

A544
Jul 23 1988
#3

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

Volume 83

Held: September 12, 1988, at the St. Thomas Aquinas Church Hall,
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

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David
Orsborn: Commission counsel

Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:
Counsel for Donald Marshall, Jr.

Mr. Ronald N. Pugsley, Q.C.: Counsel for Mr. John F. MacIntyre

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

Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for
Donald MacNeil estate

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

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

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

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

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

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

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

MEDIA POOL COPY

September 13, 1988

INDEX - VOLUME 83

Mr. Michael Harris

Examination by Mr. MacDonald	14480
Examination by Mr. Pugsley	14489
Examination by Mr. Ross	14491
10:23	14493

Mr. Hugh Faegan

Examination by Mr. Spicer	14498
10:42	14502
11:25	14532
12:12	14565
2:15	14578
2:27	14587
3:14	14621
3:29	14633
3:45	14645
4:14	14658
Examination by Mr. Saunders	14670
4:32	14670
4:44	14679
Examination by Mr. Merrick	14695

EXHIBIT LIST

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>	<u>Volume</u>
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

B

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>	<u>Volume</u>
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 Marshall 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
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
164	Statement of facts	14498	83
165	Booklet of documents dealing with events after the filing of the August 29, 1980 report	14498	83

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MacDONALD

Good morning, My Lords. When we broke or adjourned the hearings in June we had contemplated the requirement to issue a subpoena or attempt to have a subpoena issued out of Newfoundland to secure the attendance of Mr. Harris. As a result of the cooperation now between counsel and on Mr. Harris's behalf he is appearing voluntarily this morning to give evidence.

The agreement reached between counsel and the understanding on which Mr. Harris appeared voluntarily conforms with your Lordships' decision which was given on May 31st, when you indicated that there was one area in which you would like to hear evidence from Mr. Harris, and that is whether or not John MacIntyre had deliberately attempted to conceal some documents, and in particular a Patricia Harriss statement from Staff Sergeant Wheaton. We have undertaken to counsel and to Mr. Harris that we would question on that area only and also that if anyone else attempted to question on another area that we would be objecting, subject of course to your Lordships' ruling.

MR. CHAIRMAN

Fair enough, call Mr. Harris.

MR. MacDONALD

Good morning, My Lords. When we broke or adjourned the hearings in June we had contemplated the requirement to issue a

1 subpoena or attempt to have a subpoena issued out of
2 Newfoundland to secure the attendance of Mr. Harris. As a result
3 of the cooperation now between counsel and on Mr. Harris's behalf
4 he is appearing voluntarily this morning to give evidence.

5 The agreement reached between counsel and the
6 understanding on which Mr. Harris appeared voluntarily conforms
7 with your Lordships' decision which was given on May 31st, when
8 you indicated that there was one area in which you would like to
9 hear evidence from Mr. Harris, and that is whether or not John
10 MacIntyre had deliberately attempted to conceal some documents,
11 and in particular a Patricia Harriss statement from Staff Sergeant
12 Wheaton. We have undertaken to counsel and to Mr. Harris that
13 we would question on that area only and also that if anyone else
14 attempted to question on another area that we would be objecting,
15 subject of course to your Lordships' ruling.

16 MR. CHAIRMAN

17 Fair enough, call Mr. Harris.

18 MICHAEL HARRIS, duly called and sworn, testified as follows:

19
20 EXAMINATION BY MR. MACDONALD

21 Q. Your name, sir, is Michael Harris?

22 A. That's correct.

23 Q. And you're the author of the book, *Justice Denied*?

24 A. Correct.
25

MR. HARRIS, EXAM. BY MR. MACDONALD

1 Q. Would you tell the Commissioners, please, in the course of
2 doing your research for that book and in writing the book, on
3 how many occasions you would have met with and
4 interviewed Staff Sergeant Harry Wheaton?

5 A. Probably three to four times during that period.

6 Q. Are you able to tell us over what period of time those
7 interviews would have taken place?

8 A. It was approximately between, in the year between March
9 29th, '82 and May 10th, '83.

10 Q. During each interview, would you be covering specific topics
11 or dealing generally with Staff Wheaton's involvement?

