

was exculpatory, pointedly question him. There would be nothing improper in any of that. However, Shephard, in effect, tried to intimidate Doran through a heavy-handed suggestion that Doran could be charged with a crime (which, of course, was incorrect) for failing to speak to Shephard. This was an abuse of his powers as a police officer and is a completely inappropriate tactic.

D. Contentious Witnesses of the Crown

(i) Introduction

A number of contentious witnesses were tendered by the prosecution against Guy Paul Morin. Some of these witnesses have been addressed in other parts of this Report. This portion of the Report focuses on several witnesses whose evidence raises recurrent themes. These are Constables Robertson and McGowan, Paddy Hester, Doug Greenwood, John Carruthers, Leslie Chipman, Mandy Patterson, Janet Jessop and other witnesses as to the ‘funeral night screams’.

Some of the common issues which arise through these various witnesses are: the manner in which their evidence was obtained; when their evidence came forward; how ‘late-breaking’ or ‘untimely’ allegations by witnesses were handled, how their reliability was assessed, and how their evidence was presented to the jury.

Another recurrent theme is the use of much of this evidence to demonstrate that Guy Paul Morin exhibited, through his words and conduct, a *consciousness of guilt*.

During closing argument by the prosecution, Mr. McGuigan addressed evidence of ‘consciousness of guilt’ and ‘very unusual and strange behaviour’ at some length.²³ These passages are particularly significant:

²³ The evidence put forward at the first trial varied from the evidence tendered at Mr. Morin’s second trial. At the first trial, as described elsewhere in this Report, witnesses such as Robertson, McGowan, Greenwood, Carruthers, Hester and Chipman, were not called. In fact, there was very little evidence led by the prosecution from witnesses regarding Mr. Morin’s ‘unusual conduct and demeanor’; the evidence of Mandy Patterson being one exception. The term ‘consciousness of guilt’ was not employed by Mr. Scott in his closing address, nor by Mr. Justice Craig in his charge to the jury.

There is in this case circumstantial evidence upon which the Crown submits an inference of consciousness of guilt may be found. Failure of the accused to search for Christine Jessop and all the circumstances. Number two, failure of the accused to attend the funeral or the funeral home or to even express his regrets to the Jessop family on the disappearance and murder of Christine. Three, the crying out or screaming by the accused of words to the effect “Help me, help me, oh God, help me” on the night of the funeral of Christine Jessop.

The accused on Saturday October the 6th, '84, running out of his residence, yelling and waving his fists at Paddy Hester and and [sic] yelling “Get away from my car” when she was at the '77 Honda passenger door. If you — we heard evidence that Mrs. Morin did not let the dog out. Mr. Morin says he didn't let the dog out. If you accept Constable Robertson's evidence, somebody let the dog out. Only three people in that home and if it's the accused, if you find that, that the accused is the person who released the dog at that time, I submit to you that that is evidence that's capable of being evidence of consciousness of guilt.

The utterances of the accused to Mandy Patterson we have previously discussed. Number seven, “otherwise I'm innocent” comment during the recorded portion of the February 22nd statement to Inspector Shephard and Detective Sergeant Fitzpatrick.

.....

Now, this is a heading called unusual conduct or demeanour. The accused's conversation with Mandy Patterson, speaking in a very uncaring fashion which was different from his usual manner. And I ask you, as I indicated before, this was a friend of his I point out to you. The observations of P.C. McGowan because during his attendance at the house between 8:30 and 8:45 on October the 3rd he testified he spoke to Mrs. Morin and the accused was sitting about eight feet away staring straight ahead; did not turn towards the conversation even though P.C. McGowan was speaking in a fairly loud voice.

The evidence of Paddy Hester at some time around or

after midnight, she observed the accused in the red pick-up truck sitting staring straight ahead. The encounters of the accused with Leslie Chipman and Christine within the two weeks prior to October 3rd, '84 where he was clipping the hedge, called them over to talk and she observed the white knuckles while talking and holding the hedge clippers due to holding them too tightly. Secondly, clipping the same hedge the next day and within the next week while the young girls were present.

Now those are some very unusual and strange type of conduct and demeanor, in my respectful submission, that I'd ask you to look at.

In discussing Mr. Morin's activities on October 3, 1984, Mr. McGuigan also said this to the jury:

[I]f the accused went shopping he couldn't get home until 5:00 or 5:30. He gets home, has a nap, helps his father with the renovations. Would a man who just killed a little girl be helping his father with construction work? Problem: This trial, as you heard in cross-examination neither Mr. Greenwood nor Mr. Carruthers were ever called as witnesses at the last trial. Their testimony indicates that the accused was not helping out his father when they made their observations. You have not heard from any witnesses other than his immediate family that he was out working that evening.

I'd ask you also to look at the evidence of Constable McGowan. Somewhere between 8:30, quarter to nine goes to the house. Accused sitting there staring straight ahead.

.....

Mr. Pinkofsky made a prediction that I would refer to the fact that the accused, accused people of being mistaken. And his prediction is accurate. The accused testified that a number of people were mistaken in their testimony and I'll list some of them, but not all of them.

Mr. Greenwood testified about seeing a 50ish

neighbour outside by a cement mixer, but he didn't see the accused and this was about 8:50 p.m. Mr. Carruthers testified that around nine o'clock, a little after nine he and Greenwood went on to the Morin property to search. Both recall looking into the trench and he didn't see the accused. And both observed a cement mixer tumbling. The accused says they're both mistaken; one, re: the cement mixer. I think it should be pointed out or I'm sure you're aware from the evidence that Mr. Greenwood is a contractor and I submit he would or certainly should recognize a cement mixer when he sees one.

He testified that Paddy Hester was mistaken about seeing him and others in this red pick-up truck on October 3rd, 4th, '84; that he never came running out of his house on October the 6th when she was there.

Mandy Paterson was mistaken as follows: about him appearing not to want to talk about Christine's disappearance. She was also mistaken that he displayed an uncaring manner when discussing the murder of Christine Jessop. Three, that he told her Christine was killed the night that she was taken. In relation to Mandy Paterson, Mandy Paterson was a friend of his. This was not an enemy. This was someone who got along with him well and this is her testimony.

Leslie Chipman was mistaken; one, he never beckoned Leslie and Christine over to his property; one (sic), they never came over to his property and talked to him; three, he wasn't cutting that hedge on more than one occasion because his evidence is that he only cuts that hedge once a month.

Robertson was ... mistaken when he says the only conversation that they had pertained to having the dogs taken in, mistaken that anyone let the dogs out while Ryder, not Constable Ryder, but Ryder was at the passenger side of the Honda.

The trial judge made extensive reference to evidence of 'consciousness of guilt' in his charge to the jury. These passages are illustrative:

During the three months Christine was missing and following the finding of her body he did not express

his concern to Mr. and Mrs. Jessop, go to the funeral home or go to the funeral. He spoke of not being invited to the funeral, and said he offered sympathy to Janet's father, Gordon Simpson, who died about four years ago. Evidence the accused failed to attend the funeral or the funeral home, or offer condolences is tendered as conduct which you may find to be consistent with his knowledge as the guilty party. It must not be used as evidence of bad character of the accused, making it more probable that he committed the crime.

.....

If you accept this evidence, you may consider whether, in light of any explanation offered, the accused's conduct in failing to search was so unnatural that you accept the inference that the conduct was the product of a mind conscious of its own guilt relative to Christine Jessop's disappearance and death.

.....

The accused's work record constitutes evidence from which you may find the accused, in attempting to explain his failure to search for Christine Jessop on November 10th, 1984 [by alleging he had to work overtime], made a false statement under oath at the first trial. That type of statement, after a crime has been committed, can be evidence of consciousness of guilt. The law recognizes a guilty party may tell a false story, in order to escape the consequences of the crime.

.....

The Crown also points to the evidence of the conduct of the accused within a few hours of Christine Jessop's disappearance, which is said to be consistent with his guilt, as follows:

- a) Officer McGowan's observation the accused sat staring straight ahead, apparently at the television, when McGowan called at the Morin residence about 8:30 to 8:45 p.m., October 3rd.

.....

In these proceedings there is evidence upon which you may find the accused to have said or done things, subsequent to the death of Christine Jessop, which you may find demonstrate a consciousness of guilt on his part, in respect of her death. The following are the principal items which are capable of supporting an inference of consciousness of guilt. Whether the accused said or did these things, and whether they support that inference, is a matter for you, as is their impact, if you do find that they do support that inference.

- 1) Whether the accused told a proven lie under oath, regarding his failure to search on November 10th, 1984;
- 2) Failure by the accused to search for Christine Jessop;
- 3) Paddy Hester's observations of the accused's actions while she was attempting to look inside the Morin Honda on October 6th, 1984;
- 4) The utterances attributed to the accused, by Janet Jessop, on the night of Christine Jessop's funeral;
- 5) The accused's utterance of February 22nd, 1985, "I bet little Christine is gone."
- 6) The accused's utterance of February 22nd, 1985, "Otherwise I'm innocent."
- 7) Mandy Paterson's observations of the accused's accompanying demeanour when he said, "No, she was killed the night she was taken."
- 8) The statement attributed to the accused that he would consider entering a guilty plea to this murder charge of not guilty by reason of insanity.
- 9) The issue of whether the alibi evidence given by the accused was fabricated or concocted.

Indeed, it was alleged by counsel for the Morins that the phrase

‘consciousness of guilt’ was used 46 times in the charge to the jury, ‘guilty knowledge’ nine times, and ‘a mind conscious of its own guilt,’ ‘consistent with guilt,’ ‘inference of guilt,’ and ‘indicative of guilt’ once each.

I have not counted the number of times these terms have been used. Suffice it to say, use of this language was a prominent part of the instructions to the jury.

In the course of the Inquiry, Brian Gover, a Crown attorney who had carriage of the case during the stay motion, said this:

I think in retrospect one of the lessons of the Inquiry will be that consciousness of guilt evidence has to be approached with great caution and that in retrospect, the evidence of consciousness of guilt in this case, was problematic and perhaps ought not to have been led to the extent that it was.

Alex Smith told the Commission that he had never done a trial previously where consciousness of guilt evidence played such a substantial role. He said:

On reflection, and with the assistance of cases from our Court of Appeal and other courts, I think I have a different perspective with respect to consciousness of guilt evidence than I did then. And I think, frankly, my perspective now is healthier than the perspective I had then.

To foreshadow my later findings and recommendations, I am of the view that considerable evidence which had little or no probative value was presented to the jury as evidence of consciousness of guilt. I have no doubt that this evidence, viewed cumulatively, contributed to the miscarriage of justice. To quote the British Columbia Court of Appeal in *R. v. Campbell*²⁴ (more extensively cited below):

I believe that a trial judge should consider carefully whether it is really necessary, other than in relatively rare circumstances, to instruct a jury concerning this subject.

²⁴ (January 12, 1998),[unreported] at paras 21 and 23.

.....

I have the impression that trial judges are now more frequently being asked to give and are giving instructions about certain evidence in a case being possibly indicative of consciousness of guilt. It is a trend that is not, in my view, a happy one and I believe this should rarely be invoked as a possibly probative factor of proof of guilt. *If the crown case is so tenuous that this sort of evidence must be relied upon, it is in many instances not much of a case.* (Emphasis added.)

(ii) Constable David Neil Robertson

August 16, 1989 Meeting

On August 9, 1989, Elisabeth Widner, who was Mr. Pinkofsky's co-counsel at the second trial, wrote to Crown counsel requesting disclosure on a number of topics, including information relating to prior contacts with the Morins, sightings, and tracking dogs. John Scott, who still had carriage of the prosecution at that time, made some inquiries and determined that the information he had obtained from the York Regional Police force was incomplete. Ms. MacLean testified that many officers involved in the York Regional investigation had not made notes, and logs were missing from the command post. The activities of officers in the missing person investigation were, therefore, not fully known. As Mr. Scott had not received satisfactory answers to his queries, a meeting was organized at the York Regional Police offices for August 16, 1989, from 7:15 p.m. to 10:30 p.m. Numerous York Regional officers attended, including Constables Robertson (who was then a member of the Collingwood Police Force, having left the York Regional Force in July, 1985) and McGowan and Inspector Wilson, as well as other officers who had assisted with the search on the evening of October 3, 1984. Inspector Shephard from Durham also was present.

Mr. Scott arrived at the meeting late. There was a general conversation with the group about the status of their will-says and the disclosure requests contained in Ms. Widner's letter.

Mr. Scott said he hoped that will-says would be prepared that evening; however, as many officers had not brought their notebooks, they were unable to do so. He did not ask this collective unit about their individual recollections

during this meeting. He recalled, however, that at one point in the evening, the officers broke into smaller groups to perform the work requested of them.

In retrospect, this was an unfortunate move, particularly since it was possible that, without their notebooks, at least some of the officers would adopt statements made by those who had notes. The evidence suggests that insufficient — if, indeed, any — thought was given to this fact, but I do not see this incident as an attempt to avoid unwanted diversity in the will-says. The Crown, I believe, was frustrated by the lack of information, and hoped to break the log-jam that night. I have already expressed my view that, in future, greater care should be taken to avoid contamination of evidence, through collective recollection.

Mr. Scott recalled meeting David Robertson. This was the first time Constable Robertson spoke about evidence relating to his dog that might be relevant to the prosecution of Guy Paul Morin.

As I noted in Chapter IV, Constable Robertson was detailed to the Jessop residence the evening Christine disappeared and arrived there at 12:10 a.m. on October 4th. Upon arrival, he received permission from the patrol sergeant to use his own dog, Ryder, a male German Shepherd, to assist him in the search. (The York Regional Police did not have a canine unit.) He went to his home in Newmarket, retrieved his dog, and arrived back at the Jessop residence around 1:00 a.m.

Constable Robertson's detailed notes, documenting his activities of that evening, made reference to buildings he examined, vehicles he looked at, bushes he went to, swamps he viewed, properties he searched, people he spoke with and things he found. Although he made copious notes (in addition to detailed supplementary reports) of his actions on the morning of October 4th, he made no reference in these documents to any observations or events relating to the Morin property which he mentioned to Mr. Scott almost four years later and to which he later testified.

The entry in Constable Robertson's notebook for the August 16, 1989 meeting reads as follows:

Looking for details not mentioned in the first trial, information, etc. Further discussion to take place regarding new information from officers' notebooks, etc.

Constable Robertson said that when he attended the meeting at York Regional, it occurred to him, for the first time, that a positive reaction by his dog in the early hours of October 4th, had significance to the prosecution of Guy Paul Morin. He testified that during this meeting he was asked about his activities with his dog and this prompted a discussion of Ryder's reaction at the Morin vehicle. He described the events to Mr. Scott without the benefit of his notes or supplementary reports.

Mr. Scott was surprised that he had not learned of Robertson's evidence relating to his search before August 1989. He testified, however, that Constable Robertson told him that he had passed on this information to someone else at an earlier time. This type of breakdown of communication had occurred so many times that it took on a credibility with Mr. Scott that served to appease his concerns regarding this late-breaking evidence. He also reflected on the fact that, at the time Constable Robertson was involved, the nature of the investigation was that of a missing child.

Constable Robertson received a copy of his notes in the mail and, at some point which is not altogether clear, drafted his will-say. His notes indicate that on August 30, 1989 he drafted his will-say. He testified that he may have been working on it that day. According to defence records, the will-say was marked "received January 2, 1990." However, Constable Robertson's notes indicate that on May 1, 1990 he received a request from the York Regional police for a copy of his notes and will-say.

Constable Robertson's first will-say records his activities reflected in his notebook and then reads as follows:

(from memory not detailed in notes)

While at the Jessop residence, a sweater belonging to Christine was obtained for the dog. A search was then made of interior of Jessop residence and property.

The property to the South checked negative. Prior to attending the property to the North, request was made via another Officer, for the occupants of the house to stay inside and contain several dogs that were loose (1 large dog). This property was rather messy, and had some construction going on around front area.

The dog was used to cover entire property, including

attached garage with an old car in it. Out in the yard, were two vehicles, one a small light coloured car. The dog reacted around this vehicle, by jumping up on the passenger side door area, but due to a distraction from the house as somebody let a dog out, my dog was taken back from this area of the ground. I feared an encounter with another dog.

I feel the dog showed a positive reaction to this vehicle. Officers then had words with occupants of house. It was mentioned that both houses would be searched again in daylight.

My view was, that these people (I observed a male and female) were not very accommodating for being neighbours and the nature of search.

(Return to notebook at 3:45)

The remainder of the will-say reproduces Constable Robertson's detailed notebook entries which, as stated above, contain no mention of his activities on the Morin property.

Constable Robertson's contemporaneous notes of the evening are also devoid of any comment about retrieving an article of Christine Jessop's clothing in order to assist his dog with a scent discrimination task. Nowhere do his notes make any reference to his dog's reaction to Christine Jessop's bicycle or to the Morin Honda. Nor is there any contemporaneous documentation about other evidence he later supplied in his testimony, which was put forward by Crown counsel as indicative of Mr. Morin's consciousness of guilt. This will be explored later in this chapter.

Constable Robertson was still with the York Regional Police force when Guy Paul Morin was arrested. Though he purportedly had evidence (later tendered at the second trial) which related to Mr. Morin's guilt, he did not bring it forward when Guy Paul Morin was arrested. He left his notebooks behind with the York Regional Police force when he departed. He was not called as a witness during the first trial, nor was he asked to prepare a will-say outlining his activities in connection with his search for Christine Jessop.

November 20, 1990 Meeting

On November 20, 1990, a meeting was held in the York Regional

Police headquarters boardroom. It lasted several hours. Present were Crown attorneys Leo McGuigan, Alex Mr. Smith and Susan MacLean, Officer Chapman, and the two lead investigators, Inspector Shephard and Detective Fitzpatrick. Seventeen officers from the York Regional force who were involved in the missing persons investigation (including Rick McGowan, David Robertson and Raymond Bunce) also were there to review their recollections of the events.

By this time, Leo McGuigan had been appointed as the lead prosecutor in charge of this case. He agreed with a suggestion made to him at the Inquiry that police witnesses, like civilian witnesses, ought to be interviewed individually. These were his comments:

Q. I think you and I had agreed yesterday that matters that don't go to the substance of what a witness has to say can be dealt with collectively, but when one is dealing with the substance of one's evidence, that officer ought to be dealt with individually in the same way as the evidence of a civilian ought to be dealt with individually. Is that fair?

A. Yes, I think that's fair, and if you do it otherwise, you run the risk of being criticised by defence counsel for the manner in which you've interviewed the witnesses.

Q. And in fairness, it's not just a matter of being criticised by defence counsel; you run the risk that one of the officers' evidence is polluted by hearing what the other officer has to say.

A. Well, if it relates to the same issues.

Q. Of course.

A. Yeah, but — well, I suppose that is correct, but I'm not sure what the issues were here. These were people, I think, that had been involved in searches, and some who had been down at the town hall, or wherever it is that they set up the command post.

He recalled attending two meetings where York Regional officers were assembled as a group.

Mr. McGuigan said that the primary purpose of the meeting was to introduce the new Crown attorneys. Officers were advised that their evidence was relevant to issues that would be raised at the second trial and that they would be interviewed and called as witnesses. They were further instructed that they should submit their will-says if they had not already done so. He said that individual interviews were then conducted in Inspector Wilson's office and in other areas. Mr. McGuigan commented that irrespective of the appropriateness of interviewing officers jointly where there may be diversions on certain issues, it would also be a highly inefficient way of preparing a witness for trial.

The evidence of Inspector Shephard on the Crown meetings with York Regional officers generally, differed somewhat from Mr. McGuigan's recollection. Shephard said that a group setting, rather than individual meetings, was organized because "that's the way things were done at that time." He did not recall any segregation at the meetings. At that time, Inspector Shephard did not see a problem with gathering evidence in this manner, although he would not have permitted a meeting similarly structured with civilian witnesses. When he provided evidence before this Inquiry, he appreciated that such a process could give rise to a concern that evidence obtained through a group setting may lack independence. In cross-examination, Inspector Shephard said that it was possible discussions of a general nature were conducted in the group setting.

Detective Fitzpatrick recalled everyone sitting around a table in a boardroom at York Regional police headquarters during this meeting. Mr. McGuigan went around the room asking each officer individually what he had done upon arrival at the Jessop residence and thereafter. Fitzpatrick testified that he had been involved in this kind of meeting in other cases and did not have a concern about potentially tainting witnesses who could hear the anticipated evidence of other witnesses. Detective Fitzpatrick could neither recall nor deny that officers were separated for individual interviews after a group meeting concerning "general instructions". He recalled, however, that when the officers attended in London for their testimony they were interviewed separately. That, of course, is the way in which it should have been done in the first place.

