year. Do you recall attending any

CHIEF WALSH, EXAM. BY MR. WILDSMITH

1 evaluation meetings?

2 A. No sir, I don't.

3 Q. Mr. MacDonald also asked you about, in reference to this
4 cross-cultural training any particular courses that you
5 yourself had taken and if I recall your answer correctly, you
6 said that it was part of the senior policing course at the
7 Canadian Police College in Ottawa.

8 A. Yes, they had speakers in from minority groups speaking to
9 the officers.

10 Q. And I take it that this course then is given by definition to
11 only senior police people.

12 A. Yes, that's right. From the rank of sergeant.

13 Q. And so constables, corporals, would not receive such training.

14 A. Would not be privy to that particular course.

15 Q. Yes. Do you recall, without going into any details, anything
16 about the substance of what training you received concerning
17 policing of Indians?

18 A. No, sir. The best training that I could think of is if we could
19 get some native people who are interested in the local police
20 force and if they would be willing to go to the Atlantic Police
21 Academy and receive the training necessary, then they would
22 be considered on my force. I would welcome a native person.
23 I would welcome more blacks. I would welcome any of the
24 other denominations in my area.

25 Q. When you took this course in Ottawa did you come away with

CHIEF WALSH, EXAM. BY MR. WILDSMITH

1 | it believing that there were any special considerations to take
2 | into account when policing natives or native communities
3 | such as reserves?

4 | A. Would you repeat that, please?

5 | Q. Did you learn anything in the course in Ottawa about special
6 | considerations to be taken into account when policing Indians
7 | or Indian communities like reserves?

8 | A. No, I don't know if I'm reading you on this one. It was not a
9 | course, per se, dealing with multi-cultural people.

10 | Q. Yes. You're saying some speakers came in.

11 | A. Speakers came in with different viewpoints and perspectives
12 | and so on.

13 | Q. I'm wondering whether at the end of that process whether
14 | you left with an understanding of any special considerations
15 | that ought to be taken into account when policing Indians or
16 | policing Indian communities like reserves.

17 | A. I'd have to answer no.

18 | Q. All right. And irrespective of what you might have or might
19 | not have learned in that program for senior policing, do you,
20 | today, can you tell us today about any special considerations
21 | you think ought to be taken into account when policing
22 | Indians or Indian communities?

23 | A. When you say "special considerations" what exactly do you
24 | mean?

25 | Q. What do I mean? It could be anything, I'm asking you the

1 question but it could be matters dealing with whether to
2 arrest somebody on a reserve and take them out of the
3 community for minor offences. Whether there are other ways
4 of dealing with crime problems in Indian communities that
5 might serve the community and individual better than
6 processes you use in the rest of the city.

7 A. I think we have met with them, with native people, their
8 representatives, and we realize that they have problems on
9 the reserves that they would rather deal with themselves and
10 we would like to see it that way if this is the answer that you
11 want. If there's major crime or we have to go in, then we
12 have to go. And we have to treat them the same as anybody
13 else. There are many problems that they are trying to cope
14 with themselves, with good relationship with the department,
15 with the division and so on. And we encourage this. We
16 encourage this. Am I answering your question in that way?

17 Q. I think you are in part without going into the details of it. I
18 understand your answer to be that when dealing with more
19 minor crimes on Indian reserves you do attempt to take into
20 account the nature of the community you're dealing with.

21 A. That's true and as I indicated initially here that we, our
22 department initiated alternative measures for juveniles,
23 youth, and cases sometimes do not go to the courts. They can
24 be handled in other ways, through community effort and that
25 type of thing, which I think is probably answering your

1 question. If that is what you're asking for me that is already
2 being done.

3 Q. And I'm wondering how some of these things are
4 communicated to the constables on the beat.

5 A. Well I speak with the chief of the Membertou Reserve from
6 time to time and I speak with other members from that
7 community and I'm not receiving any static at this time so
8 things must be going very well.

9 Q. Okay.

10 A. And I have an open-door policy where I've told these people
11 "I'm willing to sit and talk to you at any time" or "We can
12 meet with my management team and let's iron out any of our
13 problems." And it seems to be working.

14 Q. Fair enough. I take it then that you don't provide any special
15 instructions to constables who are going to the reserve to
16 police the reserve community.

17 A. Well I would like to see the people on the reserve treated
18 equally with people in any other part of the city, in the same
19 manner. I don't believe in segregating one and treating one
20 different than the other.

21 11:19 a.m.

