I

The Scope and Nature of the Inquiry

A. Introduction

On July 30, 1992, an innocent person was convicted of a heinous crime. The man was Guy Paul Morin and the crime was the first degree murder of nine-year old Christine Jessop, abducted from Queensville, Ontario, on October 3, 1984. It was not until January 23, 1995, almost 10 years after he was first arrested, that Guy Paul Morin was exonerated as a result of sophisticated DNA testing not previously available.

The criminal proceedings against Guy Paul Morin represent a tragedy not only for Mr. Morin and his family, but also for the community at large: the system failed him — a system for which we, the community, must bear responsibility. An innocent man was arrested, stigmatized, imprisoned and convicted. The real killer has never been found. The trail grows colder with each passing year. For Christine Jessop's family there is no closure.

The reasons for the failure are set out in the pages which follow, and so are suggestions for change, designed to make similar failures less likely.

B. The Mandate

(i) Overview

By Order in Council dated June 26, 1996, I was appointed as Commissioner pursuant to the *Public Inquiries Act*, R.S.O. 1990, c. P.41.

The preamble to the Order in Council reads, in part, as follows:

> Christine Jessop was murdered on or after October 3rd, 1984. Guy Paul Morin was charged on April 22nd, 1985 with that murder. On February 7th, 1986, he was acquitted. A new trial was ordered by the Court of Appeal for Ontario on June 5th, 1987 and that order was affirmed by the Supreme Court of Canada on November 17th, 1988. After the new trial, he was convicted of her murder on July 30th, 1992. He was subsequently acquitted by the Court of Appeal on January 23, 1995 on the basis of fresh evidence tendered by the Crown and defence counsel. This course of events has raised certain questions about the administration of criminal justice in Ontario.

My mandate is described in these terms:

1. The Commission shall inquire into the conduct of the investigation into the death of Christine Jessop, the conduct of the Centre of Forensic Sciences in relation to the maintenance, security and preservation of forensic evidence, and into the criminal proceedings involving the charge that Guy Paul Morin murdered Christine Jessop. The Commission shall report its findings, and make such recommendations as it considers advisable relating to the administration of criminal justice in the province.

2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization, and without interfering in any ongoing police investigation relating to the murder of Christine Jessop, or any ongoing criminal or civil proceedings.

3. The Commission shall complete this inquiry and deliver its final report containing its findings, conclusions and recommendations to the Attorney General by June 30, 1997.[1] The Commission may give the Attorney General such interim reports as it considers appropriate to address urgent matters in a

[1] This date was later changed to March 31, 1998.

> timely fashion. Each report must be in a form appropriate for release to the public, subject to the *Freedom of Information and Protection of Privacy Act* and other relevant laws.
>
> 4. To the extent that the Commission considers advisable, it may rely on any transcript or record of pretrial, trial or appeal proceedings before any court in relation to the proceedings and prosecution and on such other related materials as the Commission considers relevant to its duties. (See *Order in Council dated June 26, 1996, Appendix A-1*)

Immediately after Guy Paul Morin was exonerated on January 23, 1995, the then Deputy Attorney General, speaking on behalf of the Attorney General, said this, in part:

> The minister is deeply committed to maintaining the public's faith in the system, and to ensuring that the ministry takes whatever steps are necessary that such a situation does not reoccur. To accomplish this, Ms. Boyd has decided a public airing into the justice system's handling of Mr. Morin's case is required.

These sentiments were echoed when the present Attorney General announced the appointment of this Commission. He said this, in part:

> An inquiry cannot wipe away the years of pain and turmoil Mr. Morin suffered, but it can examine the complex circumstances surrounding the case, and allow us to learn from it and prevent any future miscarriage of justice.

It follows from the Order in Council (and the comments cited above) that the mandate of this Commission is threefold: investigative, advisory and educational. Each aspect requires some elaboration.

(ii) The Investigative Role

I am to investigate and determine, to the extent possible, why the investigation into the death of Christine Jessop and the proceedings which followed resulted in the arrest and conviction of an innocent person. In other words, how and why did the administration of justice fail *in this case*? Guy

Paul Morin is entitled to have an answer to that question, and so is the public at large.

To fulfill my investigative role, I am entitled to make findings of fact. Sometimes, these findings involve the credibility of witnesses. From those findings of fact, I am entitled "to draw appropriate conclusions as to whether there has been misconduct and who appears to be responsible for it."[2]

In the *Red Cross* case, Cory J., speaking for a unanimous Supreme Court of Canada, said this:

> [C]ommissioners must ... have the necessary authority to set out the facts upon which the findings of misconduct are based, even if those facts reflect adversely on some parties. Otherwise, the inquiry process would be essentially pointless. Inquiries would produce reports composed solely of recommendations for change, but there could be no factual findings to demonstrate why the changes were necessary. If an inquiry is to be useful in its roles of investigation, education and the making of recommendations, it must make findings of fact. It is these findings which will eventually lead to the recommendations which will seek to prevent the recurrence of future tragedies.[3]
>
> .....
>
> These findings of fact may well indicate those individuals and organizations which were at fault. Obviously, reputations will be affected. But damaged reputations may be the price which must be paid to ensure that if a tragedy such as that presented to the Commission in this case can be prevented. ... [C]ommissioners must have the authority to make those findings of fact which are relevant to explain and support their recommendations even though they

---

[2] *Canada (Attorney General)* v. *Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440 **(**hereinafter referred to as the *Red Cross* case).

[3] *Red Cross* at 462.

> reflect adversely upon individuals.[4]
>
> .....
>
> [T]he power of commissioners to make findings of misconduct must encompass not only finding the facts, but also evaluating and interpreting them. This means that commissioners must be able to weigh the testimony of witnesses appearing before them and to make findings of credibility. This authority flows from the wording of s.13 of the Act, which refers to a commissioner's jurisdiction to make findings of "misconduct". According to the *Concise Oxford Dictionary* (8th ed. 1990), misconduct is "improper or unprofessional behaviour" or "bad management". Without the power to evaluate and weigh testimony, it would be impossible for a commissioner to determine whether behaviour was "improper" as opposed to "proper", or what constituted "bad management" as opposed to "good management". The authority to make these evaluations of the facts established during an inquiry must, by necessary implication, be included in the authorization to make findings of misconduct contained in s.13. Further, it simply would not make sense for the government to appoint a commissioner who necessarily becomes very knowledgeable about all aspects of the events under investigation, and then prevent the commissioner from relying upon this knowledge to make informed evaluations of the evidence presented.[5]

These comments have equal application to section 5 of the *Public Inquiries Act (Ontario)* which addresses findings of misconduct which may be made.

Pursuant to my mandate, I have made findings of fact in this Report, including, where appropriate, findings of misconduct. In doing so, I was governed, in part, by the following principles which find expression in the *Public Inquiries Act*, the terms of my Order in Council and the relevant

---

[4] *Red Cross* at 462-463.

[5] *Red Cross* at 463.

jurisprudence, most particularly the *Red Cross* case, cited above:

1. The Order in Council provides that "[t]he Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization." The jurisprudence supports this prohibition. Accordingly, I have no jurisdiction to make any findings of criminal or civil responsibility and I have refrained from doing so. Each of my findings must be read in the context of this prohibition.

2. As noted by Cory J. in *Red Cross,* findings of misconduct "should be made only in those circumstances where they are required to carry out the mandate of the inquiry."[6] Any findings of misconduct which I have made shed light on how this miscarriage of justice occurred and explain and support my recommendations as to how to avoid future miscarriages of justice.

3. Subsection 5(2) of the *Public Inquiries Act* provides that no finding of misconduct on the part of any person shall be made against the person unless that person had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel. Accordingly, I have only made findings of misconduct against named persons where that person received written notice of the substance of the alleged misconduct (referred to herein as a 'section 5 notice') and had a full opportunity during the Inquiry to be heard.

4. The rules of procedure which govern public inquiries generally, and this Inquiry in particular, permit the reception of evidence which might not meet the strict test for admissibility in criminal or civil proceedings. My approach at this Inquiry was to receive such evidence primarily where it related to systemic issues, rather than issues of personal or institutional misconduct. In making findings of misconduct, I

---

[6] *Red Cross* at 470.

relied heavily, by analogy, upon the principles which govern the admissibility of evidence in criminal proceedings. Generally, a relaxation of those principles favoured a party against whom misconduct was alleged. Having said that, I respectfully adopt the following comments of Cory J. in the *Red Cross* case as reflecting the principles which govern my Report:

> A public inquiry was never intended to be used as a means of finding criminal or civil liability. No matter how carefully the inquiry hearings are conducted they cannot provide the evidentiary or procedural safeguards which prevail at a trial. Indeed, the very relaxation of the evidentiary rules which is so common to inquiries makes it readily apparent that findings of criminal or civil liability not only should not be made, they cannot be made.
>
> Perhaps commissions of inquiry should preface their reports with the notice that the findings of fact and conclusions they contain cannot be taken as findings of criminal or civil liability. A commissioner could emphasize that the rules of evidence and the procedure adopted at the inquiry are very different from those of the courts. Therefore, findings of fact reached in an inquiry may not necessarily be the same as those which would be reached in a court. This may help ensure that the public understands what the findings of a commissioner are — and what they are not.[7]

5. In assessing credibility, I also relied, by analogy, on the considerations relevant to a trial judge presiding in a criminal case. These include the demeanour of witnesses, the plausibility of evidence measured both internally and in relation to other evidence, prior statements or testimony, and the motivations and possible unconscious biases of parties. I have also considered that these biases may change as events develop. For example, a witness whose trial evidence was coloured by Guy Paul Morin's status as an accused murderer may now give evidence coloured by knowledge of Mr.

[7] *Red Cross* at 470-471.

> Morin's proven innocence. The criminal records or discreditable conduct of some witnesses may affect their credibility. The good reputations of parties against whom misconduct is alleged have been considered by me both in relation to their credibility and to the unlikelihood that the alleged misconduct would be committed by them. A number of parties led character evidence during the Inquiry, either through witnesses otherwise testifying on relevant issues, or through character witnesses or letters filed during Phase VI of the Inquiry. I have considered the excellent prior reputations of various parties against whom allegations of misconduct have been made in assessing the evidence.

> 6. I am entitled to make findings of fact which are demonstrated to my satisfaction on the balance of probabilities. However, where findings involve misconduct of named parties, potentially affecting reputations and professional standing, a higher degree of proof, closer to the criminal standard, is appropriate. This approach accords with the jurisprudence in this area which speaks of clear and convincing proof, based upon cogent evidence.[8]

Not surprisingly, the public is often most interested in the findings of misconduct made against individuals or organizations. However, as important as the Inquiry's investigative, advisory and educational roles are, as Cory J. noted, they "should not be fulfilled at the expense of the denial of the rights of those being investigated. ... [N]o matter how important the work of the inquiry may be, it cannot be achieved at the expense of the fundamental right of each citizen to be treated fairly."[9] The limitations upon findings of misconduct must be understood in the light of these expressed concerns.

(iii) The Advisory Role

The principal focus of my mandate is to make recommendations for

---

[8] *Re Bernstein and College of Physicians and Surgeons* (1977), 76 D.L.R. 38 at 76 (Ont. Div.Ct.).

[9] *Red Cross* at 458-459.

change intended to prevent future miscarriages of justice. The criminal proceedings against Guy Paul Morin have enabled me to identify certain 'systemic issues' — that is, issues which transcend the particular case and speak generally to the administration of criminal justice in Ontario. Pursuant to my mandate, I have made 119 recommendations for change. In doing so, I was governed by the following principles, which again find expression in the *Public Inquiries Act*, my Order in Council, and the jurisprudence:

1. As previously noted, the Order in Council prohibits me from expressing any recommendation regarding the civil or criminal responsibility of any person or organization. I am, therefore, not entitled to recommend that criminal, civil or disciplinary proceedings should or should not be instituted against any person.

2. Any recommendations should be reasonably related to the systemic issues arising out of the present case. Nevertheless, some recommendations may address problems not directly associated with Mr. Morin's wrongful conviction, but which were incidentally identified during the Inquiry.

3. Any recommendations should be practical and constructive.

4. It is my mandate to make recommendations to improve the administration of criminal justice *in Ontario.* My Report is, by law, directed to the Attorney General of Ontario. I have been mindful of this provincial limitation in prioritizing issues and formulating recommendations. But criminal trials and the administration of criminal justice also raise national issues of importance since criminal law, procedure and evidence fall within federal jurisdiction. Some issues raised during this Inquiry are of such importance that I feel compelled to address them in some way — in the least, by identifying the issues and the need for attention and, in some instances, by recommending changes that can only be implemented by the federal government, but which can and should be furthered through proactive representations by the Government of Ontario to the Government of Canada.

   The Order in Council authorized me to submit such interim reports as

I may consider appropriate to address urgent matters in a timely fashion. I chose not to submit interim recommendations, though matters did arise during the Inquiry which clearly required immediate remedial action. Given the structure of this Inquiry, any interim report would have been submitted without the benefit of the systemic evidence from experts from around the world heard near the end of the Inquiry, or the closing written and oral submissions of counsel. I therefore suggested early on that parties need not await my final Report before taking action to rectify problems made evident in the course of the Inquiry; indeed, parties were encouraged to take such action and several did. For example, Dr. James Young, Chief Coroner for Ontario and Assistant Deputy Solicitor General with responsibility for the Centre of Forensic Sciences, testified that, as he became aware of the unexpected depth of the problems identified by this Inquiry, certain remedial action was taken, together with action which had commenced prior to the Inquiry. Similarly, the Ministry of the Attorney General filed Crown policy guidelines addressing jailhouse informants, forensic evidence and the role of Crown counsel[10] influenced, in part, by the evidence revealed at this Inquiry. The Durham Regional Police Service described remedial actions taken in response to the Inquiry's evidence as well. To their credit, these and other parties appreciated that such remedial actions would be evaluated by me, with the view to making recommendations for further or other action.

(iv) The Educational Role

This public Inquiry may serve to educate members of the community as to the administration of criminal justice generally and as to the criminal proceedings against Guy Paul Morin in particular. A public Inquiry is, by definition, public. Fulfillment of the Inquiry's educational role and public confidence in the effectiveness and independence of the Inquiry rest, in large measure, upon the openness of the Inquiry. Accordingly, though section 3 of the *Public Inquiries Act* empowered me to hold *in camera* hearings and, by necessary implication, to ban publication of evidence, it was a power to be used sparingly. Indeed, no *in camera* proceedings were conducted by me and no bans on publication were imposed by me. On occasion, the names of third parties, addresses or other sensitive or personal information irrelevant to my

[10] The terms Crown attorney, Crown counsel, and prosecutor are often used interchangeably in this Report, and include Crown attorneys of all ranks; most Ontario prosecutors are, in fact, Assistant Crown Attorneys.

mandate were deleted from exhibits filed or questions to be posed. This was invariably done with the consensus and co-operation of all counsel.

Members of the media attended throughout the Inquiry. A single camera recorded the proceedings; the videotapes constitute the official record of the Inquiry. The hearing room was fully accessible to the public and the media. A separate media room was also provided, to which a direct audio-visual feed was available at all times. The exhibits (and the full public record of the criminal proceedings against Guy Paul Morin) were contained in a library accessible to the public and the media.

At Guy Paul Morin's second trial, the trial judge, Mr. Justice James Donnelly, imposed bans on the publication of the identities of certain persons, most significantly, one of the jailhouse informants who testified against Guy Paul Morin — referred to at this Inquiry by the pseudonym Mr. X. I have no jurisdiction to reverse a judicially imposed publication ban. (See *Ruling dated November 29, 1996, Appendix B.)* This ban on publication was unsuccessfully challenged in the Ontario Court of Appeal.[11] Accordingly, the pseudonym 'Mr. X' continues to be used throughout this Report. The media respected this ban on publication; for example, Mr. X's image and voice were artificially distorted in the television media to maintain his anonymity. Members of the public were entitled to attend the Inquiry during Mr. X's evidence and did so. Though I expressed my preference that the ban on publication respecting Mr. X be lifted, the ban did not impede the Inquiry in any significant way.

C. The Innocence of Guy Paul Morin

On January 23, 1995, the Ontario Court of Appeal convened to hear Guy Paul Morin's appeal against his first degree murder conviction. Fresh evidence of the comparison of semen found on Christine Jessop's panties to Guy Paul Morin's DNA profile demonstrated to the complete satisfaction of a panel of experts representing the prosecution, the defence and the Court that Mr. Morin was not the donor of the semen. This evidence was presented to the Court which, in short order, acquitted Guy Paul Morin.

---

[11] *Ontario (Commission on Proceedings involving Guy Paul Morin) (Re)* (1997), 113 C.C.C. (3d) 31 (Ont. C.A.).

That day, in addressing the Court, Kenneth L. Campbell, senior Crown counsel, said in part, "The evidence proves as an indisputable scientific fact that Mr. Morin is not guilty of the first degree murder of Christine Jessop, and should be acquitted."