As indicated above, meetings of this nature should be avoided. There may be occasions — and I speak of this elsewhere — where a number of potential witnesses might, quite legitimately, be gathered together: for

instance, when general instructions are given by counsel on what a witness might expect in court. Indeed, the discussion might even go beyond that. But what must be avoided is the discussion of substantive matters collectively, where officers draw (consciously or otherwise) upon the evidence of others. Clearly, when that occurs the value of their testimony is greatly diminished, and the consequences can be grave. Indeed, as pointed out in other parts of this Report, the memory of a number of participants improve remarkably after some of these meetings.

Scent Discrimination Evidence

Constable Robertson was called by Crown counsel at the second trial to provide evidence of his activities on October 4, 1984, relating to scent discrimination work performed by his dog. However, he said he was aware that such a request was made. His expertise as a dog handler, and the ability of his dog, Ryder, to scent discriminate were contested at the pre-trial motion before the second trial. Robertson had never before given evidence in tracking or scent discrimination work. He testified that while he had never been employed as a police dog handler *per se*, his expertise was based largely on the following facts:

1. He was brought up in a family with dogs, though he conceded he was not involved in training them.
2. He had assisted at kennels during his R.C.M.P. basic training.
3. While in Regina, he frequently worked closely and became very friendly with Peter Payne, an R.C.M.P. dog handler. In March 1968 he volunteered to assist Payne when someone was needed for tracking or attack work. He testified that through his experience with Officer Payne, he learned obedience training, attack, guard work and tracking.
4. His previous dog, Jesse, was used by Payne for a couple of weeks when Payne's dog was sick. Payne thought so highly of Robertson's dog that he advised his superiors that Jesse was qualified to work as a tracking dog.
5. He worked closely with half a dozen other R.C.M.P. dog handlers and had attended an R.C.M.P. course for potential dog handlers.

6. He and his dog(s) had previous experience in assisting to track two missing persons (in one case he said Ryder found a missing child in a covered sandbox), had helped track a number of escaped jail inmates and had detected illegal drugs during an arrest.

Philip Hoelcher, of Miami, Florida, an expert qualified in the field of dog training, handling, tracking and scent discrimination, testified for the defence during the pre-trial motion into the admissibility of Robertson's evidence. Hoelcher had been involved since 1974 in the training of German Shepherds and trainers. It was his opinion that neither Robertson nor Ryder were qualified to be proficient in dog scent discrimination work or tracking, and that, in any event, neither Robertson nor Ryder could reliably do what Robertson had claimed they had done.

Constable Robertson testified that he had purchased Ryder in January or February of 1984. He said that Ryder was serviceable as a tracking dog by June or July of that year. He trained Ryder himself, first in obedience and then in a form of tracking. He said that Ryder, as part of his training, had successfully tracked neighbourhood children in the bush and in a lumber yard and could single out a child whose scent had been provided on a baseball glove. After six months of training, Ryder was, in his opinion, very efficient in tracking people and detecting drugs.

Mr. Hoelcher testified that it was not viable that a dog could locate a person after having been introduced to a specific human scent; this was a myth. He said that the type of scent discrimination claimed to have been performed by Ryder had never been replicated by experts in the field:

Q. So the cross scents or cross tracks have no bearing on whether her scent was contaminated inside the vehicle.

A. And the only way that I could answer you is that there's no way the dog smelled the shirt and carried that odour picture in his mind, went to the car, and said "I smell the same odour inside the car as I did however long ago when I smelled the shirt." That doesn't happen.

Q. In your experience.

A. In my experience, in my opinion.

Q. You would agree that other people have other theories on the subject?

A. Absolutely do.

Q. And disagree with you on that point?

A. Absolutely do and many of them have tried to prove me incorrect and —

Q. So - I'm sorry. I didn't mean to interrupt you.

A. No problem. I just have never seen them prove me incorrect in front where they can do it. I have watched a thousand people attempt to do it and I've not seen it work yet.

Q. But that's your opinion as to whether they are correct or not.

A. No. It's not my opinion, it's a fact.

Mr. Hoelcher testified that dogs trained to search for narcotics do so by way of scent discrimination, requiring an intense 400-hour training period. Even then, the scent or odour that the dog is trained to locate must be constantly refreshed in the dog's mind. In his opinion, it was impossible for Ryder to have been introduced to an odour from a sweater of the victim and then to have retained it in his mind for a period of time. Assuming that Ryder did react at the Morin Honda, he could have been reacting to any number of scents, including for instance, the scent of the Morin dogs. Mr. Hoelcher further testified that tracking was also impossible in the search for Christine Jessop because of the fouling of scents at the scene by other people before Robertson and Ryder arrived. He concluded that neither Robertson nor Ryder could have done what Robertson claimed.

After hearing lengthy pre-trial arguments, Mr. Justice Donnelly found that Robertson was qualified as an expert scent discrimination dog handler and that his dog was qualified to perform scent discrimination. Accordingly, he permitted Crown counsel to lead evidence of the dog scent discrimination work allegedly performed by Constable Robertson's dog. In his reasons, however, the Judge added:

The jurors must be instructed that they are not simply making a choice between two expert opinions. They

must be told that before acting upon either expert opinion, they must be satisfied as to its reliability. They must be instructed that the dog scenting evidence must be received with caution, and must not be given undue weight. That evidence is not, in itself, evidence that the accused committed the crime. It may be an indication that Christine Jessop had been at the Honda car before the arrival of Ryder.

The evidence of the actions of the dog is not the only evidence linking Christine Jessop to the Honda car. There is also the scientific evidence of the hair and fibre. The weight to be given to the dog scenting evidence must be considered in the context of the entirety of the Crown's case.

The dog scenting evidence is admissible.

In his later charge to the jury, the judge used similar language: It was for them to determine whether the dog evidence actually linked Christine Jessop to the Honda, much like it was for them to determine if the hair and fibre evidence also linked her to the car.

The Blue Sweater

As the first officer on the scene, one of Constable Rick McGowan's tasks was to keep a log of everyone who attended or left the Jessop residence. While many police officers' names were recorded entering the residence, Constable Robertson's name was not amongst them. In McGowan's report that he prepared for the missing person investigation he noted that Christine Jessop was wearing a blue front-zippered sweater when she disappeared. Constable Robertson's notes also recorded the blue sweater as part of the description of Christine Jessop's clothing of which he had been advised at the police station prior to his attendance at the Jessops.

Before Constable Robertson arrived at the Jessops' home, Janet Jessop and some York Regional officers, including McGowan, had searched the house several times in an unsuccessful attempt to find Christine. No one could recall seeing a blue sweater on the bed.

During the trial proceedings, Robertson testified that Constable McGowan took him to Christine Jessop's upstairs bedroom. According to Robertson, a blue sweater was on her bed. He was led to believe by

McGowan that Christine had worn the sweater that day. Robertson testified that he used this blue sweater to provide Christine Jessop's scent to Ryder. His evidence about finding and using this blue sweater was crucial to his overall testimony relating to scent discrimination, as it was his assertion that this sweater was the source of the scent which enabled his dog to perform the discrimination task. Scent discrimination was useless unless the originating scent belonged to the missing person. As pointed out earlier, Constable Robertson's contemporaneous notes and supplementary reports do not mention the use of a sweater belonging to Christine.

Constable McGowan testified at the second trial that he saw Constable Robertson on the Jessop property on the night of October 3, 1984. He was aware Robertson's dog was there but he could not recall seeing the dog in the house. He gave contradictory evidence as to whether, in his presence, outside the Jessop residence, Robertson asked for a piece of clothing from the missing person for his dog. McGowan did not know whether Robertson found such a piece of clothing. McGowan further testified that he did not accompany Robertson to Christine Jessop's bedroom, nor did he point out or provide the sweater to him.

Constable Robertson said that he provided the blue sweater to his dog so that Ryder could obtain Christine Jessop's scent. He left the sweater at the command post in the trailer next to the fire hall between 4:00 and 4:30 a.m. on the 4th before returning to Newmarket. Again, there is no mention in his notes about turning in a sweater (or any other evidence) at the command post. Robertson maintained that he did not know that the police were searching in 1984 and 1985 for a blue hand-knit sweater.

According to Detective Raymond Bunce, oblivious to any claim by Robertson that he had in possession of Christine's blue sweater and had turned it in to the command post, officers made a number of attempts to locate this missing sweater; there were searches for it in the Jessop household; Bunce attended Christine's school on July 15, 1985, to see if the sweater had been left there; the sweater was also one of the items listed on the April 22, 1985 search warrant that was prepared for execution at the Morin home (Indeed, the blue sweater was even being sought at the home of another suspect, as reflected in another search warrant that was obtained.) Despite these efforts, the blue sweater that Christine purportedly wore the day she disappeared was never seen again.

The defence suggested that Christine's clothing may have been removed in a place other than where her body was found, which raised questions as to whether she was abducted, taken straight to the body site and killed, or was taken captive and killed at a later time. The latter proposition was inconsistent with the Crown's theory of Mr. Morin's guilt. Accordingly, the defence believed that evidence surrounding the blue sweater was highly important. Constable Robertson's evidence not only bolstered the prosecution's case against Guy Paul Morin, it also tied up a potential loose end relating to the whereabouts of this sweater at the time of the murder.

Description of the Sweater

Counsel for the Morins allege that the evolution of Constable Robertson's memory of the description of the sweater demonstrates the effect of suggestive questioning by the Crown.

Robertson's August 30, 1989 will-say stated: "While at the Jessop residence, a sweater belonging to Christine was obtained for the dog."

Susan MacLean's notes of the November 1990 meeting indicate that "Robertson's dog [was] given smell of blue sweater."

In Ms. MacLean's March 4, 1991 list of issues of things to do, she noted: "Was P.C. Robertson YRPF given Christine's blue sweater to use with his tracking dog? Review this with Jessops [and Robertson]."

On July 30, 1991, at the pre-trial, Officer Robertson's evidence relating to the blue sweater was as follows:

It was just a full sleeved sweater, it was blue, I think there was some other markings on it. From memory I can't recall exactly, but it was told to me by the investigating officer she had been wearing it that day ... it was a wool sweater I believe.

In August, 1991, during the pre-trial motion, Janet Jessop described the sweater in evidence as blue hand-knit sweater, zipper down the front, no collar, long sleeves, ribbed at the wrist and waist area.

Robertson's evidence at trial in November, 1991 relating to the description of the sweater was more detailed. He testified that he was taken

to Christine's bedroom by McGowan who told him Christine had worn the sweater that day. (He also testified that he only learned of McGowan's name when he had met him at the court house a few days prior to giving evidence). Robertson described the sweater as a buttoned or zippered cardigan, medium blue in colour, wool, long-sleeved, child size, possibly hand-knit. In cross-examination he added that the sweater may have had a pattern, as he had testified at the pre-trial.

He was asked during the Inquiry if the evolution of his memory was a result of being briefed by someone on the description of the sweater. He replied that this concept was totally false and he categorically denied that he was fed any of this information by anyone on the prosecution team.

Ms. MacLean told the Inquiry that she accepted Constable Robertson's evidence regarding his activities on October 4th. She said that it was during the November 20, 1990 meeting that she first realized that Robertson may have used the blue sweater which Christine Jessop had reportedly worn on the day she disappeared. Constable Robertson was asked by Ms. MacLean if he could describe the sweater in his will-say:

I remember - yes I do remember [the November 20, 1990] meeting, and I think that's where we first asked: Well can you tell us about the sweater? How did it look? and that's when he started describing it, and I remember it struck me as he described it that: Oh my goodness, this may well be sweater we've all been looking for.

Ms. MacLean testified that prior to Constable Robertson's pre-trial motion evidence, she asked him to describe the sweater in more detail, if possible. She did so, she said, so that Janet Jessop could establish whether the sweater used by Robertson belonged to her daughter. Ms. MacLean denied engaging in suggestive questioning in preparing Constable Robertson. While she could not recall her specific questions, she maintained that they were open-ended.

Robertson's Evidence of Dog Scent Discrimination

Constable Robertson said that after taking the blue sweater from Christine's bedroom he went to the rear of his patrol car where he let Ryder smell it. No other officer was present when he 'introduced' this sweater to his

dog. He testified that he then walked the dog over to Christine's bicycle and allowed Ryder to smell it. When the dog reacted positively, it indicated to him that Ryder had successfully detected Christine's scent on the bicycle. The conclusion was that Ryder was able to discriminate Christine Jessop's scent from an object. The detail about Christine's bicycle was not included in Robertson's notebook, nor in the supplementary reports which outlined his activities that evening. Nor was there any description of the location of Christine Jessop's bicycle in his will-say.

At the pre-trial motion, Robertson testified that the bicycle "was sitting right near the side door of the residence." But at trial his evidence was more consistent with that of other officers:

I went around the house clockwise or counter-clockwise, I came to a shed and an open garage, carport. And I recall it being pointed out to me there was a bike in there laying on its side and that that was Christine Jessop's bike.

Ms. MacLean denied any suggestive questioning concerning the bike; however, she stated that she may have shown Constable Robertson photographs of Christine Jessop's bicycle lying on its side in order to ascertain whether it was consistent with the bike he had observed.

After receiving a positive reaction to the bicycle, Constable Robertson went to the Morin property. But, he testified, just before doing so, he put Ryder in his car and went with another officer to the Morins and asked that their dogs be contained inside their home. After being assured that this was done, he moved on to the Morin property with Ryder.

He testified that he searched this property with his dog by leading it around on its leash. As Constable Robertson and his dog got close to the right door area of a Honda, which was parked on the property, Ryder started sniffing in a very pronounced fashion, jumped up on the side of the car and put his front feet on the glass. The windows of the Honda were closed. To Constable Robertson, this signified the beginnings of a positive reaction on the part of his dog in detecting the scent of Christine Jessop, indicating to Robertson that Ryder had, detected the scent of Christine Jessop.

At the pre-trial motions, Robertson was queried as to what happened as he and his dog approached the Honda. He described the indications

provided by his dog:

He started from the driver's side of the vehicle around the front to the passenger side of the vehicle. Once there he made a positive reaction. When he is searching for something ... the dog under search might wag a tail if I say something to him, his ears are up, he's going about his business, not displaying anything, no sound from him, he is not to bark at any time. ... However, that changes when he finds something. He will bark, he will start to get excited, the tail is wagging. If somebody, something is behind something he can't get at, scratching at it, jumping against the door to a closet ... This type of reaction turning around, looking back to me like, "Hey get over here." ... *He started this reaction first of the tail, the becoming excited, the barking and the next thing I know he's right up on the side of this small light-coloured vehicle, on the passenger door. The windows were all up on both sides.* (Emphasis added.)

In Robertson's opinion this reaction meant that Christine Jessop had been in the car:

At the time the dog had reacted positively to whatever he smelled within that car and if it was under training or practice conditions I expect what we would be finding to be sitting on the front seat of that vehicle. That's the reaction that I had detected, etc., from the dog and going at that vehicle. If it was a stage one, the person would be hiding in the vehicle, or the object you were looking [for] ... would be on the front seat of the vehicle.

At the Inquiry, however, he stated that Christine had been in *or at* the car.

Constable Robertson said that the occupants of the Morin household watched him through their front window while Ryder was at the vehicle. He could not see inside the vehicle, as he was several feet back from Ryder, who was on a three-metre leash. As Robertson moved closer to the car he was suddenly interrupted by a barking dog which he observed at the side door of the residence, coming towards him. He stopped what he was doing, pulled Ryder away from the car, and shouted to another officer to 'get the Morin

dog away.’ Robertson then moved on to search elsewhere.

At trial, the Morins were emphatic that none of their dogs were allowed to run loose that evening, as they were aware that people were searching in the vicinity.

Robertson testified that when the dog was let out of the home, it interrupted his search (and his dog’s activity). Robertson was asked why he did not do the logical thing and look inside the car:

Q. And again, if, on your evidence your dog provided to you an accurate and reliable indication that Christine Jessop had been at or in that vehicle, wouldn’t the first thing that you would have done is try the door, come up to the door, look into the car and see whether Christine Jessop is still in the vehicle? Wouldn’t that be the most natural thing to do if your dog indeed had positively reacted to the car in the way you described?

A. I guess, but at the time, with the other dog coming out, in the position that I was in, the best of my memory is that I pulled the dog back from the area to secure it, and to request that the other dog be secured.

He further stated, by way of explanation:

I was up there looking for a missing girl, I was using my own dog to do that, and the action that I took after the reaction at the vehicle was to go and assure that these houses and vehicles would be properly checked.

Constable Robertson said that while he told a sergeant at the Jessop house that evening that the houses and vehicles on the properties surrounding the Jessop residence should be properly searched if they had not already been. He was uncertain of the identity of this officer, nor did he make any notes of his request. He identified the sergeant he spoke to in this regard as either Sergeant Gordon LeMoine or Sergeant Alex Low. He did not know if he had gone into any more detail with this person. Robertson believed he had told other officer(s) of Ryder’s reaction to the Morin Honda, but he did not know who.

Sergeant Low, who had testified prior to Robertson during the trial,

had not been asked about his involvement with Constable Robertson that evening. Accordingly, the defence brought a motion to regarding-open its cross-examination of Sergeant Low. Over Crown counsel's objection, the defence was permitted to do so, but Sergeant Low had no recollection of seeing Robertson on October 4th.

Sergeant LeMoine was not called as a witness at the trial, but his October 4, 1984 supplementary report said this:

P.C. Robertson assisted in the search of the immediate area, using his german shepherd which he is training for police use. A thorough search of immediate buildings and parks etc. was made. Due to the amount of searchers in the area prior to the dogs arrival, no scent was available. P.C. McHardy assisted P.C. Robertson with this detail.

No other officers had any recollection of Robertson relaying such information to them.

Officer Robertson testified that a trained dog can follow a scent path left behind from a person. This is 'tracking'. Tracking could not be done here, due to the contamination of the scene. He indicated that a trained dog can 'scent discriminate', that is, the dog can look for a particular scent provided by, for example, a person's clothing. Finally, dogs can be used in the searches for humans (for example, after an avalanche) without a track and without a scent object, simply because dogs can assist in scenting a human (i.e. any human's) presence. The latter was what Robertson and his dog later did in Queensville. However, Robertson denied that he and his dog were only involved in the latter kind of assistance throughout; he could not explain Sergeant LeMoine's report, and did not recall telling either Sergeant LeMoine or Sergeant Low that his dog would be trying to scent discriminate.

It did not concern Ms. MacLean that Constable Robertson did not open the car door or further investigate, following the reaction from his dog. She said that had the case been a homicide investigation at that point in time, the failure to search the car would have concerned her, but she accepted Robertson's explanation that a missing person search was a different matter. At no time did Constable Robertson tell her or testify, as he did at the Inquiry, that Christine Jessop had either been in *or at* the car, the latter being a significantly different matter.

At the Inquiry, Constable Robertson justified not reporting Ryder's reactions to the bicycle and the car in his notes and in the supplementary reports as follows:

Because I didn't place a great importance to those two reactions, as I had just said, because of the proximity they were to where the girl lived, played or - because we were there so close with these residents, and I didn't know who was in the residences, who the vehicles belonged to. My assumption was that there was nothing alarming, it's nothing obviously noteworthy.

When asked whether it occurred to him to have promptly documented that his dog had given him an accurate and reliable indication that Christine Jessop had been in or at the vehicle, he replied: "No, I don't believe it did, because I don't believe that there was an importance to me about it. I was, after all, searching for a missing girl." *Whether or not the search was part of a homicide investigation or a search for a missing person, Robertson should have conducted a thorough search of the Honda, or ensured this was done if the events he described truly occurred.*

Robertson testified that after he finished his search, he spoke with Inspector Wilson at the fire hall. He did not, however, mention Ryder's reaction at the Honda; nor did he seem to tell any other officer about the dog's reaction until some five years after the event. Inspector Wilson testified that he did not know anything about Robertson's (and McGowan's — described later) purported observations until years later. He testified that he was shocked and disappointed to learn that information relating to activities on October 3 and 4, 1984, was provided for the first time in 1989.