22 Q. So you don't provide any special instructions.

23 A. No, I expect them to treat all our citizens alike, in a very
24 equitable manner.

25

CHIEF WALSH, EXAM. BY MR. WILDSMITH

1 MR. WILDSMITH

2 Thank you. That's all I have.

3 MR. CHAIRMAN

4 That's all. Thank you, Chief.

5 CHIEF WALSH

6 Thank you, sir.

7 **THE WITNESS WITHDREW**

8 MR. CHAIRMAN

9 Do you propose to call Inspector MacDonald.

10 MR. MACDONALD

11 I'll think about it over the break.

12 MR. CHAIRMAN

13 All right. Well, if you do intend to call him, it seems to me,
14 as he probably won't be very long, we should hear from him
15 before we hear the application...

16 MR. MACDONALD

17 Yes.

18 MS. DERRICK

19 ...from Ms. Derrick.

20 **BREAK** 11:20 - 12:00 p.m.

21
22 MR. MACDONALD

23 My Lords, we've elected not to call any additional evidence.
24 The only evidence we may need to be called at this stage of the
25 hearing will be Donald Marshall, Jr. tomorrow.

1 MR. CHAIRMAN

2 Then we should deal with Ms. Derrick's application that she
3 had given notice of.

4 MS. DERRICK

5 Thank you, My Lord.

6 My Lords, on behalf of Donald Marshall, Jr. this morning,
7 we're requesting the Commission that the television cameras and
8 lights be turned off during Mr. Marshall's testimony tomorrow.
9 And we're also requesting that still cameras be prohibited from
10 taking pictures while he is testifying, although we are prepared
11 for them to take Mr. Marshall's picture before he starts testifying.
12 So there could be what's described as "a photo opportunity".

13 The basis of this request is an opinion provided to us by Dr.
14 Kris Marinic, who is a psychologist practicing privately in Halifax,
15 and who has had a professional relationship with Mr. Marshall
16 during various periods of time since early 1984.

17 De. Marinic has advised us by letter to the following effect,
18 and I'm just going to read the relevant portion of his letter into
19 the record.

20 Dr. Marinic says with respect to Mr. Marshall:

21
22 Given his past experiences and the ongoing
23 current stress, in my opinion, the exposure to
24 television cameras and bright lights would
25 compromise his ability to testify. Most likely, his
 level of anxiety would adversely affect his
 speech, concentration, and memory.

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Consequently, not only would he endure more distress, the quality of his testimony would also suffer.

I, therefore, recommend that the television equipment be turned off during Mr. Marshall's testimony.

I'd like to indicate that the full text of this letter is before Your Lordships. I have filed it. I believe it may have been even given an exhibit number. 163, thank you. It's also in the hands of Commission counsel and other counsel present and Mr. Murrant, who is here representing the CBC.

EXHIBIT 163 - LETTER FROM DR. K. MARINIC DATED JUNE 21, 1988, REGARDING DONALD MARSHALL, JR.

MS. DERRICK, Cont'd.

Your Lordships, this is a tragic story unfolding over 17 years of Mr. Marshall's life, with him being so often the focus of intense public scrutiny. Mr. Marshall has already testified six times about his involvement in the case and they have been painful and difficult experiences in themselves. He is now to testify for a seventh time and I submit that it is the principal concern of this Commission to insure that his evidence is elicited under the most conducive circumstances, to insure its maximum effectiveness. Testifying will be a difficult enough experience for Mr. Marshall as it is. There has, in fact, been evidence before this Commission that

1 Mr. Marshall is a shy and reticent person.

2 We are not asking for the public or the press to be
3 excluded. The public nature of the Inquiry can be insured
4 without the presence of cameras and their lights. The public will
5 continue to have access to Mr. Marshall's testimony and the press
6 can report fully on the proceedings.

7 You should know that prior to making this application, we
8 had discussions with CBC and the ATV networks and explored
9 various arrangements for keeping one camera in the room.
10 However, in reviewing these options, alternatives, we believe
11 anything short of no cameras and no lights will create problems
12 and compromise Mr. Marshall's ability to testify, and Dr. Marinic's
13 opinion supports this view. The critical aspect here is the quality
14 of Mr. Marshall's testimony.

15 We are asking Your Lordships to accede to Dr. Marinic's view
16 that Mr. Marshall's ability to testify will be adversely affected by
17 the presence of cameras and lights. Mr. Marinic has referred to
18 the effects on Mr. Marshall's speech, concentration, and memory.
19 In light of the fact that it is Mr. Marshall's recollection of events
20 that happened over 17 years ago, it is particularly important to
21 insure conditions prevail that will enhance his ability to recollect
22 as much as possible.