Upon the acquittal having been entered, Mr. Campbell, again in open Court and on behalf of the Ministry of the Attorney General, expressed to Mr. Morin and his family "... our deepest regret for all that they have had to endure." He also publicly acknowledged "the anguish that has been suffered by the Jessop family for the loss of their daughter, Christine, and the continuing hardship caused to them by the uncertainty surrounding the identity of her killer."

Later that day, the Deputy Attorney General, speaking on behalf of the Attorney General (who was attending a meeting in Victoria, B.C.), said, in part, as follows: "Mrs. Boyd has asked me to express her deep regret to Mr. Morin and his family for what they have had to endure over the last years. She cannot imagine a more personally arduous experience."

Mr. McGuigan, the senior prosecutor at Guy Paul Morin's second trial, also expressed regrets to Guy Paul Morin and his family at a press conference that day.

Despite these public acknowledgements, early in this Inquiry, there were undoubtedly some who still believed, despite Guy Paul Morin's exoneration through DNA testing, that he was nonetheless guilty. Perhaps, it was said, he committed the crime with others; perhaps the DNA testing was flawed. As the evidence which supported his conviction was revisited at this Inquiry, the case against Guy Paul Morin unraveled before our very eyes. Hair and fibre evidence, thought by prosecutors to be the strongest evidence against Mr. Morin, was shown to be contaminated and, apart from that contamination, worthless in demonstrating guilt when properly understood. Other evidence suffered a similar fate.

In the course of the Inquiry, several witnesses publicly apologized to Guy Paul Morin for any involvement on their part in his wrongful conviction. These apologies were widely reported. Apologies offered by Susan MacLean, one of the Morin prosecutors, Inspector John Shephard, a lead Durham investigator, retired Superintendent Robert Brown, Durham's senior officer in charge, and Trevor McCagherty, the Durham Chief of Police were

particularly memorable.

These apologies offered a measure of closure to Guy Paul Morin. Equally important, the evidence tendered at this Inquiry, together with these apologies, should have demonstrated unequivocally to the public that Guy Paul Morin is indeed, beyond a shadow of a doubt, an innocent person. As James Treleaven Q.C., himself a seasoned prosecutor, noted in his evidence:

> [M]y suspicion is that ... some people at the start of this Inquiry still harboured lingering doubts about [Mr. Morin], and I think that one of the useful functions this Commission has served is to make it clear. I mean, nobody could sit, as I have, through day after day of this evidence ... without saying: How can there be any doubt?

Though this was not one of the stated purposes of the Inquiry, I am pleased that the Inquiry may have served to support and explain Guy Paul Morin's innocence to many members of the public.

D. The Ongoing Police Investigation

As previously noted, the Order in Council reflects that the Commission must "perform its duties ... without interfering in any ongoing police investigation relating to the murder of Christine Jessop or any ongoing criminal or civil proceedings." The current investigation of Christine Jessop's murder is being conducted by the Metropolitan Toronto Police. As a result, many of the documents which were relevant to this Inquiry were in the possession of the Metropolitan Toronto Police. Commission counsel and the Metropolitan Toronto Police Force established a protocol regulating the acquisition, preservation and return of documentation (and related computer data) needed by the Commission. This enabled the Commission to provide full disclosure to all parties at the Inquiry, without compromising the Christine Jessop or other ongoing investigations, the legitimate privacy interests of third parties or the continuity of original materials. I wish to extend my appreciation to Acting Inspector Neale T. Tweedy, Acting Detective Sergeant Steve Hulcoop, Acting Detective James Makris, and Jerome Wiley, Q.C., counsel to the Metropolitan Toronto Police Force, for their assistance in resolving many issues which arose during this Inquiry. (See *Exchange of Correspondence dated January 31, 1997, and February 3, 1997, Appendix*

C.)

My mandate is not directed to identifying the killer of Christine Jessop. However, much of the evidence at this Inquiry may have relevance to any further investigation. Accordingly, Commission counsel will continue to work with the Metropolitan Toronto Police Force to facilitate their access to the materials accumulated during the Inquiry.

E. Standing

Section 5(1) of the *Public Inquiries Act* provides as follows:

> A Commission shall accord to any person who satisfies it that the person has a *substantial and direct interest* in the subject-matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest. (Emphasis added.)

On September 4, 1996, I commenced hearing applications for standing at the Inquiry. I immediately granted standing to the following individuals or entities:

- The Attorney General of Ontario
- The Centre of Forensic Sciences and persons employed by or associated with the Centre
- The Chief Coroner for Ontario and persons employed by or associated with that office
- Bernie Fitzpatrick (formerly Staff Sergeant, Durham Regional Police Service)
- Gordon Hobbs (Metropolitan Toronto Police Force, formerly seconded to the Durham Regional Police Service)

- Janet, Kenneth and Robert Jessop[12]
- Susan MacLean (prosecutor at Guy Paul Morin's first and second trials)
- Leo McGuigan, Q.C. (senior prosecutor at Guy Paul Morin's second trial)
- Sergeant Michael Michalowsky (formerly identification officer, Durham Regional Police Service)
- Guy Paul, Alphonse and Ida Morin
- John D. Scott Q.C. (senior prosecutor at Guy Paul Morin's first trial)
- John Shephard (formerly Inspector, Durham Regional Police Service)[13]
- Alex Smith (prosecutor at Guy Paul Morin's second trial)
- Ministry of the Solicitor General and Correctional Services and persons employed by or associated with the Ministry

I subsequently granted standing to the following individuals or entities, with the limitations expressed below. (See *Reasons dated September 25, 1996, November 12, 1996, and letter dated January 23, 1997, to CBA-Ontario, Appendix D*):

- Association in Defence of the Wrongly Convicted

---

[12] Robert Jessop applied for, and was granted, standing subsequent to the original application by Janet and Kenneth Jessop.

[13] Mr. Shephard actually held the rank of Detective in 1985. He was promoted to the rank of Inspector before the second trial. In order to avoid confusion, and because his rank at any particular point in time has no bearing on the issues before the Commission, he will be referred to as Inspector Shephard throughout the Report.

(AIDWYC) — on systemic issues only

- Criminal Lawyers' Association — on systemic issues only

- Ontario Crown Attorneys' Association — on systemic issues only

- Durham Regional Police Association — on systemic issues only, except insofar as the Association's counsel also had a mandate to represent four specific officers, Joseph Loughlin, Robert Chapman, Thomas Cameron and David Robinet, each of whom were entitled to full standing

- York Regional Police Association — on systemic issues only, except insofar as the Association's counsel also had a mandate to represent specific officers whose conduct may be examined

- Chief of Police and York Regional Police Board — the latter, on institutional issues only, except insofar as their counsel also had a mandate to represent senior officers whose conduct may be examined and who are not represented by the York Regional Police Association

- Durham Regional Police Board — on institutional issues only, except insofar as its counsel also had a mandate to represent senior officers whose conduct may be examined and who are not represented by the Durham Regional Police Association

- Canadian Bar Association — Ontario — on systemic issues only, limited further to particular Phases of the Inquiry

- Law Union — on systemic issues only, limited to

closing submissions only[14]

- Mr. X (jailhouse informant[15] and witness) — limited to the Phase(s) of the Inquiry which directly concerned him

- Robert Dean May (jailhouse informant and witness) — limited to the Phase(s) of the Inquiry which directly concerned him

During the submissions as to standing, some counsel suggested that entitities seeking standing, particularly on systemic issues, would attempt to intrude into the factual issues relating to the Guy Paul Morin proceedings, or unduly lengthen the Inquiry. Similarly, concerns were expressed that certain common interests (for example, on behalf of the police) would be unnecessarily and unfairly duplicated through the granting of standing not only to individual officers but also to police associations and boards. Underlying these submissions — which, ironically, emanated from strikingly divergent parties — was the concern that there be no imbalance of representation at the Inquiry or 'ganging up' on certain parties by others. These concerns proved unwarranted. Counsel for all parties demonstrated a high degree of professionalism, avoiding duplication, while serving their respective clients extremely well. The parties to the systemic issues called much of the evidence during Phase VI of the Inquiry (the systemic phase), sometimes in shared panel presentations, and did so in a truly non-adversarial and co-operative manner.

In my written reasons released on September 25, 1996, I reflected that "[i]t is my hope that the work of the Commission will proceed efficiently and with dispatch, but this can only be achieved with the full co-operation of all the parties concerned ... I have spelled out some limitations, and my purpose in doing so is to avoid costly and time-consuming duplication and prevent unfairness. I know I can count on the help of all parties to achieve this result." I can now say that the timely completion of this Inquiry, together with the

---

[14] The Law Union ultimately chose not to participate directly. Its counsel appeared on behalf of AIDWYC for part of the Inquiry.

[15] The terms 'in-custody informer' and 'jailhouse informant' are used interchangeably, unless otherwise indicated, throughout this Report.

high quality of representation throughout, is a tribute to all counsel who appeared before me.

F. Funding

The funding of counsel for parties granted standing at the Inquiry proved to be a contentious issue. Ultimately, counsel for parties with standing were indeed funded, but in different ways. Counsel for several parties (the Morins, the Jessops, Robert Dean May and Mr. X) were funded by the provincial government at civil legal aid rates. Their accounts were submitted to me for review and approval, a task which I delegated, in part, to the Administrator. Counsel for several parties granted standing on systemic issues (AIDWYC, Criminal Lawyers' Association, Ontario Crown Attorneys' Association, Canadian Bar Association — Ontario) were allocated monies by me out of a fund established as part of the Commission's budget for that purpose. Counsel for the remaining parties were funded by their clients or, in a number of instances, by the clients' present or former employers. For example, it is my understanding that the Regional Municipality of Durham funded some of the parties, including present or former Durham police officers, who were granted standing. (I am aware that there was, and may still be, an issue between the municipal and provincial governments as to the level of government that should be responsible for this funding.)

The issue of funding threatened to derail the Inquiry in its earliest stages. I was gratified, however, that the issue was resolved to the extent that each of the parties before me was represented and that the representation was highly skilled. In saying that, I recognize that some counsel appeared at civil legal aid rates for an extended period of time, well below their usual compensation, and I am grateful for their indispensable contribution to the Inquiry's work. Similarly, I recognize — and appreciate — that some counsel who were allocated limited monies by me out of the Commission's budget, worked many hours for which they were not financially compensated. Their contribution, both in the interests of their client organizations and in the public interest, was in the finest traditions of the bar.

Parties granted standing during a public Inquiry inevitably have, as set out in the *Public Inquiries Act,* a 'substantial and direct interest' in all or part of the proceedings. Their role is of fundamental importance to the success of any Inquiry. The ability of a Commission to investigate, advise and educate is

greatly dependent on the contribution of counsel. That is why I stated at the outset that, "[t]o effectively and properly discharge my mandate, it is essential that parties granted standing have adequate funds to be properly represented by counsel."

Recommendation 1: Policy for Funding Inquiries.

A clear and comprehensive policy should be established by the Government of Ontario for the funding of public inquiries, consistent with the concerns expressed herein.

G. Rules of Procedure

The hearings were governed by rules of procedure established after consultation with all parties and submissions before me. The rules were largely arrived at through consensus.

During the Inquiry, I did, on occasion, relieve against the strict application of the rules to ensure fairness to all parties. It is a tribute to all counsel that, despite strongly held positions on the issues before me, they were extremely accommodating to each other and to me, and it is fair to say that the rules worked well. (See *Rules of Procedure, Appendix E.*)

H. Disclosure and Documentary Access

Commission counsel established various protocols to collect, catalogue, disclose and, where applicable, return documentary material. Similarly, protocols were established to enable the disclosure of anticipated evidence. These protocols are largely contained in memoranda issued by Commission counsel to all counsel at the Inquiry. (See *various memoranda, Appendix F.*)

I. Phases of the Inquiry

The public hearings proceeded in phases. At the commencement of each Phase, Commission counsel outlined the background facts and the

systemic issues likely to arise out of those of facts. These phases were organized as follows:

Phase I — In-Custody Statements/ Jailhouse Informants

At the first and second trials, the prosecution led evidence of an incriminating statement allegedly made by Guy Paul Morin in the presence of his cellmate Robert Dean May and allegedly overheard by Mr. X in the adjoining cell. Phase I examined the issues arising out of this statement tendered through the two jailhouse informants at trial.

Phase II — Forensic Evidence and the Centre of Forensic Sciences

At the first and second trials, the prosecution led the evidence of forensic scientists from the Centre of Forensic Sciences, primarily concerning comparisons between hairs and fibres from the body site and hairs and fibres from Guy Paul Morin, his residence and vehicle. Evidence of 'indications' of blood in the Morin vehicle was also led. As well, the results of two autopsies respecting Christine Jessop were introduced into evidence. The issue of forensic pathology is dealt with in a later chapter. This Phase examined the issues arising out of the forensic evidence tendered at the trials.

Phase III — The York Regional Police Investigation

When Christine Jessop disappeared, the initial investigation was conducted by officers of the York Regional Police force which had jurisdiction in the area in which she had lived. When her body was discovered on December 31, 1984, the homicide investigation was assumed by the Durham Regional Police Service, in whose jurisdiction her body was located. Two York Regional Police officers were assigned to the Durham investigation thereafter. This Phase examined the issues arising out of the York Regional Police investigation.

Phase IV — The Durham Regional Police Investigation

The Durham Regional Police investigation commenced on December 31, 1984, when Christine Jessop's body was discovered in Durham Region. It extended through Guy Paul Morin's arrest on April 22, 1984, by Durham

investigators, his first trial, which resulted in his acquittal, the period during which a new trial was ordered by the Ontario Court of Appeal and upheld by the Supreme Court of Canada, until July 30, 1992, when he was convicted at his second trial. This Phase examined the issues arising out of the Durham Regional Police Service investigation.

Phase V — The Trial

This Phase examined issues arising out of the trial of Guy Paul Morin, most particularly the second trial, since it resulted in his wrongful conviction.

Phase VI — Systemic Issues

At the end of the evidence particular to the Christine Jessop investigation and Guy Paul Morin criminal proceedings, a number of systemic issues were identified — issues that transcend the facts of the Morin case and extend to the administration of criminal justice in Ontario generally. During Phase VI, I heard evidence from experts and participants in the administration of criminal justice from around the world. These witnesses were, with few exceptions, completely uninvolved in the Guy Paul Morin case; they were tendered to assist me in formulating recommendations for systemic change. I also heard evidence from six individuals from England, the United States and Canada, who were wrongfully convicted and later exonerated, and who offered a sobering reminder of the objectives of this Inquiry. This Phase was designed to examine the systemic issues in a completely non-adversarial way. To that end, counsel were precluded from questioning systemic witnesses on the contentious factual issues relating to the Guy Paul Morin case itself.

Phase VII — Section 5 Phase

Section 5 of the *Public Inquiries Act* provides as follows:

> (1) A commission shall accord to any person who satisfies it that the person has a substantial and direct interest in the subject-matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest.
>
> (2) No finding of misconduct on the part of any

> person shall be made against the person in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the inquiry to be heard in person or by counsel.

Early in the Inquiry, section 5 notices were served confidentially upon various parties. They were supplemented or amended as the evidence unfolded. Commission counsel met with counsel for such parties to provide any needed clarification. These clarifications were reduced to writing and were treated as if they formed part of the notices themselves. The allegations contained in the notices did not represent the views of Commission counsel (who prepared them) or my views, but rather represented allegations of misconduct contained in the public record. Not every allegation contained in the public record was necessarily included in these notices. Some prioritization was established.

This Phase was designed to enable parties who received section 5 notices to lead any evidence bearing upon allegations contained in their notices.

Phase VIII — Written and Oral Submissions

All parties were permitted to file written submissions, without limitations on length, on the factual and systemic issues raised during the Inquiry. Consensus was reached as to when each factum had to be filed, together with reply facta. I then heard oral submissions from the parties. Again, consensus was reached as to the times allocated for oral submissions. (*See memoranda from Commission counsel, Appendix G.*)

J. Breadth of the Factual Issues

As may be clear from the above recital of the Phases, the number of factual issues which arose out of the Guy Paul Morin criminal proceedings was very large indeed. Prior to the commencement of the public hearings, the Commission accumulated transcripts from the first trial (1,839 pages), the second trial (77,800 pages), fresh evidence materials (21,400 pages) and summaries of the documentary evidence (which commission staff prepared), all relating to the Christine Jessop investigation and Guy Paul Morin

prosecutions and appeals for the period of more than 10 years from October 1984 to January 1995. The legal issues raised by counsel for Guy Paul Morin and the Attorney General of Ontario, in relation to the appeal against conviction, consumed 19 volumes of facta. (The public record was later augmented by the *viva voce* evidence tendered at this Inquiry (146 volumes) and the documentary evidence filed as exhibits (311 exhibits).

As earlier noted, the Order in Council directed me to "complete this inquiry and deliver [my] final report containing [my] findings, conclusions and recommendations to the Attorney General by June 30, 1997," that is, one year after I was given the mandate.

Public hearings commenced on February 10, 1997, with opening statements by Commission counsel. Evidence was then called.