12 A. Well, there are two types of talks that we had. We had taping
13 sessions in which we got down to brass tacks on particulars of
14 the investigation and other factual matters that I was
15 interested in. And there were general talks... If you're talking
16 about meetings that took place prior to formal tapings, that
17 might happen after a court session. And these were the
18 occasions when I was basically saying to him, "I need to talk
19 to you. I'd like to talk to you." And I was haring back from
20 him what his response and openness was to that request.

21 Q. But there were occasions when you met with him and taped
22 the interview, is that correct?

23 A. Yes, for the book all sessions were taped.

24 Q. All sessions were taped?

25 A. Correct?

1 Q. And are those tapes still in your possession?

2 A. Yes, I have those tapes.

3 Q. How long would the interviews take when you were taping
4 Staff Wheaton?

5 A. It's tough to be explicit. I would say I have two to three
6 hours worth of tapes, but subject to check.

7 Q. Okay. When is the last time you reviewed the tapes?

8 A. Four years ago.

9 Q. Would it just be you and Staff Wheaton present, or would
10 other people be there?

11 A. Just myself and Staff Wheaton.

12 Q. Now I believe you know, Mr. Harris, the topic of interest to
13 the Commission, I would like if you would for you to tell the
14 Commission whether Staff Wheaton at any time mentioned to
15 you an incident where Sergeant MacIntyre allegedly threw
16 some papers deliberately on the floor?

17 A. Yes, he did mention that to me, actually on more than one
18 occasion.

19 Q. Would you tell the Commissioners what it is Staff Wheaton
20 said to you?

21 A. To the best of my recollection, Staff Wheaton made the point
22 that, in his opinion, Chief MacIntyre had concealed some
23 information that Staff Wheaton and his partner had needed to
24 complete the documentary side of their investigation into the,
25 the reinvestigation into the Marshall case.

MR. HARRIS, EXAM. BY MR. MACDONALD

1 Q. Did he identify what information?

2 A. Yeah, he said that, I believe it was one of Patricia Harriss's
3 statements, I think the first statement. But, again, subject to
4 checking it. It was dropped on the floor and kicked under a
5 desk.

6 Q. Was this at a time... I'm sorry. Did the incident allegedly
7 occur at a time when Staff Wheaton had been seeking
8 information from the Chief?

9 A. Yes, I think the problem was, or the allegation was that Staff
10 Wheaton had asked for all the files with respect to the case
11 and was finding difficulty it getting all those files. And this
12 was an example of lack of cooperation, I suppose, for want of
13 a better word.

14 Q. You were aware in the course of your research that an order
15 had been issued from the Attorney General's office directing
16 the Chief of Police to turn over all information to Staff
17 Wheaton.

18 A. Yeah, I believe that was Attorney General How.

19 Q. Was there any reference to you by Sergeant MacIntyre... I'm
20 sorry, by Staff Wheaton that the incident occurred at a time
21 when Wheaton was picking up the materials in response to
22 that order from the Attorney General?

23 A. I believe so.

24 Q. Would these references to that incident by Staff Wheaton
25 have occurred during your taping sessions?

1 A. Yes.

2 Q. And do I understand then that you would have in your
3 possession today tape, tapes of those interviews?

4 A. I would expect so. I won't be categorical because during the
5 taping sessions, we would occasionally stop and discuss points
6 off of tape. But it was certainly during those taping sessions
7 that the issue was raised.

8 Q. Are the tapes that you have identified by person?

9 A. I beg your pardon?

10 Q. Are the tapes that you have in your possession identified so
11 that you could easily get to the tapes of your interviews with
12 Staff Wheaton?

13 A. I'm sorry, I don't follow your question.

14 Q. The tape recordings that you've done of the interview with
15 Wheaton, is it something that you could pick up easily, or
16 would you have to listen to hours and hours of tape?