23 Television cameras do not have an established right and law
24 to be present at these proceedings. I submit to Your Lordships
25 that they have been here at Your Lordship's pleasure and we

1 request that, for this witness, they and their lights be excluded.
2 The public interest here is best served by Mr. Marshall giving the
3 most effective evidence he can. There is precedent before this
4 Commission relative to an application of this nature. Your
5 Lordships will recall that television cameras and lights were shut
6 off during John Pratico's evidence and the evidence of Mrs.
7 Pratico. And I will just very briefly refer to the relevant portions
8 of Your Lordship's decision concerning John Pratico in September
9 of 1987.

10 Your Lordship stated:

11 The chief concern of this Commission is to obtain
12 the facts. Freedom of the press is a right to
13 report fully. In that regard, this Commission has
14 had, in my view, the maximum public exposure,
15 the maximum coverage by the media with
16 unrestricted right of access that has been
17 enjoyed before any Canadian Commission. The
18 right of the press to report fully is secondary
19 only to the Commission's duty to insure that all
20 relevant evidence is given freely and
21 uninhibited. Commission counsel's motion would
22 in no way prevent the media from reporting
23 fully upon the proceedings. It would merely
24 insure that a witness be allowed to testify
25 without such testimony being impeded by
floodlights.

In our view, the public can best be served and
protected and the adjudicative role of this
Commission discharged fairly and properly by
granting the application of John Pratico.

1
2 It is ordered, therefore, that the order requested
3 by Commission counsel on behalf of John Pratico
4 is granted.

5 And that ruling that I was referring to is found at pages
6 1323 and 1324 of the daily transcripts.

7 Those are my submissions, My Lord. I understand that
8 other counsel wish to speak to this application and that, following
9 that, Mr. Murrant representing the T.V. media intends to oppose
10 our application.

11 If I could, I note that Mr. Wildsmith is not here as he had to
12 leave given...

13 MR. CHAIRMAN

14 He was here a minute ago.

15 MS. DERRICK

16 He did indicate to me that he might have to leave and asked
17 if I would represent to the Commission that he is in support of our
18 application and that he has nothing further to add to it other than
19 what he said in response to our application last week concerning
20 Mr. Marshall and to the previous application with respect to Mr.
21 Pratico.

22 COMMISSIONER POITRAS

23 Ms. Derrick, have you considered television cameras without
24 floodlights?
25

SUBMISSION BY MS. DERRICK

1 MS. DERRICK

2 We did, My Lord. I don't feel that... I think Mr. Marinic's
3 opinion, in fact, doesn't just discuss the effect of lights but also
4 refers to the issue of T.V.cameras and I believe, both from looking
5 at this opinion, discussions that I've had with Mr. Marinic myself,
6 discussions I've had with Mr. Marshall, that Mr. Marshall's
7 testimony will be compromised even given the presence of one
8 television camera in the room with the lights off. So even in that
9 situation, I submit to you Mr. Marshall's testimony will not be at
10 its best.

11 MR. CHAIRMAN

12 What you're really asking for is the same order as made
13 with respect to John Pratico.

14 MS. DERRICK

15 That's correct. I don't know that that addressed the issue of
16 still cameras and our concern there is the distraction that Mr.
17 Marshall would experience.

18 MR. CHAIRMAN

19 Tell me. Is there a still camera on here right now?

20 MS. DERRICK

21 No, but the still cameras come in during the course of
22 someone's testimony.

23 MR. CHAIRMAN

24 Oh, you mean when somebody...
25

SUBMISSION BY MS. DERRICK

1 MS. DERRICK

2 And they click away and they come quite close and our
3 concern there is that anything like that will distract.

4 COMMISSIONER POITRAS

5 It seemed to me that in the Pratico case, we were dealing
6 with floodlights alone and not with cameras.

7 MS. DERRICK

8 No, cameras as well. The camera was dismantled.

9 COMMISSIONER POITRAS

10 Did it? Yes.

11 MR. SPICER

12 Dismantled and taken out.

13 MS. DERRICK

14 Yes, so it wasn't even physically present in the room, I
15 believe, and that's what we're requesting here, too.

16 MR. CHAIRMAN

17 But if a newspaper reporter came in and... My recollection is
18 that they were extremely responsible in that regard and didn't go
19 up close to Mr. Pratico.

20 MS. DERRICK

21 We're speaking about still cameras now, are we, My Lord?

22 MR. CHAIRMAN

23 Yes, and...

24 COMMISSIONER POITRAS

25 Without lights.

SUBMISSION BY MS. DERRICK

1 MR. CHAIRMAN

2 Without lights, yes.

3 MS. DERRICK

4 Well, I put our position before you. I am concerned that
5 that would also create difficulties for Mr. Marshall and that
6 certainly how we are trying to address the various needs here is
7 to provide, as I said earlier, a photo opportunity. It is quite true
8 that we don't regard the issue of the still cameras to be as
9 important as the issue of the lights and the television cameras.
10 That is of critical concern and I believe should be to the
11 Commission.