By letter dated April 11, 1997, directed to the Honourable Charles A. Harnick, Q.C., Attorney General of Ontario, I requested that the completion date of the Inquiry be extended *once and only once* to March 31, 1998. (See *Letter dated April 11, 1997, Appendix H*.) This letter read, in part, as follows:

> This request is consistent with the breadth of the inquiry mandate, fiscal responsibility, and the commencement date of the public hearings. Indeed, it is my view that this request should not be seen as a prolongation of the ongoing process, but rather an acknowledgment of the significant amount of work, requiring the co-operation of many parties, needed before the public hearings could begin.
>
> The Order in Council contemplated a one year period commencing in June, 1996. However, the public hearings only commenced seven and a half months later. During that period, the commission offices were established, commission staff, including commission counsel, were retained and facilities were renovated to accommodate the multiple parties with standing and daily participation of television, radio and print media. A decision was made that time expended 'up front' in collecting, assimilating, organizing and computerizing the voluminous documentation in existence would ultimately ensure that the hearings be conducted in an expeditious and efficient manner.

I then outlined in detail the work done during this 'start-up period,' which included the creation of two libraries, one for the Commission itself and one for parties with standing and other interested parties, containing the voluminous materials relating to the Guy Paul Morin proceedings, and the creation of a database accessible to all parties with Summation search capacity. The letter continued:

> This start up period was also prolonged for reasons not anticipated by anyone when the original O.I.C. was approved. The Crown Law Office and the Court of Appeal were requested by the Commission to collect, organize and deliver much of the documentation now contained in our libraries. This, understandably, took several months. Commission Counsel and the Metropolitan Toronto Police agreed that a protocol had to be established before sensitive (and voluminous) materials in the possession of the police could be released. This ensured that appropriate safeguards to protect legitimate privacy issues were in place, and that any ongoing police investigation would not be compromised, while ensuring that parties with standing would have the full ability to address relevant issues at the inquiry. This very necessary protocol had to be in place prior to obtaining these materials which were of great importance to us and to parties with standing. Finally, a variety of issues, such as standing, funding and publication bans had to be addressed before the public hearings on the substantive issues could commence.
>
> .....
>
> One cannot be oblivious to the fact that criticism has been directed to some public inquiries, rightly or wrongly, for repeated extension requests, and undefined or uncontrolled hearings. A recent article in the Globe and Mail reflected such criticism. I could not help but note that our commission was listed as a notable exception.
>
> As I earlier indicated, the public hearings began in February of this year (and will have lasted less than six months by June 30, 1997). This request is, therefore, as indicated above, more reflective of the considerable amount of time spent 'up front' gathering and consolidating materials, and designing the process so

> that the hearings, upon commencement, would proceed expeditiously and fairly. This latter goal appears to have been achieved to date. However, I am mindful of the concerns which any extension requests raises and the importance that the public support the work of this Commission. ... Accordingly, should the proposed timetable be acceptable to the government, I will not apply for a further extension.

Pursuant to this request, the Order in Council was amended to extend the life of the Commission to March 31, 1998, as requested. (See *Appendix A-2.*) Though the letter was written only two months into the public hearings, the hearings did proceed in accordance with the letter. The evidence was completed on December 18, 1997, the date specified in my request. My Report is hereby submitted on March 31, 1998, as scheduled. The completion of this Inquiry on schedule was accomplished through the efficient and effective advocacy of all counsel, extended sittings on occasion and some prioritization of issues.

My letter also reflected my hope that much of the evidence which would otherwise be relevant during the 'section 5 Phase' of the Inquiry, would be called by Commission counsel during the earlier Phases, through ongoing discussions between Commission counsel and counsel for parties who had received section 5 notices, and so it was. This enabled evidence relied upon by those parties to be presented in the context of the factual and systemic issues at this Inquiry, rather than in a Phase which exclusively must focus on alleged misconduct. This approach was most successful. Indeed, less than two days of section 5 evidence was heard. As a result, Commission counsel, in anticipation of a shortened section 5 Phase, were able to allocate more time to earlier Phases.

K. Breadth of the Systemic Issues

At the commencement of each Phase, Commission counsel listed potential systemic issues which could arise from the evidence tendered during that Phase. At the end of Phase V (the trial), Commission counsel circulated a refined list of 57 systemic issues which they had identified during the Inquiry. This list was intended to facilitate the presentation of evidence during the systemic Phase which was to follow and, ultimately, the closing submissions of counsel directed to any recommendations for change. Other

counsel were invited to comment on this list of systemic issues. It appeared there was general consensus that this list accurately identified the systemic issues arising out of the Inquiry evidence.[16] This list follows:

(i) Phase I Systemic Issues

Phase one raises systemic issues relating to jailhouse informants and their use in criminal proceedings:

1. What reliability concerns are raised generally in connection with jailhouse informants? (This issue might involve consideration of the documented techniques used by jailhouse informants in various jurisdictions to mislead the authorities.)

2. To what extent have unreliable jailhouse informants contributed to miscarriages of justice or potential miscarriages of justice, particularly in other jurisdictions? What, if any, lessons can be learned from such experiences?

3. When, and to what extent, should their evidence be used by the prosecution in a criminal case? How, if at all, can the potential dangers associated with their evidence be reduced?

4. What, if any, protocols, rules or guidelines should govern the relationship between jailhouse informants and the police?

5. What, if any, protocols, rules or guidelines should govern the relationship between jailhouse informants and Crown counsel?

A number of the following questions are more particular forms of questions 4 and 5:

6. To what extent should (or must) police and/or Crown counsel

---

[16] By letter dated November 6, 1997, the Ontario Crown Attorneys' Association requested that the allocation of resources to the prosecution of criminal cases in Ontario be considered during the systemic Phase. It was the Association's position that even though lack of resources did not affect the Morin prosecution, many systemic issues have resource implications. Recommendations must be responsive to fiscal realities. I agreed with this position and permitted limited questioning directed to this issue.

evaluate the reliability of jailhouse informants as a pre-condition to their use or potential use as witnesses? How can the authorities best evaluate reliability?

7. What, if any, benefits should be offered informants as inducements to give evidence? Who should negotiate these benefits on behalf of the prosecution?

8. How should these benefits (or potential benefits) be recorded? When and how should these benefits (or potential benefits) be disclosed?

9. What, if any, protocols, rules or guidelines should govern benefits sought or conferred after testimony has been given?

10. To what extent, if any, should trial judges be empowered to exclude unreliable evidence? If jailhouse informant evidence is tendered, what instructions should be given to the jury?

11. The discussion paper [prepared by Mr. Sherrin at the direction of the Commission][17] makes reference to the various recommendations arising out of the Los Angeles grand jury on jailhouse informants. Should all or some of these recommendations be adopted here?

12. To what extent, if any, should institutional records of jailhouse informants be made available to the Crown and defence? What

---

[17] A discussion paper dated December 6, 1996, by Chris Sherrin was circulated to all counsel (*Jailhouse Informants in the Canadian Criminal Justice System, Part I: Problems with their Use* (1997), 40 C.L.Q. 106; *Jailhouse Informants, Part II: Options for Reform* (1997), 40 C.L.Q. 157.) It addressed the problems associated with the use of jailhouse informants and various options reflected in the literature for reform. The discussion paper, citing the work of Evan Haglund (*Impeaching the Underworld Informant* (1990), 63 S. Cal. L. Rev. 1407 at 1408-1409), defines a jailhouse informant as "an inmate, usually awaiting trial or sentencing, who claims to have heard another prisoner make an admission about his case." Commission counsel expressed the view that the use of undercover police officers or confidential informers (whose identities remain undisclosed) raise different systemic issues, beyond the scope of this Inquiry. Counsel were also invited to provide input on the appropriate definition of a jailhouse informant, for the purposes of any systemic recommendations.

procedural rules or protocols should govern access to such records? To what extent (and how) should prior cases in which an informant has been involved be recorded and disclosed?

(ii) Phase II Systemic Issues

Phase II raises systemic issues relating to the formation of forensic findings and opinions, the treatment of forensic issues in the criminal courts and the relationship between forensic scientists and the other participants in the administration of criminal justice:

13. To what extent has forensic evidence contributed to miscarriages of justice or potential miscarriages of justice, particularly in other jurisdictions? What, if any, lessons can be learned from such experiences?

14. What, if any, involvement should the forensic scientists have in the collection of evidence (or decisions as to which evidence to collect) at the body site or other locations?

15. To what extent do police receive adequate direction and training on how to collect forensic evidence, or what forensic evidence should be collected? To what extent do the police (and identification labs) have adequate resources to perform their forensic-related role?

16. What protocols, rules or guidelines should govern the relationship between the Centre of Forensic Sciences (or forensic scientists unaffiliated with the Centre) and the police?

17. More specifically, to what extent should the collection or examination of forensic evidence be driven by an investigative theory? Put another way, what should the relationship be between the forensic tests requested or performed, and the investigative theory?

18. How can the independence and objectivity of the Centre of Forensic Sciences be ensured and fostered? What, if any, protocols, rules or guidelines should exist to promote such

independence and objectivity? How, if at all, should the relationship between the Centre and defence counsel be altered to promote such independence and objectivity?

19. A breakdown in communication between forensic scientists and the police has been raised as an issue here. What protocols, rules or guidelines can promote the accurate and complete transmittal of findings, and the limitations upon those findings, by forensic scientists to the police, who act upon those findings? When should reports be prepared, how should they be formatted and what should they contain?

20. A breakdown in communication between forensic scientists and Crown counsel has been raised as an issue here. What protocols, rules or guidelines can promote the accurate and complete transmittal of findings, and the limitations upon those findings, by forensic scientists to Crown counsel?

21. An issue has been raised here as to how well forensic scientists, the police, defence and Crown counsel communicate forensic findings, and the limitations upon them, to trial courts or at pre-trial proceedings? What, if any, systemic changes can better ensure that these findings, and the limitations upon them, are conveyed to the court in a scientifically valid, understandable and accurate way?

22. To what extent should the language of forensic scientists be standardized? For example, does the sometimes interchangeable use of phrases such as 'consistent with', 'may originate from', 'are similar to' and 'are a match' enhance or detract from the appropriate use of forensic evidence? Does the use of some language mislead the trier of fact, and further suggest standardization of language?

23. How adequate are the expertise, training and resources of the Centre to deal with hair and fibre evidence in particular? What protocols, rules or guidelines should govern the internal/external review of a forensic scientist's work, to ensure accuracy, objectivity and appropriate recognition of the limitations upon any findings?

24. How should Centre employees be designated by the Centre to act as experts in serious criminal cases?

25. What information about a criminal case should be communicated to the forensic scientists by the police? What protocols, rules or guidelines should regulate this communication?

26. What protocols, rules or guidelines should regulate the collection, transmittal, documentation, preservation (in a non-contaminated environment) of trace evidence?

27. What protocols, rules or guidelines should govern requests by the defence for DNA testing?

28. Issues have been raised on the public record as to the adequacy of the autopsy initially performed in this case and the findings resulting therefrom. What, if any, systemic changes should be made to address pathology-related issues?

29. The necklace hair in the Guy Paul Morin case was said to be 'similar' to Guy Paul Morin's known hairs, such that he could not be eliminated as the donor. It was also said that the comparison had extremely limited probative value. Should such evidence be admissible at the instance of the prosecution or be used generally for investigative purposes only? Put another way, what should the threshold of admissibility be for such evidence? Should there be protocols governing when hair and fibre opinions can be expressed (such as those that govern fingerprints)?

30. Disclosure of internal documentation at the Centre has been raised as an issue here. What materials from the Centre should be subject to disclosure and what protocols, rules or guidelines, if any, could enhance the disclosure process?

31. How can the loss of evidence be prevented? What evidence should be preserved and for how long? What, if any implications, should flow from the loss of evidence?

(iii) Phases III and IV Systemic Issues

Phase III raises systemic issues relating to the conduct of an investigation from the disappearance of a young child to the discovery of bodily remains. Phase IV raises systemic issues relating to the conduct of an investigation from the discovery of bodily remains through to the identification of a suspect, arrest and prosecution:

32. When should a missing person investigation be considered and treated as a potential abduction or a homicide?

33. How should the initial search and investigation be structured so as to maximize its effectiveness, the use of resources, and the preservation of potential evidence? More specifically, when and how should a door-to-door canvass be done? What system should be in place to ensure that an officer in charge is aware of all occurrences, investigations and follow-ups? How should investigators clear potential suspects? How can files be most effectively transferred from one jurisdiction to another? How can the relationship between different police forces be enhanced? (Counsel should be mindful of Mr. Justice Campbell's recommendations in this regard.)

34. What protocols, rules or guidelines should regulate the treatment of the body site and the collection, preservation and transmittal of physical evidence for forensic examination or for use in court.

35. How should a homicide investigation be structured to maximize its effectiveness, the use of resources and an accurate resolution? More specifically, how should officers be assigned and to what tasks? What investigative plan should motivate the investigation? How should teams of investigators report and to whom? To what extent should investigative teams be privy to the work of others?

36. What reliance should be placed upon polygraph results and profiling in setting the investigative priorities and direction to be taken by the investigation?

37. How is the reliability or accuracy of evidence enhanced or reduced by certain investigative practices? How, if at all, can investigative practices be improved to enhance accuracy and reliability? What protocols, rules or guidelines should regulate the conduct of interviews by police?

38. More specifically, how should police interviews be recorded? What protocols, rules or guidelines should govern the recording of such statements? What, if any, implications should flow from unrecorded interviews?

39. How, if at all, should evidence be assessed by investigators for relevance and reliability, and to what extent is that assessment coloured by the investigative theory? Similarly, how should potentially exculpatory evidence be dealt with by investigators, once a suspect has been identified or an arrest made? Is 'tunnel vision' a systemic problem and, if so, how can it be addressed?

40. How should 'late breaking evidence' be dealt with?

41. How should the documentation associated with the investigative process (supplementary reports, notebooks, etc.) be organized? When should information be contained in supplementary reports as opposed to notebooks and should such matters be standardized? What additional or different protocols, rules or guidelines should regulate police notebooks, supplementary reports and other documentation?

42. To what extent have poor or inappropriate investigative practices contributed to miscarriages of justice or potential miscarriages of justice, particularly in other jurisdictions? What, if any, lessons can be learned from such experiences?

43. Generally, how can the investigative process be improved to promote the accurate identification of the perpetrator?

44. How adequate is police training? How, if at all, can training of investigators be improved?

(iv) Phase V and General Systemic Issues

Phase V raised issues relating to the exercise of prosecutorial discretion, disclosure and the conduct of criminal cases generally. It involved consideration of the roles of all participants in the administration of criminal justice:

45. Can some or all of the causes of wrongful convictions in Canada or elsewhere be systemically identified? If so, what, if any, lessons can be learned from these systemic causes?

46. To what extent should individual items of evidence be assessed by Crown counsel for reliability and accuracy, as a precondition to their introduction by the prosecution? What, if any, test should be applied by Crown counsel to that assessment (*e.g.* evidence known to be false or inaccurate, suspected to be false or inaccurate, likely false or inaccurate etc.)? To what extent might such an assessment be coloured by the position/theory of the Crown and how might that affect how or by whom such an assessment should be made? Is 'tunnel vision' a systemic problem? If so, how should it be addressed?

47. What protocols, rules or guidelines should govern the conduct of Crown interviews with prospective witnesses? How should such interviews be recorded? (See Phase IV, questions 6 and 7, which reflect, in more detail, analogous questions, though the answers may be very different in the context of Crown interviews.)

48. Should the jurisdiction of the trial court or appellate court be expanded to permit wider judicial review of the jury's verdict? Should the jurisdiction of the appellate court be narrowed to limit appeals against acquittal?

49. Should exculpatory statements made by an accused on arrest be admissible at the instance of the defence? If so, under what circumstances?

50. Should reciprocal disclosure be mandated for expert evidence?

51. An issue was raised at the Inquiry as to what appellate Crown counsel do when the guilty verdict is not unreasonable in law but nonetheless disquieting. What, if any, changes should be made to the role of appellate Crown counsel to address this issue?

52. Within the framework of the present adversarial system, what, if any, trial procedures should be altered to enhance the fact-finding process and reduce the risk of wrongful convictions? For example, to what extent should trial judges deal with the evidence in their closing instructions or comment upon the evidence?

53. Should the law on consciousness of guilt or 'after the fact' evidence be altered?

54. Should the threshold of admissibility for individual pieces of circumstantial evidence be altered? (This question is also specifically addressed in Phase II, question 17.)

55. What, if any, systemic problems arise from the relationship between Crown counsel and the police? How might these problems be addressed? Does this relationship limit the ability of Crown counsel to deal with unreliable police evidence prior to, during or after the criminal trial?

56. How, if at all, should the education of Crown and defence counsel be improved to enhance the criminal trial process and prevent miscarriages of justice?

57. Subject to privilege and statutory exceptions (such as for confidential medical records), should there be an 'open box' disclosure policy in Ontario?