17 A. I'd have to review the tapes.

18 Q. You don't have particular tapes that are marked "Interview
19 with Wheaton," interview with somebody else.

20 A. Oh, of course, I see what you mean. Yeah, of course, they're
21 marked as to name, but I'd have to review the tapes
22 themselves in order to find the pertinent parts.

23 Q. And you think there's a couple of hours of those tapes?

24 A. Yes.

25 Q. You haven't obviously made an attempt to do that.

MR. HARRIS, EXAM. BY MR. MACDONALD

1 A. To do which?

2 Q. To review the tapes, to refresh your memory in preparation
3 for giving this evidence today.

4 A. No, I haven't reviewed the tapes because I have a very good
5 recollection of the one issue that was of interest to the
6 Commission.

7 Q. Okay, so you do have very good recollection of that.

8 A. Yes.

9 Q. Who was present or was anyone present with Wheaton and
10 MacIntyre at the time of this incident? Did Wheaton tell you
11 anyone was present?

12 A. I believe the other officer was Herb Davies.

13 Q. And you believe that Wheaton told you that?

14 A. Yes.

15 Q. Did you ever interview Davies?

16 A. No, I didn't.

17 Q. Did you ask to interview Davies?

18 A. No, I didn't.

19 Q. You said your recollection is that Staff Wheaton told you this
20 on more than one occasion, told you about the incident?

21 A. Yes. I'm not sure if those were always formal interview
22 situations, but certainly in conversation subsequent to the
23 first time, it was raised again.

24 Q. Did you interview anyone other than Wheaton with respect to
25 those allegations?

MR. HARRIS, EXAM. BY MR. MACDONALD

1 A. No, the only other person who was able to be interviewed
2 wouldn't grant an interview.

3 Q. That was?

4 A. Staff Sergeant... Sergeant MacIntyre, or Chief MacIntyre.

5 Q. Well, Davies would be somebody who obviously would have
6 some...

7 A. Yeah, that's true. That's true as well. But I guess to anticipate
8 the question, maybe I ought to tell you that the purpose of
9 the book was certainly not to establish other matters which
10 could be construed as criminal and in seeking advice, both
11 from Osler Hoskins who vetted the entire book for MacMillan
12 and an Ontario judge, who is a friend of mine, with respect to
13 the fairness issue, everyone felt that this was interpretive
14 matter. That is, whether a person is hiding or merely
15 dropping a piece of paper is a very tough thing to resolve.
16 And since the main story of the book had to do with the
17 course of justice in 1971, the theme of Donald Marshall in the
18 system, that this was an area that I didn't want to get into for
19 those reasons and for the additional reason that I did not
20 have the power to subpoena people and talk to everyone that
21 needed to be talked to and did not want to lose the main
22 thread in an interpretive matter like the St. Phillips[sic] paper
23 shuffle.

24 Q. The what shuffle?

25 A. The paper shuffle.

MR. HARRIS, EXAM. BY MR. MACDONALD

1 Q. You called it the St. Peters?

2 A. Phillips... St. Peters, sorry.

3 Q. I put a word in your mouth there. You said "St. Phillips."

4 A. No, I know the place.

5 Q. St. Peter.

6 A. Just the wrong...

7 Q. Why are you referring to or why has someone referred to it
8 as the "St. Peters paper shuffle"?

9 A. I don't know.

10 Q. You're not aware of any connection between St... You know
11 where St. Peters is? It's about 35, 40 miles from Sydney.

12 There's no connection that you're aware between St. Peters
13 and this incident?

14 A. No.

15 COMMISSIONER EVANS

16 Or between St. Peter and...

17 MR. HARRIS

18 A. No, that too.

19 Q. That's perhaps more appropriate with given where we are,
20 My Lord.

21 A. I might add one more point. There were a number of things
22 that came up in the course of doing the book that were
23 similar to this issue. For example, the tapings with John
24 Pratico brought up the issue of whether or not he had been
25 moved with respect to where he viewed the incident from in

1 the park that night and the evidence that was in his mind,
2 brought to his attention by the police was a beer bottle,
3 allegedly with his fingerprints on it. And for the exact same
4 reasons, that is, the allegation against the police would then
5 be obstruction of justice or tampering with the witness,
6 whatever, based on one person's interpretation of event. That
7 event did not appear in the book, even though I knew about
8 it and had a record of it from the Pratico tape.