12 COMMISSIONER POITRAS

13 Except that your still cameras make more noise than your
14 T.V.cameras, forgetting the lights.

15 MS. DERRICK

16 Well, I think that there may be some, and I've had some
17 discussions about this, there may be some modifications that can
18 be made to reduce the amount of noise they make. I think we've
19 had, in fact, some discussions about if they were to be allowed to
20 be present, which as you know, we're asking that they not be, but
21 if Your Lordships were to feel that they should be allowed to be
22 present, that a camera be used that would not be as disruptive.

23 COMMISSIONER EVANS

24 Well, to date, have you any reason to think that the still
25 cameras have been disruptive of the proceedings?

SUBMISSION BY MS. DERRICK

1 MS. DERRICK

2 My Lord, if I can say to you, personally, I found them
3 disruptive.

4 COMMISSIONER EVANS

5 You found them that?

6 MS. DERRICK

7 Yes, I've certainly found them to intrude into my
8 concentration.

9 COMMISSIONER EVANS

10 They would be behind you at all times, pretty well.

11 MS. DERRICK

12 I think that the significant problem with the still cameras, as
13 it would be felt by Mr. Marshall, would be both their presence, if
14 they were very close to him taking pictures of him while he
15 testified, and also the sound of the clicking. So it may be that
16 there can be a way of modifying that. But I do respectfully
17 submit that it should be of critical concern that Mr. Marshall give
18 his evidence in the most enhanced circumstances. And there's
19 ample evidence in front of you that he doesn't have an easy time
20 as a witness, in any event, and that these factors contribute to the
21 difficulty he experiences.

22 MR. CHAIRMAN

23 One of the, running through some of the evidence that we've
24 heard, at the time of the reference, et cetera, there was a lot of...
25 The views expressed, particularly by Frank Edwards, that Donald

SUBMISSION BY MS. DERRICK

1 Marshall, Jr. not being on trial, which he won't be here, this
2 hearing is not to try Donald Marshall, that's long since past, was
3 never given the opportunity to convey to the public generally, and
4 in particular, the public of Nova Scotia, his innocence, his side of
5 the story, and I take it that that has been... You've put that to him
6 and he has concluded that he is prepared to forego what would be
7 his one and only clear chance to speak to the people of Nova Scotia
8 through television.

MS. DERRICK

9
10 My Lord, with respect, he's not foregoing that opportunity
11 because the press will be here and they will be reporting fully on
12 the proceedings. Concerning the issue of him being televised into
13 people's homes and having the opportunity, in a sense, to speak
14 directly to the public in that capacity, I can say to you that Mr.
15 Marshall is coming to testify to Your Lordships and it is not his
16 desire...

MR. CHAIRMAN

17
18 Well, I appreciate that so long as I know he understands it.

MS. DERRICK

19
20 No, he understands that and I think that, as well if you look
21 at Mr. Marinic's letter, Mr. Marshall is described, I think,
22 understandably, as a "self-conscious and mistrustful individual"
23 and that those are the feelings he brings into these proceedings,
24 which will only be exacerbated with the presence of lights and
25 cameras.

SUBMISSION BY MS. DERRICK

1 MR. CHAIRMAN

2 And he's been made fully aware of the fact that the hearings
3 of this Commission do not constitute a trial and that he, Donald
4 Marshall, Jr., is not on trial.

5 MS. DERRICK

6 Yes, that's correct, My Lord.

7 MR. CHAIRMAN

8 Fine. Mr. Pugsley?

9 MR. PUGSLEY

10 I am in full accord with Ms. Derrick's recommendations, My
11 Lord. It is our position that Mr. Marshall should testify in an
12 environment where the stress on him is reduced to an absolute
13 minimum.

14 MR. MURRAY

15 Likewise, My Lord.

16 MR. PRINGLE

17 We have no submissions, My Lord.

18 MR. PINK

19 I would ascribe to the comments of Mr. Pugsley.

20 MR. CHAIRMAN

21 Mr. Ross?

22 MR. ROSS

23 I take no position, My Lord, in that I have not had an
24 opportunity to test the author of the letter which is before you as
25 Exhibit 163.

SUBMISSION BY MS. DERRICK

1 MR. CHAIRMAN

2 Counsel for the Commission?

3 MR. MACDONALD

4 We take the position, My Lord, if you're satisfied that the
5 best quality of evidence would be in the absence of television and
6 lights, then that's what you should order. And, for your
7 information, in both other circumstances where the television
8 lights were turned out, there was an arrangement worked out
9 with the media for still cameras in as an unobtrusive a manner as
10 possible. And I would suggest that a similar thing could probably
11 be worked out here and it would not be the least bit disruptive to
12 Mr. Marshall, which is the paramount concern. But it may satisfy
13 some of the concerns of the media to get some coverage.