It is curious that Robertson would not have told Inspector Wilson, the most senior officer he came into contact with during the search, or anybody else, about the dog's reaction to Christine Jessop's bike and to the Honda, had this, in fact, occurred.

Robertson's Evidence of the Morins' Demeanour

The will-says of three officers reflected material bearing adversely upon the Morins, none of which was contained in contemporaneous notes or reports. These will-says, produced many years afterwards, expressed the

sentiment that the Morins were either unaccommodating or unwelcoming to the officers visiting their residence.

Constable Robertson's will-say reads:

My view was that these people [the Morins] (I observed a male and a female) were not very accommodating for being neighbours and the nature of the search.

Similarly, Constable McGowan's will-say reflected his observation that "I was not made welcome nor offered any assistance [by the Morins]. I felt this strange for an immediate neighbour." (Constable McGowan's late-breaking information is discussed later.)

The will-say of Constable McHardy also states

I don't believe that I had any conversation with the occupants of the house to the North of the Jessop residence. I recall that there was some conversation, and I remember feeling that we were not welcome on this property.

It is noteworthy that Constable Raymond Bunce's original will-say prepared for the first trial states that upon attending at the Morin residence

a request was made to search the residence. ["Mr. Morin"] advised that we were not welcome into the residence, he had searched the residence and he would in fact search the residence again.

Police notebooks do not record all those present at the August 16, 1989 meeting. Officers Bunce, McGowan and Robertson all attended the November 20, 1990 meeting. Officer McHardy is recorded as attending a meeting November 19, 1990.

Constable Robertson testified at the Inquiry that the first time he was ever aware of Constable McGowan's evidence relating to the demeanor and attitude of the Morins was at this Inquiry. McGowan's evidence is outlined, later in this Report.

Testimony Challenging Constable Robertson

Peter Payne

At the second trial, defence counsel called Peter Payne, a retired R.C.M.P. officer, to refute the evidence of Constable Robertson. According to R.C.M.P. records, Robertson had never been assigned to any duties relating to the handling of police service dogs. Contrary to his testimony that he worked closely and frequently with Mr. Payne, this officer had no recollection of working with Robertson. Indeed, he had no memory of ever meeting Robertson, and he also contradicted much of his other evidence:

Q. [Pinkofsky]: To your knowledge, did you ever work with any officer in the R.C.M.P. named David Nell (sic) Robertson, Dave Robertson or anything like that?

A. I can't recall the name.

Q. Insofar as your becoming a dog master, did you utilize officers to assist you as quarry the same way you were quarrying the first part of your career in dog work?

A. Yes, I did.

Q. Have you ever recommended any police officers who acted as a quarry to you, to sort of recommend that he should go on to become a dog master?

A. I can only recall one that I recommended who subsequently did become a dog master, and that was in Nanaimo, British Columbia.

Q. And was his name David Robertson, David Nell (sic) Robertson, or anything like that?

A. No it wasn't.

.....

Q. Have you ever used any dog named Jessie owned by another officer, regardless of who it was?

A. No.

Q. Have you ever used dogs privately-owned by any individual an R.C.M.P. case work?

A. No.

Q. Would you have ever used a female Shephard in R.C.M.P. case work?

A. No.

He further testified that he would never use another handler's dog, even if it was an official R.C.M.P. dog, as he would not be sufficiently familiar with the animal to interpret its indications. This, again, was in complete contrast to Robertson's testimony as to his dealings with Payne. However, Mr. Payne did recall that his own dog had been sickly for about a year. He also recalled being involved in two searches which Robertson also described; one involved a search for inmates in a 'jail break' in which Payne used his own dog, and one followed the shooting of two police officers in Prince Albert. With regard to the former, Robertson said his dog, Jesse, had been used and with regard to the latter, Robertson said he had worked with a dog handler who replaced Payne when he left the Regina detachment.

Albert Boley

Albert Boley testified at Mr. Morin's trial for the defence and also during the Inquiry. He is a former staff sergeant who was in charge of the Ontario Provincial Police canine division from 1965 to 1988. He was a member of the U.S. Police Canine Association. He presented seminars on the subject, had been involved in over 3,000 police investigations in which dogs were used and had trained 100 dogs and 320 OPP officers in police dog work. He has also participated in studies with forensic climatologists examining scent and wind patterns and humidity relative to the location and duration of scent. Mr. Boley had impressive credentials in relation to the training and handling of dogs and their use in criminal investigations.

In November 1991 Mr. Boley learned through the media that a dog handler (Constable Robertson) had placed Christine Jessop in Morin's vehicle based upon scent discrimination. His knowledge and training told him this was not possible in such circumstances. Accordingly, on November 21, 1991, he called the Crown attorney's office in London and left a message with his opinion on the nature of this evidence. He was assured by a local Crown

attorney that someone from the Durham office would get back to him. Neither Ms. MacLean nor Mr. McGuigan could recall receiving a message that Mr. Boley had called. A number of days went by.

When no one returned his call, he telephoned Mr. Pinkofsky's office in Toronto and expressed his concern about the nature of this evidence. Mr. Boley read transcripts of Constable Robertson's evidence and was impressed neither with Robertson's purported training as a dog handler, nor with his claims of Ryder's skills.

Mr. Boley testified that preparing a dog for work of this nature involves intense training. He said Ryder was simply not old enough to have received sufficient training to qualify him in tracking and scent discrimination. To refine a dog's training in these areas would take 18 to 30 months. Ryder had four to eight months' training at best.

Ryder's age was an issue at the second trial. Constable Robertson's evidence at trial and at the Inquiry was that Ryder was fifteen months old when he purchased him in January or February, 1984 and that at the time of Christine Jessop's disappearance he was just under two years old. At the pre-trial he testified that he based his belief in this regard on the Canadian Kennel Club registration which he had received upon purchase. At trial, evidence was called relevant to this issue. Canadian Kennel Club records were filed; a certificate of registration indicating that Ryder was born February 18, 1983 and another indicating that ownership had been transferred to Robertson on June 3, 1984. These documents suggested that Constable Robertson obtained Ryder only four months before Christine Jessop disappeared and that Ryder was 20 months old at the time of his search discrimination work in the Jessop case. At the Inquiry, Constable Robertson stated that, in fact, he had not seen these certificates when he purchased Ryder. While at some point he received the documents from the Kennel Club, he passed them on to Ryder's new owner. Someone told him Ryder's age when he purchased him.

Mr. Boley considered Ryder's reaction at Christine's bicycle and at the Morin car to be virtually meaningless. Boley's evidence was that a dog's reaction could be, at best, an investigative tool, but did not permit the conclusions drawn by Robertson. He was emphatic that any reaction by Ryder to Christine's bicycle or the Morin Honda could not be interpreted as an accurate and reliable indication that she had been in or at the car. He gave this opinion based on the dog's training and the particular circumstances of this

case, as well as the general limitations of drawing conclusions from the reactions of dogs. Boley testified that even the best-trained trainer with the best-trained dog would never feel confident testifying in a criminal court with accuracy and reliability that the dog had correctly pointed out the guilty party based upon scent.

The following exchange took place at the Inquiry:

Q. If you've got a reliable dog, and it gives a positive identification that positive identification, is useful to you as the handler, because you're going to accept that it's reliable to a certain degree, and that it would be useful for you to do things as a result of that?

A. It would be as useful to you as would a flashlight be useful to you, nothing more than that. You can't take it to the next step and say: Christine Jessop was in that car or around that car. You cannot say that with any degree of reliability because there are too many things. If you have the best dog in the world and the best handler, if he says that, then he's wrong.

I accept Mr. Boley's evidence. It is also commendable that he, a long-time police officer, would initiate a telephone call to correct what he perceived to be overstated evidence by another police officer. He did not know whether Guy Paul Morin was guilty or innocent — that was not the point. Mr. Boley's attitude was refreshing.

I do not take from his evidence that dogs are incapable of using an article to 'scent discriminate.' His evidence is not as definitive in that regard as that of Mr. Hoelcher who testified at the pre-trial motion. At trial, he agreed with Ms. MacLean (who put certain writings to him) that trained dogs can do some remarkable things. A trained dog can lead an investigator to drugs, explosives or to a person. His point was that, in the absence of finding those drugs, explosives or the person, one could never rely upon the dog's indications as proof that they were once there. One example made the point well:

A. Well, the dog could make a mistake. He could be indicating on something that was there. He could be indicating on something that never was there, it's just that they're too many — ... like with an explosive detector dog, if in fact we got a call that there was an

explosive in this room and I brought a dog in and searched it ... Dog indicates no explosive [on the suspect briefcase] , I'm not about to go over and kick the briefcase, you know what I mean?

Opinion of the Investigators

Detective Fitzpatrick recalled a conversation with Inspector Shephard in which concerns were expressed concerning the reliability of Robertson's evidence, given the timing of the disclosure of this evidence and his failure to record his observations until some years after the event. Nevertheless, the officers took no steps to check out this evidence. Although Fitzpatrick could not recall doing so, he assumed that he or his partner would have attempted to verify Constable Robertson's account of turning the blue sweater over to the command post.

Inspector Shephard testified that he had no reason to disbelieve Constable Robertson. Shephard was questioned during the Inquiry and said that he was aware of the following factors:

- that no contemporaneous notes had been made of the dog's reactions to the bike and vehicle whereas Robertson did make detailed notes on insignificant matters;
- that he alerted no one at the time to the actions of his dog, considering the potential significance of those actions;
- that he took no follow-up steps personally, such as checking the door of the vehicle;
- that, at the highest, he merely told a superior that all properties in the area should be searched.

Inspector Shephard acknowledged that, in retrospect, he should have been concerned about all of those circumstances. But he also agreed with Crown counsel's submission in closing to the jury that the 'dog evidence' took on much greater significance in light of the cumulative effect of the other evidence connecting the Honda to the crime.

He candidly agreed with the suggestion that, unconsciously, he probably accepted Constable Robertson's evidence somewhat uncritically because it conformed to his view, at the time, that Guy Paul Morin was guilty. He acknowledged that he did not critically analyse Robertson's recollection in the same manner as he analysed the evidence supporting Mr. Morin's innocence. (For example, see the later discussion on the investigator's approach to Frank Devine's recollection.)

Inspector Shephard could not recall discussions with Crown counsel where concerns were expressed about the indicia of unreliability surrounding Robertson's evidence; nor did he recall any Crown attorney or police officer voicing a reservation about calling Constable Robertson; nor was he ever instructed to further investigate the facts alleged by Robertson.

Crown's Use of the Dog Evidence

The position of the prosecution relating to the evidence of Constable Robertson is succinctly set out in its factum on the appeal:

Further, it is a position of the Crown that *regardless* of whether or not the trial testimony of Constable Robertson was properly admissible as *expert evidence*, with respect to the issue of "scent discrimination," there can be little doubt that the evidence was properly admissible, in any event, to show *consciousness of guilt* on the part of the *Appellant* and his *parents*. More specifically, it is submitted that the trial judge was bound to admit this evidence if for no other purpose than to show how the members of the Morin family *reacted* when they saw Ryder "react" positively at the passenger side of the Morin Honda. It was *reasonably open* to the jury to infer, from the fact that the Morins *immediately released their own dogs* from the house as soon as this happened, thereby effectively and hastily bringing the police search of their property and, in particular, the Honda, to a screeching *halt*, that they did this because they *knew* that Christine Jessop had been *in that car that very day*, and they wanted to inhibit the police from taking any further steps *in their investigation of the vehicle*. In short, releasing their dogs to interrupt the police search just as Ryder "reacted" at the Honda, was a *deliberate act of obstructing* the police investigation so as to effectively *conceal* any potential evidence that the police might

find in and around the car shedding light on the murder of Christine Jessop. (Emphasis included in the original factum.)

Mr. McGuigan invited the jury to infer from Robertson's evidence that Christine Jessop had been in the Morin Honda. This was, of course, in contrast to Mr. Morin's testimony that Christine had never been inside that car. The dog evidence, as it came to be known, attained a prominent place in the trial and was extensively referred to in closing arguments and in the trial judge's charge to the jury. The address of Crown counsel relating to Constable Robertson's evidence covered 36 transcript pages. The trial judge's charge to the jury on the same subject covered 27 pages. Mr. McGuigan's closing address to the jury included the following passages:

If you accept Constable Robertson's evidence, somebody let the dog out. Only three people in that home and if it's the accused, if you find that, that the accused is the person who released the dog at that time, I submit to you that that is evidence that is capable of being evidence of consciousness of guilt.

.....

Ladies and gentlemen, I submit to you that the reason that Constable Robertson's dog reacted at the accused's vehicle, that Honda vehicle, in the early morning hours of October 4th, was because the accused had driven Christine Jessop to her death in that vehicle on October 3rd, '84.

I respectfully submit that this dog evidence, if I can refer to it as that, takes on much greater significance in the light of all the other circumstantial evidence connecting the accused's car to this crime. That is, the hairs, the fibres, the blood and the reaction that Paddy Hester got from the accused when she tried to search the same vehicle and the same door.

When Crown attorney Alex Mr. Smith testified early in the Inquiry, he was questioned about the reasons for his belief that Mr. Morin was guilty. He replied that, among others,

[t]here was evidence that the dog — if I remember

correctly, the officer's name was Robertson, the police dog was alerting or whatever one calls it, at the Honda motor vehicle when a Morin dog was let out of the house.

Mr. Gover gave his opinion that the evidence of Constable Robertson likely strengthened the prospect of conviction. In his view, however, the reliability of this evidence was affected by the fact that Robertson did not come forward earlier or make a note of it in his contemporaneous documents.

Ms. MacLean was asked during the Inquiry about her opinion as to the veracity of Robertson's evidence. Although she was unsure as to the weight the jury would place on his testimony (which Ms. MacLean viewed as one of the more peripheral pieces of evidence), she was not concerned about its veracity:

As much as I was troubled by some of the things about Robertson, I don't think he was lying, I think he honestly believed what he said, and I felt it was still open to the jury to consider his evidence.

Ms. MacLean was not concerned that Mr. Payne did not remember Robertson despite the latter's testimony that he and Payne had worked together for a length of time. In terms of the absence of a contemporaneous record of Robertson's testimony, Ms. MacLean testified that while she wondered why he had not previously recorded his dog's activities, it was not surprising to her, given her experience where police officers sometimes did not even record statements made by an accused in their notebooks. She added that many officers involved in the York Regional investigation had not made notes. In assessing whether Constable Robertson was truthful about the dogs being let out of the Morin residence, Ms. MacLean considered the fact that Ms. Hester also stated that she was chased away from the car by dogs (this is discussed in more detail later in this section). Robertson's claim that the dogs were let out the moment Ryder reacted at the Honda was, in Ms. MacLean's opinion, as significant as Robertson's evidence concerning his dog's reaction because everything in the case pointed toward the car.

Mr. McGuigan testified that at the time of the second trial he believed dog scent discrimination evidence was reliable. The timing of Constable Robertson's evidence, and the lack of a contemporaneous recording, were the only two matters which caused him some scepticism about Robertson's

reliability. He said that while one always has to have concerns about late evidence, he had his faith in the credibility of police officers, absent an indication to the contrary. Mr. McGuigan thought that too much emphasis was placed on the notebook omission and Robertson's failure to suggest the Honda be searched, in light of the fact that this was not yet a homicide investigation. In Mr. McGuigan's opinion, the absence of confirmation from Sergeant Low or Constable Robertson's partner was not determinative. Robertson's stated experience in the field was uncontradicted at the time he was prepared by Ms. MacLean and he, McGuigan, believed that the evidence of Mr. Payne was not determinative. Mr. McGuigan added that, on the basis of Robertson's evidence in-chief, he was of the view that the dog was trained.

Findings

Officer Robertson testified at the second trial that his dog, using the scent of the blue sweater given to him from Christine Jessop's bedroom, indicated that Christine Jessop had been in the Morin Honda. Though Officer Robertson left the impression during the Inquiry that he was expressing the opinion only that Christine Jessop had been in *or at* the Honda, there are suggestions to the contrary in the trial evidence. (Like certain other witnesses at this Inquiry, Robertson's testimony sought to minimize the inculpatory thrust of his trial evidence somewhat.) Robertson further testified that the homeowners let out the dogs, preventing Ryder from further exploring the property.

On the totality of the evidence, I find Officer Robertson's account to be implausible. There is no record or recollection of anyone that the blue sweater was provided to Robertson. Everyone was searching for the blue sweater for months thereafter, including his fellow officers. It was Robertson's evidence that not only was the sweater in open view in Christine's bedroom, but he returned it to the York Regional officers at the command post for the investigation. No one confirms that Robertson 'introduced' any blue sweater to his dog. There is no suggestion that his partner that night, his supervising officers or anyone else knew that he had introduced this sweater to the dog, or that the dog had detected anything at the Morin property. It is untenable that Robertson would take no action, even during a missing person investigation, to search the vehicle or even try the door of the vehicle where Christine's scent was purportedly detected. It is inconceivable that he would tell no one to search *that specific vehicle*.

He has notes and supplementary reports made at the very time of the events or shortly thereafter, documenting the most minute details of the objects and locations searched. It is inconceivable, on his version of events, that there would be no mention of the Morin vehicle, the dog's indications, the homeowners' behaviour or the use of the sweater as a scent object. Indeed, the contemporaneous records make it appear that his dog was not tracking and was not using a scent object, but merely assisting the search by looking out for any detectable human scents. Robertson also has no explanation for LeMoine's entry.

Then, Guy Paul Morin, Christine Jessop's neighbour, is arrested. Robertson does not tell his fellow officers that his dog detected Christine Jessop's scent in the neighbour's Honda, though he is still a York Regional Police officer and the case assumed unparalleled importance in the York Region community.

Guy Paul Morin is prosecuted for murder. Robertson tells no one in authority during the currency of the first trial about his purported evidence.

His claim only comes forth after Guy Paul Morin has been acquitted and is facing a new trial. It only comes forth in the context of a meeting which explores the officers' potential relevance at a second trial.

The evidence as to the age of Ryder, Robertson's real opportunity to train him and as to Robertson's lack of any memorable relationship with Peter Payne further undermines his credibility. I find that Robertson exaggerated the extent of his training and the extent of any relationship with Peter Payne.

Objectively viewed, there were very significant problems with what Robertson had to say. Brian Gover recognized these problems at the time. However, I accept that Susan MacLean, who tendered Officer Robertson as a witness, did believe that Robertson had credibility, primarily due to her overall view of Morin's guilt and her confidence in the forensic evidence purportedly supporting Christine Jessop's connection to the Morin Honda.

Some might infer from my finding in relation to Robertson (particularly since the *indicia* of unreliability were largely known by the prosecutors at the time) that they chose to call this evidence which they knew to be false or, at least, highly suspect. (I refer only to the three prosecutors at the second trial here, not Mr. Gover or Mr. Scott.) However, as I earlier

said in the context of the jailhouse informants, the prosecutors' views were no doubt coloured by their firm belief in Morin's guilt. Perhaps this made certain witnesses look better to them than they were; this also made it easier to discard evidence which undermined their own witnesses and to look upon largely inconsequential evidence as confirmatory. On the other hand, some or all of the prosecutors may, like Mr. Gover, have had a greater appreciation of the significant problems with their witnesses' credibility. However, the prosecutors determined that the assessment of admissibility was for the trial judge and ultimate weight was for the jury. No law or ethical standards existed that prevented them from calling somewhat suspect evidence, so long as they did not *know* that the evidence was false.

I do accept that the prosecutors did not call evidence which they *knew* to be false. Of course, from a systemic point of view, this offers cold comfort to Guy Paul Morin or to others who may be charged with crimes they did not commit. The important systemic issues raised are addressed later in this Report.

It would also be erroneous on my part to assume that each prosecutor thought the same way. Frankly, I would expect that Mr. McGuigan over the years had acquired a seasoned appreciation of the quality of evidence; indeed, as Mr. Gover conceded, Mr. McGuigan has a great deal more trial experience than Mr. Gover or, for that matter, most everyone else in the system. As a result, unlike Susan MacLean perhaps (that is, back then), he might have seen much of the suspect evidence for what it was, unless all of his assessments were impaired by the tunnel vision I earlier described.