9 Q. What about the allegation or at least the suggestion that John
10 MacIntyre coerced young people to lie.

11 A. That's different.

12 Q. Why?

13 A. Because there are several people corroborating the same
14 story and doing so in a formal way with affidavits.

15 Q. But you haven't interviewed MacIntyre about it.

16 A. MacIntyre would not be interviewed.

17 Q. Do I understand, and I'm not asking for the advice you
18 received, Mr. Harris, but you did seek legal advice with
19 respect to this particular incident, the St. Peters shuffle,
20 whether it's something you should or should not include in
21 the book?

22 A. That's correct.

23 Q. And did receive advice.

24 A. From several different sources.

25 Q. You used the phrase one time this morning that there was a

MR. HARRIS, EXAM. BY MR. MacDONALD

1 lack of cooperation here. It may have been a lack of
2 cooperation as opposed to obstruction by John MacIntyre.

3 A. Sure.

4 Q. Is that your phrase or is that Staff Wheaton's phrase?

5 A. I couldn't really honestly tell you.

6 Q. And do you know or can you help us out as to when
7 Wheaton said chronologically when the incident is said to
8 have taken place?

9 A. Not with the kind of precision you would need to be helpful.

MR. MacDONALD

10
11 Thank you, Mr. Harris.

EXAMINATION BY MR. PUGSLEY

12
13 Q. Mr. Harris, I'm Ron Pugsley and I act for John MacIntyre.
14 We know each other, I think.

15 A. Um.

16 Q. Mr. Harris, I was trying to take down your words as you
17 gave your evidence. You said in response to a question from
18 Mr. MacDonald it was "An interpretive manner" or you used
19 the word "interpretive," that is to say, the information that
20 Staff Sergeant Wheaton gave to you with respect to the
21 paper could be interpreted in one of two ways, either that it
22 was accidentally dropped on the floor or that it was
23 attempted to be concealed.

24 A. Correct.

25 Q. And as a consequence of the information that you gave...that

1 he gave you, you were not in the position to determine
2 which was the accurate characterization of this particular
3 incident.

4 A. Particularly because, as I recall how the story was related,
5 only one of the RCMP officers saw this happening, and I
6 think it was reported to the other one after the two men left
7 the room.

8 Q. Yes.

9 A. Therefore it was one person.

10 Q. Yes.

11 A. And so I thought that if two people had come to the same
12 conclusion, a little more grounds for perhaps examining it
13 very closely, but the critical thing for the book was to try
14 very hard, not always succeeding, but the effort always
15 being made to say what people had done that you could
16 verify in a reasonable way, rather than to surmise what
17 people might have done.

18 Q. Quite so. And on the basis of the information that Staff
19 Sergeant Wheaton gave to you, it was left to you, or indeed
20 to anyone else, to surmise what, in fact, had happened.

21 A. And that is why it wasn't used.

22 Q. Quite so. And indeed, it was not sufficiently strong, the
23 information given to you by Wheaton was not sufficiently
24 strong to warrant you to talk to Sergeant Herb Davies.

25 A. That's correct.

MR. HARRIS, EXAM. BY MR. PUGSLEY

1 Q. Yes. How many people, as a matter of interest, did you talk
2 to with respect to writing this book? Roughly.

3 A. Over a hundred.

MR. PUGSLEY

4
5 Thank you. That's all the questions I have.

MR. CHAIRMAN

6
7 Mr. Orsborn.

MR. ORSBORN

8
9 No questions, My Lord.

MR. CHAIRMAN

10
11 Mr. Ross.

12 *9:52 a.m.

EXAMINATION BY MR. ROSS

13
14 There are one or two questions I would like to ask with
15 respect to the investigation and the reporting on Sandy Seale, if it
16 will be permitted by this Commission.