Many of these systemic issues have been addressed by me. Some deserve more extended and discrete attention. In formulating my recommendations for change, I have relied upon the evidence tendered at this Inquiry, particularly the systemic evidence, together with the considerable resource materials collected by my staff and made available to all counsel.

L. Evidentiary Rulings: Limitations on the Evidence Tendered

In the course of the Inquiry I made certain evidentiary rulings which sometimes limited the evidence to be heard. Some of these rulings reflected, in part, priorities given to issues of greater importance to ensure the timely completion of the Inquiry. The more significant of these rulings are highlighted below.[18]

(i) Evidence Tendered Only at the First Trial

There is no doubt that a number of issues do arise out of Mr. Morin's first trial. Further, there is no doubt that the Order in Council, by its express terms, extends my mandate to the first trial. That being said, Guy Paul Morin's first trial resulted in his acquittal. (This acquittal was later reversed on appeal and a new trial ordered.) It was only at Guy Paul Morin's second trial that he was convicted. Because the essence of the mandate was to examine how and why the administration of justice failed Guy Paul Morin and the public, I chose, by and large, to direct the focus of the Inquiry to issues relevant to Guy Paul Morin's wrongful arrest and conviction. This necessarily meant that far less attention was directed to Mr. Morin's first trial.

During the Inquiry, counsel for the Ontario Crown Attorneys' Association wrote to Commission counsel requesting that our Commission investigate the propriety of a defence lawyer raising a defence relating to the state of mind of the accused (such as insanity) absent proper instructions from the client, and the manner in which psychiatric assessments are conducted and utilized in a criminal case. This request was related to the fact that Clayton Ruby, counsel for Mr. Morin at the first trial, submitted to the jury that Mr. Morin had not committed the offence charged but, should the jury find otherwise, he was not guilty by reason of insanity. Psychiatric and psychological evidence was tendered by the defence in support of this alternative defence.[19]

---

[18] One ruling, wherein I declined to compel Michael Michalowsky to testify, is addressed in a later chapter.

[19] By letter dated May 23, 1997, Mr. Levy, counsel for Mr. McGuigan and Mr. Smith, supported the Ontario Crown Attorneys' Association position.

In my view, Crown counsel who prosecuted Guy Paul Morin at his second trial, as well as police officers who investigated Guy Paul Morin, were fully entitled to tender evidence before me as to how, if at all, their state of mind was affected by the insanity defence offered at the first trial and by the psychiatric and psychological assessments relating to that defence. These matters, if known to them, may have affected or may explain their conduct and become relevant on that basis. Accordingly, I permitted such questions to be directed to prosecutors and investigators; indeed, I heard considerable evidence as to their state of mind arising from the insanity defence. Sometimes, my own counsel led that evidence.

That being said, the defence of insanity was not raised at the second trial. No psychiatric or psychological assessments of Guy Paul Morin were tendered at the second trial. Put succinctly, such evidence played no part whatsoever in Mr. Morin's second trial. Accordingly, the propriety of counsel raising an insanity defence or the manner in which psychiatric or psychological assessments are conducted and utilized were issues of marginal relevance to this Inquiry. Further, these issues are of limited systemic interest. When the first trial was held, Mr. Morin was compelled to introduce the alternative insanity defence during the trial proper. (Indeed, Mr. Ruby unsuccessfully applied for leave to reserve any alternative insanity defence until after the jury first determined whether Mr. Morin committed the crime.) Now, such a bifurcated approach is statutorily mandated. In summary, the propriety of an insanity defence tendered on behalf of an accused who denies any involvement in the crime no longer arises and, further, was an issue confined to the trial at which Guy Paul Morin was acquitted. To the extent to which the insanity defence was relevant to state of mind, I admitted it.

I note that counsel for the Ontario Crown Attorneys' Association subsequently deferred to Commission counsel's position on this issue and withdrew his request that the issues he raised be investigated.[20]

The issue was revisited later in the Inquiry when Robert Armstrong, counsel for Mr. Scott, sought to question Mr. Scott relating to the defence of insanity advanced at the first trial. My oral ruling given on October 22, 1997 was, in part, as follows:

---

[20] Letter from S. Skurka dated June 17, 1997.

> Objection has been taken by Commission counsel to a series of questions which Mr. Armstrong wishes to direct to Mr. Scott relating to the defence of insanity advanced at the first trial. A number of counsel have made submissions directed not only to the specific questions sought to be asked by Mr. Armstrong, but to the scope of the inquiry generally. I therefore wish to make some general remarks in addition to my ruling on the specific questions raised.

I then reread my mandate, as reflected in the Order in Council, and continued:

> It follows that my mandate is not confined exclusively or chronologically to the events at the second trial. In fact, it encompasses among other matters the inquiry into the investigation by the York Regional Police force into the disappearance of Christine Jessop on October 3, 1984, the events surrounding the finding of her body on December 31, 1984, and the subsequent investigation by the Durham Regional Police, including the investigation of Mr. Morin and his arrest on April 22, 1985. It might be alleged that some or all of these areas of inquiry may have had an impact on the wrongful conviction of Mr. Morin at the second trial.
>
> That being said, I believe some limitations must be placed on the *viva voce* evidence heard at this Inquiry, but these limitations must be consistent with my undertaking, stated publicly on a number of occasions, to have a full, fair and open hearing yet, as I also said, one of limited duration. Towards this end, I recognize — to state, perhaps, the obvious — that Guy Paul Morin was acquitted at the first trial and only convicted at the second trial. So the second trial is, by this very fact, of greater importance to may mandate than the first trial.
>
> Accordingly, Commission counsel have attempted to prioritize the items of importance at this inquiry and, in my view, have done so, fairly and without prejudice to the parties. It is not a matter of competing objectives — a timetable vs. thoroughness. It is, rather, an examination of what I will need to carry out the mandate, and if I felt for a moment that I [was] required to know more about the questions now raised

I would not hesitate to make the necessary time.

With these principles in mind, Commission counsel indicated at an early opportunity that they would not lead evidence as to why the section 16 defence was called at the first trial, whether the evidence was accurate or inaccurate and whether that defence should have been called. However, the investigators and Crown counsel who became aware of that evidence, which is reflected on the public record, would be fully entitled to rely upon the effect that such evidence had on their state of mind and conduct. I agreed with that position then and I still do so now, and in fact we have already heard a good deal of evidence on that point.

Section 16 was not invoked at the second trial. It played no part in that jury's consideration. The systemic issues arising out of the section 16 defence are now less applicable since a bifurcated proceeding, which was sought by the defence at the first trial and refused, is now the law. On balance, I am, therefore, of the view that the limitations suggested by Commission counsel in the early stages of the inquiry on the receipt of certain evidence relating to the section 16 defence are appropriate.

With this in mind, I will permit Mr. Armstrong to explore with Mr. Scott how the section 16 defence, together with the evidence supporting that defence, affected his state of mind, and I add that I have carefully noted the evidence already in the record and to which I alluded before on how this evidence impacted on the state of mind of other parties at this hearing.

I will not, however, permit Mr. Armstrong or other counsel to explore the circumstances under which the defence was called, the propriety of calling such a defence, the instructions that may have related to that defence or to put other questions of a similar nature. In my view, this approach causes no unfairness to Mr. Scott or other parties, nor will it deprive the Commission of evidence which it should have in order to fulfill its mandate. Indeed, Mr. Armstrong portrayed these questions as relating to a systemic issue. Furthermore, this approach prevents potential unfairness to persons not represented here — a point

> made by Mr. Cooper when Mr. Lockyer cross-examined Mr. Gover as to the latter's view of the evidence.

During this argument, it was also suggested, by analogy, that Mr. Scott should not be questioned on any disclosure issues which arose at the first trial. It was also suggested that it was potentially unfair to explore Crown conduct and not the conduct of the defence. Though these points are further addressed by me below, I did refer to them during my oral ruling on October 22, 1997, in the following terms:

> It was suggested in argument that Mr. Scott should not have been questioned by Ms. Currie about matters which arose at or prior to the first trial. I do not agree. As set out above, the areas canvassed are within my mandate and are potentially relevant to additional issues now before me. For example, the questions relating to the laundromat test and to the Jessop will-says[21] may well be relevant to the investigation of Guy Paul Morin at large and to the ultimate evidence that was given at the second trial. In this regard, I note the submissions made by Mr. Sandler on July 22, 1997, Vol. 75, p.24 and following and referred to yesterday in argument.
>
> I think it important to note that Mr. Scott's evidence at the stay proceedings prior to the second trial is six volumes in length. He was questioned about dozens (if not hundreds) of items of alleged non-disclosure prior to the first trial. In my view, Commission counsel has appropriately confined her examination to but a few of those issues.
>
> Finally, I wish to comment on the suggestion made that it is inappropriate to examine the conduct of Crown counsel and not defence counsel. In fact, the conduct of defence counsel at the second trial has been extensively explored. I have noted the many questions and answers directed to this issue, largely without objection. Defence counsel at the second trial have not been insulated by the scope of this inquiry. Commission counsel, counsel for Mr. McGuigan and

[21] A 'will-say' is a summary of a witness' anticipated evidence, which may be provided to the defence as a form of disclosure.

> Mr. Smith have elicited much of this evidence. The failure to examine the conduct of defence counsel at the first trial in calling a section 16 defence does not represent any general decision to focus only on Crown counsel, but rather the appropriate prioritization of issues earlier described.
>
> The official record of this inquiry contains transcripts of all proceedings connected with the proceedings against Guy Paul Morin. It contains the evidence presented in connection with the section 16 defence. Counsel and police who were present heard it. Others have read it. We know what was said. Whether the witnesses were right or wrong in their opinions is not now in issue, and indeed I do not intend to take into consideration what Mr. Lockyer elicited on this point from Mr. Gover before Commission counsel's objection was made. To do otherwise would not be fair but, quite apart from that, whether the evidence was believed or disbelieved it was there for all to hear and, as I said before, we have already heard how that may have affected police and Crowns and others and I will, of course, bear that in mind.

A similar issue arose in connection with the evidence of Gordon Hobbs. Counsel for the Jessops[22] and counsel for Guy Paul Morin requested that Officer Gordon Hobbs be called as a witness during the Inquiry. Officer Hobbs was a witness for the prosecution at the first trial only. He testified as to purportedly incriminating conversations which he had with Guy Paul Morin while posing as a fellow inmate at the Whitby Jail. Surreptitious recordings were made by police of such conversations. The recordings were of uneven quality. The prosecution and defence called conflicting evidence as to the precise content of these conversations, their meaning, and as to a purportedly incriminating gesture by Guy Paul Morin to Officer Hobbs (showing how he killed Christine Jessop) not captured on tape, which was denied by Mr. Morin. Commission counsel responded to this request as follows:

> It is our present intention not to call Officer Hobbs as a witness at the Inquiry. The Commissioner's mandate is, in essence, to examine the wrongful conviction of Guy Paul Morin, its causes and the important systemic

[22] In this instance, the application was brought by Robert Jessop alone.

> issues arising out of the wrongful conviction. Undoubtedly, any number of issues arise out of Mr. Morin's first trial, when he was acquitted. However, these issues do not fall within the Commissioner's mandate. Further, as you know, our time frame is a limited one. It is important that we fully and fairly investigate the important issues directly arising out of the wrongful conviction at Mr. Morin's second trial within that time frame. A direct examination of the contents of Officer Hobbs' evidence would involve consideration of his evidence, the taped recordings, tape enhancements already done or proposed to now be done, and the various interpretations given at trial as to the contents of the taped conversations; this would seemingly involve a number of days of evidence. Having said this, the existence and contents of Officer Hobbs' evidence may be directly relevant to issues to be directly examined by the Commissioner. For example, Crown counsel at the second trial and police officers who investigated Guy Paul Morin must be permitted to tender evidence before the Commissioner as to how, if at all, their state of mind was affected by the existence and contents of Officer Hobbs' evidence. Things known to them which affected or explains their conduct become directly relevant to the Commissioner's mandate on that basis. Of course, Officer Hobbs' evidence is a matter of public record which is available to the Commissioner.

This request was renewed before me by counsel for Robert Jessop. Counsel for Mr. Morin, though expressing his desire to cross-examine Mr. Hobbs, reflected to me his understanding of the time constraints and why, in the circumstances, the Commission could not undertake to call Mr. Hobbs. On August 14, 1997, I adopted the position advanced by Commission counsel and did not order that Mr. Hobbs be called as a witness. I note that, pursuant to the position taken by Commission counsel and my ruling, evidence was elicited as to the state of mind of prosecutors and investigators, induced by Mr. Hobbs' evidence (whether his evidence was accurate or inaccurate). I have taken that evidence into consideration.

(ii) Disclosure Issues

Prior to the commencement of the jury portion of the second trial, the defence brought an application to stay the proceedings due to alleged

misconduct on the part of the authorities. The misconduct largely related to alleged non-disclosure and misleading disclosure. In the alternative, the defence sought access to the complete investigative file relating to the case ('the open box application'). This application lasted seven months, and involved an exhaustive examination of what had been and what had not been disclosed previously. The applications ultimately failed, as did re-applications to the Supreme Court of Canada to reconsider its decision to affirm the setting aside of the acquittal at the first trial and the ordering of a new trial. Donnelly J., in dismissing the applications, found, in part, that

> [t]he hinge pin of the application, the alleged massive suppression, did not occur. Neither was it massive, nor was it suppression. To "suppress" is "to keep secret, to refrain from disclosing or divulging" ... More precisely, this information was not disclosed. Any breach of duty demonstrated on these motions resulted generally from inadvertence or failure to consider the issue. I am unable to find any wilful failure to disclose on the part of the Crown.

Here, counsel for John Scott contended that this Inquiry should not consider any of the disclosure issues, essentially for three reasons: Donnelly J. had resolved these issues (including issues of credibility) in favour of the prosecution; the disclosure issues raise no systemic issues of interest since the Supreme Court of Canada's decision in *Stinchcombe*[23] has addressed these issues subsequently; and that, since disclosure had been provided prior to the second trial, these issues were unrelated to the wrongful conviction.

I do not accept that Donnelly J.'s rulings bind me or make it inappropriate to examine related issues at the Inquiry. My mandate directs me to examine, amongst other things, what went wrong at the second trial. As Commission counsel put it, "it would be strange if the Commissioner was prohibited from examining relevant issues because they were ruled upon at the trial which resulted in the wrongful conviction." Further, I heard evidence which was unavailable to Donnelly J.

I do accept that the intervention of the *Stinchcombe* decision reduces the systemic interest in the disclosure issues pursued in the Guy Paul Morin case. I further accept that the disclosure issues often bore more relevance to

---

[23] (1992), 68 C.C.C.(3d) 1 (S.C.C.)

the first trial. As I have previously indicated, though my mandate permits me to examine, *inter alia*, the entire Guy Paul Morin criminal proceedings, which include the first trial, I recognized (as did my counsel) that issues directly relevant to Mr. Morin's wrongful arrest and ultimate conviction had greater priority. Accordingly, the vast majority of the disclosure issues raised on the pre-trial motions were not explored by Commission counsel. Commission counsel's position, with which I agreed, was expressed as follows:

> [I]t must be clear that we have often refrained from examination of various witnesses on the vast majority of the disclosure issues related to the first trial. This reflects our view that the Commissioner's mandate is most directly related to the wrongful conviction of Guy Paul Morin and that, accordingly, issues which relate exclusively to the first trial may be less relevant to the mandate and therefore have less priority for the Inquiry.
>
> Some disclosure issues which relate to the first trial also have relevance to issues arising out of the second trial or to the administration of criminal justice generally. The Jessop will-says, the 'scream' test, the OPP fingerprint evidence (and its relationship to Michalowsky's evidence), the 'laundromat' test and the cigarette butt evidence are examples of matters which, in our view, may have significant relevance beyond the first trial.

Commission counsel ensured that all other interested counsel were advised of those areas that would be explored by Commission counsel. Commission counsel also met with other counsel to narrow the disclosure-related issues that would be raised by other counsel.

(iii) The Jurors as Witnesses

Counsel for the Jessops, supported in part by counsel for Guy Paul Morin, moved that the jurors from both trials be summoned by me to give evidence at this Inquiry. On August 14, 1997, I dismissed the application for the following reasons (given orally):

> Section 649 of the *Criminal Code*, subject to certain exceptions, prohibits jurors from disclosing "any information relating to the proceedings of the jury

when it was absent from the courtroom that was not subsequently disclosed in open court."

Mr. Danson suggests that the wording of this section is such that jurors could, if they so wish, relate their personal views and impressions, so long as they do not disclose what was said in the course of their deliberations. And if that were impossible, he submits that the provision may well be unconstitutional because it prohibits, *inter alia*, freedom of thought and of expression, and this to an extent that it could not be saved by the provisions in section 1 of the *Charter*.

It is not my intention, nor do I have the power, to rule on the constitutionality of section 649. It exists, and until such time as a court of competent jurisdiction may set it aside, it must be followed. And, indeed, a number of Canadian courts have, in the past, done so, as the cases submitted by Mr. Danson demonstrate.