The bottom line is this: Mr. McGuigan, Mr. Smith and Ms. MacLean failed to *objectively* assess the reliability of evidence which favoured the prosecution. It is difficult to determine the precise extent to which each of the prosecutors appreciated just how unreliable some of the evidence tendered was. I accept that Ms. MacLean genuinely believed in the credibility of much or all of the suspect evidence called by the prosecution, and in particular, Robertson's evidence. Her evidence at the Inquiry makes it clear to me that her eyes have been opened wide by the revelations here, and that she will be far more cognizant of the dangers of tunnel vision and a loss of objectivity in the future. It is sometimes difficult to assess just how insightful the far more experienced Mr. McGuigan was about the quality of the evidence being tendered. Mr. Smith's precise state of mind is also difficult to assess. He, like Susan MacLean, was far less experienced than Mr. McGuigan. However, his

outlook, in some respects, was far more closely aligned to Mr. McGuigan's than that of Susan MacLean.

Having found that each of these prosecutors failed to objectively assess their own evidence at times and, on the other hand, that they did not call evidence they knew to be false, I do not believe that their precise state of mind as to each and every witness called is of great assistance in addressing the issues at this Inquiry. I do return to the issue of their state of mind, to some extent, in the context of other contentious witnesses, as is necessary.

In any event, the prosecutors did not see it as their function to assess the reliability of this evidence. Mr. McGuigan was not exercising any prosecutorial discretion to decline to tender unreliable evidence. Evidence was evaluated on the basis of whether it would tactically advance the Crown's case or could backfire, and redound to the Crown's disadvantage. If the jury might accept it, and it was admissible, it would be tendered.

Counsel for Guy Paul Morin has alleged that the 'development' of Robertson's evidence about the blue sweater, given Ms. MacLean's notes, was orchestrated by Ms. MacLean. It is also alleged that the collective meetings to which Robertson was a party played a role in the formation of his evidence.

I have no doubt that some of the witnesses who testified at the second trial owe the 'improvement' in their recollections to the way or ways in which their evidence was obtained: collective meetings where evidence was discussed; suggestive questioning by investigators; discussions between fellow officers; overly informative questioning by prosecutors in their extensive preparation of witnesses and, I regret to say, at times outright falsehoods calculated by certain witnesses to advance the Crown's case or dull the defence's point of attack. (My mandate does not permit me to make findings that named persons deliberately lied; I have not done so and my findings, particularly those as to the *unreliability* of witnesses, must be seen in that light.) However, I can say this: I do *not* find (as has been alleged here) that Mr. McGuigan, Mr. Smith or Ms. MacLean deliberately counselled perjured evidence or deliberately 'fed' witnesses with details, not known to those witnesses to cause them to regurgitate those details as their own. (I earlier made a similar finding in relation to the 'body site' evidence.)

I specifically accept Ms. MacLean's evidence that she did not

deliberately ‘feed’ Robertson with details about the blue sweater. Their failing was that they did not take adequate care to ensure that their interviewing process did not contaminate witnesses. The prosecutors showed little or no introspection about these contaminating influences upon witnesses for two reasons: one, the evidence favoured the prosecution; this coloured their objectivity; two, their relationship with the police which, at times, blinded them, and prevented them from objectively and accurately assessing the reliability of the police officers who testified for the prosecution. This is a recurrent theme throughout this, and other chapters. In this context, I speak of the three prosecutors generally. I appreciate that each is entitled, where possible, to separate treatment by me. However, many of their interviews were done with all three present. Mr. McGuigan is shown in police notes to be present for many of these interviews, even when conducted by the others. He indicated that this may be reflective only of his presence in his own hotel room, where interviews were conducted. He also indicated that the other prosecutors were fully capable and given significant independence in dealing with their own witnesses. Frankly, Ms. MacLean’s perspective at this Inquiry was, to some extent, different. She perhaps saw Mr. McGuigan’s role as more substantial. Everyone agreed that as the lead counsel, Mr. McGuigan had the ultimate deciding voice on issues. I have no doubt that Mr. McGuigan’s influence (and I do not use the term ‘influence’ in a pejorative way) pervaded the exercise of discretion in the prosecution case.

What this means is that the other prosecutors took their lead, in most respects, from the approach and mind-set of Mr. McGuigan.

Apart from Robertson’s credibility, I have serious concerns about the admissibility of evidence as to the dog’s ‘indications’ that Christine Jessop had been in the Morin Honda. My later recommendations address this issue.

Evidence that an accused attempted to divert an investigation may, under certain circumstances, constitute evidence of consciousness of guilt. Even apart from Robertson’s credibility, it is debatable whether his evidence was sufficient to permit that inference to be left with the jury. It is unnecessary for me to decide the point, given my findings and given my view, elsewhere expressed, that a number of other items of ‘consciousness of guilt’ or ‘unusual conduct or demeanour’ ought not to have been left with the jury on that basis.

(ii) Constable Rick McGowan

Overview

Constable McGowan was not called to give evidence during Mr. Morin's first trial. During the second trial, however, he testified that on the night of October 3, 1984, he left the Jessop household only once during the course of the evening: at approximately 8:18 p.m. he went to the Morin household to speak with the neighbours. He walked up to the front door where he was greeted by Ida Morin. While he was asking her questions, he observed a side profile of a person who appeared to be looking straight ahead. He never thought about this until he saw the news report of Guy Paul Morin's arrest on television. The picture of Mr. Morin triggered the memory of what he had witnessed at the Morin house that evening. He was "astonished," he said, to see that Mr. Morin was the person who had been sitting in the chair, seemingly unconcerned about his questions relating to the missing child.

This is what he said, in part at the second trial:

Q. While you were having this conversation with Mrs. Morin what was the accused doing?

A. He sat there, just looking straight ahead and didn't turn his head to look at me or get in on the gist of the conversation that I was having with his mother. He just seemed to sit there looking straight ahead.

Q. Can you give us your best estimate as to how long the conversation conducted with Mr. Morin took?

A. It was brief. It was brief. It didn't seem to be assisting me with any information I was getting in response to my questions so I just left it at that. I went back to the Jessop house.

Q. When you say "brief", could you give an estimate at all?

A. A minute maybe.

Q. Through that minute you were at the front door, did you see any reaction from Guy Paul Morin at all?

A. None.

In re-examination he was asked this question:

Q. Can I ask you how clear your present recollection is as to the accused Guy Paul Morin looking ahead when you were speaking to his mother?

A. It's about as clear as the day that I saw the picture on TV and it just flashed in my mind what had happened.

Despite his clear recollection of Mr. Morin's demeanor, Constable McGowan had little memory of other matters relating to his visit to the Morin property. For instance, he could not recall the lighting near the house, the nature of construction work on the premises, nor his approach to the property.

When Ida Morin answered the door, he asked her a number of questions about Christine Jessop and received "basic yes/no answers." In his evidence at the Inquiry, Constable McGowan said that his testimony set out above ("it didn't seem to be assisting me with any information I was getting in response to my questions") was not meant to reflect negatively on Ms. Morin.

Ms. Morin was emphatic that no police officer spoke with her on the evening of October 3, 1984. She had no recollection of Constable McGowan coming to her house. Guy Paul Morin, too, had no memory of Constable McGowan coming to the door that evening. During his cross-examination he conceded that it might have been possible that he was watching TV when the constable knocked on the door. He also hypothesized that he may have been having his supper and did not pay any attention to him because he did not hear him knocking at the door — if, in fact, Constable McGowan came to the house that evening.

Events Leading Up To Constable McGowan's Testimony

Constable McGowan said that he was aware at the outset that the disappearance of Christine Jessop could result in a major missing persons investigation. He therefore carefully prepared detailed notes while sitting at the kitchen table in the Jessop home that evening. While he tried not to leave out anything of importance, there is no mention, in his notes, of his leaving the Jessop premises to go to the Morin home to speak with the neighbours.

Constable McGowan wrote four reports in October, 1984 regarding the events of October 3, 1984. Again, there is no mention anywhere of his attendance at the Morin household, nor of his observations there. He testified during the second trial that he took the case seriously and noted anything of significance, as he knew that his reports and notes could later be used by detectives who might follow up on their contents.

Meetings with the Crown

I have already referred to the August 16, 1989 and November 20, 1989 meetings held at the York Regional Police offices, attended by York Regional and Durham officers, and Crown counsel. Constable McGowan was present for both meetings.

On the day following this first scheduled meeting, August 17, 1989, there is a reference in McGowan's notebook to preparing paperwork on the Jessop case which, he testified, referred to the preparation of another will-say of his activities. This will-say prepared after the meeting included the following passage: "The Morin family was not welcoming, nor was it cooperative. Guy Paul Morin was staring straight ahead at the television." *Again, I find this to be a derogatory comment meant to reflect negatively on the Morins.*

Constable McGowan also attended the November 20, 1990 meeting with Crown attorneys. While McGowan had no recollection of whether in either of these meetings he mentioned seeing Mr. Morin, Detective Fitzpatrick said that he first learned of McGowan's evidence about his visit to the Morins during the November 20th meeting. While Fitzpatrick had some reservations about the late disclosure of such evidence, he did not recall discussing his concerns with his partner, but assumed that he probably spoke about this fact with Inspector Shephard or a Crown attorney.

The Will-Say Statements

According to the evidence, three will-say statements were prepared of the anticipated evidence of McGowan. He was vigorously cross-examined by Jack Pinkofsky on his previous will-say statements to show that his evidence relating to the Morin household and Guy Paul Morin's demeanor was a recent fabrication evolving with time. Accordingly, his various will-say statements were provided to him at trial to demonstrate that his memory had improved

insofar as detail was concerned and to obtain his explanation for this. More important, Mr. Pinkofsky challenged the witness' credibility on the basis that the information concerning Guy Paul Morin's demeanor was not recorded until 1989. McGowan conceded to Mr. Pinkofsky that he had never recorded his observations of Guy Paul Morin in any will-say statement until 1989. (He has resigned from this concession at this Inquiry.) His explanation to Mr. Pinkofsky was that, although the references to Morin were not drafted until 1989, this was not a new or recently fabricated story. In making reference to Constable McGowan's first statement, Mr. Pinkofsky asked the following questions:

Q. When your memory was the best and the freshest, there isn't one word in your statement about Guy Paul, how did you put it, sitting staring, staring, staring straight ahead, is that how you put it?

A. Looking directly ahead.

Q. Looking directly ahead. Not one word about that is there?

A. No.

Constable McGowan's story about his will-say statements at the Inquiry differed vastly from his evidence at the stay proceedings or the second trial. He told us that his 1985 will-say was a very detailed document which did set out his conversation with Ms. Morin and his observations about Guy Paul Morin's demeanor that evening. He stated that an *unidentified person* took this will-say and, for consistency purposes, retyped it on a legal-size sheet to conform with the format used by Crown counsel. The content of this sheet was considerably more concise than that which McGowan claimed, during the Inquiry, was his first will-say document and was, therefore, devoid of the detail he claimed he had included in his first will-say about Guy Paul Morin's demeanor. Constable McGowan was at a loss to explain why, if this explanation was correct, this second will-say, which was prepared by another person, added information not contained in the document that McGowan states was his first detailed will-say. For example, this 'second' document (which McGowan referred to as his second will-say) included details that the Morins purportedly told him about their dog barking and hearing a bus stop out front when Christine got home after school. This was not information that could have been gleaned from the document that Mr. McGowan says was utilized as the source document for this revised will-say.

Constable McGowan said that some time later he was told that his will-say was misplaced, necessitating a new statement. Curiously, Constable McGowan told the Inquiry that he prepared his new will-say by using and copying out the former will-say in his name, that is, the one he claimed had been prepared by the unidentified officer from Durham. He explained that this was the reason that the ‘third’ will-say was not as detailed as his ‘first’ and had errors; he incorporated these errors while copying it.

At this Inquiry, Constable McGowan testified that it was only when he was driving home from the second trial that it occurred to him there was a simple explanation for the variance in detail of his will-says. He claimed that he pulled over to the side of the road on Highway 401, took out all his will-says and analysed them. As mentioned above, questions had been put to him during cross-examination why his first will-say had no detailed information relating to Mr. Morin’s demeanour. It was only when he analysed these will-says at the side of the road, he told the Inquiry, that he realized that the very detailed statement which the Crown, the defence, and he, had believed was his last statement, was, in fact, his first statement. He testified that the will-say statements had been regarding-arranged and the defence had been referring to the statements out of order during the pre-trial proceedings and the trial. His counsel summarized McGowan’s position as follows:

If there was any miscommunication or misinterpretation of the evidence, it was by the defence counsel for Guy Paul Morin, Mr. Pinkofsky. Throughout his testimony, defence counsel was very aggressive and harsh in his cross examination. McGowan could not understand that harsh treatment by Pinkofsky or the confusion over his will say statements, and testified only to what he knew. While he was on the stand, McGowan did not understand the commotion that defence was making over his statements nor was he able to clarify the situation, he could not understand why he was being “reamed out and called a liar.”

Due to the harsh treatment by defence, McGowan was eager to leave the courthouse as soon as he had completed his testimony. He was astonished by the abusive treatment of defence counsel. He wanted to put the entire case behind him.

On the drive home, McGowan continued to be

disturbed about defence counsel's confusion over the will say statements. He pulled over to the side of the road and took the statements out of the car. He soon discovered the basis of the confusion.²⁵

An analysis of his evidence at trial discloses that Constable McGowan was specifically directed on numerous occasions to the various will-say statements during his testimony. At no time did he say that the statements were out of order.

Constable McGowan notified no one associated with the case of his 'revelation' on the side of the road. He did not return to the court house to clarify the situation for Crown counsel, nor did he explain the discrepancy and the reason for the confusion to any of the officers.

Ida Morin's Complaint

Ms. Morin made a formal complaint in accordance with the *Police Services Act*,²⁶ alleging that Constable McGowan had fabricated his testimony and lied under oath. She was adamant in her complaint that she did not speak with him on the evening of October 3, 1984. In accordance with the governing procedure, Constable McGowan was served with the complaint, asked for his explanation, and in due course he responded to the Police Complaints Commissioner.

On June 7, 1992, the Police Complaints Commissioner sent a letter to Ms. Morin. It is obvious that an analysis of McGowan's statements and testimony had ensued. The letter discussed the various will-says and the differences in them. The following passage should be noted:

In re-examination at your son's second trial, Constable McGowan testified that he had been told his first statement could not be found, and in preparing his second statement, he had not been given any instructions as to what information should go in the statement; he prepared it from what he recalled, from his notes, and from what he could remember putting in his first statement. When asked by Crown counsel how

²⁵ A discussion on the conduct of defence counsel is contained later in this Report.

²⁶ *Police Services Act*, R.S.O. 1990, c. P.15, as amended.

clear his recollection was as to your son looking ahead while he spoke with you, Constable McGowan testified “it’s about as clear as the day I saw the picture on TV and it just flashed in my mind what had happened.”

Crown Counsel’s Use of Constable McGowan’s Evidence

Constable McGowan maintained during the Inquiry that he was completely unaware of what use the prosecution would make of his testimony. Mr. McGuigan testified that McGowan’s evidence was called because he was the first officer to attend at the Morin residence and to establish that Guy Paul Morin was inside the house. (Mr. Morin had previously said that he was outside that evening helping his father work on the construction; the evidence of Douglas Greenwood and Ted Carruthers contradicted that.) In his closing address, Mr. McGuigan said, in part:

Now there is this heading called unusual conduct or demeanour ... the observations of P.C. McGowan because during this attendance at the house between 8:30 and 8:45 on October 3rd he testified he spoke to Mrs. Morin and the accused was sitting about eight feet away staring straight ahead; did not turn towards the conversation even though P.C. McGowan was speaking in a fairly loud voice.

He cited other examples of Mr. Morin’s behaviour (and which are discussed elsewhere) and concluded: “Now those are some very unusual and strange type of conduct and demeanour, in my respectful submission, that I’d ask you to look at.”

Mr. Gover’s opinion at the Inquiry was that he did not put any stock in McGowan’s evidence because of its late disclosure. He said that since Constable McGowan had not come forward earlier, or made a note of his observations in his contemporaneous materials, the reliability of his evidence was affected and he found it difficult to accept. Mr. Gover added that he would have not elected to call such evidence had he been in charge of the second trial. In the context of contributing to the wrongful conviction, Mr. Gover thought that the evidence of McGowan likely strengthened the prospect of conviction.

Constable McGowan's Evidence at the Inquiry

Several other features of Constable McGowan's evidence at this Inquiry need be noted. During his testimony, Constable McGowan put forward, for the first time, his opinion that Guy Paul Morin's behaviour that evening may have been innocuous: "[whether he] was unconcerned or didn't realize I was there, I don't know." At no time did he express such an opinion at trial. Several witnesses at this Inquiry sought to minimize the inculpatory aspects of their trial testimony. Some also suggested that they were unaware of the inculpatory use to which their evidence would be put. McGowan did both.

Constable McGowan testified in trial proceedings that he had prepared a will-say statement for the investigating officers for Mr. Morin's first trial in 1985. As explained above, during the Inquiry, he resiled from the position that this was the first will-say. In this statement there is, the following reference to his visit to the Morin house. This is what he wrote, in part:

I checked with the *occupants* of the house on the northside of the Jessop home. The people inside said *they* had heard the bus stop out front, (Leslie Street) to drop Christine off. *Their* dog barked as it normally did when Christine arrived home after school and that was it. *They* didn't hear or see anything unusual. (*Names* not recorded). (Emphasis added.)

During his cross-examination at both trial and this Inquiry, Constable McGowan had no explanation for the use of the plural form which indicated that there was more than one occupant supplying him with information. He said he did not see Mr. Morin Senior anywhere on the premises. His evidence was that he only spoke to Ida Morin at the door.

Similarly, in his evidence before the Inquiry, at one point, he said this:

A. I was on the porch and I could only see in not much beyond the door because I could see the end of the couch. I was — I asked a few questions and —

Q. You were asked a few questions?

A. No, I asked a few questions.

Q. What questions did you ask?

A. I asked if *they'd* seen Christine get off the bus after school and I believe the response was something to the effect that *they* heard the dog barking, as it normally does, when she gets home after school. But *they* saw nothing unusual, heard nothing unusual and nothing to offer. And that's when I returned back to the Jessop house. (Emphasis added.)

The use of the word 'they' once again indicates that there was more than one occupant supplying him with information. Yet, McGowan was adamant that he spoke only with Ms. Morin. While Guy Paul Morin stared straight ahead.

Constable McGowan was again cross-examined on the late disclosure of his evidence. He advised, for the first time, that he spoke to his supervisor about his attendance at the Morin household during the evening of October 3, 1984. Despite the vigorous cross-examinations that Officer McGowan had faced in the pre-trial motion and during Mr. Morin's second trial, he had never before mentioned such a disclosure:

Q. You didn't think, sir, that perhaps given Mr. Pinkofsky's suggestion to you that you had invented this story about going over to the Morins' and seeing Guy Paul there, the suggestion that you'd invented the story in 1989, you didn't think of responding by saying: Well, I didn't invent it in 1989 because I spoke with my supervisor about it in 1985. But you didn't think to say that?

A. No, I didn't.

Findings

Constable McGowan is yet another Crown witness whose evidence emerged for the first time at the second trial. One of his will-says indicates:

It was a mild, damp, dark evening, when I knocked on the door. I was standing on the open porch, when Mrs. MORIN answered the door. I was not made welcome and had a feeling that my presence was bothersome. I made inquiries as to whether she had seen or heard Christine at home, after school. I was advised that

their dog(s) bark when she arrives home. They had done so that afternoon. I recall that during the conversation, I had observed THE ACCUSED seated on a couch in the livingroom area, looking straight ahead, seemingly unconcerned. I was not made welcome, nor offered any assistance. I felt this strange, for an immediate neighbour.

He ends this section of his will-say with the *caveat*: “THIS INFORMATION IS NOT NOTED — BUT RECALLED”

This will-say was intended to reflect adversely upon Guy Paul Morin and his family. Its contents only came forward at, or after, one of the collective meetings earlier discussed. Characterizations such as “I was not made welcome”, “I had a *feeling* that my presence was bothersome”, Morin was “seemingly unconcerned” and “I felt [Morin’s demeanour] *strange* for an immediate neighbour” is the very kind of evidence that is easy to allege, difficult to disprove; easily tainted by the impressions of fellow officers in a collective meeting and easily coloured by the charge against an accused.

And that even assumes that Constable McGowan attended the Morin residence that night.

While it would have been reasonable for McGowan to have attended at the Morin residence on October 3, 1984, considering they were the closest neighbours to the Jessops, I am left with serious doubt as to whether he even did so. Even more problematic is his evidence as to what he saw at the Morin residence and when it was that his impressions of Guy Paul Morin and his family were first recorded.