MR. CHAIRMAN

17
18 The only questions that will be permitted are pursuant to
19 the order that we, this Commission, made on May 31st, and the
20 order was very specific, that Mr. Harris was to be questioned only
21 with respect to the allegations made, particularly by Staff
22 Sergeant Wheaton with respect to one of the statements of
23 Patricia Harriss.

MR. ROSS

24
25 Well, yes, My Lord, and I don't propose to be argumentative.

MR. HARRIS, EXAM. BY MR. ROSS

1 I would just like to point out that this witness apparently had an
2 opportunity to speak to one of the police officers involved at the
3 time, which is Constable Mroz. The evidence of other police
4 officers was that this man took extensive notes, and my questions
5 were going to be directed just to that because Mroz is dead. The
6 only reason, that's the only area.

MR. CHAIRMAN

8 Now the ruling of the Commission is very specific, Mr. Ross,
9 to the line of questioning.

MR. ROSS

11 Then I've got no questions then.

MR. CHAIRMAN

13 Mr. Wildsmith.

MR. WILDSMITH

15 No questions, My Lord.

MR. CHAIRMAN

17 Mr. Murrant.

MR. MURRANT

19 Nothing, My Lord.

MR. CHAIRMAN

21 That's all. Thank you very much, Mr. Harris, for coming
22 over. We'll rise for a short while.

BREAK

1 MR. CHAIRMAN

2 Now, Mr. MacDonald, are you ready?

3 MR. MACDONALD

4 Yes, My Lord. My Lords, at this stage, with three possible
5 exceptions, all relevant evidence concerning the handling of the
6 Donald Marshall, Jr. case has been presented. Depending on the
7 decision of our courts, additional evidence may be required and, if
8 so, will be presented to Your Lordships from Cabinet Ministers
9 and the members of the Appeal Division of the Supreme Court of
10 Nova Scotia. In addition, we have been advised by Mr. Ross that
11 he may wish to make an application or he may... He has asked
12 Commission Counsel to consider calling some additional evidence
13 on a fairly restricted area and we will confer with Mr. Ross this
14 week, and if Commission Counsel is not prepared to agree to his
15 request, then he may be making an application to you. Subject to
16 those three areas, all of the evidence has now been presented.

17 We now move to the final phase of evidence to be presented
18 in this Inquiry. Your Lordships have indicated on several
19 occasions your interest in learning how the administration of
20 justice in this province operates generally and expressed your
21 concern in making recommendations for change based on the
22 evidence which occurred in one case. Extensive evidence has
23 already been presented concerning the normal or the expected
24 way the system will operate. There has been suggestion,
25

1 however, that the system operates differently when dealing with
2 prominent persons. To enable Your Lordships to test this thesis,
3 we intend to present evidence of the manner in which the
4 Attorney General's Department and the Royal Canadian Mounted
5 Police have dealt with two cases involving prominent persons and
6 institutions. We emphasize that it is not our desire to ask you to
7 make a finding whether such persons or institutions actually
8 committed any illegal acts. Indeed, that would be totally outside
9 the terms of your mandate to suggest that you could make such a
10 finding. Rather, we are concerned only with the manner in which
11 cases involving these persons were treated and handled by the
12 appropriate officials within the administration of justice system.

13 We will present evidence dealing with the actions of the
14 Attorney General's Department and the R.C.M.P. leading to the
15 ultimate decision not to lay an information charging Roland
16 Thornhill and four chartered banks with a breach of certain
17 sections of the *Criminal Code*. We will also present evidence of the
18 manner in which the Attorney General's Department and the
19 R.C.M.P. handled the investigation charging and subsequent
20 sentencing of Billy Joe MacLean, arising out of his claims for
21 expenses incurred in performance of his duties as a Member of
22 the Legislature. We will deal with these cases consecutively and
23 that necessarily will require the recalling of certain witnesses. We
24 do consider, however, that that will be less confusing in the long
25 run for Your Lordships.

We will proceed with the Roland Thornhill matter first. In

1 recognition of our concerns that Mr. Thornhill and the banks not
2 be prosecuted now before this Commission when it was decided
3 eight years ago that no charges were warranted, we wished to
4 limit the disclosure of confidential information wherever we
5 considered the disclosure would not be of assistance to Your Lord-
6 ships in your deliberations.