I agree that in the present case it would not be the intention of counsel to try to use the jurors' testimony to impeach the verdict, which is one of the origins of the prohibition now found in section 649. Nevertheless, the line of demarcation is thin, and even if I were inclined, which I am not, to ask the jurors to appear, it would be an impossible task to monitor their evidence to the degree that all remarks which might be in violation of the Criminal Code would be excluded. As someone said yesterday — in jest, but only partly so — we might all become parties to the offence.

But I go further. While some of the jurors might be willing to testify, others may not, and if that were the case, the evidence might be skewed and of diminished value. And what if a juror were to make adverse remarks about an actor in the trial? Could he or she then be cross-examined by counsel and could he or she be asked, for instance, if others shared the view? Fairness would dictate that cross-examination be unfettered, yet section 649 would prevent this. This is but one example of the practical difficulties — difficulties which would be encountered even if I were to accept one of Mr. Lockyer's alternate proposals that the jurors be spoken to as a group and that the questions be predetermined, with no cross-examination allowed.

> I have no doubt that the jurors' views might be enlightening and that their collective experience might make a fascinating chapter in the annals of criminal law. But while the terms of this Commission permit me to examine all aspects of Mr. Morin's wrongful conviction and to make such recommendations as I may see fit to improve the administration of criminal justice in this province — and, I might say, to do so by March 31, 1998 — I must put limits on the process consistent with my mandate and fairness to all parties.
>
> I realize that some jurors have given interviews which were widely reported. That was a matter for them to decide and I have no criticism of that fact. But to ask them to appear before this Commission, even voluntarily, raises both legal and practical hurdles which cannot be overcome.

Subsequently, counsel for the Jessops brought a motion before me "to state a case pursuant to section 6 of the *Public Inquiries Act*." The application to state a case heavily focused upon the constitutional validity of section 649 of the *Criminal Code*, to which I extensively referred in my earlier ruling.

Section 6 of the *Public Inquiries Act* reads, in part, as follows:

> 6.-(1) Where the authority to appoint a commission under this Act or the authority of a commission to do any act or thing proposed to be done or done by the commission in the course of its inquiry is called into question by a person affected, the commission may of its own motion or upon the request of such person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the commission or the authority of the commission to do the act or thing are questioned.

It was, and is, my view that jurors ought not to be summoned, whether or not section 649 can withstand *Charter* scrutiny. Accordingly, I did not regard it to be an appropriate exercise of my discretion to state the proposed case. In written reasons dated September 24, 1997 (See *Appendix I*), I declined to do so. I stated, in part:

> [E]ven without the presence of section 649, should it be declared unconstitutional, there are good reasons

> why I should not hear [the jurors'] testimony.
>
> To begin with, section 649 was in place for both trials and both judges warned the jurors accordingly. [The relevant passages are reproduced in the written reasons]
>
> This makes it clear that each juror was told *even before the deliberations began*, that what will be said in the jury room cannot be disclosed thereafter, and for that reason alone I feel that any attempt to elicit these jurors' views and beliefs would be inappropriate. With these judicial admonitions, so firmly and unequivocally stated, it would be unseemly for me to summon the jurors to appear before this Commission under the pain of contempt. I realize, as Mr. Danson pointed out, that questions could be asked which would attempt to limit the response to generalities, but even if that were successful, would the right to cross-examine not be inhibited? And what if a juror, however inadvertently, were to make reference to what was said by a colleague? The list of difficulties goes on.
>
> Furthermore, as I said in my previous ruling, while some of the jurors might be willing to testify, as some had indicated to the media, others might not, and evidence so obtained would necessarily be skewed and of diminished value.
>
> I might add that I am fortified in this view by the recent pronouncement of Finlayson J.A. in *Regina v. Selles* (1997), 116 C.C.C. (3d) 435 at 452, and I quote from Mr. Justice Finlayson:
>
> > I would add that a jury's verdict has always been considered sacrosanct. A jury is protected from having to explain how its members voted and for what reason. The anonymity of the jury verdict safeguards the individual juror from personal scrutiny and accountability. Absent allegations of impropriety, a public investigation into the adjudicative process behind the collective verdict could well have an inhibiting effect on individual jurors who would otherwise be prepared to take unpopular positions with respect to the case before them.

> In the result, for the reasons cited above, as well as those submitted by Commission counsel, I hold the firm view and conviction that, even if the constitutional challenge were to succeed — a question on which I clearly express no opinion — it is not necessary for me in order to fulfill my mandate that I summon the jurors, nor indeed would such a course be in the interest of justice. (Emphasis added.)

An application to the Divisional Court by counsel for the Jessops for an order directing me to state a case was unsuccessful. (See *Reasons, Appendix J*.) A further application for leave to appeal to the Court of Appeal for Ontario was also dismissed.

Counsel for the Jessops suggested in argument that I could not fulfill my mandate in identifying the causes of the miscarriage of justice unless I heard from the jurors at the second trial. This theme was reiterated by several witnesses at the Inquiry. In my view, this concern is unfounded. Appellate courts assess, on a daily basis, whether misdirection by the trial judge, the failure to admit admissible evidence or to exclude inadmissible evidence, or improper conduct by counsel did, or may well have contributed to an unsatisfactory jury verdict. On the totality of the evidence, I am able to say with certainty that certain evidence or conduct contributed to Guy Paul Morin's wrongful conviction: for example, the hair and fibre evidence tendered by the prosecution at the second trial undoubtedly contributed to the jury's verdict, though the evidence was seriously flawed and, in my view, worthless. In other respects, I am only able to say that evidence or conduct may well have contributed to the jury's verdict: for example, the evidence of Officer Robertson which, in my view, was equally worthless. An assessment of this evidence is no less important (either to an understanding of the Guy Paul Morin case or to the systemic issues) merely because I cannot definitively say that the jurors acted upon this evidence to Guy Paul Morin's detriment. Flawed evidence must and should be recognized and addressed by me in any event. I am of the view that the evidence tendered against Guy Paul Morin must, in some respects, be reviewed cumulatively and I return to this point later in this Report.

As I have previously stated, the jurors' collective experience would have undoubtedly been fascinating. However, their views may or may not have been terribly enlightening on the issues which I must address. They did

not have the benefit of considerable evidence from investigators, prosecutors, civilian witnesses and experts which I have heard. It would be exceedingly difficult for them to reconstruct with precision what evidence each did or did not rely upon in forming his or her opinions — particularly when possibly coloured now by Guy Paul Morin's proven innocence and the revelations publicly reported during this Inquiry about some of the evidence they heard. Indeed, several counsel brought to my attention that media reports reflected inconsistent accounts from those jurors who did speak publicly as to what evidence was or was not relied upon.

(iv) The Role of the Defence at the Second Trial

I wish to address this topic now, since some hold the misperception that I (or my counsel) immunized defence counsel at the second trial from any scrutiny.

It is my view that no participant at the second trial (prosecutor, investigator, defence counsel, Crown or defence witness) is entitled to avoid scrutiny at this Inquiry. Mr. Pinkofsky, lead defence counsel at the second trial, is no exception. Early in the Inquiry, Mr. Levy, counsel for Messrs. McGuigan and Smith, made his position clear that Mr. Pinkofsky contributed to the miscarriage of justice primarily by the ill-advised, sometimes hostile, approach taken to witnesses and the undue prolongation of the trial, resulting in jury alienation. During Phase I of the Inquiry, Mr. Levy also made his position clear that Mr. Pinkofsky's manner of examination of early Crown witnesses explains, in part, the prosecutorial decision to make an offer to the two jailhouse informants, permitting them to choose whether or not to testify as to Guy Paul Morin's confession. This dual position was reflected in the evidence of Mr. Levy's clients, Messrs. McGuigan and Smith, and advanced through the examination of numerous other witnesses, frequently by Mr. Levy and sometimes by Commission counsel, in fulfillment of their (and my) mandate. Some of this evidence extended beyond Mr. Pinkofsky's conduct at the second trial to his reputation amongst Crown counsel (which was relevant to how the prosecutors prepared to respond to him at trial). This evidence was relevant to the issues at this Inquiry and therefore admitted, and I deal with it in some detail in Chapter V.

Mr. Pinkofsky did not apply for standing at the Inquiry. He did not request that he be called as a witness. No other counsel sought to have Mr. Pinkofsky called as a witness at the Inquiry, despite inquiries by Commission

counsel, but instead relied upon the evidence otherwise elicited. I did not feel it necessary to hear *viva voce* from Mr. Pinkofsky, since what he said and did at the trial was fully contained in the trial transcripts, which were available to me, and which my mandate permits me to consider.

Having said that, it was not surprising that significantly greater attention was directed to the conduct of police and prosecutors than to defence counsel. The defence did not investigate, charge or lead the evidence relied upon to support the conviction of Guy Paul Morin. Unlike, for example, the defence counsel at *Donald Marshall's* trial, Mr. Pinkofsky relentlessly pursued issues of disclosure and investigative leads. Some Crown counsel regard Mr. Pinkofsky's approach to involve a wholesale attack on virtually every witness, particularly police witnesses, who testify for the Crown, without appropriate distinction. However well or ill-founded this criticism might be in other cases, there is no doubt that a disquieting number of witnesses for the prosecution in this case gave evidence which could justifiably be regarded as suspect.

(v) The Role of the Trial Judge

It was suggested during the Inquiry that I should determine whether the trial judge, Mr. Justice Donnelly, engaged in misconduct. Indeed, I was invited to 'censure' the judge. I declined the invitation, and I did so for the very good reason that I have no jurisdiction to consider any alleged misconduct by a judge of the Ontario Court of Justice (General Division). However, I am not unmindful of the fact that the trial judge was an important and active participant in Mr. Morin's second trial, and his actions during the lengthy proceedings, like those of the other participants, may have played a role in Mr. Morin's wrongful conviction. My mandate, therefore, permits me to examine the trial judge's rulings and actions, not with a view of finding misconduct, but rather in assessing what went wrong and how this might be rectified in future.

A number of allegations were advanced by Mr. Morin's counsel in his Notice of Appeal against his client's conviction. This Notice sets out 22 grounds of appeal,[24] 18 of which allege errors on the part of the judge. Some

[24] An amended Notice of Appeal, outlining 181 grounds of appeal, was subsequently filed on March 11, 1994.

of these allegations were repeated before the Commission. As Catzman J.A. pointed out in his decision to grant bail pending the hearing of the appeal, the appeal was not "frivolous," and seven grounds (which were discussed by counsel during the bail application) were found by His Lordship to be "clearly arguable." However, the judgment of the Court of Appeal, acquitting Mr. Morin, was based on one ground only: the fresh evidence of DNA results which exonerated Mr. Morin. The other grounds of appeal, therefore, were moot and were not dealt with by the Court.

This poses a dilemma: first, to state the obvious, I am not the Court of Appeal; second, I did not have the benefit of argument by the Appellant and the Respondent, as the Court would have had, had the appeal proceeded on the other grounds. Accordingly, I had no desire to convert this Inquiry into an appellate proceeding, and examine the many grounds of appeal which were raised in the Court of Appeal but left unresolved. Constraints of time and of resources also did not permit me to do so. Yet, as I said before, to carry out my mandate, I was obliged to consider all the circumstances of the case.

I resolved this dilemma by focusing on a limited number of issues which are of particular systemic interest or of particular relevance to understand the case itself. I have not otherwise attempted to evaluate the merits of the many issues which were raised in the Court of Appeal.

M. The Background Facts

(i) Overview

At the commencement of the public hearings, Commission counsel outlined the background facts relevant to the investigation into Christine Jessop's disappearance and murder and to the arrest and prosecution of Guy Paul Morin. At the commencement of each Phase of the Inquiry, Commission counsel further outlined the background facts relevant to that Phase. The following represents an overview of the relevant background facts, drawn in part, from the uncontentious facts that were known prior to the commencement of this Inquiry. Many of these facts are revisited (and expanded upon) in later parts of this Report.

(ii) Christine Jessop

It is appropriate to commence by reflecting upon the life of Christine Jessop. Counsel for the Jessops led this evidence from Janet Jessop:

> Q. Now Janet, at this Inquiry we've heard many details of Christine's death and the subsequent murder investigation, but we haven't heard anything about Christine's life. And I know that this is something that you've been wanting to tell at the Inquiry, and hopefully this will be your last time here. And I thought that this is your opportunity to tell the Inquiry at little bit about Christine herself.
>
> A. Okay. She was a normal nine-year-old little girl. She was all of forty pounds soaking wet — excuse me. She really loved life. She loved her family, her uncles, her aunts and her cousins. She was a happy, sensitive, lively, caring and a little clean-freak girl. She had a terrific sense of humour. She was fun, she was feisty, and she loved to help in whatever you were doing, she just wanted to be with you.
>
> And she was a little going concern and a very loving child. She loved school and she loved sports, particularly baseball. And she adored animals and particularly her own dog, Freckles. And she was the little type, she could go from a real lady to a little tomboy. She'd put the worms on the hook for her brother because he couldn't put them on. And she even slept with the baby chicks so that they wouldn't be alone at night.
>
> And she was a very responsible little girl, she never wandered off from me for a minute. If she went to someone's home to play, or went to her grandparents for the weekend, she'd be phoning every five minutes just to say, hi. So that's the type of little girl that I lost due to some very, very foolish person, and very demented.
>
> Q. And as Christine's mother, what kind of things did you and Christine do together?
>
> A. Oh, we did a lot, we did everything together. We'd go to showers, shop, she and I were very, very close,

> and I guess maybe being the mother and daughter, you're closer to the daughter, the mother. We went to birthday parties, we went to parks, really the only time Christine was alone was when she was at school.
>
> Q. And what were your expectations and dreams for Christine?
>
> A. Well I think the first and most important thing was to remain the best of friends, which we were. And to see her graduate from school, to see her get married and have children and to remain a loving family and to let her pursue, rather, and achieve any goal in which she wanted to do, and this has all been taken away.

(iii) The Town of Queensville — The Jessops and the Morins

Queensville, Ontario, is a small town, about 35 miles north of Toronto, in the township of East Gwillimbury in York Region. Guy Paul Morin was 25 years old when he was arrested on April 22, 1985, and charged with the first degree murder of Christine Jessop. He has never otherwise been charged with any criminal offence. His family, consisting of his mother Ida, his father Alphonse, four sisters and one brother, moved to Queensville in 1978. At the time of Christine Jessop's disappearance, only Guy Paul Morin was still living with his mother and father. Alphonse Morin was an engineer, having retired from his teaching position at Seneca College in 1982. Ida Morin was a retired teacher who continued to supply teach with the North York Board of Education. Guy Paul Morin's sister, Yvette, her husband Frank Devine and their child, Andrew, who was then one and half years of age, will also be referred to in this Report.

Guy Paul Morin completed grade 12 and then attended various courses in auto upholstery, spray painting, air conditioning, and refrigeration and gas fitting. In July 1984, he commenced employment with a firm known as Interiors International Limited, which will be referred to as IIL. They were furniture manufacturers. He worked as a finishing sander and was employed there in October 1984 when Christine Jessop disappeared.

The firm of IIL is located in the area of Steeles Avenue and Weston Road, just north of the city of Toronto. In December 1984 Guy Paul Morin left his employment there to help his father with the renovation work being done to their residence in Queensville. Guy Paul was also a beekeeper and a

musician. In 1984 he had beehives in his backyard and in Minden, about an hour and a half north of his home. He began playing the saxophone and clarinet in junior high school and has played in various community bands and won a number of awards and competitions.

As is reflected above, Christine Jessop was nine years old when she disappeared on October 3, 1984. She was four feet nine inches tall and she weighed only 40 pounds. She attended Queensville Public School and was in grade four. She lived with her parents, Robert and Janet Jessop and her brother, Ken Jessop, in Queensville. In October 1984, Robert Jessop was serving a custodial sentence in Toronto for a white collar offence. He was released on compassionate grounds shortly after his daughter's disappearance. In October 1984, Ken Jessop was 14 years old.

The Morins and the Jessops were neighbours. Their homes were on Leslie Street, about an eighth of a mile north of the Queensville Sideroad. The Morin home was on an adjacent property, north and east of the Jessop property. To the northwest of both properties was the Queensville cemetery. There was neighbourly contact between the Jessops and the Morins. The extent of this contact was a contentious issue at trial. It was relevant to the significance, if any, to be given to fibre comparisons relied upon by the prosecution at trial.

(iv) The Disappearance of Christine Jessop

What precisely Christine Jessop was wearing on the day she disappeared was the subject of several different accounts in the course of the evidence called at two trials. In ruling on the motion to have the proceedings against Guy Paul Morin stayed at the outset of the second trial, Mr. Justice Donnelly outlined more than 20 different descriptions and reports of Christine's clothing. Apparently, Christine would often wear several layers of clothing to keep warm. On the day of her disappearance, she was variously reported to have been wearing a T-shirt, a blue hand-knit sweater, a light blue jacket with an attached hood and a pouch pocket on the front, bright blue corduroy slacks and blue-grey running shoes. She may also have been wearing a pink hooded jacket. Ken Jessop recalled that his sister was wearing a pink jacket when she left for school on the morning of her disappearance. Several persons who saw Christine on the afternoon of her disappearance indicated that she was wearing a light blue jacket with a hood tied under her chin and possibly something red.