His notebook says nothing about his attendance at the Morin residence. No supplementary report reflects any such attendance. There were additional difficulties which he had in describing his attendance at the Morin residence. In any event, neither notes nor supplementary reports suggest anything untoward at the Morin residence.

At the second trial, Mr. Pinkofsky cross-examines McGowan vigorously on his ‘late-breaking’ allegation. McGowan concedes that his claims about Morin are not reflected in his early will-say. Then, he swears at this Inquiry that he did, indeed, reflect these claims in his earliest will-say; everyone just got the order of his three will-says confused at the second trial.

This revelation came to him by the side of Highway 401 after he had been cross-examined by Pinkofsky and released by the Court. Perhaps McGowan did stop at the side of Highway 401 to ponder what had happened to him at the trial. But his reconstruction of the order of his will-says is seriously flawed. On his evidence, some unknown person left out the part of his will-say dealing directly with Guy Paul Morin in preparing a second will-say for use at the first trial of Guy Paul Morin. That unknown person did include in this second will-say additional matters which were accurate reflections of what McGowan's recollection would be. Then, he was told that his will-say was misplaced. He said he used the second will-say (which was not his) to prepare his third will-say; that explains the deficiencies in the third will-say. Equally significant, having reconstructed the events by the side of Highway 401, he did not return to Court to advise the prosecutors or investigators that his evidence was inadvertently misleading and inaccurate, and he did not advise any superior officers.

The fact that Constable McGowan did not take this opportunity to rectify his trial testimony ties in with his subsequent actions, or inactions, in relation to a complaint made by Ms. Morin following Constable McGowan's testimony at the second trial.

It is clear from Constable McGowan's response to Ms. Morin's complaint that he did not advise the Police Complaints Commissioner of the revelation he had on Highway 401 which, if accepted, might nullify any allegation that his evidence relating to the Morins was fabricated sometime close to the second trial. Again, in the context of this complaint, McGowan did not advise his superior officers that there had been a complete misunderstanding regarding the sequence of these statements. This further undermines his credibility.

I cannot safely rely upon anything that Officer McGowan told me on the critical issues. Apart from his credibility, it is my view that the prosecution should not have been permitted to use this testimony as evidence of conduct or demeanour consistent with guilt. McGowan's evidence now, which minimizes the significance of his observations of Morin, comes too late. He was aware during the second trial that his evidence was being used to reflect adversely upon Guy Paul Morin.

My later recommendations address the use of this kind of evidence.

(iii) Paddy Hester**Ms. Hester's Claim**

On April 23, 1985, the day after the arrest of Guy Paul Morin, Queensville resident Mary Elizabeth Hester, known to everyone as "Paddy," spoke with Detective Christopher Barratt of the Durham Regional Police Service who recorded her six page signed statement. In describing her involvement and participation in the search for Christine Jessop on the night of October 3, 1984, Ms. Hester told Detective Barratt about an encounter with a 30 to 33 year-old male person wearing a fawn-coloured trench coat, lace-up work boots, and blue jeans. His hair was light and bushy. According to Ms. Hester, this man told her that he lived beside the Jessops and that he had a daughter who was a playmate of Christine. She told the detective that this man's heart was not in the search effort. The detective's supplementary report of that date noted that Ms. Hester advised in response to his inquiry that she did not know that an arrest had been made in the Jessop case. Detective Barratt made the following comment in his report:

It's not my opinion that she is trying to cloud the arrest however in view of the ... matter it should be recognized as a possibility. ... I think her story should be confirmed or denied to save possible headaches later on.

On February 6, 1987, almost two years later, Ms. Hester provided the police with a second handwritten statement relating to her participation in the search for Christine, documenting a markedly different version of her involvement in the search. In her later evidence at Mr. Morin's second trial, she related the following. On October 3, 1984 she received a telephone call from a friend asking if she and her husband could assist in the search for the missing child. They arrived at the Jessops at 10:15 p.m. Those who attended were divided into two search parties. She and her husband joined separate search parties. Ms. Hester testified about her active involvement in organizing the search:

They were standing doing nothing so I put them into squads & sent them off to search the cemetery & ravine, while I took 10 men to search the farm buildings across Leslie St. from Jessop home.

She said she returned to the Jessop home at 11:45 p.m. and then went to the fire hall. She walked back from the fire hall to the Jessops' to find her husband. She claimed that on her way back she saw a red pick-up truck stopped on the east shoulder of Leslie Street directly in front of her. It was on the wrong side of the street for the direction it was travelling. The engine was running, but it was not moving. Its lights were out. As she got within approximately 100 feet from the truck, the headlights came on. She claimed that, being by herself, she was nervous and started to veer to cross the street to the other side, when the car drove over and partially blocked her path. Alphonse Morin, was the driver:

He was wearing work clothes and he had a feed mill type cap on, as you refer to it, a baseball cap, and looked as if he hadn't shaved that day. He had a growth of whiskers on his face.

According to Ms. Hester, he wore construction boots, but since she did not get up on the running board it is unclear how she could see his boots. When Mr. Pinkofsky questioned her about this, she replied: "It was the way he had the foot placed, Mr. Pinkofsky. I could see, glance down." Alphonse Morin asked her where she had searched and whether anything had been found; she told him to go to the fire hall and ask the police.

At the second trial, Ms. Hester described Guy Paul Morin sitting in the truck between his father and his brother-in-law, Frank Devine, wearing a beige trench coat: "[h]e was just sitting there with his hands clasped on his lap looking out the window straight ahead, staring, sort of." Alphonse Morin, Frank Devine and Guy Paul Morin were adamant that these events did not occur; they were not out together that evening.

Ms. Hester purported, in her evidence at the second trial, to have made another observation — this one on October 6th. She testified that on that day, she went to the Morin property by herself, gaining entry by climbing over the fence. She claimed that she approached a car (which she eventually identified as the Honda) parked near the rear of the residence. She looked inside through the windows and saw what she described as "a pigsty." It was, she testified, "full of litter, old coffee cups, and old pieces of paper, napkins, that sort of thing and coffee stains, and it was dirty." She then described a pink cloth or a blanket in the back seat of the vehicle. She said that she was about to open the door to see what was under the blanket when the back door of the house flew open and Guy Paul Morin came out:

screaming and yelling at me to get out of his yard and get away. He didn't want me to look in his car. And I thought, oh, I thought he thought I was breaking in. So I said: "Oh, I'm one of the searchers." That made him even worse. He started screaming and yelling at me and coming at me with fists.

Q. All right. And what did you do?

A. Bailed out over the fence as best I could.

Q. All right. And as a result of going over the fence, did anything — did you in anyway injure yourself or hurt yourself?

A. Yes, I did.

Q. What happened?

A. I ripped my jeans and I cut my leg.

She continued searching despite her injury for a further 45 minutes, but did not seek medical help. The incidents described in her evidence were substantially those related in her handwritten statement.

In both her handwritten statement and in her evidence at the second trial, Ms. Hester said that she had reported both of these encounters to the command post. She testified that she reported the October 6, 1984 incident first to a cadet and, upon his instruction, then to an officer at the command post when she finished searching that day. She testified that she also told the police about the October 4, 1984 encounter but could not recall when she did so. There is no record of any such reports. Of course, Detective Barratt's April 23, 1985 report has Ms. Hester describing a very different encounter.

During the summer of 1989, Detective Fitzpatrick and Inspector Shephard unsuccessfully attempted to locate the command post log book in order to verify Ms. Hester's alleged reports. Nor could the reports be confirmed by the recollections of any police officer or searcher, despite police efforts in this regard, also during the summer of 1989.

At one time, Ms. Hester had been a secretary in the law firm of Pinkofsky, Lockyer & Kwinter. After Mr. Morin's first trial, she was employed by lawyers who shared space with Clayton Ruby. During this time,

Ms. Hester performed some clerical work for Ms. Mary Bartley, an agent for Mr. Ruby, in connection with the Crown appeal of Mr. Morin's acquittal

On January 25, 1989 Detective Fitzpatrick interviewed Claire Hester, Paddy Hester's daughter. According to Detective Fitzpatrick's notebook entry, Ms. Hester recalled her mother:

saying something strange about persons at a house wanting to know what she [was] doing on [the] property. [Her] mother did not appear upset. Went to Huron Heights School at time. Grade 9 or 10. Likely mother told her of incident right away.

Detective Fitzpatrick's supplementary report of the interview reflects that Claire Hester indicated that her mother said something about "a person" asking her what she was doing on the property. Her mother said she thought that was strange because everyone knew about the missing girl.

In a supplementary report dated August 17, 1989, Sergeant Chapman recorded that in an interview with Kim Hester, Ms. Hester's husband, he said that his wife was the type of person who might "guild the lily;" and exaggerate to make herself look more important. However, he was sure she would not do so to the detriment of another, or perjure herself in order to convict Mr. Morin. Mr. Hester said that his wife had told him about the October 6th incident with the Morin Honda the night Christine Jessop disappeared. The transcript of a tape-recorded interview of Mr. Hester on August 31, 1989 by Inspector Shephard and Detective Fitzpatrick records the following questions and answers:

Q. Are you certain that Paddy told you about the incident with Morin and his car on the Wed-Thurs Oct 3rd or 4th

A. Well it's been a long time. I can't say for certain. I know it was the same day it occurred she told me.

Q. couldn't it have been [Saturday, October 6th]?

A. Yes I'm sure it was the same day she told a police officer right after it happened. During the trial Paddy was [agitated] because this info didn't come out. She felt it was either the police or crown decision not to bring it out or to introduce it.

On August 24, 1989, Constable Patrick Hester, Paddy Hester's son, a member of the York Regional police force, was interviewed by Sergeant Chapman. The supplementary report of that interview reflects that Constable Hester was asked if he thought his mother might make something up about her involvement in the case. Constable Hester stated that he could not see any reason for her to do so as she did not know either the Jessops or the Morins.

On March 29, 1990, Ms. Hester took a polygraph test at the request of Detective Fitzpatrick. Mr. Scott arranged for the test to be conducted by the Peel Regional Police Force.

The supplementary report of Detective Michael Stephenson of the Peel police force, dated March 29, 1990 reflects that:

[t]he issue under consideration was whether [Ms. Hester] was telling the truth when she claimed that while engaged in a community search for missing Christine JESSOP, she was confronted by Guy Paul MORIN in his backyard.

The questions asked of a relevant nature were: 1. DID YOU LIE to me today when you said MORIN ordered you away from his car in 84? 2. DID YOU LIE to the Police when you said MORIN ordered you off his backyard in 1984? 3. ARE YOU MAKING UP THE STORY about MORIN confronting you in his backyard?

Detective Stephenson's opinion, on the basis of the polygraph test, was that Ms. Hester was truthful in answering these questions.

February 6, 1987 Interview

On February 6, 1987, Detective Fitzpatrick interviewed Paddy Hester. (At this interview Ms. Hester provided him with her handwritten statement). At this time, the Court of Appeal for Ontario was hearing oral submissions on the Crown appeal against Mr. Morin's acquittal. In her statement, Ms. Hester indicated that ten days prior to writing the statement, Ms. Bartley had asked her to type a draft of the evidence heard at the first trial. According to her statement, Ms. Hester typed the first few pages and then passed the matter to Mr. Ruby's secretary. In her statement, she said "I was so haunted when what I knew from the search clicked with the excerpt from the transcript I

read”. Ms. Hester advised that she talked to Detective James Allen, a York Regional police officer, who advised her to contact Inspector Brown immediately. As a result of doing so, Detective Fitzpatrick attended her home for an interview.

During the Inquiry it was discovered that the February 6, 1987 interview of Ms. Hester by Detective Fitzpatrick was tape-recorded. This fact was not disclosed to the defence at the second trial. The evidence was that prior to the Commission proceedings, the Crown attorneys were unaware of the taped interview. It was only after the completion of Detective Fitzpatrick’s evidence before this Inquiry, that the interview tape was found amongst material turned over to the Jessop Task Force by the Durham Regional Police.

Inspector Shephard found this non-disclosure surprising. Following an interview with Ms. Hester, his January 5, 1989 notebook recorded the following entry: “Interview, Paddy Hester ... Interview tape recorded. Fitzpatrick had interview previous.”²⁷ Inspector Shephard said that he could not recall listening to the tape of the 1987 interview between Fitzpatrick and Hester played at the Inquiry.

Several portions of the transcript of this recording are reproduced below: they serve to illuminate the interview process that had been engaged in with this witness and I will have more to say about this later.²⁸

Fitzpatrick: I’ve also heard okay, somewhere along the line, that Ruby had said that if Devine, if he put Devine on the stand, Devine would send [Guy Paul Morin]

Hester: to the slammer

²⁷ However, when the defence requested disclosure of a tape or transcript in relation to the January 1989 interview with Ms. Hester, they were told that it had not been tape-recorded.

²⁸ Two different transcripts of this interview were filed as exhibits during the Inquiry. The taped interview had much background noise and some distortion; accordingly, certain portions of the tape were inaudible. The different versions are essentially the same, with some variation in what could be heard during the distorted section. For the purposes of this Report, the tape transcribed by a member of the research staff of the Commission is used. This was also the version which was used by most counsel at the Inquiry.

Fitzpatrick: Yes.

Hester: All right this is my, what do you call, Irish sense and the old experience coming [inaudible]. I'll tell you something. The father and Devine are covering up for him.

Fitzpatrick: Well we've always figured the father knew.²⁹

Hester: The father knows and Devine knows but they're covering up. That's my own theory on the thing.

Fitzpatrick: Well both John and I, John Shephard, that was my partner at that time, both John and I always figured right from the word go that the old man knew.

Hester: Oh, the old man knows for sure.

Fitzpatrick: And I think the old lady knows.

Hester: Yeah, but you see what happens the father so [inaudible] the mother is terrified, [inaudible] I feel sorry for the woman.

After listening to this tape during the Inquiry, Inspector Shephard acknowledged that, by relating such information to a prospective witness, evidence could be tainted, leading a witness to “add something more to her statement down the line, whereas she normally wouldn't.”

Detective Fitzpatrick also discussed with Ms. Hester other evidence in the case. In particular, he advised her that pink angora fibres had been found:

Fitzpatrick: Can you recall anything pink in the car that night?

²⁹ In his evidence, Shephard related his reason for believing that Alphonse Morin, but not Ida Morin, knew his son was guilty — on two occasions he and his partner attended at the Morin residence. Ms. Morin was present and spoke to the investigators. Through Ms. Morin, a request was made for Mr. Morin Sr. to call the police to arrange a time to meet, but he failed to do so.

Hester: I didn't get close up to look in the car that night. Is that the Wednesday night you're talking about?

.....

Fitzpatrick: Okay, getting back to this pink

Hester: Yeah, like, you know if someone took a cloth and flung it over something, say you wanted to cover something up in the back of the car. Whatever it was on the floor in front of the back seat [inaudible] Whatever it was it was flung over that, and part of it came up on the back seat but whatever it was covering was higher than the level of the back seat, you know it was about that much higher. And that's what I wanted to see and that's when the bugger came out and went for me.

Fitzpatrick: That's when he started going a bit berserk on you.

Hester: Yeah. Came at me with his fists. He was really berserk. [inaudible] I still have the jeans with the hole in them where caught in piece of wire.

Fitzpatrick: Yeah

Hester: And the damn thing went right into my leg too because it was bleeding like a pig.

Fitzpatrick: Could you, would it have been ah, do you know what angora is?

Hester: Yes.

Fitzpatrick: Could it have been something like that?

Hester: It was ah it wasn't angora but I'll tell you what it was, it was, okay, you know when you see this fabric here has got [inaudible] hairs.

Fitzpatrick: Yeah.

Hester: Fibres

Fitzpatrick: Yeah.

Hester: Well it was the same sort of material, not tweed like this but it had

Fitzpatrick: It would have had, would have been... long hair sticking out of it, like would it have been easy to

Hester: [inaudible]

Fitzpatrick: Yeah.

Hester: It might be, if you were wearing maybe slacks or something like that it would probably who on them I would imagine.

Fitzpatrick: Okay, did you follow the trial at all?

Hester: No, I didn't. I was too sick.

Fitzpatrick: Okay, do you have any idea what it was, if, if we get a new trial [inaudible]

Hester: You know what it reminded me of? What do they call them here, the things they throw over sofas and chairs.

Fitzpatrick: Just a throw?

Hester: A throw. At first that's what I thought it was and then I thought no maybe it's a bedspread or something. And I looked again and I thought no, it's not big enough for a bedspread, and maybe it's just a piece of material, you know, a remnant or something.

Fitzpatrick: Yeah.

Hester: But it wasn't angora but it was

Fitzpatrick: Would it have been a rabbit type thing?

Hester: I don't know. Not [inaudible] I know what angora is, no, it wasn't definitely, it wasn't angora, it was

Fitzpatrick: But definitely a pink

Hester: Oh it was pink because I thought to

myself Oh God.

Fitzpatrick: Yeah.

Hester: [inaudible] like a bloody pig sty. And it was dirty, the pink cloth was dirty.

Fitzpatrick: Ever been in the house?

Hester: Yeah I can believe it.

Fitzpatrick: Okay, now that pink, see we found pink material of an angora type, that's the reason I'm asking for angora. We found it on her, on her body and found it in his car. Of course, but, you know, there's six months of her laying out there, you know, everything with [inaudible] we didn't get too much and of course then our good friend Mr. Ruby says that Queensville is full of hairs and fibres blowing all over the place.

Hester: He's so full of shit. Pardon me. [laugh]

Fitzpatrick: But that was one of the things he did pull, like, you know, in fact he left the jury to believe that if you go to Queensville at all you'd never run into a snow storm, you'd run into a hair and fibre storm. You know, so.

Hester: [inaudible] rot in hell...

Detective Fitzpatrick advised Ms. Hester during this interview of the importance of the pink fabric:

Fitzpatrick: With yourself, Patty (sic), if we had known, we would have been able to put that pink thing in. See we couldn't find, when we searched the house, if I recall correctly, mind you I wasn't at the search cause John and I had *him*. I don't think we found anything pink at all that could match the fibres that we had but you know we are really hoping that we're going to be able to get another kick at him.

During the course of the interview, Detective Fitzpatrick communicated to Ms. Hester further information suggesting that Mr. Morin committed the murder:

Fitzpatrick: I've been in fairly close contact with somebody that is fairly close to Morin and this person feels that if they could probably get him away from the parents she'd get a confession out of him. Also word did come to us that Ruby wanted to plead guilty and Guy Paul was, plead not guilty by reason of insanity and Guy Paul was going to do the same thing.

Hester: He was willing to go with that because Mary Bartley went to the jail to talk to him about that and he agreed to it and then the father came into the office storming and raging, he embarrassed everybody in the office because he started screaming [inaudible] through the front door.

Fitzpatrick: Is that right eh?

Hester: Yeah, Oh god, it was [inaudible]

Fitzpatrick: They're awful people aren't they?

Hester: Oh, they're terrible. He's another reject too. He, I swear, honest to God I swear on the lives of my children and my husband that that old bastard and Devine were covering up. They know. And I'll tell you something they know where different things are too because I think they were the ones that hid them, got rid of them.

Fitzpatrick: Is that right eh?

.....

Fitzpatrick: Well, Shephard and I right from the time we really started to look at Guy Paul as being the perpetrator, and we felt that the father had always known.

Hester: Yes, that's it, you see he rules the household with an iron fist. No one else has a say in anything. You're not even allowed their own thoughts. The father dictates them.

Ms. Hester commented on her knowledge of the legal team defending Mr. Morin:

Hester: I think [inaudible] just because I heard a young lawyer and a couple of students talking [inaudible] and they were saying it was reserved, the decision on it. But Ruby was really depressed. He'd gone out with another lawyer, buddy of his, they'd gone to have a few drinks, to do some talking and Ruby figured it might go against him and [inaudible] another trial.

Fitzpatrick: They're gearing up for it

Hester: [inaudible] I'll tell you something [inaudible] I have a funny feeling if there is another trial, Ruby knows that I know things, he's not sure just what I know but he knows I know things. He probably I think would try, through Bartley or someone else, to tap me and either hamper me from being used or try and see [inaudible]

Fitzpatrick: [laughs] ... Irish in you. You know what they say about us Irish. Well that's like, I'll tell you without a word of a lie, when we've lost, like you know, there's no doubt [inaudible] a person is insane, of course, Guy Paul is insane because psychiatrists [inaudible] three, two psychiatrists and a psychologist say that. I'm not much in love with psychiatrists or psychologists okay, because to me they're always doctors who couldn't be doctors so they go into the mind.