14 COMMISSIONER POITRAS

15 What was that arrangement, Mr. MacDonald?

16 MR. MACDONALD

17 It was one camera placed in an unobtrusive part of the St.
18 Andrew's Church Hall. If you remember, I think it was just
19 around that corner by the, where you used to go and get your
20 muffins. They were around that corner taking some pictures from
21 time to time, and I believe they have some sort of a lens or
22 something. They can be quite a distance from the witness and not
23 interfere at all, in my view.

24 COMMISSIONER POITRAS

25 There was no flash.

SUBMISSION BY MS. DERRICK

1 MR. MACDONALD

2 There was no flash, no.

3 MR. CHAIRMAN

4 Mr. Murrant?

5 MR. MURRANT

6 Thank you, My Lord. As I rise, I should point out I act as
7 well for Michael Harris and The Globe and Mail and I have, I
8 wasn't aware there would be a motion this morning on that and I
9 was absent from the room. If time permits...

10 MR. MACDONALD

11 There was no motion this morning.

12 MR. CHAIRMAN

13 There was no motion this morning.

14 MR. MURRANT

15 Excuse me?

16 MR. CHAIRMAN

17 There was no motion this morning. We had understood that
18 Mr. Harris had been told through his counsel that we would hear
19 him today and he's not here. Your associate was here.

20 MR. MURRANT

21 He wasn't familiar with that, My Lord, and I wasn't aware
22 the matter was coming up and all I want...

23 MR. CHAIRMAN

24 But you were here. You were in the environs.

25

1 MR. MURRANT

2 Yes, but I didn't know that Mr. MacDonald would raise the
3 topic, nor had no full warning. And all I meant to say on that, My
4 Lord, is that I had some helpful suggestions, if they could be
5 entertained later. I wish to deal with this at the moment.

6 MR. CHAIRMAN

7 I don't see any point. We've dealt with Michael Harris and
8 you didn't... It was open to you to have him here this morning and
9 he wasn't here. That's all. Now let's hear from you with respect
10 to this application.

11 MR. MURRANT

12 Thank you, My Lords. In dealing with this, in response to Ms.
13 Derrick's submission, I am following a few guidelines which
14 are American but I'm compelled to because there's certain
15 experience in the U.S. with cameras and courts that we don't
16 have in Canada. They may be helpful. They may help Your
17 Lordships. One is just a reference to the word "qualitative
18 difference" and that is in making a decision such as this, it
19 may be a helpful guideline to question whether there's a
20 qualitative difference between a camera and other media that
21 are present. And I will return to that briefly, but that's one
22 approach that's been suggested.

23 12:15 p.m.

24 Also from a Florida court a quote that's obvious, "We realize
25 that courtrooms are intimidating, this however, is not a product of

1 the electronic media's presence." Again, an obvious statement.

2 And then in dealing with differences as to when cameras are
3 excluded in American situations frequent ones that occur are
4 undercover officers' informants. In particular cases persons who
5 have their identities changed. Persons fearing reprisal, rape
6 victims and people involved in child custody proceedings. So that
7 you can look and say in circumstances such as that there may be a
8 qualitative difference and a very good reason to keep a camera
9 out of a room.

10 And in this particular situation we simply pose the question
11 here of what is the difference. We are in favour of what Mr.
12 MacDonald suggests and I think what Your Lordships have raised
13 and that is a compromise that we have tried to work out and I can
14 return to that at the end of my submission. At the moment, if you
15 take Mr. Ross' submission, we have before us a very brief report
16 and in our submission it's not good enough to take the dramatic
17 step at this stage of removing the cameras and that is because the
18 psychologist draws a fine line between a television camera, a still
19 camera and audio recording, for example. And in our submission
20 there is no empirical data in this nation that would allow a
21 Canadian psychologist to make that distinction.

22 Secondly, to make that distinction discriminates, in our
23 submission, unfairly. If there were compelling reasons, such as a
24 name of an informant, that would be fine. But ATV broadcast
25 television and they should not be excluded from the room while,

1 for example, the Globe and Mail is let in because they are in the
2 newspaper business. So there shouldn't be a discrimination
3 without compelling reason which, again, is consistent with the
4 American approach.

5 The psychologist in the report again, I think, glosses over, it
6 says, at the end of paragraph two, "...associated with further
7 public exposure." To follow that logic one would have to think
8 shouldn't this be, shouldn't there be a ban on publication in
9 newspapers to follow that logic. "Television equipment be turned
10 off during Mr. Marshall's testimony." That begs the question,
11 "Should radio equipment be permitted?" It singles out, for a
12 reason that's not compelling, television only.