7 The Attorney General's Department and the R.C.M.P. have
8 cooperated fully with Commission Counsel and have disclosed to
9 us all of the information and documents in their possession and
10 have permitted us to interview any representative of their
11 departments who we ask to interview. Following our review of
12 those documents, Commission Counsel prepared a statement of
13 facts which we considered were supported by the documents and
14 which would eliminate the necessity of filing publicly a large
15 volume of documents. We have obtained the agreement from
16 Counsel for the Attorney General and the R.C.M.P. that the
17 documents do support the facts which are contained in the
18 statement.

19 The statement of facts, which has now been introduced as
20 **EXHIBIT 164** in this Inquiry, is a summary of the relevant
21 events which occurred to August 29, 1980, when an R.C.M.P.
22 report was received by the Attorney General's Department. If you
23 just look at that statement for a moment, My Lords, Exhibit 164,
24 which has been placed in front of you, we have, as I've indicated,
25 prepared this statement based on the documents which were
made available to us. You will note that the statement sets a

general background and then deals with phases which occurred.

1 | There was a preinvestigative stage occurring in January through
2 | March, 1980 an investigation by the R.C.M.P. which commenced in
3 | April and concluded on April the 29th. From our point of view...
4 | August 29, I'm sorry. 1980 is a jumping off point, if you will. At
5 | that time, as disclosed in the final paragraph in the Statement of
6 | Facts, a final report was delivered by the R.C.M.P. to the Attorney
7 | General's Department. In that report, it was concluded by the
8 | Investigating Officer that the *prima facie* case was available or
9 | had been established against Mr. Thornhill and he asked that a
10 | prosecutor be appointed. He also went on to say that there was
11 | sufficient evidence to justify considering whether to lay charges
12 | against chartered banks and, again, he asked for the appointment
13 | of a Crown Prosecutor who he could confer with in order to make
14 | a final determination.

15 | Now we consider at this stage you have reached a point
16 | where you are into the system. An investigation has been carried
17 | out. The investigating officer has reached certain conclusions and
18 | asked to go or to have a prosecuting officer appointed for his
19 | benefit. That's our jumping off point and we want to know what
20 | took place from that point forward. We do not want to investigate
21 | and we will avoid, if we can in all events the facts that led this
22 | officer to that conclusion. The fact is that he considered there
23 | were sufficient facts to justify in his mind the laying of charges.
24 | Whether or not there were is really not of our concern.

25 | Now we have also prepared, My Lords, a booklet of

documents, which has now been filed as **EXHIBIT 165**. Some of
1 the documents which are in this booklet are referred to in the
2 Statement of Facts. But in the main, these documents deal with
3 events which occurred after the filing of the August 29, 1980
4 report. Evidence from various witness will be presented and all of
5 these documents in this booklet will be referred to by some or all
6 of the witnesses. The following witnesses will be called in the
7 Thornhill matter.

8 The first witness will be Hugh Feagan, who was the
9 Commanding Officer of "H" Division for the R.C.M.P. Following
10 him, will be Deputy Commissioner Quintal, former Deputy Minister
11 Quintal. Now it is our wish that he will follow Mr. Feagan.
12 Because of travel arrangements, it may be necessary to change the
13 order a little bit. But assuming he is here at the appropriate time,
14 Mr. Ken Towle will be second. We will then follow with David
15 Thomas, who is Chief Prosecutor for Halifax. We will then follow
16 Martin Herschorn. Your Lordships heard evidence from Mr.
17 Herschorn already, and then Gordon Coles, Judge Harry How, who
18 was the Attorney General at the time of these incidents,
19 Superintendent Simmonds of the R.C.M.P., and finally, Gordon Gale.

20 The only other point, My Lord, I would mention at this stage
21 is, for the record, Mr. Thornhill did apply for and was granted
22 standing by Your Lordships to be represented at this phase of the
23 hearings and that he is represented here today by John Merrick as
24 his counsel.

25 The first witness then, My Lords, will be Mr. Feagan.