Hester: That's right. Because nobody knows and can't prove them wrong.

Fitzpatrick: That's right. But, you know, I suppose they do have to learn something, I suppose, a lot more than you and I figure but.

Hester: You can learn to read people

Fitzpatrick: That's right.

Hester: You can learn to read them.

Fitzpatrick: And, you know, Orchard, Basil Orchard said at trial that yes he was 1% of the world's population or something, and a very minuscule part of that 1% population fitted into a category that would

commit such a crime and Guy Paul fell within that category. And of course when we get this, we see a copy of this affidavit that he's signing or that he says, you know, he's changing, this is what I said at trial but this is what I meant, nobody asked me this sort of thing, I'm sure it was, well, and Orchard has gone along with it. And it wasn't Ruby's or it wasn't Orchard's stuff at all.

Hester: Orchard didn't know what the hell it contained until he got it put in front of him to sign on the dotted line.

Fitzpatrick: Is that right 'eh?

Hester: Honest to God, I swear.

Ms. Hester commented disparagingly on Mr. Ruby and Dr. Orchard and how Dr. Orchard came to give his evidence. The following exchanges are directed towards Mr. Ruby:

Hester: [inaudible] He surrounds himself with [inaudible] ... literally die for him because he's got them all fucking brainwashed ... Basically Satan worship him [inaudible]

Fitzpatrick: It was obvious at the appeal.

When asked about these comments during the Inquiry, Inspector Shephard said it raised his concerns about bias.

The two discussed the prospect of another murder by Mr. Morin. This was something that had previously been discussed with Frank Devine and, according to Inspector Shephard, perhaps also with the Jessops:

Fitzpatrick: Paddy if, and I hope to God we do get another trial because if [inaudible] definitely no justice if this kid walks because he'll do it again.

Hester: I know. [inaudible] Why do you think I have that black dog and I've got two more coming tomorrow.

Fitzpatrick: Yeah. There's no ifs ands or buts about it. He will do it again like because he beat the system.

Like he said the system works – if you recall what he said exactly.

Hester: That's right. I listened to it last night. [inaudible] shouldn't have said that. [inaudible] He's more inclined to do it more again because he is now [inaudible] egotistical [inaudible] And he's going to do it again just to prove the he can do it and get away with it. And he'll keep doing it. And I'll tell you what's more. [inaudible] He's not going to do it [inaudible] He's going to come back to the same turf and do it again.

Fitzpatrick: Yeah. We even, we, separately we kicked that around. The only other alternative is that he might grab a little girl from Durham Region and dump her in York, just to play games. Play games.

Hester: Yes. ...He could do that. Yes.

Fitzpatrick: If not, he will grab a little girl from Queensville again or York or closer to Queensville and dump her in our area again.

Hester: [inaudible]

Fitzpatrick: Yeah. But he'll dump them over in our territory again.

Hester: That's right.

Fitzpatrick: Okay, and then just sort of sit back and laugh at us.

Hester: Yes. Yes. Because that's exactly what he's doing.

Fitzpatrick: But of course and I think again getting back what you're saying the old man definitely knows because the old man now is controlling him like they just won't let them out of his sight.

Hester: That's right.

Fitzpatrick: He just won't let him out of his sight.

Hester: That's right. That's exactly it.

Fitzpatrick: Anyway, I was going to ask, Paddy, if we get a new trial, you know I'll have to talk to John Scott about you seeing me.

Hester: I don't care.

Fitzpatrick: Okay, and you know you'll be subpoenaed.

Hester: I don't care.

Fitzpatrick: Okay. Good.

Hester: I mean, that's where I was the other day in one of the cases for the York Region boys. I did two positive IDS for them and they're going to crucify the bastards.

Q: [laugh] well you [inaudible] able to do that unfortunately the system does not [inaudible] do it for us.

A: [inaudible] good ID evidence.

Q: Yeah.

Detective Fitzpatrick inquired about Ms. Hester's background. She claimed to have been in British 'Naval Intelligence' in the 1950s:

Fitzpatrick: How long were you in British Intelligence?

Hester: [inaudible] two and a half [inaudible] years. [inaudible] The British Intelligence is different because the more [inaudible]. The British Intelligence is good. But it's more.

.....

Hester: [inaudible] Anyhow [inaudible] experience and everything [inaudible] naval service [inaudible] started off in the staff of the Commander in Chief and I was promoted to [inaudible] assistant to Sir Nigel Henderson. And then I got drafted to Malta where I worked on the staff at Sir John A. Henderson, or not Henderson, [inaudible] answer to the [inaudible] intelligence guys [inaudible].

Inspector Shephard told the Inquiry that he did not recall attempts to verify Ms. Hester's description of her role with the British intelligence service, but did recall that this was being done by someone, perhaps the defence. He was unaware that the defence was advised by the British Ministry of Defence by letters dated December 2, 1991 and January 9, 1992 that Ms. Hester had never worked for Naval Intelligence and that she had actually worked as a 'Wren writer,' or secretary. When cross-examined at trial on this point, Ms. Hester responded that for security reasons she could not provide details, nor would the Navy release that information. In light of Ms. Hester's response, the Crown would not agree to the filing of the letters unless the author could be cross-examined. The Crown's further position was that this was a collateral matter upon which the defence was not entitled to adduce evidence.

During the interview, Detective Fitzpatrick asked Ms. Hester whether she had previously reported her version of the events:

Fitzpatrick: Do you know. Just, my mind's racing a thousand things here. Do you know. You mentioned to [inaudible] when you saw this pink stuff into the car you mentioned it to York Regional detectives.

Hester: Yes I did. And he wrote it in a log. [inaudible]....

Fitzpatrick: yeah, okay. I never did see their logbook.

Hester: Can you put your hands on it?

Fitzpatrick: Yeah. All I got to do is call Bob Wilson about it.

Hester: Yeah. Call Bob. I know Bob. Call Bob and ask him, if you look on your Saturday, last day of the search was the Saturday [inaudible] it should be in there because I went out, I was one of the [inaudible] search parties going at once and I was at the one that did the stretch and that was the first one in the morning you know on that area.

As indicated above, although the investigators were able to confirm that Ms. Hester participated in the search, they were unable to verify her claim that she had previously reported these incidents.

Detective Fitzpatrick also questioned Ms. Hester about ‘remnants of blood’. He questioned her in a manner which Inspector Shephard told the Inquiry might taint her evidence. This is what was said:

Fitzpatrick: Can you recall, you said you have an excellent memory, can you recall ever seeing the driver’s side of the vehicle, can you recall ever seeing any brown spots or blood or anything that looked like blood on the vehicle?

Hester: Driver’s seat. A lot of dirt marks, what I thought were dirt marks.

Fitzpatrick: Okay. Did you notice them on the handle, of course the car was filthy.

Hester: The car really was filthy.

Fitzpatrick: Can you recall ever seeing them on there at all or? [Pause] There was remnants of blood found on the driver’s wheel and on the door handle of the car. That of course, being so old, that was six months from the time she went missing, of course, and the CFS didn’t even group it to say [inaudible] human blood or animal blood or anything.

Hester: Like I just took it to be like [inaudible] There’s one thing I did notice. I thought it was like coffee [inaudible] driving along and you hit the brakes and you have a cup of coffee [inaudible] and it flew out.

Fitzpatrick: Yeah.

Hester: [inaudible] I saw that.

Fitzpatrick: On the car?

Hester: [inaudible] I thought it was that. I don’t know if it was coffee but I [inaudible] you know those paper cups you get when you go to Mr. Donut or something.

At a later point in the interview, Detective Fitzpatrick exclaimed “Jesus, it’s too bad you didn’t get, we weren’t able to get [inaudible] you before.”

Inspector Shephard acknowledged that Fitzpatrick did not conduct this interview in a professional manner so as to elicit a reliable and accurate account from Ms. Hester. He further agreed that Ms. Hester's comments about Mr. Morin's lawyer at the first trial raise a concern about bias.

Shephard testified that the following statement might give him particular cause for reflection on Ms. Hester's reliability:

Hester: I've thought about, since that Saturday morning, [inaudible] picked up the next door neighbour and charged him with murder, I almost did cartwheels and flips and my old heart was going ... I thought [inaudible] was right.

At the time of their evidence before the Commission, neither Mr. McGuigan nor Ms. MacLean had read the transcript of Detective Fitzpatrick's interview of Ms. Hester. Both had been advised generally of its contents. Mr. McGuigan expressed surprise that he had not been provided with a transcript of the interview at the time of the second trial. Lengthy excerpts were read to Mr. McGuigan and he provided his comments, as set out below. Ms. MacLean said that, had she been aware of the discussion, it would have altered her assessment of Ms. Hester's reliability and credibility. For example, she and her co-counsel had wondered whether the pink throw Ms. Hester described in the Honda might be the source garment of the fibre evidence. Detective Fitzpatrick's comments about pink fibres would have greatly concerned Ms. MacLean, apart from the tenor of the entire conversation as she understood it.

Mr. McGuigan found the suggestions and information provided by Detective Fitzpatrick to be inappropriate. He elaborated as follows:

- Suggestions to a prospective witness that Mr. Morin was guilty may colour the witness' evidence;
- The reference to looking for pink angora was troubling in that the witness may attempt to fill in the void;
- Ms. Hester's dislike of Ruby was obvious, giving an indication of bias. Mr. McGuigan was not sure how

that would filter into the case given Mr. Ruby was not involved at the time of the interview;

- Mr. McGuigan was not concerned by police questioning as to work done on the case for Mr. Ruby's office, subject to the issue of privilege. His sense was that neither Ms. Hester nor Detective Fitzpatrick understood the principles of privilege;
- Ms. Hester's statement that she was almost doing cartwheels and flips when she heard Mr. Morin had been arrested for murder gave cause for concern about her reliability.

Mr. McGuigan suggested that if Ms. Hester's handwritten statement, which was provided prior to any prompting by Detective Fitzpatrick, was consistent with her evidence, one might conclude the interview had no effect on her evidence. Nonetheless, Mr. McGuigan agreed that the manner in which Ms. Hester refers to Mr. Morin and his family and to Mr. Ruby would give serious cause for concern. He described the interview as "a very serious matter" and upon review, he may very well have decided not to call the evidence.

Mr. McGuigan also expressed his view that the manner in which the interview was conducted may be a product of the person being interviewed. In that regard, he had some sympathy for Detective Fitzpatrick in that "you say one word and away she goes".

Inspector Shephard testified at the Inquiry that he was concerned about Ms. Hester's veracity and the impact her evidence may have on the Crown's case should she be shown to be a liar. He was sceptical of both her story about Mr. Morin and of her claim to have worked for the British Intelligence. During the stay motion, he learned that the latter claim could not be supported by work records. He also knew that she had previously worked at Mr. Pinkofsky's office and claimed to have had an altercation with his partner. He expressed his scepticism to John Scott and "probably" all of the other Crown attorneys involved in the case. He could not recall any Crown counsel expressing reservations about Ms. Hester's veracity.

Detective Fitzpatrick was directed to Ms. Hester's original (1985)

statement, the police attempts to verify her later (1987) account, and her husband's comment concerning her credibility (set out above). He was asked:

Q. At the end of the day, Mr. Fitzpatrick, where this woman Hester was concerned, there were several reasons, were there not, why one might take her story with a pinch of salt, to put it politely? Do you agree with that?

A. Not really, no.

When asked if he thought her evidence was credible, he responded:

A. I placed the evidence before the Crowns. I don't place it before a jury in a trial, and how the Crowns handle it, that's their decision.

Fitzpatrick was sure he discussed Ms. Hester with the Crowns.

Mr. Scott said that he arranged to have Ms. Hester undergo the polygraph test, in part, because her evidence had come forward so late, and partly because of her past relationship with the law firms involved in the case. Mr. Scott's concerns with regard to the timing of the evidence were eased by Ms. Hester's assurance that she had contemporaneously reported the incidents. In that regard, his experience obtaining records of the command post had been less than positive in that a number of items that were supposed to have been there were not, and were never found. Mr. Scott also spoke to another Crown attorney who had called Ms. Hester as a witness in another case and whose assessment of Ms. Hester's veracity was "strong." Mr. Scott may have also spoke to Constable Patrick Hester, Ms. Hester's son, at some point. No negative comments as to her credibility were communicated to him.

Mr. McGuigan called Ms. Hester at Mr. Morin's second trial. He understood that prior to his involvement in the case, the issue of her reliability had surfaced with Mr. Scott, primarily, and the investigating officers. Mr. McGuigan's understanding was that the concerns arose out of the timing of the evidence and Ms. Hester's unique personality, which could arouse suspicion. Mr. McGuigan was aware of the results of the polygraph test. He knew that while family members, and one a York Regional officer, had indicated that they had some concerns about her credibility, they did not think she would make up such a story. He also knew that another Crown attorney

who had prosecuted a case, in which Ms. Hester was the complainant, thought she was credible. Both Mr. McGuigan and Mr. Smith told the Commission that neither Inspector Shephard nor Detective Fitzpatrick expressed concern to them about Ms. Hester's reliability. To the contrary, Mr. Smith suggested, the police went to some lengths to demonstrate her credibility.

Mr. McGuigan could not recall whether he asked Ms. Hester why her evidence came forward so late but he remembered that she had expressed surprise that she was not called at the first trial. In reviewing her evidence, nothing caused him to question her credibility. The absence of a contemporaneous record was not determinative. The fact that the reports could not be confirmed by the recollections of any police officer did not surprise Mr. McGuigan given the routine nature of the matter being reported.

Mr. McGuigan's position on this issue as it related to the evidence of Ms. Hester, Constable Robertson, and Messrs. Greenwood and Carruthers, all of whom claimed to have made a contemporaneous report (claims which could not be confirmed) was expressed as follows:

So you come to two conclusions. Either they didn't make it and they're lying about it, or there's some very poor note taking or record keeping on the part of the York Regional Police.

Mr. McGuigan had not decided whether he accepted Ms. Hester's claim to have been involved with British Intelligence. He had been informed by the police that telephone contact had been made with the authorities in Great Britain who had advised that records as to whether Ms. Hester had worked in Intelligence were privileged. In light of this, the accuracy of the letter received by Mr. Pinkofsky from the British Intelligence indicating that she had been employed as a secretary was suspect. Mr. McGuigan did not know whether the defence was advised of Detective Fitzpatrick's telephone inquiry. (It was not referred to in the letter received by the defence, *supra*.)

Mr. McGuigan also considered that Mr. Pinkofsky recommended Ms. Hester to Mr. Ruby's firm, an indication that she was not a "flake".

In Mr. McGuigan's opinion, Ms. Hester was a good witness. He denied that the Crown attorneys were embarrassed by having called her. Although the jury showed amusement at the way she described things, given her unique turn of phrase, he did not think they were amused by the

testimony itself.

Although he had no specific recollection, Mr. Smith was sure the Crown attorneys discussed Ms. Hester's veracity, particularly her claim to have worked as a spy. Mr. Smith concluded that Paddy Hester "did not fall into a black and white category" of witness in that she was a "shade of grey." In that context, he understood there were potential problems with her veracity.

Ms. Lorraine Pike was a Crown witness at Mr. Morin's second trial and at the Inquiry. Her evidence relevant to the issue of the Jessop's arrival time home on October 3, 1984 is discussed elsewhere in this Report. Ms. Pike's daughter is married to Paddy Hester's son, Constable Patrick Hester. As mentioned above, Constable Hester was a member of the York Regional police force. During her evidence at the Inquiry, Ms. Pike said that despite her relationship with Ms. Hester (as a result of her daughter's marriage), she did not know Ms. Hester very well; their relationship was "distant." Ms. Pike expressed her opinion that although Ms. Hester exaggerated at times to make herself seem important, she would not go so far as to say Ms. Hester told lies. At the time of the second trial she was not asked nor did she convey such an opinion to the police or the Crown attorneys. Neither Mr. McGuigan nor Mr. Smith were aware of the relationship by marriage between Ms. Pike and Ms. Hester.

Findings

Ms. Hester's present ill-health precluded her from testifying before this Commission. I did have the benefit of hearing her on tape, in the context of an interview conducted by Officer Fitzpatrick.

The day after Morin's arrest, Paddy Hester came forward with a story. It described a discussion with Christine Jessop's next-door-neighbour whose "heart was not in the search effort." The officer appreciated that it was possible that she was trying to "cloud the arrest," which I take to mean that she was possibly an intermeddler who had nothing to offer. If I am right, his assessment may have been unerringly right and prescient of what would come.

Hester was not called upon for Guy Paul Morin's first trial. (The prosecutors were unaware of her evidence.) Mr. Morin was acquitted. The Crown appealed. Prior to the second trial, Ms. Hester was motivated to come

forward to assist the prosecution. She alleged that she had witnessed a strange encounter with the Morins in a pickup truck (with Morin staring straight ahead) and a second incident where Morin had chased her away from the Morin Honda before she could search it.

She claimed that her story had been reported to the York Regional Police in a timely way. Indeed, this was a common thread running through the evidence of a number of the ‘late-breaking’ witnesses to meet the defence suggestion that their evidence was more recently fabricated. This evidence is summarized when it arises in this Report. For example, we have already seen that Robertson claimed that he left the missing blue sweater at the command post.

I have earlier commented upon the failings of the York Regional investigation in Chapter IV. There may be instances where ‘late-breaking’ evidence could be explained in this way. *However, I do not believe that the command post was some ‘black hole’ or that York Regional Police were so incompetent that all of the ‘late-breaking’ evidence at the second trial can be so explained. At some point, the absence of any confirmatory records defies coincidence and raises serious issues as to the reliability of claims made years later and well after Mr. Morin’s arrest and first trial.*

Ms. Hester’s claim would appear inconsistent with the supplementary report prepared about her in 1985. Family members did suggest that part of her claim was made in a more timely way to them. These same family members raise an issue as to her tendency to exaggerate, though not maliciously so.

Ms. Hester’s claim that she played an important role in Naval Intelligence excites the gravest suspicion — particularly, when a letter from the British Government described her, in essence, as a secretary. Her response — that the Navy would not reveal her true role for security reasons — should have excited even graver suspicions. The Crown’s response — the letter(s) were hearsay and the issue collateral.

The February, 1987 interview that Officer Fitzpatrick conducted with Ms. Hester was disturbing, both in what it said about her attitude and in what it said about Fitzpatrick’s approach. Her animosity towards Guy Paul Morin (and his counsel) was patent. Her admission that “she almost did cartwheels and flips” when Morin was charged with murder was particularly illuminating.

In the interview, Officer Fitzpatrick shared with Ms. Hester the evidence which existed against Guy Paul Morin. In particular, he told her what forensic evidence was found in the Morin Honda (including ‘remnants of blood’) as an introduction to questions as to what she saw in the car. He shared with her his and Shephard’s views as to Guy Paul Morin’s guilt. He expressed how much he wished they had known about her evidence before. This was a text-book example of how *not* to conduct an interview.

In fairness to Officer Fitzpatrick, I do appreciate that Paddy Hester’s personality, irrepressible manner, shared views in Morin’s guilt and gossipy treatment of the defence, may have caused Fitzpatrick to be more suggestive and careless than he otherwise would be. However, we do not know what many of the interviews with Crown witnesses sounded like; these generally were unrecorded. A few glimpses at conversations that were recorded indicate that other witnesses were also told in no uncertain terms that Morin was guilty, family incest was raised (though these false allegations did not originate with the officers) and witnesses were questioned in a suggestive fashion. This interview may represent an extreme example of what was happening with a number of witnesses, but it remains an example, nonetheless.

Disclosure of this taped interview to the defence would have, in my view, seriously, if not fatally, undermined Ms. Hester’s credibility. However, I find that it was not disclosed to the defence, or for that matter, to the prosecution. This is disturbing. Shephard’s notes did reflect that Hester had been interviewed at an earlier date than in 1989, when she was interviewed again. The notes make it appear that the 1989 interview was tape-recorded. When defence counsel sought the tape-recording, they were told that the 1989 interview was, in fact, not recorded. No one told the defence that the 1987 interview had been recorded instead. I cannot find that the tape-recording was deliberately suppressed by Fitzpatrick. I do not know one way or the other. But I will say that this tape-recorded interview was cogent evidence in support of the taping of police interviews with important witnesses. My later recommendations address this issue.