13 If there were those qualitative differences in the case of the
14 Mr. Marshall, we might have something here as to how long he
15 should testify without recess. Whether he should be on the stand
16 for more than one day without recess. A suggestion of an in
17 camera hearing, a closed to the public hearing. Or other matters
18 of assistance, possibly something to do with a sketcher in the
19 audience. A sketcher could come, My Lords, and make sketches...

20 CHAIRMAN

21 Mr. Murrant we will, as we have every witness, if we feel
22 that he or she is under considerable stress we've taken recesses
23 periodically and that's, you know, that's not a problem. We also
24 announced last week that tomorrow at 4:30 the, we will conclude
25 the evidence of all witnesses.

1 MR. MURRANT

2 Yes, My Lord.

3 My only point in that, My Lord, was not in the least
4 suggesting, you know, how the inquiry should deal with witnesses,
5 but saying that in the particular report here that's untested it
6 specifies one media only and it discriminates.

7 The other point, My Lord, the Pratico matter is a young man
8 who at the time the determination was made, had a clinical
9 condition, a mental illness, and had had that for 20 years
10 preceding the exclusion of the cameras.

11 The suggested solution here is that there be some
12 arrangement and there is a suggested arrangement, My Lords,
13 whereby the lighting could be removed from the room. Now this
14 was discussed last week and apparently the discussions broke
15 down but the equipment is available to remove the lighting from
16 the room, to use what is called a beta camera, which is not making
17 the racket of a still camera, to place it at the extreme of the
18 peripheral vision of the witness so that one could get the comfort
19 factor of the absence of cameras even moreso than, I think, was
20 the case in Sydney where the lights were left on because of the
21 darkness of the basement. And that arrangement can be made
22 during the evidence of Mr. Marshall.

23 CHAIRMAN

24 The lights were turned off in Sydney. The flood- lights were
25 off.

1 MR. MURRANT

2 But we are quite amenable to doing that, My Lords, to, using
3 one camera placed in that fashion which doesn't differ at all from
4 having one still camera, let's say, or a photographer coming into
5 the room. This psychologist is just being, is just specifying
6 television but nothing else.

7 CHAIRMAN

8 I don't follow your argument on discrimination. The, we're
9 dealing, the issue that we're dealing with is whether or not
10 television cameras and television lights will be disruptive to
11 Donald Marshall, Jr. giving his testimony to the extent that this
12 Commission will not be able to get the best evidence. That's the
13 only issue. The fact that the Globe and Mail or other members of
14 the media are present is not an issue because I think we can
15 reasonably assume that their presence will not be disruptive.

16 MR. MURRANT

17 Well to come at that, My Lord, then in specific response is
18 that our proposal is that there be a modification that the lighting
19 can be removed. That particular cameras can be used and
20 inspected by all concerned which would minimize that to, at or
21 near zero. So that it could be had both ways. This man could
22 have some comfort in testifying and it would not be disruptive.

23 Secondly...

24 COMMISSIONER EVANS

25 You mean I've been suffering from those lights for two

1 months when we didn't need to.

2 MR. MURRANT

3 Well the quality is not as good. But it's dealing with the
4 darkness quality. Well the angle we propose, My Lord, I think
5 would be closer to yourself but far from the peripheral vision of
6 the witness.

7 The other item, My Lords, in all seriousness on this is as
8 Justice Hickman suggests, would this disrupt the evidence of this
9 witness or have that effect. Now Ms. Derrick relies on her written
10 exhibit. We rely on a videotape, My Lords, which we have
11 brought this morning and propose as Exhibit 163[sic], which is an
12 eight to ten-minute videotape of Mr. Marshall giving television
13 interviews and attending press conferences by consent. And we
14 have this individual on television on four occasions from 1984 to
15 '86 and, in our submission, the tape should be looked at. It only
16 takes eight minutes. It covers the period, interview 1986 with
17 Mr. Vickery of CBC; 1984, again with Mr. Vickery of CBC; 1895
18 following Mr. Ebsary's conviction and a press conference with Mr.
19 Aronson in May of 1983. A press conference, My Lords. I mean
20 you can see there, a number of journalists, eight or ten. You can
21 see the cameras and a press conference in which Mr. Marshall is
22 exercising his condemnation of the system that incarcerated him.

23 So the two very issues that Justice Hickman raises, we say
24 we can minimize the impact for the physical change and we're
25 prepared to do that and as to whether it's really necessary, we

1 would submit that the Inquiry should look at the tape as part of
2 its deliberations.