On the morning of October 3, 1984, Christine Jessop boarded the school bus for the 1.2 kilometre drive to Queensville Public School. During the school day, her teacher distributed recorders to the students which they all took home that day. When she was returned to her home at the end of that day, the school bus dropped her off at the end of her driveway at about 3:50 p.m. No one was home.

Christine Jessop and Leslie Ann Chipman, a school mate, had arranged to meet at the park after school that day, and Miss Chipman did go to the park at about 4:00 p.m., but Christine Jessop never arrived. Phone calls which Miss Chipman made to the Jessop home shortly after that went unanswered. The transcripts of the evidence reveal that Christine went from her home to the variety store at the south-east corner of Leslie Street and the Queensville Sideroad, .07 kilometres from the Jessop home. Chris Liasopoulos, its owner, testified that she came in alone between 3:30 and 4:00 in the afternoon, bought bubble gum and left a minute or so later. Various other witnesses gave evidence as to seeing Christine Jessop that afternoon.

One witness the defence relied upon was Sandra Horwood, who said that she saw a man driving a dark green or blue car in the area at about 4:05 p.m. and he appeared to force a small girl down towards his chest area with his right hand. There were other sightings.

On October 3, 1984, Janet and Ken Jessop had visited Robert Jessop at the Toronto East Detention Centre where he was then incarcerated. They were there early that day. From the detention centre they drove to various locations before proceeding to the dental offices of Dr. Paul Taylor in Newmarket. Ken Jessop was booked for a 3:30 appointment that day. Janet Jessop dropped Ken off at Dr. Taylor's office, ran some errands, returned to pick up her son and then they drove home to Queensville. Their early accounts to the police reflected that they had arrived home at 4:10 p.m. Janet Jessop ultimately testified that they arrived home between 4:30 and 4:35 p.m. Their arrival time and the circumstances which brought about their estimate of their time of arrival were the subject of considerable evidence on the pre-trial motion before the second trial, and at the trial itself. Of course, the times that Ken and Janet Jessop arrived home were relevant to Guy Paul Morin's alleged opportunity to commit the murder.

When Janet and Ken Jessop arrived home, Christine's school bag was on the pantry counter and the mail and newspapers had been brought inside

the house. Her bicycle was lying on its side in the shed, its kickstand and carrier damaged. Christine's pink jacket may have been hanging on a hook that was beyond her reach. At 4:49 p.m. that day, Janet Jessop telephoned her husband's lawyer in Toronto (on an unrelated matter) and she then drove to the park to look for Christine. She telephoned some of Christine's friends, looked in the cemetery and stopped at the variety store. Sometime between 7:00 and 8:00 p.m. that evening Janet Jessop telephoned the police.

(v) Guy Paul Morin's Activities on October 3, 1984

On October 3, 1984, Guy Paul Morin was at his place of employment at IIL. His time card confirmed that he left work that day at 3:32 p.m. He testified that he drove the family Honda north in the direction of his home. He stopped at the Upper Canada Mall in Newmarket on the way and purchased a lottery ticket from Susan Scott at the Infoplace Ticket Centre. He bought groceries at the Dominion Store. He may then have filled up his gas tank at a nearby gas station. He continued to shop at Loblaws and then at Mr. Grocers. He then drove north on Leslie Street, arriving home, he swore, between 5:00 and 5:30 p.m. As he walked towards his house, his brother-in-law was leaving. They spoke briefly. Guy Paul Morin's parents and his sister, Yvette, were at home. He carried the groceries into the kitchen and then, he said, he napped until approximately 6:30 p.m. He had supper with his parents after which he worked with his father outside the house into the evening, using trilights as makeshift floodlights. At the second trial, the prosecution alleged that this alibi evidence was false and that the alibi put forward by Guy Paul Morin and his family had been concocted. (At the first trial, the prosecution contended that Guy Paul's family were mistaken in their support of his alibi.)

(vi) The Investigation by the York Regional Police

Queensville is within the jurisdiction of the York Regional Police. Accordingly, members of that police force responded to Christine Jessop's disappearance. Constable Rick McGowan was the first officer who arrived at the Jessop residence; he arrived at 7:53 that evening. Over the next seven hours, some 13 police cars, two emergency vehicles and 17 police officers had been dispatched to the Jessop residence. Constable McGowan testified that he attended the Morin residence that evening, and asked Ida Morin whether the Morins had seen Christine Jessop that day or noted anything unusual. According to McGowan, Guy Paul stared straight ahead, showing no apparent

interest in the conversation. The Crown at the second trial relied upon this evidence as evidence of guilt. On the other hand, the defence contended that the evidence was false and brought forward only after the first trial, and in any event, that the evidence was meaningless.

That evening, Alphonse Morin speculated that the police activity at the Jessop house was related to Ken Jessop. Guy Paul told his father that "I bet that little Christine is gone." He repeated this conversation to Detective Fitzpatrick and Inspector Shephard on February 22, 1985, and the Crown relied upon that evidence at trial as further evidence of guilt. The defence, on the other hand contended that the conversation between Guy Paul and his father reflected their speculation and evidenced nothing.

(vii) The Dog Search

There was evidence of a dog search on October 3, 1984. Alphonse Morin testified that some time around 10:30 in the evening, two police officers with a dog came to the Morin house. He authorized them to search the property and, according to the evidence of Guy Paul Morin, his father went outside to bring their dogs in while he stayed on the front porch talking to the officers. He told them he had not seen Christine Jessop that day and that he had not arrived home from work until 5:00 to 5:30 p.m. Constable David Robertson of the York Regional Police force testified at the second trial only. He indicated that he brought his dog, whose name was Ryder, to the scene sometime after midnight on October 3, 1984. He said he was given Christine Jessop's blue wool sweater to facilitate the search. Constable Robertson testified that he used the sweater to provide Ryder with a scent and that Ryder recognized the scent on Christine's bicycle. He testified that when he and the dog approached the Morin's beige coloured Honda, the dog began sniffing in a pronounced way and placed its front paws up against the glass on the passenger side of the vehicle. According to Constable Robertson, this signified the initial signs of a positive reaction, indicating that Ryder had detected Christine Jessop's scent. At this point, a dog, presumably one on the Morin property, barked; Robertson saw it at the side of the house. Although Alphonse, Guy Paul and Ida Morin all testified that no one let a dog out while the police were on the property with their dog, according to Constable Robertson, a dog had been let out of the Morin house while he was searching the Honda, and he therefore pulled Ryder away and backed towards the Jessop property.

At the second trial the Crown relied on the behaviour of the dog as evidence that Christine Jessop had ridden in the Morin Honda. The defence, on the other hand, seriously questioned Constable Robertson's qualifications as a dog scent expert and challenged both the accuracy and reliability of his evidence. The defence position was that it was wholly unbelievable.

(viii) The Failure to Search

Another issue arose out of the evidence that Guy Paul Morin failed to search for Christine Jessop. At both trials, the Crown suggested to Mr. Morin that he failed to search beyond his own backyard because he knew that Christine was dead and lying in a field in Durham Region and that a search in and around Queensville would be futile.

The defence, on the other hand, countered that the only meaningful inference to draw from Mr. Morin's failure to search for Christine Jessop while she was missing was that this was a sign of his innocence. The defence argued that if guilty, he surely would have made a show of joining the search parties.

(ix) Paddy Hester

At the second trial the Crown called the evidence of Paddy Hester, a Queensville resident, who testified that in the early morning of October 4, while participating in the search for Christine Jessop, she saw Alphonse and Guy Paul Morin. Guy Paul Morin was sitting in a truck between his father and his brother-in-law, Frank Devine. They were in a pickup truck on the shoulder of a road in Queensville. She swore that Guy Paul Morin was staring straight ahead. Both Guy Paul Morin and his father denied leaving their property that night and denied being in such a truck. The Crown at the second trial also relied on Paddy Hester's testimony that on October 6, 1984, three days after the disappearance of Christine Jessop, she went on to the Morin property and was looking into the Morin Honda when Guy Paul Morin suddenly appeared, yelled at her to get off his property, and chased her away. Mr. Morin agreed that on the weekend following Christine's disappearance he spoke with some person who was in the backyard looking inside his father's old Lincoln. He denied ever seeing Paddy Hester until she testified in Court. And he denied ever chasing anyone off the Morin property.

Although Paddy Hester claimed to have immediately reported both

these incidents to the police, the first recorded statement given by Hester was on April 23, 1985 — which was a half year later — when she described coming across a man while searching near the cemetery on October 3, 1984. It was not until after the first trial that Paddy Hester gave statements to Detective Fitzpatrick and Inspector Shephard regarding the pickup truck incident on October 3rd and the later Honda incident on October 6th, involving Guy Paul Morin.

(x) The Finding of the Body of Christine Jessop

Various other searches for Christine were conducted in the area of Queensville in the days and in the weeks following her disappearance. The investigation by the York Regional Police continued through November and December 1984.

The body of Christine Jessop was discovered on December 31, 1984, by Fred Patterson, a local resident, and his two young daughters, who were walking near their property in Durham Region, about 56 kilometres east of the Jessop residence, and near the town of Sunderland. The main west to east thoroughfare in the area is a road known as the Ravenshoe Road. Christine Jessop's body was on its back and her legs were spread apart in an unnatural position, with her knees spread outward. She was wearing a beige turtleneck sweater, a blue pullover sweater, a blouse from which some buttons were missing and a pair of white socks with blue stripes. Subsequently, it was determined she was in fact wearing two pairs of socks. Her panties were found at her right foot. Blue corduroy pants with a belt and a pair of Nike running shoes were found just south of her feet. These clothes were subsequently identified as belonging to Christine. Her recorder with her name taped on it, which had been given to her at school on October 3, 1984, was found next to her body. The police were notified.

Up to 15 or 20 Durham officers were present at the search site.The body site was roped off, searched and photographed. Christine Jessop's remains were eventually placed on a board and transported to the coroner's office in Toronto. Because the body was discovered in Durham Region rather than in York Region, the investigation, which up to now had been handled by the York Regional Police, at this point was turned over to the Durham Regional Police Service. Two of the principal investigators in the case were Detective Bernie Fitzpatrick and Inspector John Shephard. Inspector Robert Brown of the Durham Police took charge of the investigation upon his arrival.

Sergeant Michael Michalowsky became the officer in charge of all identification aspects of the homicide.

On January 1, 1985, the remains were positively identified by dental records as those of Christine Jessop. An autopsy was performed on January 2, 1985, by Dr. John Hillsdon-Smith. Detectives Fitzpatrick and Nechay[25] were present at the autopsy along with Sergeant Michalowsky, who took possession of Christine's necklace with some hairs attached to it found at the body site. Dr. Hillsdon-Smith found the cause of death to be multiple stab wounds to the chest. Due to decomposition of the body, he was unable to say whether the deceased had been sexually assaulted. There were no animal teeth impressions on any bones he examined, however, the torn and missing flesh on the legs suggested animal activity. His findings were not inconsistent with death having occurred three to four months prior to January 1985.

(xi) The Funeral

Christine Jessop was buried on January 7, 1985, about a week after her body was discovered. At the second trial, two issues surrounding the funeral were put to the jury. The first was the issue of Guy Paul Morin's failure to attend the funeral. At the time of the funeral, Alphonse and Ida Morin were on holiday in Bermuda while Guy Paul was at home alone. He did not attend the funeral home or the funeral itself. He testified that he had expressed his condolences to Janet Jessop's father but not to Christine's parents.[26] When his parents returned from their vacation, they visited the Jessops to express their sympathy. At the second trial, the Crown argued that Guy Paul Morin's failure to attend the funeral home and the funeral, as well as his failure to express his condolences to the Jessop family were indicative of his consciousness of guilt. The defence, on the other hand, took the position that these so-called failures of Guy Paul Morin were not aberrant behaviour and had absolutely no significance to his innocence or his guilt.

The second issue raised was the hearing of screams at about 7:00 p.m. on the night of the funeral. Several people present at the Jessop house after

---

[25] Nechay was a York Regional officer seconded to the Durham investigation.

[26] The prosecution also contended that Guy Paul Morin's suggestion that he was not 'invited' to the funeral was problematic.

the funeral purportedly heard the screams. They described them as a male voice coming from outside the house, north of the Jessop residence, crying "God, help me, oh please, God, help me!" Janet Jessop testified at the second trial that she recognized the voice as that of Guy Paul Morin, and that when she was outside she saw a silhouette moving quickly through the back door of the Morin house. There was no evidence called about this incident at the first trial. The first police report of the screams was recorded on May 25, 1985, several months after the funeral. At that time, Janet Jessop spoke to Detective Frank Raymond Bunce of the York Regional Police. Detective Bunce's report does not record being advised by Ms. Jessop that she had personally heard the screams or that she recognized the voice of the person who had been screaming. This purported recognition was only noted in a police report in September 1989, four years later. And she did not advise the police of her sighting of the silhouette moving quickly through the backdoor of the Morin house until May 30, 1991. Both Ken Jessop and Guy Paul Morin denied having screamed on the night of Christine Jessop's funeral. At the second trial, the Crown argued that Guy Paul Morin's cries for help on the night of Christine Jessop's funeral were evidence of consciousness of guilt. The defence, on the other hand, took the position that evidence relating to the screams, in all of the circumstances, was false.

(xii) The Cigarette Butt

On December 31, 1984, the date Christine Jessop's body was found, a cigarette butt was located in the general area of her remains. It was tagged, bagged and photographed by Sergeant Michalowsky, the senior identification officer who was in charge of the identification unit at the Durham Regional Police Service. It was an uncontested fact at both trials that Guy Paul Morin was not a smoker.

On December 10, 1985, Mary Bartley of Mr. Ruby's office met with Sergeant Michalowsky and John Scott. Upon viewing photographs taken at the body site on December 31, 1984, Ms. Bartley learned of the finding of the cigarette butt. Apparently Sergeant Michalowsky commented to her something to the effect that "we even find our own officers' cigarette butts."

On December 27, 1985, a meeting took place involving the Crown attorneys John Scott and Susan MacLean (the two prosecutors at the first trial) and officers who had attended at the body site on December 31, 1984. The purpose of the meeting was to determine the involvement of each officer.

According to Constable Cameron, during the meeting John Scott inquired of Sergeant Michalowsky as to the whereabouts of the cigarette butt. Constable Robinet also recalled an issue being raised at the meeting about finding the cigarette butt. In his evidence at the second trial in June, 1992, Sergeant Michalowsky denied that the cigarette butt had ever been lost or that anyone asked him to find it. The evidence was that at the December 27, 1985 meeting, John Scott wanted to know whose cigarette butt it was. Constable Robinet's recollection, five years later, was that Cameron claimed ownership of the cigarette butt at the meeting. However, Robinet subsequently came to question his recollection. Cameron denied claiming the butt as his own at the December 27, 1985 meeting.

Following this meeting and prior to the commencement of the first trial on January 7, 1986, Detective Fitzpatrick called officers he knew to be smokers who had attended at the body site on December 31, 1984 to inquire whether they had been smoking at the scene and had disposed of a cigarette butt. In a telephone discussion between Detective Fitzpatrick and Constable Cameron, Cameron recalled he had been smoking at the body site; he had discarded a Craven Menthol cigarette butt upon realizing he was entering the homicide scene.

On January 10, 1986, shortly after the beginning of the first trial, Sergeant Michalowsky testified that a cigarette butt marked as an exhibit at the trial was the butt found in the vicinity of Christine Jessop's body. He testified that another exhibit, a photograph taken on December 31, 1984, depicted the same cigarette butt with the grass around it pulled back. On January 12, 1986, a meeting was held between police investigators and Crown attorneys Scott and MacLean. Prior to the meeting, Detective Fitzpatrick told Constable Cameron that he believed that the cigarette butt found at the body site was the one that Cameron had thrown away, and Cameron assumed that this was correct. And at the meeting with the Crown and the police, he (Cameron) described how he had indeed discarded the butt along the path as he approached the area where the remains were located on December 31, 1984.

On January 13, 1986, the day following the meeting, Constable Cameron testified at the first trial that he had butted his cigarette at the body site on December 31st, 1984, and flicked it to the side of a path. That evening, however, Constable Cameron asked Sergeant Michalowsky when the cigarette butt had been discovered. From Sergeant Michalowsky's answer, Constable

Cameron determined that the butt had been discovered prior to his arrival at the body site. Accordingly, he felt that the butt could not have been his. At the second trial, Cameron testified that he contacted Detective Fitzpatrick and Crown attorney Susan MacLean to advise them of this fact but he was unsure of precisely when he did this. In cross-examination at the first trial, Constable Cameron testified that the brand of cigarette he regularly smoked was Craven Menthol. During the subsequent cross-examination of Inspector Shephard at the first trial, he noted that the cigarette butt, tendered as an exhibit, was not a Craven Menthol. On March 14, 1990, prior to the second trial, it was discovered that Sergeant Michalowsky had prepared duplicate notebooks of the Morin investigation. The second set of notebooks included an account of a conversation at the body site in which Constable Cameron allegedly indicated to Michalowsky that the cigarette butt found in the area was his. Ultimately, at the second trial, the Crown conceded that the cigarette butt introduced at the first trial was not the one found at the body site, and was not the butt depicted in the photograph marked as an exhibit. The Crown also conceded that the cigarette butt depicted in the photograph taken at the body site had been lost.