Though I find that this interview was powerful evidence as to Ms. Hester’s unreliability and as to the conduct of the investigation generally, I do not find that Ms. Hester’s trial testimony originated as a result of this interview. As reflected in my summary of the evidence, I do accept that Ms. Hester brought her allegations to Fitzpatrick in writing, before this interview took place.

In summary, I find that Paddy Hester's evidence cannot be safely relied upon. Frankly, based upon what I heard at the Inquiry, it is difficult to imagine anyone placing any weight upon her evidence at the time. However, as I previously reflected, the three prosecutors at the second trial did not *know* that her evidence was false. They were told that she passed a polygraph test. They viewed her evidence as confirmatory of other evidence, such as that of McGowan (who also talked about the Morin 'stare') and Robertson. The prosecutors also viewed her evidence as confirmatory of the forensic evidence relating to the Honda. Of course, by the time Hester made her claim, she had the full opportunity to have learned what forensic evidence existed. The prosecutors did not have the February 1989 interview. The extent to which they discussed her unreliability with the investigating officers is unclear.

I find that the prosecutors did not objectively assess Ms. Hester's reliability. They easily discarded evidence which undermined her credibility. They were not terribly interested in determining whether her evidence about her status in Naval Intelligence was true. Their role was seen as advocates in an adversarial system. It was for the defence to explore her unreliability. It was for the prosecution to resist in full adversarial fashion. I have already indicated that Mr. McGuigan could draw upon his formidable experience in assessing witnesses. He knew that Ms. Hester's testimony had certain flaws. I am unclear as to the extent to which he truly appreciated how flawed her testimony was.

Apart from Ms. Hester's unreliability, I am of the view that her evidence about the encounter with the Morins in the pickup truck should not have been admitted into evidence as yet another example of what was put to the jury as conduct or demeanour from which consciousness of guilt could be inferred. I need not decide whether the evidence could have been admitted at the instance of the prosecution to rebut Mr. Morin's position that he was home at the time Ms. Hester purportedly saw him.

(iv) Doug Greenwood and John Carruthers

Background Investigation

In 1984, John Carruthers, Doug Greenwood and Christine Jessop's father, Robert Jessop, were members of the Queensville Volunteer Fire Department. On learning that Christine was missing from her home, Greenwood and Carruthers joined other community members to search for

Christine.

It was not until January 5, 1989 — almost four years after the arrest of Mr. Morin — that Detective Fitzpatrick was advised by Robert Jessop that Messrs. Greenwood and Carruthers claimed that they felt so strongly that Alphonse Morin was hiding something on the night of the search that they made a report to the York Regional Police force at the time. Inspector Shephard and Detective Fitzpatrick were unsuccessful in their attempt to find any documentation substantiating such a report to the York Regional police. In fact, on February 1, 1985, Detective Fitzpatrick interviewed Mr. Carruthers concerning a potential suspect who worked at his place of business. During this interview, Mr. Carruthers was neither asked, nor did he communicate, any particular observations he had made or concerns he had had relating to his search on October 3, 1984.

On January 13, 1989, Inspector Shephard and Sergeant Chapman interviewed Mr. Greenwood. A transcript of this taped interview reads, in part, as follows:

Greenwood: Guy Paul wasn't there ... [Alphonse Morin] was the only one there [at the Morin property], we looked all over, we got quite interested in what he was doing because (sic) just seemed like everybody in Queensville was looking for this little girl except for the next door neighbour .

.....

And I know I got down in the trench (sic) and wondered if he [Alphonse] was burying her or something at that point, ah, or hiding something in the concrete that he was pouring.

.....

[A]nd then he went and [testified] that he was out looking for this little girl and he sure wasn't that night[.] I heard him say that over the ... news that he was out searching for the girl but he sure wasn't. ... We thought it was him that killed her or took her at that point.

Inspector Shephard expressed his wish during the interview that “we

had known about you and Ted four years ago.” These two witnesses were able to testify during the second trial about Alphonse Morin’s lack of interest in the search and provided information that Guy Paul was not working in the yard with his father, as he had claimed in his statement to the police.

Detective Fitzpatrick interviewed Mr. Carruthers in Western Canada (where he had moved in 1985) by telephone on January 13, 1989. His supplementary report reads, in part, as follows:

We had information that Carruthers may have had some info re: Morins that night.

Carruthers advised that he and Doug Greenwood felt that the family were acting unusual and they felt that they should check the house and as they were going to, someone stopped them and said that was the Police’s responsibility. So they went and told their Captain who in turn told the police officer at the Jessop residence.

On November 11, 1991, at a meeting attended by Alex Smith, Ted Carruthers, Doug Greenwood and Detective Fitzpatrick, Mr. Carruthers provided a more detailed statement which contradicted portions of what he had said on the telephone. Detective Fitzpatrick’s notes which record this meeting read:

Carruthers stated he has thought about incident, and said some things different than report statement. Now remembers the sheets to windows, people peering out at others, etc.

Detective Fitzpatrick denied providing Mr. Carruthers with any information about what other witnesses, such as Ms. Hester and Constable Robertson, reported concerning the Morin family peering out of the window.

In the telephone interview, Mr. Carruthers said while the family was acting unusual, he did not search the property. This is in contrast to his later statement in which he recalled spending some time searching the property.

During the Inquiry, Detective Fitzpatrick testified that the Carruthers and Greenwood evidence might be categorized as ‘weird evidence,’ as it presented an eerie view of what was going on at the Morins that night. Inspector Shephard testified that he accepted the evidence of Messrs.

Greenwood and Carruthers, as these men were not overly suspicious, a symptom he had observed in various Queensville residents. He was not troubled that he could find no support for their claim that they had reported their concerns at an earlier time. In hindsight, Inspector Shephard thought he may have been overly accepting of the evidence because it pointed to Morin's guilt.

Trial Testimony

Messrs. Carruthers and Greenwood testified that they were on the driveway at the Jessop home in the evening of October 3, 1984, awaiting instructions, when they noticed a 55 to 60 year-old man, standing at the southwest corner of the Morin property. *He did not appear as concerned as others that evening.* He was working along the side of his house, digging and pouring footings. Beside him was a cement mixer which was running. No one else worked with this man, who remained outside for approximately half an hour. Greenwood testified that he remembered saying to the police that night regarding this neighbour: "Maybe he's down there burying the little girl."

Greenwood and Carruthers said they later walked over to the Morin property and looked in the backyard when no one was there. Two-by-fours held plastic which covered flood lights that had been left on near the house. An empty cement mixer near the house continued going around and around, rattling stones most of the evening. A trench had been dug along the south side of the house; concrete had been poured into the bottom of this excavation.

Guy Paul Morin said in cross-examination during the second trial that he stopped working in the yard at approximately 9:00 p.m. that evening. He was unable to explain why neither Mr. Greenwood nor Mr. Carruthers saw him working when they went on the Morin property to search. Both he and his father said that the men must have been mistaken when they testified there was a cement mixer on the premises: they did not own one at this time and they were not using cement for their renovations; in fact they purchased a cement mixer a year after Guy Paul Morin's acquittal in 1986.

The two volunteer firefighters testified that at no time did they see Guy Paul Morin, or anyone else, in the company of the man they had seen. Even when they returned at 11:30 p.m. from searching for Christine, the lights were still on. No one, however, was working. By this time, Mr. Carruthers

said, the Morins had placed curtains or sheets over the front window. On at least one occasion, someone peered out. He and a few firefighters went out searching again and returned at approximately 2:00 a.m. Again, he noticed someone peering through the sheets or curtains. The flood lights were still on.

Mr. Carruthers testified that subsequent to the initial contact with Detective Fitzpatrick in February 1985 (about a co-worker), over the next five years he received a number of telephone calls from the police. Towards the end of the trial, the Crown made an admission which the defence commented upon to the jury in the following words:

Now I think, first of all, as a prelude to this re-examination, the Crown is prepared to admit as a fact that the first time any Durham police officers spoke to either Mr. Greenwood or Mr. Carruthers was sometime in 1989.

Messrs. Greenwood and Carruthers were forcefully questioned by Mr. Pinkofsky. Crown counsel Alex Smith told the Inquiry that a number of witnesses were cross-examined vigorously — and, in his view, unfairly — by Mr. Pinkofsky and he was surprised these two men were questioned so severely since he considered them to be ‘straight-forward people’ with no stake in the outcome of the case. He said that his experience with the Crown had taught him that people’s evidence changes with time; it sometimes improves, at other times it worsens, but it rarely stays the same. Mr. Smith believes that once asked specific questions, a person’s memory often improves because they are forced to focus on particulars. It was his opinion that the evidence of Greenwood and Carruthers was made into a greater issue than it deserved and thought the cross-examination by Mr. Pinkofsky got out of control. By way of example, he recalled that Mr. Carruthers was chided by Mr. Pinkofsky about his command of the English language:

In putting prior statements to him or prior testimony, it was suggested that he had a very good grasp of the English language and Mr. Pinkofsky suggested that the witness certainly never failed English, and I recall the witness pausing and turning beet red and indicating that, in fact, he had failed English...

I will comment about the conduct of the defence later in this report.

Use of the Evidence by the Crown

In its factum for the Court of Appeal, the defence, *inter alia*, said this about the evidence of Messrs. Greenwood and Carruthers:

In itself, the evidence of Greenwood and Carruthers was insignificant. It was, however, given considerable weight by the Crown in his closing address, and the trial judge in his charge.

According to the Crown, the significance of the evidence of Greenwood and Carruthers was this:

- neither saw Mr. Morin working outside of his home on the night of October 3, 1984, contrary to Mr. Morin's evidence;
- both remembered a cement mixer on the Morin property, contrary to the evidence given by Mr. Morin and his father;
- the flood lights were alight outside the house at 11:00 p.m., contrary to Guy Paul Morin's statement that he took the lights — he said they were tri-lights — into the house at approximately 9 p.m.

Much of the closing address of Mr. McGuigan in relation to Greenwood and Carruthers was used to correct misstatements Mr. McGuigan thought that Mr. Pinkofsky had made in his closing. He also said this:

It is submitted that the family got together at some time and certainly prior to the alibi notice being sent out by the accused counsel to the Crown and concocted this alibi.

.....

Let's testify [sic] that if the accused went shopping he couldn't get home until after 5 or 5:30. He gets home, has a nap, helps his father with the renovations. Would a man who just killed a little girl be helping his father with construction work? Problem: this trial, as you heard in cross-examination, neither Mr. Greenwood or

Mr. Carruthers were ever called as witnesses at the last trial. Their testimony indicates that the accused was not out helping his father when they made their observations. You have not heard from any witnesses other than his immediate family that he was out working that evening.

Finding

I do not believe that Messrs. Greenwood and Carruthers knowingly concocted a story to help convict a person whom the police believed to be guilty. They were respected members of the community, volunteer firefighters, and when the word spread that their colleague's child was missing, they went at once to help in the search. However, there is no contemporaneous record of their recollections and, as indicated above, their account changed over time. There may be a question as to how much weight should be given to their evidence. However, I do not find any prosecutorial impropriety in dealing with this evidence.

(v) Leslie Chipman

Ms. Chipman's Evidence

Leslie Chipman's evidence at Mr. Morin's second trial was summarized by Leo McGuigan as follows:

Leslie Chipman. Leslie Chipman was the 17 year old high school student who in 1984 attended Queensville Public School and was a classmate and close friend of Christine Jessop or, as she describes it, "I would probably say she was my best friend." They were the same age and used to play together either at the park or at Christine's home.

She testified that approximately two weeks before October 3rd, 1984 she was at Christine's house after school. She believes on that day that they met at the store, both were riding their bikes. Christine had taken the school bus home from school. She indicated that she and Christine were playing out in the Jessop driveway or looking out for squirrels when they observed the accused clipping the hedges on his property line at the back of his property, that is, behind

his house. He said, “hello” and asked them if they would like to come over and talk.

She testified that they went on to his property and talked with him for about five to ten minutes. This conversation took place at the front of his property near the fence. She described how they left the Jessop property, went across into the Morin property and he came and met them. Miss Chipman states that the accused asked them what they liked to do, where they liked to play. He asked Leslie where she lived. She testified that during this conversation the accused had the clippers in his hand and he held them so tightly that his knuckles were white.

She testified that the very next day she saw him again and he was in his yard clipping the hedges again. As she stated it, “he was back at his hedges again” and he said “hello” to Leslie and Christine on that occasion. She testified that about a week before Christine was abducted, on the previous Wednesday, she believes, the accused again said “hello” to her and Christine and they said “hello” to him. She testified that the accused was clipping the same hedges again.

I submit to you that in my observation and I hope in yours, that Miss Chipman was quite truthfully recounting her experiences in meeting the accused in the two week period leading up to Christine’s disappearance. That issue, of course, is something for you to decide based on the abilities that collectively you possess.

Why was the accused on three occasions during that period clipping the hedge between the Jessop and the Morin property? He denies that this happened. And I submit Miss Chipman is worthy of your belief in that regard. I submit that this was his vehicle for watching those two young girls.

Interviews

On October 3, 1984, Christine Jessop and her friend, Leslie Chipman planned to meet after school at the park to play with their dolls. Both would be there by four o’clock. Ms. Chipman estimates that she arrived between 3:50 and 4:00. She waited for some time, but when Christine failed to arrive,

she returned home. She telephoned the Jessop residence several times, but did not receive an answer until 6:30 that evening.

In the weeks following Christine's disappearance, Ms. Chipman spoke to officers from the York Regional Police on several occasions. She told them that approximately a week before Christine disappeared, two men in a white sports car with tinted windows had followed her and Christine first to the park, then to the general store and finally back to the park. She also gave them information about other men speaking with them at the tennis courts.

After Ms. Chipman saw the television coverage of the arrest of Guy Paul Morin and realized that he was Christine's neighbour, she spoke with a friend about her contact with Mr. Morin in Christine's presence. Her friend relayed this information to the police, who interviewed Ms. Chipman on May 23, 1985. On that day, she provided a signed, detailed, five-page statement to Detective Raymond Bunce which included the following information:

When we got to Christine's house I saw a boy about 20 yrs. old on his property clipping his hedges, by Christine's driveway so we put our bikes in Christine's garage. Then we walked outside. The fellow called us over asking "would you guys like to come over to my house in the backyard to talk?" ... While we talked with him, he always held on to his clippers so tight his knuckles turned white.

.....

The following day I was at Christine's house again and this fellow appeared to be [clipping] the hedge in the same area again and this time he just said "Hi Christine" and I walked over to talk with him over the hedge. Again he asked me where I lived and he also asked Christine what she was doing that night.

.....

Approx. 1 week later, this was on a Wednesday, I believe a week before Christine went missing, I was at Christine's house about at 4:00 p.m. and we played around on her front lawn while this fellow was clipping his hedge and he called to us and said "Hi."

The next day I was with Christine and we just arrived

at her house and this fellow was sitting on a chair in his backyard of his house. Then when he saw Christine and I arrived he got up and then went over and started clipping the hedge again.

I recall that was the week Christine went missing.

Following her May 1985 statement, she was interviewed on at least seven subsequent occasions by police and Crown attorneys. While she was not able to be specific, she told the Inquiry that she was given the impression by some of the officers that Mr. Morin was ‘odd,’ and this, she said, influenced her to believe that he was, indeed, guilty of her friend’s murder.

The manner in which the information contained in this statement was elicited from Ms. Chipman and subsequently used at Mr. Morin’s second trial was discussed at the Inquiry. Ms. Chipman was 10 years old when she was interviewed in her home; there was no adult with her while she spoke with the officer. She said that, on reflection, she would have preferred that her mother had been present for the interview:

I just think that my mom would have been able to stop me where it should have been stopped, rather than let questions keep coming and make me second-guess myself. You know, at ten years old, second guessing yourself is pretty hard to do.

Use of the Evidence by the Crown

John Scott decided not to call Ms. Chipman as a witness at the first trial. In part, his reason was that no other evidence supported Ms. Chipman:

I had a little bit of difficulty, because there was no – Mrs. Jessop never mentioned anything about – on my recollection, at least, about Mr. Morin being in the area of the side there, property lines, or anything of that kind. So there was nothing else that supported. She was a young kid, and I chose not to expose her to the criminal process at that stage.

Mr. Scott also believed that he spoke with one of her teachers who also raised concerns about Ms. Chipman’s credibility. Mr. Scott does not recall speaking to Mr. McGuigan about the hedge itself — though in his opinion it only amounted to a few sparse cedar trees.

During the preparatory phase for the second trial, Crown counsel reconsidered tendering the evidence of Ms. Chipman. She was interviewed by Leo McGuigan before the trial and his contemporaneous notes reflect this:

- Hedge incidents.
- She now thinks it's odd the number of times he was clipping his hedge.
- Some of the incidents might be on weekends, not always after school.

.....

- Thinks now he was clipping his hedge so much, must have been watching her.

In June 1990, police officers spoke with Ms. Chipman's former principal at the Queensville Public School. He told them that she had a desire for attention: she would, for instance, pretend to be emotional about Christine and then, minutes later, play happily with other children. In his opinion, she would 'most definitely' exaggerate to gain attention. While Mr. McGuigan was aware of this report, he felt it was not unusual for a young child to be upset one moment and then to carry on with her classmates the next.

According to Mr. McGuigan, the importance of Ms. Chipman's evidence was that on three separate occasions Mr. Morin would have gone into his backyard to trim a rather insubstantial hedge when Christine Jessop appeared on the scene; this, to him, was strange conduct. While the 'white knuckles' were part of the scenario, Mr. McGuigan said that this description was not the purpose of leading Ms. Chipman's evidence, but was simply part of the narrative of an unusual event.

In Ms. MacLean's pre-jury charge submissions, she told the Court that she wished to delve into

an area that deals with demeanor or conduct [of Mr. Morin] consistent with guilt.

.....

[T]he fourth example, your honour, is the Leslie Chipman evidence about the accused gripping the

hedge clippers so tightly that his knuckles were white. Again, that was of course in the presence of Christine Jessop and that conduct, the Crown submits, would be conduct consistent with guilt.

Ms. Chipman's Evidence Before the Inquiry

At the Inquiry, Ms. Chipman initially made certain allegations against the police and the Crown attorneys. Primarily, she expressed doubts regarding the accuracy of her statements to the police as reported by them, and the manner of eliciting her evidence. This is a summary of what she said:

1. She was manipulated in her evidence; she felt this way as a result of how the 'hedge clipper' evidence was used at trial;
2. She initially said that the Crown attorneys and police embellished her answers to questions during interviews subsequent to 1985; however, after a review of both her original statement and her evidence at the second trial, she agreed that her evidence had not substantially changed from her original statement. She then commented that it was her original statement that was embellished;
3. The police and Crown attorneys were not interested in her evidence relating to the timing of her arrangements with Christine Jessop and subsequent telephone calls, nor of suspicious sightings, but rather focused on her hedge clipper evidence. When it was pointed out to her that discussions of timing and cars were recorded in many of the supplementary reports, she was unable to explain why she had made such a statement in an affidavit for defence counsel and during an interview for 'The Fifth Estate';
4. The main thrust of Ms. Chipman's evidence was that the 'white knuckle' comment took on inordinate importance, to the point that Ms. Chipman felt obliged to repeat that evidence during interviews and in her testimony.

Ms. Chipman told the Commission how interviews with her had been conducted, and she discussed the evolution of her evidence relating to the hedge-clipping incident:

Q. How did the information about the hedge come up?

A. I guess they just had asked me what he was doing, maybe, when I saw him ... And that's how it came up: When he was in his yard, what was he doing? I think he was clipping his hedge. It wasn't a huge thing to me, so I would just try and think about it, and between myself and between them, we decided what he was doing next door.

Q. Just a minute, "*We* decided what he was doing next door"; what do you mean by that?

A. I guess whatever they asked me, I would think - you know: Well, was he cutting his hedges? Yes, I think he might have been cutting his hedges. So all of a sudden: Yes, he's definitely cutting his hedges. Well, was he holding the hedge clippers tightly? Well, I don't know. Well, were his knuckles white, did they look like this?

And he would show me - you know, he showed me what it looked like to have a clenched fist and as far as I'm concerned right now, when I look at something it doesn't look any different to me at all. But when he put it across to me, yeah, sure, okay. Yes it did look like that. You know — like he — they just seemed to sort of direct me with the questions.