3 Thank you, My Lords.

4 MS. DERRICK

5 My Lord, may I respond to the issue of the tapes?

6 CHAIRMAN

7 Well, the tapes, I take it, were 1984 to 1986. And the only
8 thought that crosses my mind, supposing that Mr. Marshall was
9 extremely comfortable and extremely relaxed two years ago. I'm
10 not sure that that's going to help us in 1988 but we've been fairly
11 generous with allowing counsel to let us, to bring before us what
12 they consider to be germane to the issue and I have no quarrel
13 with looking at it. Rather than run the risk of being told that
14 we're not giving Mr. Murrant an equal opportunity to present his
15 exhibit.

16 MS. DERRICK

17 With due respect, My Lord, you haven't heard from me yet
18 and I'd appreciate if I could put my objection on the record.

19 COMMISSIONER POITRAS

20 I wonder if we shouldn't hear from after looking at the
21 tapes...

22 MS. DERRICK

23 But I would object your seeing that tapes.

24 CHAIRMAN

25 Well, all right. Tell us why we shouldn't see the tapes.

1 MS. DERRICK

2 Well they're not relevant to this motion, they're completely
3 irrelevant. I mean the fact of the matter is is that these tapes
4 arise out of completely different context from these and they've
5 got nothing whatsoever to do with the application before you. You
6 know, the fact that Mr. Marshall may have participated in a
7 television interview or a press conference anywhere from two to
8 five years ago, has no bearing on, at all on whether or not he's
9 going to be able to provide quality evidence before Your
10 Lordships tomorrow at this Commission.

11 There are no recent examples of Mr. Marshall appearing
12 voluntarily before cameras. The last example in Mr. Murrant's
13 collection is 1986, before this Commission of Inquiry was even
14 constituted. The fact of the matter is is that subsequently there
15 have been countless requests for television interviews by Mr.
16 Marshall and on his behalf, and on his expressed and unwaivering
17 instructions, I've declined all those interviews on his behalf.

18 And the fact is is that it may well be that the proceedings
19 will be adversarial. There are a number of counsel representing
20 parties here. Parties with interests that may be adverse to Mr.
21 Marshall. There's the right of cross-examination. All of those
22 factors contribute very much to the fact that these are going to be
23 stressful proceedings and that whether or not Mr. Marshall gave a
24 press conference or gave a television interview, is in my
25 respectful submission, completely immaterial.

1 It's also material that Mr. Marinic's letter points out that at
2 the most recent session of seeing Mr. Marshall "...he appeared to
3 be excessively worried, anxious and fearful as well as fatigued
4 and wasted." And it's his opinion "that his condition has
5 deteriorated since he last saw him" which is in 1987.

6 CHAIRMAN

7 Where did you get that?

8 MS. DERRICK

9 And I think that that's very significant. We're not dealing
10 with the same man in 1988 that was talking to Mr. Vickery in
11 1986.

12 COMMISSIONER EVANS

13 How would the viewing of this film disturb it? How would it
14 affect...

15 MS. DERRICK

16 I submit to Your Lordships it's a waste of time and...

17 COMMISSIONER EVANS

18 That may well be but...

19 MS. DERRICK

20 And I don't think it assists you in any...

21 COMMISSIONER EVANS

22 Isn't it relevant, though, isn't it relevant because this report
23 goes back to 1984?

24 MS. DERRICK

25 I respectfully submit it's not relevant in the least. That Your

REPLY - MS. DERRICK

1 Lordships have to make an assessment on what circumstances will
2 make Mr. Marshall most able to give his evidence and the fact
3 that he may have given a press conference or television
4 interviews has no bearing on that decision whatsoever.

CHAIRMAN

5
6 And that's a very good point that you've already made in
7 advance of our hearing it so, you know, the rele-, the change in
8 condition that has been alleged by the psychologist, but we want
9 to see it.

10 You've completed your submission?

MR. MURRANT

11
12 Yes I have, My Lord.

VIDEOTAPE SHOWN

13
14 12:30 p.m.

CHAIRMAN

15
16 Ms. Derrick, anything you have to say in response to Mr.
17 Murrant?

MS. DERRICK

18
19 Just a few things, My Lord.

20 Mr. Murrant pointed out that there are some instances,
21 based on his American precedents, where cameras are excluded
22 and one of them that he referred to is rape victims. And I would
23 like to point out that rape victims are protected because they're
24 victims and Mr. Marshall is also a victim and that the purpose for
25 excluding cameras in such an instance is to enable them to be able

1 to give their evidence fully. So I think that is fully analogous in
2 this situation.

3 And he also was making the point about there shouldn't be
4 discrimination amongst the various forms of media unless here's a
5 compelling reason. Well here there is a compelling reason, the
6 reason is clearly set out in Dr. Marinic's letter.