Sergeant Michalowsky testified at the second trial that it was only on May 29, 1990, in the course of being questioned by the Ontario Provincial Police (OPP) that he became aware that another photograph tendered as an exhibit at the first trial, depicted not a cigarette butt, but a piece of birchbark. He added he did not know how it came to be that the cigarette butt tendered in evidence at the first trial was not the cigarette butt found at the body site in the vicinity of the remains of Christine Jessop.

In the summer of 1990, following an Ontario Provincial Police investigation, Sergeant Michalowsky was charged with perjury (for allegedly knowingly making false statements under oath), wilfully attempting to obstruct justice (for allegedly preparing and testifying from the second undisclosed notebook), and wilfully attempting to obstruct justice (for allegedly tendering a cigarette he falsely claimed to have seized at the body site). On November 12, 1991, these charges were stayed by the Honourable Mr. Justice O'Connell of the Ontario Court of Justice (General Division), due to Michalowsky's ill health.

The Crown declined to call Sergeant Michalowsky as a witness. The defence brought a variety of applications in response. The defence position was that if the Crown elected not to call Sergeant Michalowsky, it was

precluded from leading the expert opinion evidence regarding hair and fibre exhibits which had at one time been in Sergeant Michalowsky's possession and control. Without the evidence of Sergeant Michalowsky, the defence submitted there was no foundation for that opinion evidence. The trial judge ruled that the hair and fibre evidence was admissible without the necessity of the Crown calling Sergeant Michalowsky in that there was evidence identifying the exhibits in question. The issue of continuity was not a matter of admissibility but of the weight to be assigned to the evidence.

The defence brought a second application to compel the Crown to call Sergeant Michalowsky, as a consequence of the Crown being allowed to file hair and fibre exhibits. In the alternative, the defence sought an order compelling the Crown to call Michalowsky for the purpose of making him available to the defence for cross-examination, or, in the further alternative, an order whereby the Court would call Michalowsky. The trial judge ruled that none of these orders were required to ensure a fair trial, noting that Sergeant Michalowsky had testified for five days on the stay application and the defence may have resort to section 9 of the *Canada Evidence Act.*

The defence subpoenaed Sergeant Michalowsky. Counsel for Sergeant Michalowsky applied for an order quashing the subpoena issued to Michalowsky on the basis that his physical and emotional health did not permit him to testify. On the application, several doctors were heard. Mr. Justice Donnelly ruled that subject to Dr. Rowsell's final opinion, Sergeant Michalowsky would testify in the presence of Dr. Rowsell who would monitor Michalowsky's condition and advise as to the taking of recesses.

The trial judge also directed that certain informal circumstances be arranged for Sergeant Michalowsky's evidence. Although the matter proceeded in the courtroom with the jury in the jury box, neither counsel nor the trial judge were gowned. All parties remained seated. The courtroom was arranged in such a way that all parties, including the trial judge, were on floor level. The media and public had access to the courtroom. Sergeant Michalowsky was seated so that his back was to the public. Justice Donnelly further directed that Sergeant Michalowsky's testimony be videotaped to preserve the record of this extraordinary situation.

(xiii) The Hair and Fibre Evidence

Forensic evidence relating to hairs and fibres was a significant part of

the Crown's case against Guy Paul Morin. At the first and second trials, the Crown led expert evidence which allegedly linked Guy Paul Morin and the Morin Honda to the murder of Christine Jessop as follows: First, a hair found on Christine Jessop's necklace could have come from Guy Paul Morin. Second, three hairs found in the Morin Honda could have come from Christine Jessop. Third, six or seven fibres found on Christine Jessop's clothing and on her recorder case at the body site, could have come from the same source as five fibres found in the Honda and in the Morin home. The Crown led evidence as to the significance of those cumulative findings.

According to Mr. Morin and his parents, neither Christine Jessop nor her parents had ever been inside their home or in the Morin Honda. The Crown therefore argued that the fibre 'matches' could be logically explained only if Guy Paul Morin was in fact Christine Jessop's abductor and killer. On the other hand, the defence position at the second trial was that the hair and fibre evidence was not of significant probative value and defence experts were called who disagreed with many of the hair and fibre similarities found by the Crown experts. Further, according to the defence experts, the fact that a common source for the fibres had not been found suggested that any fibre similarities could be explained by the fact that Guy Paul Morin and Christine Jessop lived in neighbouring houses and, as such, opportunities existed for fibres to be transferred between the two households. The defence also challenged the hair and fibre evidence on the basis that the way in which this evidence was collected and stored by the police, created a risk of contamination which might explain any fibre matches. The defence questioned the integrity and the reliability of this evidence.

(xiv) Police Contacts with Guy Paul Morin Before his Arrest

On February 14, 1985, Detective Fitzpatrick noted after a conversation he had with Janet Jessop that Guy Paul Morin played the clarinet and was a "weird-type guy." On February 19, 1985, surveillance was set up on the Morin house.

Inspector Shephard and Detective Fitzpatrick wanted to interview Guy Paul Morin away from his family, and they unsuccessfully attempted to do so by having an official from the Department of Transportation telephone him to arrange for a licensing interview. It was Shephard's evidence and the Crown's position that at this time Guy Paul Morin was sought as a potential witness and not as a suspect, notwithstanding the fact that Fitzpatrick had made a

February 20th entry in his notebook which read "Suspect Morin in Toronto." On February 22, 1985, Fitzpatrick and Shephard visited the Morin residence.

Guy Paul Morin agreed to speak to them in their cruiser, and they spoke for between an hour and two-and-a-half hours. Although Guy Paul was not aware of it, the police officers were recording the interview. However, the tape recording of the interview ran out after 45 minutes. The detectives said they believed that the tape would record for 90 minutes rather than for only 45 minutes. Inspector Shephard took point-form notes as well as a witness statement, though Guy Paul Morin never saw or signed either of these documents. At the trial, the Crown suggested that many of the comments made by Morin during the course of this interview were evidence of his guilt.

First, Morin told Shephard and Fitzpatrick that while one media account had wrongly reported that Christine Jessop's body had been found west of Queensville, he knew that her remains had been found across the Ravenshoe Road. Until then, Shephard and Fitzpatrick had not known that the Ravenshoe Road was a main road leading eastward from the Queensville area in the direction of the body site. Second, Guy Paul Morin told Fitzpatrick and Shephard that Christine Jessop was a very innocent child, not aware of anything bad out there. He later said something to the effect that 'All little girls are sweet and beautiful, but grow up to be corrupt.' This statement, it was suggested at the second trial, revealed a motive on the part of Guy Paul Morin to kill Christine Jessop because her death would prevent her from growing up to be corrupt. Third, at one point in the conversation, Guy Paul Morin said, "Otherwise, I'm innocent." Shephard and Fitzpatrick had not said anything to Morin to suggest that he was a suspect. Morin went on to tell them that York Regional Police had said that all Queensville residents were suspects until proven otherwise. Finally, Morin told Fitzpatrick and Shephard that he was a musician and that he played the clarinet and saxophone. He also told them that he had learned through the media that Christine Jessop supposedly played the recorder. At the conclusion of this interview, Shephard and Fitzpatrick theorized that, perhaps, Christine Jessop had proudly showed her new recorder to Morin on her return home, or he had somehow seen her with it, and he had used this common interest in music to engage her in conversation, and then abducted her. This theory was presented by the Crown to the jury at the second trial.

On the other hand, the defence's position was that the conversation that Guy Paul Morin had with Fitzpatrick and Shephard on February 22,

1985, was demonstrative of Guy Paul Morin's innocence, and that there was nothing sinister in anything that he had said. First, the Ravenshoe Road was a primary route going east from Queensville in the direction of the body site. A map of the area made that fact clear. Other Queensville residents, including police officers, described the Ravenshoe Road in this way. The fact that Shephard and Fitzpatrick, who were unfamiliar with the Queensville area, did not know that the Ravenshoe Road was one of the major roads going east from Queensville was irrelevant to Morin's guilt or innocence.

As to Morin's comment about all little girls being sweet and beautiful but growing up to be corrupt, the defence maintained that it only showed that Guy Paul Morin believed that Christine Jessop was too young and too innocent to have been involved in any trouble. The defence further contended that Guy Paul Morin only said “Otherwise, I'm innocent” as a sardonic, somewhat resentful preamble to his recitation of his complaints about York Regional Police investigators who had publicly treated everyone in Queensville as suspects until proven otherwise.

Finally, the defence argued that Guy Paul Morin would never have embarked on a conversation with the police about his musical interest, and about Christine Jessop's recorder, had he truly abducted Christine by using their mutual interest in music.

(xv) The Arrest and Search

Inspector John Shephard arrested Guy Paul Morin at about 7:45 p.m. on April 22, 1985, while Morin was driving in the family Honda to his band practice in Stouffville. Detective Fitzpatrick searched him. Inspector Shephard looked inside the car, which was later seized and delivered to the Centre of Forensic Sciences in Toronto. Morin was taken to the police station, where he arrived shortly after 8:00 p.m. At the station, Guy Paul Morin volunteered samples of his hair, blood and saliva, which were subsequently delivered to the Centre of Forensic Sciences. The same night, at about 10:20 p.m., the police executed a search warrant at the Morin residence.

Mr. Morin proclaimed his innocence throughout the six hour interrogation following his arrest. In the course of questioning he produced a penknife which was ultimately tendered into evidence at both trials as a possible murder weapon. The Crown did not tender the statement upon arrest at either of Mr. Morin’s trials. At his second trial the defence sought to

introduce the statement in support of Mr. Morin's alibi. The trial judge ruled the statement was inadmissible.

The officers who participated in the search of the Morin residence had been provided with a list of articles for which they were to search. These included a knife, buttons missing from Christine Jessop's blouse, and a blue woollen sweater that belonged to her, shirts or jackets with blood stains, a gold-coloured seat cover, a coat or collar with animal hair, anything relating to sex, and anything else that may have appeared to be related to the case. They were also to examine any photographs they found.

The police were to search for a gold-coloured seat cover because (on their evidence) on March 8, 1985, Stephanie Nyznyk, a forensic analyst at the Centre of Forensic Sciences, had told Shephard and Fitzpatrick that there were gold-coloured fibres on Christine Jessop's clothing taken from the body site that were consistent with the type of fibres used in the manufacture of upholstery and floor coverings for vehicles. (It was Ms. Nyznyk's reported findings about the hair and fibre evidence that had largely prompted the police to arrest Mr. Morin.) The searchers were divided into three teams headed by identification officers Sergeant Michalowsky, Constable David Emile Robinet, and Constable Harry Shephard. The Robinet team searched the upstairs bedrooms and collected 81 exhibits. Michalowsky's team searched the property itself, including the beehives located there, a shed, an old Lincoln car on the property, and a 1980 Ford pick-up truck in the garage. They also re-searched an upstairs bedroom, and they seized 18 exhibits. The team headed by Shephard searched the northwest ground floor bedroom, the living room, television room and basement, and they seized 50 exhibits. All exhibits were taken to the identification laboratory at 17 Division of Durham Regional Police, and Sergeant Michalowsky delivered 141 of these exhibits to the Centre of Forensic Sciences on May 7, 1985. Only one dark grey fibre found on the living room rug ultimately proved to be of any significance to the prosecution.

(xvi) The Finding of Additional Bones

During and after January 1985, on several occasions, members of the Jessop family visited the site where Christine Jessop's body was found. On May 10, 1985, Robert, Janet, and Ken Jessop met with John Scott. Following the meeting they visited the body site. At about 5:10 p.m., Ken Jessop found an indentation in the ground that appeared to have been dug out. It was five

or six inches deep. Nearby was a birch tree which had been scorched, and a patch of burnt grass. Robert and Ken looked inside the burnt area and found four bones. One was similar to a rib, and one was similar to a vertebra. One had a hair attached to it, and one was not initially recognizable.

They took the bones out of the hole and placed them in a styrofoam cup. They then took the bones to a police station in nearby Sunderland, and at about 5:30 p.m. they turned them over to Constable Lorne Annis of Durham Regional Police. Extremely upset, Robert Jessop called Mr. Scott about the matter the same day. P.C. Annis gave the bones to Constable Harry Shephard in the identification unit at Durham Regional Police headquarters in Oshawa. On May 13, 1985, Constable Shephard examined the bones, and he examined them again on the 14th with Michalowsky. The bones were subsequently submitted to the Centre of Forensic Sciences. The fact that the Jessops found bones at the body site was never revealed at the first trial or otherwise disclosed to Guy Paul Morin's first defence counsel, Clayton Ruby.

(xvii) The Jailhouse Informants

After his arrest on April 22, 1985, Guy Paul Morin was placed in custody in the Whitby Jail. His application for bail had been denied. On June 26, 1985, he had been committed to stand trial on a charge of first degree murder after a preliminary inquiry before His Honour Judge Norman Edmondson. While in custody he encountered two inmates, Robert Dean May and Mr. X. May had 11 convictions for various offences, including crimes of dishonesty. Mr. X had a juvenile and adult record for multiple offences involving sexual abuse of young people. Both men had undergone psychiatric assessments in custodial institutions which reflected on their anti-sociability and reliability. Both admitted lying to the authorities and others in the past.

Mr. Morin was in a cell with May in late June 1985; Mr. X was in an adjoining cell. On July 1, 1985 May and X contacted the police and, after some negotiations for benefits for themselves, told the officers that Morin had confessed to May the night before that he had "killed that little girl." Allegedly, X had overhead the confession.

Both May and X testified for the prosecution at the first trial as to the confession. In his testimony at the first trial, Guy Paul Morin denied that he had made such a confession. The prosecution relied on the confession as proof of guilt. On the other hand, the defence denigrated the evidence of both

informants, alleging that they were lying about the purported confession and that their motive for concocting the confession was to obtain benefits from the authorities.

(xviii) The Offer

At the second trial, both May and X were again called as witnesses for the prosecution. Both again testified about the alleged confession made by Morin. In addition, both told the jury that the prosecuting authorities had offered each of them the right to refuse to be a witness if he so chose. Their subpoenas would not be enforced and they would suffer no consequences. Both testified that they had refused the offer and were, therefore, giving their evidence voluntarily. The prosecution took the position that the informants' voluntary attendances at the trial strengthened the credibility of their testimony. Guy Paul Morin gave evidence denying that he had made any confession. The defence at trial unsuccessfully raised concerns about the *bona fides* of the prosecution's offer to the informants. (This issue was raised again at this Inquiry, and became a major subject of dispute.)

(xix) The First Trial

On October 7, 1985, Mr. Justice John Osler granted a defence application for an order changing the venue for the trial. In directing that the trial take place in London, Mr. Justice Osler considered the extensive media coverage in the case, including press releases both before and after Mr. Morin's arrest relating to details of a psychological profile of the killer prepared by an experienced F.B.I. profiler. Following Mr. Morin's arrest, Superintendent Doug Bullock was quoted in the news media as saying the profile matched Guy Paul Morin better than the other four suspects being investigated.

Mr. Morin's first trial, presided over by the Mr. Justice Archibald McLeod Craig, began on January 7, 1986, and lasted approximately four weeks. Mr. Morin was represented by Clayton Ruby and Mary Bartley; John Scott and Susan MacLean appeared on behalf of the Crown.

At the first trial, it was the Crown's theory that Morin left work on October 3, 1984, arrived home about 4:30 p.m., lured Christine Jessop into his car and took her to the body site in Durham Region where he sexually assaulted and killed her before returning home to Queensville. At that trial, the

Crown relied mainly on:

1. Evidence of Morin's opportunity to commit the crime;

2. Statements made by Morin to police in February 1985, allegedly demonstrating consciousness of guilt;

3. Hair and fibre evidence, including evidence of a hair found embedded in Christine Jessop's necklace which allegedly 'matched' Morin's hair, evidence of three hairs found in Morin's car which allegedly 'matched' the hair of Christine Jessop, and the 'matching' of other fibres and animal hairs found at the murder scene and in Morin's home and car;

4. The evidence of undercover police officer, Sergeant Gordon Hobbs, who testified that while in the Whitby Jail, Morin had made stabbing motions towards his own chest, allegedly demonstrating the means by which he had murdered his victim;

5. Statements made to the undercover officer which allegedly showed consciousness of guilt;

6. Morin's alleged confession to a cell mate, Robert Dean May, which confession was allegedly overheard by Mr. X.

The defence position at the first trial was that, given his itinerary on October 3, 1984, Guy Paul Morin could not have committed the crime charged against him. The position was that Morin left work northwest of Toronto at 3:32 p.m., stopped at a Newmarket shopping mall lottery booth, a grocery store and a gas station and then went on to two other grocery stores before arriving home between 5:00 and 5:30 p.m. He then took a nap, had dinner, and went outside to do some home renovations.

The defence also argued that even if Morin had arrived home at 4:30 p.m., he still would not have had sufficient time to commit the offence. At the first trial, in the alternative, the defence argued that if the jury were to find that Morin did kill Christine Jessop, he was not guilty by reason of insanity. In support of this alternative defence, the defence called expert psychiatric testimony to the effect that Morin suffered from schizophrenia, and if he did

in fact commit the killing he would not have appreciated the nature and quality of his act. At the end of the trial, on February 7, 1986, Guy Paul Morin was acquitted by a jury after its members had deliberated for approximately 13 hours.

(xx) The Crown Appeal

By Notice of Appeal dated March 4, 1986, the Attorney General of Ontario launched an appeal to the Court of Appeal for Ontario against the acquittal. There were two bases for the Crown's appeal: first, that the trial judge had misdirected the jury as to the application of the doctrine of reasonable doubt to the evidence at trial. The trial judge had directed the jury that if they had a reasonable doubt with respect to individual items of evidence, they should give the benefit of that doubt to the accused. The second ground of appeal was that the jury had been incorrectly instructed that evidence of the accused's psychiatric condition was admissible only on the issue of the defence of insanity and could not be used as evidence of guilt. The Court of Appeal allowed the Crown's appeal on both grounds (Cory J.A., as he then was, dissenting) and ordered a new trial for Morin on the charge of first degree murder.

(xxi) Morin's Appeal to the Supreme Court of Canada

Mr. Morin appealed to the Supreme Court of Canada against the reversal of his acquittal. On November 17, 1988 the Supreme Court dismissed his appeal and upheld the Court of Appeal's decision to order a new trial based on the misdirections as to reasonable doubt only.

(xxii) A Further Autopsy

On October 31, 1990, the remains of Christine Jessop were exhumed. A post-exhumation examination led by Dr. Clyde Snow, a forensic anthropologist, commenced the same day and continued over the following two days. Dr. Snow was an expert in skeletal identification, and he examined the exhumed skeleton for the purpose of making an inventory of the bones and determining whether bones found subsequent to the discovery of the body belonged to the same skeleton.

During the course of his inventory, he realized that injuries were

apparent which had not been described in the original autopsy report and he requested the presence of a pathologist. A forensic pathologist, Dr. Hans Sepp joined him on November 1, 1990. Dr. Snow formed the opinion that all the bones, including those found by the Jessops on May 10, 1985, did belong to Christine Jessop. He concluded that 94 per cent of the bones had been recovered. A number of inadequacies in the original autopsy were revealed. Dr. Hillsdon-Smith later acknowledged those inadequacies.

As to the injuries observed on the remains of Christine Jessop, the remains were examined by Dr. Sepp on November 1, 1990 and he agreed with the conclusion of Dr. Hillsdon-Smith at the first autopsy that the cause of death of Christine Jessop was stab wounds to the body. There was disagreement, however, between Dr. Snow and Dr. Sepp as to the nature and cause of the some of the injuries evident to the bones.

(xxiii) The Pre-Trial Motions

The re-trial was scheduled to commence on several occasions following the Supreme Court of Canada decision on November 17, 1988 affirming the order for a re-trial. On each occasion the defence sought and obtained an adjournment. In September 1989, Mr. Morin waived his right to be tried within a reasonable time.

In March 1990, potential police misconduct on the part of the chief identification officer, and revelations relating to sexual activity on the part of others with Christine Jessop, came to the attention of the Crown attorneys and was disclosed to the defence.

On April 5, 1990, defence counsel wrote to the then Assistant Deputy Attorney General requesting Mr. John Scott's removal from the case, alleging gross misconduct concerning the duty of disclosure on the part of Mr. Scott. The following day, on April 6, 1990, defence counsel filed an application with the Supreme Court of Canada for a rehearing of Mr. Morin's appeal or a stay of the order based on fresh evidence of material non-disclosure and misleading disclosure which had made the Crown's case appear more cogent than it actually was. It was further submitted that non-disclosure and misleading disclosure constituted an abuse of process or a breach of Mr. Morin's *Charter* rights. Affidavits were filed on the application.

On May 14, 1990, at the conclusion of the hearing before five

members of the Supreme Court of Canada, Sopinka J. delivered the judgment dismissing the motion, holding that it was impossible to say on the basis of the untested evidence tendered on the application whether the decision affirming the order for a new trial would have been different. The Court further held that the trial court was the appropriate forum to deal with the issue of whether non-disclosure and misleading disclosure constituted an abuse of process or a *Charter* violation.

Mr. Morin's second trial commenced on May 28, 1990, with the hearing of two defence motions. The first motion was for access to the complete investigative file ('open box' disclosure) which the defence submitted was necessary for a complete evidentiary basis for the stay motion and for full answer and defence at trial. The second motion was for a stay of proceedings on the basis that non-disclosure and misleading disclosure, combined with police misconduct, rendered the first trial proceedings an abuse of process and a breach of Mr. Morin's section 7 and 11(d) *Charter* rights. Section 7 provides persons with "the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Section 11(d) entitles anyone charged with an offence "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal."

Evidence applicable to both motions was heard over the course of the next seven months, constituting 80 court days and 7,000 pages of transcript. One hundred and three witnesses were called, nine of whom were called by the Crown. The evidence concluded on December 5, 1990. On November 13, 1990, the trial judge dismissed the application for 'open box' disclosure, for reasons to follow. On February 8, 1991, Mr. Justice Donnelly dismissed the motion for a stay of proceedings and released his lengthy reasons for judgment on both motions.

In dismissing the motion for 'open box' disclosure, Donnelly J. found that the law was as stated by Sutherland J. in his judgment on the disclosure motion at Mr. Morin's first trial.[27] In particular, the *Charter* did not create a

[27] Prior to the commencement of Mr. Morin's first trial, the defence moved for further disclosure before Mr. Justice Sutherland, who held that he did not have jurisdiction to order pre-trial disclosure and that the appropriate forum was the trial judge. In addition, Sutherland J. held section 7 of the *Charter* did not create additional rights to pre-trial disclosure: *R. v. Morin* (1985), 23 C.C.C. (3d) 550. The motion was later renewed at the

constitutional entitlement by the defence to all facts within the knowledge of the police or Crown in some way related to the investigation of the offence. Mr. Justice Donnelly also concluded that the defence had not met its burden of establishing the existence of still undisclosed exculpatory evidence capable of supporting the application to stay the proceedings.

The motion to stay was based on the alleged suppression of exculpatory evidence primarily relating to:

- evidence relevant to Mr. Morin's opportunity to commit the offence;

- evidence relating to other suspects, suspicious vehicles and suspicious sightings;

- the finding by the Jessops of bones at the body site in May, 1985;

- an OPP report concluding that an impression on Christine Jessop's recorder was unsuitable for fingerprint comparison;

- evidence relating to the forensic aspects of the prosecution's case, *i.e*.

  (a) it was not disclosed that hair samples were obtained from Christine Jessop's classmates for elimination purposes with regard to the 'necklace hair.' Further, these hairs were submitted to the Centre of Forensic Sciences for testing in November, 1987 but examinations were not conducted until January, 1989. The results showed that the necklace hair was as 'consistent with' two of the classmates' hairs as it was with Guy Paul Morin's hair;

  (b) a 'laundromat test' conducted by the police during

---

commencement of the first trial.

> the first trial at the instance of the Crown and relevant to the issue of contamination between the Jessop and Morin households was not disclosed. The test result showed obvious transfer of fibres.

The motion was also based on the loss of physical and documentary evidence, as well as lost memories given the passage of time, and on police misconduct.

In dismissing the application for a stay, Donnelly J. did not find a lack of good faith on the part of either the Crown or the police with regard to disclosure. He concluded that there had been no "suppression" of evidence. Rather, through inadvertence or a failure to consider the matter, some information had not been disclosed. The defence did not meet the onus of establishing, on a balance of probabilities, that Mr. Morin's re-trial would clearly violate fundamental principles of justice underlying the community's sense of fair play and decency, thus disentitling the community to a proper trial on the merits.

Donnelly J. concluded that the Crown's theory of opportunity and the place of the abduction was not dependent on the non-disclosed evidence relating to the time of the Jessops' arrival home. Further, the general request by the defence for "all evidence tending to show innocence" did not enlarge the Crown's duty to disclose plainly exculpatory material within the Crown's knowledge. In the absence of specific disclosure requests relating to general topics of concern, the Crown should not bear the unreasonable burden of speculating as to information capable of becoming exculpatory evidence. No disclosure interest had been specifically directed towards other suspects, suspicious vehicles or suspicious sightings, the analysis of a partial fingerprint on Christine Jessop's recorder, or hair samples taken from Christine Jessops' classmates.

Donnelly J. found that the police failure to preserve items of evidence did not demonstrate the requisite bad faith on the part of the police. Proper instructions would allow the jury to properly assess the evidence of apparent misconduct on the part of the chief identification officer which had been fully disclosed. Further, having waived his right to be tried within a reasonable time, Mr. Morin could not later complain of the extensive loss of evidence caused by the six year delay in disclosure.

A laundromat test conducted at the instance of the Crown showing fibre transfer was found to be pre-trial preparation and not discoverable. Evidence of screams emanating from the body site relating to the theory of when the murder took place was not viewed as a serious transgression in light of concerns about the reliability of this evidence.

Donnelly J. held that certain information should have been disclosed by the Crown. However, he found the failure to do so the result of inadvertence, not wilfulness. This evidence related to the matters relevant to the credibility of the jailhouse informants, later sightings of Christine Jessop, early reports as to the time of the Jessops' arrival home the day of the disappearance, and the May 10, 1985 discovery of bones at the body site (relevant to the quality of the investigation). Other information, exculpatory on its face, was found by the trial judge not to have been made known to the Crown by the police, although he found it should have been. These included reports of phone calls received by Christine Jessop from an older man, and later sightings of Christine Jessop.

On March 8, 1991, the month following the release of this decision, the defence unsuccessfully applied for a further rehearing of the appeal before the Supreme Court of Canada on the basis of that Court's earlier reasons and the evidence before Donnelly J. on the stay motion.

In April 1991, and continuing to August 1991, a number of other pre-trial motions were heard by Mr. Justice Donnelly, dealing with a variety of issues. One of his rulings was the exclusion of Sergeant Hobbs' evidence, pursuant to the Supreme Court of Canada decision in *R. v. Hebert*,[28] which prohibited the 'active eliciting' of statements from detained persons by state agents. Other rulings are specifically referenced elsewhere in this Report. Jury selection was completed on November 12, 1991, and on the following day the jury members heard the Crown's opening address.

On November 14, 1991, Mr. Morin sought to reopen the motion to stay the proceedings on the basis of the seminal decision of the Supreme Court of Canada in *Stinchcombe*, released on November 7, 1991. That decision dealt with the disclosure obligations of the Crown.

---

[28] (1990), 57 C.C.C.(3d) 1 (S.C.C.).

On February 24, 1992, Donnelly J. dismissed this motion, finding no reason to alter his earlier conclusions.

On March 30, 1992, the defence sought to reopen the 'open box' disclosure motion, again on the basis of *Stinchcombe*. Donnelly J. dismissed this application the same day, finding that disclosure since the original open box application had been voluminous, as indicated to him by the exchange of 225 letters and two banker's boxes of materials relating to 300 potential suspects.

(xxiv) The Second Trial

The trial before the jury spanned a period of approximately nine months, during the course of which 120 witnesses were called. At the second trial, it was the theory of the Crown that, on October 3, 1984, some time between 3:32 p.m. when he left work and 4:30 to 4:35 p.m. when Janet and Kenneth Jessop returned home, Guy Paul Morin took nine-year-old Christine Jessop from her home or from the immediate vicinity of her home into his Honda motor vehicle and drove her across the Ravenshoe Road to a location some 30 miles away.

There, the Crown theorized, Morin sexually assaulted the girl, and then stabbed her to death with a knife he habitually carried with him. The Crown alleged that Morin then returned home in his vehicle, leaving the dead body of Christine Jessop in this remote rural location.

In support of its theory, the Crown led evidence from Mr. May and Mr. X that, while incarcerated in the Whitby Jail pending his first trial, Morin confessed that he had in fact killed the girl.

The Crown also led evidence of Morin's alleged motive to kill Jessop, his opportunity to do so, expert forensic evidence relating to findings of hairs and fibres allegedly linking Morin to the killing, and evidence alleged to reflect Morin's consciousness of guilt. This evidence is elaborated upon throughout this Report.

At the second trial, the defence of Guy Paul Morin was advanced on only one ground. The defence position was that Guy Paul Morin was not the killer of Christine Jessop and that the police had arrested the wrong person. Counsel for the defence argued that Morin could not have abducted Christine

Jessop because he had no opportunity to do so.

In support of his alibi, the defence called Guy Paul Morin, his father and his mother as witnesses. The Crown argued that this alibi was fabricated by Morin and his parents to enable Guy Paul Morin to escape responsibility for the murder.

The jury retired to deliberate on July 23, 1992, and seven days later returned a unanimous verdict finding Guy Paul Morin guilty of first degree murder.

(xxv) The Second Appeal

By Notice of Appeal dated August 22, 1992, Guy Paul Morin launched an appeal from his conviction to the Court of Appeal for Ontario. On November 30, 1992, Mr. Morin applied for bail pending his appeal. On February 9, 1993, the application for bail was granted by Mr. Justice Marvin Catzman and Guy Paul Morin was released from custody. There were 181 grounds of appeal. On appeal, Guy Paul Morin sought to adduce fresh evidence relating to two issues: first, as to the reliability of the evidence of Robert Dean May; second, as to the significance of the hair and fibre evidence adduced by the Crown at the second trial. These applications were ultimately unresolved, given the availability of new DNA results obtained just days before the appeal was to be heard.

As to the first (the reliability of the evidence of Robert Dean May) — subsequent to the second trial, evidence surfaced which impacted on the credibility of Robert Dean May's testimony at both of Morin's trials. This evidence was examined extensively in Phase I of this Inquiry.

As to the second (that relating to the hair and fibre evidence) — at the second trial emphasis was placed on a 1986 research paper by Roger Cook and Graham Jackson entitled “The Significance of Fibres Found on Car Seats.”

Cook and Jackson were fibre examiners for police forensic science laboratories in England, and their study sought to examine the significance of finding fibres in cars to criminal cases. On the fresh evidence application, the defence filed an affidavit by Roger Cook, one of the authors of the Jackson and Cook study, in which he concluded that the study was misused by the

prosecution in a number of ways. Mr. Cook was cross-examined by Crown counsel on that affidavit.

(xxvi) The DNA Evidence

The underpants and blouse seized from the body site of Christine Jessop were filed as exhibits at the first trial of Guy Paul Morin. At the time, the blood and semen stains on Christine Jessop's underpants could not be typed for DNA because of the deterioration which had resulted from exposure to the elements and because of the state of the science at that time. Subsequent attempts at DNA typing of the semen were renewed by the Crown and by the defence from 1988 to 1991. None of these attempts was conclusive.

In October 1994, the Chief Justice of Ontario ordered three scientists, Dr. David Bing of Boston, Massachusetts, Dr. John S. Waye of McMaster University in Hamilton, Ontario, and Dr. Edward T. Blake of Richmond, California, to examine jointly all of the available semen samples and report whether further DNA testing would likely lead to a conclusive result. The renewed testing attempts began on December 12, 1994, and on January 18, 1995, the scientists recommended that DNA typing of the semen found on the underpants should proceed.

The next morning, counsel for the Crown and the defence authorized the typing to proceed, and later the same day, at 10:33 p.m., counsel were finally advised of the outcome of the testing. In a report addressed to Chief Justice Dubin dated January 20, 1995, Drs. Bing, Waye, and Blake reported that they had been successful in DNA typing the sperm recovered from the underpants of Christine Jessop. They concluded that the DNA from the sperm sample could not have originated from Guy Paul Morin. This report was presented, on consent of both parties, to the Court of Appeal as fresh evidence.

(xxvii) The Acquittal of Guy Paul Morin

On January 23, 1995, Guy Paul Morin's appeal of his conviction for murder was allowed based on the new DNA report, his conviction was set aside, and a verdict of acquittal was entered.

N. Structure of this Report

The structure of this Report does not correspond, in all respects, to the way in which the Phases at the Inquiry were organized. For example, the forensic evidence is addressed first, given my findings as to the importance of that evidence to the miscarriage of justice. Also, given the overlap between the Durham Regional Police investigation and the trials of Guy Paul Morin, investigative and trial issues are often addressed together. There is sometimes a repetition of certain facts to give context to findings or recommendations. Generally, my findings of fact are subsumed under headings entitled 'Findings' throughout the Report. Otherwise, they are italicized. My recommendations are numbered and are in bold faced type. Generally, recommendations appear at the end of each chapter.

Table of Contents

CHAPTER 1: THE SCOPE AND NATURE OF THE INQUIRY