7 And that the issue here is not that Mr. Marshall's concern
8 about further public exposure, although the letter refers to that it
9 also refers to his exposure to the television cameras and lights
10 compromising his ability to testify. And so it's their actual
11 presence in the same room with him.

12 And we haven't asked for sketchers or the print media to be
13 excluded. It's obvious that television cameras and bright lights
14 are much more obtrusive than the presence of the print media
15 and that's clearly supported by Mr. Marinic.

16 And I think all I could say in response to the tapes that Your
17 Lordships have just seen is I would merely reiterate that the
18 context was entirely different and that it was a different man that
19 was speaking on those occasions.

20 Thank you.

21 CHAIRMAN

22 We'll take a ten-minute recess.

23 BREAK - 12:43 p.m.

24

25

RULING1:00 p.m.CHAIRMAN

Ms. Anne Derrick, as counsel for Donald Marshall, Jr. applies for an order that television cameras and still cameras be excluded from the hearing room while her client is testifying. Her request is objected to by counsel for the Canadian Broadcasting Corporation and ATV Television. Other counsel for parties with standing did not object to Mr. Marshall's application.

The position put by Ms. Derrick and corroborated by the report of Kris Marinic, a psychologist, is that at this time Donald Marshall, Jr. is "excessively worried, anxious and fearful as well as fatigued and wasted." Is it the opinion of Mr. Marinic that Donald Marshall's condition has deteriorated since he last saw him and that Donald Marshall seems to be particularly afraid of the humiliation associated with even further public exposure. Mr. Marinic concludes his report, which is in evidence as Exhibit 163 as follows when referring to Donald Marshall, Jr.

Given his past experience and the ongoing current stress, in my opinion, the exposure to television cameras and bright lights would compromise his ability to testify. Most likely, his level of anxiety would adversely affect his speech, concentration and memory.

Consequently, not only would he endure more distress, the quality of his testimony would also suffer.

I therefore, recommend that the television equipment be turned off during Mr. Marshall's

RULING

testimony.

1
2 As was said by this Commission when dealing with a similar
3 application on behalf of John Pratico, the right of the press to
4 report fully is secondary only to the Commission's duty to ensure
5 that all relevant evidence is given freely and uninhibited.
6 Commission's counsel would in no way prevent the media from
7 reporting fully upon the proceedings. It would merely ensure
8 that a witness be allowed to testify without such testimony being
9 impeded by floodlights.

10 In that context and based on representation we have heard,
11 we conclude that television cameras and floodlights should be
12 excluded from the hearings to ensure that the Commission obtains
13 that best uninhibited testimony possible from Donald Marshall, Jr.

14 With respect to the application to exclude still cameras we
15 are not persuaded that their presence will be detrimental to the
16 quality of Donald Marshall, Jr. testifying provided only one still
17 camera is present in the hearing room at any one particular time
18 and is operated without the benefit of flood, flash or strobe lights
19 and in a manner acceptable to the Commission as being
20 reasonable.

21 It is ordered, therefore, that television cameras and
22 floodlights be excluded from the hearing room while Donald
23 Marshall, Jr. is testifying before this Commission.

24 Mr. MacDonald, do you have any other witnesses?
25

RULING

1 MR. MacDONALD

2 There are no further witnesses today, My Lord. Donald
3 Marshall, Jr. for tomorrow. You had indicated last week that you
4 wanted to start at 9 a.m. I understand from counsel for Donald
5 Marshall that 9:30 would be...

6 MS. DERRICK

7 Preferable.

8 MR. MacDONALD

9 Might be acceptable and we're still confident that his
10 evidence can be concluded by 9:30 in accordance with your
11 direction.

12 CHAIRMAN

13 By 4:30.

14 MS. DERRICK

15 My Lord, if I could just say that a couple of weeks ago Your
16 Lordship made a ruling with respect to scrumming and I would
17 simply ask you to expressly remind the media with respect to that
18 ruling in light of Mr. Marshall testifying tomorrow.

19 CHAIRMAN

20 Scrumming is a word that I can recall being involved in
21 when I played real football at Dalhousie many years ago, not the
22 Canadian football that's now played where they have shoulder
23 pads and helmets but rugby. Be that as it may, I'm sure that the
24 press are aware that the jurisdiction of this Commission extends to
25 its, to the environment of this room and people, including

RULING

1 witnesses, have the right of free passage to and from the hearings
2 without any interruption or invasion of their privacy.

3 MS. DERRICK

4 Thank you.

5 ADJOURNED TO 28 June 1988 - 9:30 a.m.

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REPORTER'S CERTIFICATE

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

Faith Mackinnon
for Margaret E. Graham

DATED THIS 27th day of June

19 88 at Dartmouth, Nova Scotia