Q. Well when you say direct you with the questions, am I to understand what you're saying today is that when you first spoke with the officer, you weren't even sure of whether or not he was cutting a hedge. This was something that was decided? Is that what you're saying?

A. Yeah, yes. It was — like, process of elimination. Well, was he cutting his lawn? No. Was he standing next to his fence? Yes. Could he have been cutting his hedges? Yes. That seemed to be the way that the line of questioning would go [sic] and from that, we would determine what I thought I saw or experienced with Christine's neighbour.

And later:

Q. How is it that the evidence regarding his knuckles being white with the clippers get to be in your statement if when you first spoke with this officer you didn't even recall what it was he was doing in the backyard when you spoke with him briefly?

A. I don't know. I can't – I don't remember if they asked me if he was holding the hedge clippers, or if we just determined that he was, or – I don't remember how he got about to determining that yes, he was holding the hedge clippers. We talked a lot about it.

During her later cross-examination before this Inquiry, she stated that this evidence may have simply arisen as a result of her trying to picture the event in her mind as opposed to suggestive questioning by the police.

Ms. Chipman also initially told the Inquiry that approximately a year before she testified at the second trial, she felt that she was being manipulated, but she did not advise the Crown attorneys or the police because she was 'scared.' Speaking about her recollection of the hedge incident was upsetting for her, she explained, because

I guess it's something that's bothered me for a long time, because I don't feel that it was totally truthful, or that it was accurate, I guess, is more the word when it came across when I testified [sic] and I guess even when we decided what had actually happened, I don't think that it was very accurate. ... It, being the hedge clippers. I think the whole focus on that is just wrong. I don't think it's accurate.

Under cross-examination by Mr. McGuigan's counsel, Ms. Chipman reviewed her May 8, 1985 statement and was asked about virtually every paragraph. Her responses were dotted with "I don't remember" and admissions that she lied in part. She also stated that she never saw Mr. Morin hold the clippers. This is an excerpt from her cross-examination:

Q. Did you say "I recall that he did seem to be holding his shears very tightly when he talked to us."

A. I said it, but I don't remember it.

Q. All right. And that's not true, that's the lie under oath; is that correct?

A. It's not accurate.

Q. It's a lie under oath.

A. It's not accurate.

Q. Well there's a difference between something not being accurate and something being a lie. I'm suggesting to you that when you say, I recall that he did seem to be holding his shears very tightly when he talked to us, is a lie.

A. Okay.

Ms. Chipman did not ever tell police officers or any Crown attorneys that she had any concerns as to the accuracy of her initial statement before she gave evidence at the stay motion in July 1990 or the second trial in February 1992.

Susan MacLean said that Ms. Chipman gave Crown counsel no indication that she was not telling the truth or that she felt her evidence was being misconstrued. By the second trial, Ms. Chipman was approximately 17 years old; Ms. MacLean was not concerned about her previous school principal's opinion based on contact he had with her a few years earlier. She "appeared to have grown out of that" by the time Crown counsel met with her in preparation for the second trial. In Ms. MacLean's opinion, while her evidence was thought to have significance, it was a minor part of the prosecution's case.

Mr. Smith was asked his opinion of the position taken by Mr. McGuigan relating to Leslie Chipman in his closing. He said:

I would not promote the white knuckles as evidence of consciousness of guilt, but I would not tell Ms. Chipman: Don't mention the white knuckles. That's part of her evidence, and I think you've got to be pretty careful in saying: Don't mention that, because that's neutral evidence.

I mean I don't think the white knuckles was a big deal, and frankly, I never did think the white knuckles was a big deal. And I clearly would not call it as evidence of consciousness of guilt.

Findings

Ms. Chipman's demeanour when she testified before the Inquiry was very emotional. She had clearly thought about the implications of her evidence in the years which followed her testimony, and while she appeared to be an honest witness with a genuine desire to help the Commission, I find it somewhat difficult to rely upon all of her assertions. This is not to suggest that she in any way lacked good faith, but the struggle within her, if I may put it that way, that she may have helped to convict an innocent person — and, indirectly, thereby let her former best friend's killer escape — make it difficult to separate fact from faulty perception.

Ms. Chipman was interviewed on a number of occasions by investigators and prosecutors. During her evidence, she made several serious allegations against the authorities who collected her evidence and prepared her for trial. This was said to explain why her evidence at Guy Paul Morin's trial was untrue.

I do not take from her evidence at the Inquiry that she deliberately lied at Guy Paul Morin's second trial. Instead, I take from her evidence that she came to believe, and to communicate to the Court, things about Guy Paul Morin which, on reflection were untrue. She was swept away by the accusation against Guy Paul Morin. I accept this aspect of her testimony completely.

The real issue is the extent to which the authorities were responsible for her coming to believe in facts that were untrue. This is where I have difficulty (despite her complete good faith) in relying upon her evidence.

The evidence suggests that she came forward to the police with an initial claim. The police did not induce that claim. Instead, it is explained by her very young age and the inclination to perceive events, coloured by the charge against Guy Paul Morin and the swirling speculation and innuendo in the community. However, a number of interviews followed. None of them were videotaped. No parent was present, despite her tender age in the early stages of the process. Her recollection 'improved' through the process. By the time she testified, she had a detailed recollection not only of the 'white knuckles', but of specific and varied times when Morin viewed Christine Jessop and her while working on his hedge. Mr. McGuigan's notation of his preparatory interview reflects that "she *now* thinks it's odd the number of

times he was clipping his hedge” and “thinks *now* he was clipping his hedge so much, he must have been watching her.” Though the content of that notation does not reflect a great deal of new information (and indeed the full content of his notes was not lead from her), the notes do reflect a certain evolution in the strength or force of her testimony.

I do not believe that police or prosecutors told Ms. Chipman what to say. I also do not believe that police or prosecutors *knew* that her recollections were false ones. She admitted that she never indicated that to them either. I do find that the interviewing process by the authorities contributed to the added strength and detail in her trial evidence and that this may have been brought about through very pointed questions which she may have felt constrained to answer. I have no doubt that Mr. McGuigan, given his considerable skills as an advocate, could ‘squeeze every drop’ from a witness, without violating any ethical rules. This was a highly impressionable witness, who was very young at the material time, who regarded the police and prosecutors with respect and awe, was alone with them, who wished to assist and who was coloured by the charge existing against Guy Paul Morin. As well, her evidence was based upon impressions of what were then insignificant moments, where subtle changes in her evidence could turn her observations from suspicious conduct (even assuming it showed that much) on Morin’s part to complete innocuousness. In those circumstances, the importance of the interviewing process is manifest; the dangers of suggestibility considerable.

Again, it is my view that this evidence should not have been introduced and used in the way that it was. Further, it is clear that extreme care is needed when dealing with the evidence of children, and this must begin at the very first interview. Certainly, an adult should have been present, even if this would have meant a delay. John Scott chose not to lead her evidence, and then, as well as in retrospect, this was a sound decision. But, as I said before, I am not prepared to say that the Crown’s decision to call the then 17-year-old Ms. Chipman on the second trial was improper. It may have been unwise, and it may have been an unfortunate exercise of discretion, but the trial judge permitted it and thus it became one more item in the list of events which the Crown — and the Court — considered evidence capable of demonstrating Mr. Morin’s guilt. I repeat, once again, that my later recommendations will address this issue.

(vi) Evidence of Funeral Night Screams

Introduction

On January 7, 1985, Christine Jessop was buried in the cemetery in which she used to play behind the Jessops' home. After the funeral, friends and relatives congregated at the Jessop residence.

During the second trial, Janet Jessop testified that she and some guests were in the den at approximately 7:00 p.m. when a scream was heard coming from the north of her house. She ran outside with three of the visitors. A male voice screamed "Help me, help me, Oh God, help me." She described it as sounding frightened, troubled or scared. Ms. Jessop said that she recognized it as Guy Paul Morin's voice. She and her brother-in-law, Wally Rabson, Barb Jenkins and Wally's brother, Lloyd Rabson, went to the driveway, looked around, but saw nothing. Snow had fallen that day but had stopped by this time. Ms. Jessop then heard footsteps in the snow and saw a silhouette of a person moving quickly into the back door of the Morin house. She asked, "Can I help you?", "Are you alright?" and "Does anyone need help?". She did not think she used Guy Paul's name. There was no reply. As no one answered her call, she assumed everything was all right. The group remained outside for a minute before returning indoors. Ms. Jessop testified that she and her husband reported this to the police later that evening or the following day.

Following Ms. Jessop's testimony at Mr. Morin's second trial, the Crown made an admission that no Durham police officers who interviewed Janet Jessop regarding these screams recorded information about hearing the sound of a person running in the snow or seeing a silhouette or a shadow.

John Scott was unaware of this matter and therefore no evidence about it was led at the first trial. No police officer was ever found to whom the event was reported on the night on which it would have occurred or the following day. The first recorded police documentation of the incident was when Janet Jessop spoke with Detective Bunce of York Region on May 24, 1985, over a month after the arrest of Guy Paul Morin. He recorded that Ms. Jessop told him that Wally and Lloyd Rabson "had heard *someone* yelling very loudly, 'help, help'." (Emphasis added.) His report did not indicate that Ms. Jessop, too, had heard this.

Constable Bunce's supplementary report was read to Ms. Jessop

during the Inquiry. She said it was possible that she did not tell him that she had personally heard the screaming, or that the words had included the reference “God, God, ... Oh God,” or that she had personally observed the Rabsons run outside and that she had accompanied them.

Detective Fitzpatrick’s September 21, 1989 supplementary report reflects that he had “received information from Janet Jessop sometime ago” that on the night of the funeral she and others, including Lloyd Rabson, heard someone yelling “God, God, help me, Oh God help me”. She and others went outside and saw footprints in the snow leading towards the Morin residence. The report further reflects “Janet *now* feels that the person she heard that night was Guy Paul Morin. She states she knows his voice”. Detective Fitzpatrick could not recall how long before he prepared his 1989 supplementary report that Janet Jessop had originally related the information to him. He had not made a note or report because it was not until Ms. Jessop advised him that she identified the voice as that of Guy Paul Morin, and provided the names of the others who had heard the screaming, that he viewed the evidence as important.

During the Inquiry, this, too, was read to Janet Jessop. She said that she never ‘saw footsteps’ as indicated in Detective Fitzpatrick’s report. She agreed it was possible that she first reported her identification of Mr. Morin’s voice to Fitzpatrick in September 1989. Although she may have communicated to Detective Fitzpatrick that it was only ‘now’ that she could recognize the voice, she said “I had a feeling all along it was him.” Ms. Jessop agreed that her strong view that a guilty person had been acquitted may have played some role in the accuracy of her recollection about the incident, but she was adamant that “I know I heard the screaming.” She said that although the day of her daughter’s funeral was emotionally tumultuous, the screams she heard have “stuck in my mind.”

Detective Fitzpatrick told the Commission that he had concerns about the reliability of Janet Jessop’s evidence in light of the fact that he had spoken to Ms. Jessop on many occasions about this incident, but had not previously been told that she recognized the voice as that of Guy Paul Morin. Similarly, Inspector Shephard said that he, too, was sceptical of the evidence. Although he could not recall doing so, he probably expressed this scepticism to his partner. He could not specifically recall discussing it with the Crown attorneys. He acknowledged that he may have been overly accepting of the evidence because of his belief that Mr. Morin was guilty.

The Evidence of the Rabsons and Barbara Jenkins

Wally Rabson was formerly married to Robert Jessop's sister. In January 1985 he had a common-law relationship with Barbara Jenkins. Lloyd Rabson is his brother. All three claim to have been in the dining room when they heard a cry from the north of the house. There were as many as 30 people in the room at the time, but only these three testified during the pre-trial motions. The sound they heard was something to the effect of "God help me, oh please, God help me." Lloyd Rabson thought these were the precise words. He described the voice as being high-pitched, as if the person was troubled, scared or frightened. Ms. Jenkins described it as a male voice, "a plea, a distress, desperation." They went outside. Wally Rabson described it as "the type of night that you could hear for miles." He thought the noise had come from children playing outside on a toboggan. Children often played in the cemetery behind the Jessop house. Wally Rabson and Barbara Jenkins both initially stated that they could not recall Janet Jessop going outside with them.

No one seemed to have attached much importance to the event until September 1989, when Detective Fitzpatrick first contacted the Rabsons by telephone. The only previous reference to this incident in the police records was the report of Detective Bunce speaking with Janet Jessop about this on May 24, 1985.

On May 29, 1991, the Rabsons and Ms. Jenkins met with Detective Fitzpatrick in a bar in London the night before they were to testify on the stay application. According to Lloyd Rabson, Janet Jessop was also there for part of the time. During the meeting, Detective Fitzpatrick read out everyone's individual statement in the presence of all the others. Lloyd Rabson described the scene:

Q. [Detective Fitzpatrick] had copies of statements that he recorded ... in the form of a statement and he had copies of those statements and he read them out to you?

A. Yes he read them to us.

.....

Q. So it is correct if you wanted to listen it was there, each of you knew what the other was saying to

Detective Fitzpatrick according to those statements.
Correct?

A. Yes, correct.

Detective Fitzpatrick said in relation to this:

If someone was to suggest that I had a drink with them, yes, I would have a drink with them sir. Mrs. Jessop wasn't there. I had a drink with the Rabsons. I did have the reports that I had typed out with me when I did have a drink with them. I never did sit and read their reports out to them. I spoke to them individually. All three were there and I asked them if they could just relate to me, if they recalled the information that they had given to me, and I may have asked them if they recall saying such and such. I am sure I had conversation with them.

Mr. Morin testified during his second trial that, at the time of Christine's funeral, his parents were on vacation in Bermuda and he was in the house by himself. He denied shouting the night of the funeral, nor did he hear any screaming that evening. The only time he would have been outside that night was to let out the dogs.

Mr. Morin's factum for the Court of Appeal says this about the funeral night screams:

This delayed investigation [into the funeral screams] meant that the civilian witnesses' original statements were prepared up to *five* years after the event. The Rabsons and Jenkins all admitted discussing the incident amongst each over the years. In addition, their memories may well have been affected by the "joint" interview of them with Fitzpatrick in London in preparation for their evidence during the pre-trial motions. As regards the frailty of four to five-year memories, the trial judge made no comment. As regards the "joint" interview in which the statements of each witness were read out by Fitzpatrick in the presence of others, the trial judge referred to this evidence elsewhere in the charge only in the context of the defence alleging an attempt on Fitzpatrick's part:

"to influence the evidence ... about the

screams heard on the night of the funeral,” and that “a variety of witnesses, including Barbara Jenkins, the Rabsons, Janet Jessop ... denied any attempt by investigators Fitzpatrick and Shephard to influence their testimony”.

The trial judge had said this a day earlier in his charge in a section unrelated to the funeral night screams evidence. He never suggested to the jury at any time that, regardless of motives, the joint session may have affected the memories and evidence of the witnesses.

Crown Use of the Evidence

As noted above, the funeral night screams were not raised at the first trial as John Scott was not aware of this evidence. He was only told about the details of this occurrence in 1989, just prior to the end of his carriage of the case.

Ms. Jessop’s evidence as to the identity of the screamer was the subject of a lengthy exclusion application by the defence on the basis that it was unreliable. The evidence was ruled admissible, however, and the issue of reliability was left for the jury to determine. It was tendered as evidence of ‘consciousness of guilt.’ Mr. McGuigan acknowledged that trial judges then had, and have now, very limited powers to exclude evidence because of its reliability, even if a judge were persuaded that evidence proffered was patently unreliable.

The Crown admitted at the second trial that the aspect of Janet Jessop’s evidence of hearing footsteps and seeing a silhouette first came to the Crown’s attention in May, 1991 when she testified on the pre-trial motion to exclude the evidence of the funeral night screams.

Counsel for the Morins took the position that Janet Jessop’s evidence was confabulated; she convinced the Rabsons and Ms. Jenkins years after the event that it was significant.

The position of Mr. McGuigan and Mr. Smith in written submissions before the Commission was that although there was a concern with the accuracy of Ms. Jessop’s recollection on the funeral screams, none of the

Crown attorneys thought she was fabricating this evidence. While Mr. McGuigan believed that Janet Jessop could have recognized Mr. Morin's voice and may have seen shadows, the one area that concerned him was 'hearing footprints,' as she called it:

Q. Now, you believed, I take it, at the second trial that Guy Paul Morin had indeed screamed that night?

A. Yes.

Q. And what I want to ask you is this: Leaving aside that belief, did you also believe that Janet Jessop had not only heard some scream outside that night, as the others had described, but that, indeed, she could recognize the screamer's voice as Guy Paul Morin's, that indeed she had, in reality, heard these footsteps, and that indeed, in reality, she had actually seen this silhouette enter the Morin residence?

A. Well, I believed that she could recognize the voice. the other -- the footsteps, hearing the footsteps was somewhat problematic. The silhouette, I think the word silhouette may exasperate the situation. I take it what she means is shadows, and I thought that could very well be possible. But I had a lot of trouble with the hearing footprints, because there was a fairly heavy snow that had been there that night.

.....

Q. [D]id you have any concerns about the reliability of her evidence that indeed she could actually recognize this scream that had been heard as being the voice of Guy Paul Morin?

A. [T]here was emotion in regard to that, if I'm not mistaken, in which the issue of expertise in recognizing voices was part of the issues that were raised. And as I recall her evidence, and I can't recall it all, but I recall that she was familiar with ... having heard him yell when he was in his own backyard on other occasions, when they were neighbours.

And that she was, therefore, familiar with him, how he sounded when he raised his voice to what we'd call, I suppose, a yell. So that that was argued and the judge

indicated that that evidence -- she could give that evidence on that particular issue. But I have to tell you that the fact that the scream came from Guy Paul Morin, and now again, I'm going back to my thinking at that time, was not a big problem because I think circumstantially it was established that it would have been Guy Paul Morin. and I'll go into that if you'd like me to.

.....

Q. I think I can assist you by saying that it was your position that apart from what she had to say about it, one could look at the direction that it came from and the fact that he was alone at home that evening, and so on, and other pieces of evidence as circumstantial support for the fact that, indeed, it was Guy Paul Morin. And that's what your referring to, I take it?

A. That's right. I think there's a very strong circumstantial case that could be made.

.....

Q. Did you not, in light of the fact that after she had spoken to the police so many times without identifying Guy Paul Morin as the person who had been the screamer, and after having spoken to the Crowns a number of times without having mentioned the fact that she could actually identify Guy Paul Morin as the screamer, surely you must have had some concerns about the reliability of ... this lady claiming that she could identify the voice as Guy Paul Morin's.

A. Well, I think you're — I was assisted in this by the circumstantial evidence that if it was him, and she said she heard him, it's more likely she did hear him.

.....

Q. And the third aspect of this, that she had actually seen this silhouette — and whether we call it a silhouette or a shadow, and I believe she did refer to it as a silhouette, but she'd actually seen the silhouette of presumably the screamer enter the Morin residence.

A. Yes.

Q. Did you have no concern about the reliability of that evidence?

A. Well, I mean, if it's a shadow, you know, I really didn't — I didn't think that was of much consequence in any event. But whether she saw a shadow or didn't see a shadow, ... I believed that she may very well have seen a shadow, but I didn't direct my mind to it in any great detail.

.....

I mean, by silhouettes, I take it as being, it's more understandable to me to be talking about shadows.

.....

I didn't think it was that important and I thought that, you know, that was something, I suppose, for the jury to consider, given our acknowledgment of when it was reported.

.....

Q. But I'm saying from Janet Jessop's perspective, did you really believe that back during the day of, that she had actually come to the conclusion that it had been Guy Paul Morin who she could identify as being the screamer and running into the door and through his arrest and through his prosecution at the first trial, and so on and so forth. She never told the Crowns, or she never told the police, but had reported it back when on the day of?

A. Well, Mr. Sandler, the alternative to this, and I accept it other than the issue of the footprints because I couldn't understand how you could hear footprints. I accepted, basically, her evidence in this regard. My alternative would be to go to the victim, the mother of the little child, and say, I think you're lying, I'm not going to call you on that. And given how I looked at it, that was not an alternative for me.

Q. Well, is there another alternative? I mean, first of all, are you entitled to go to the jury and say, well, you know, you may feel that in light of the fact that there's no contemporaneous record, and that in hundreds of

meetings with the police and Crown, she never mentioned her recognition of this [as] Guy Paul Morin, or the silhouette entering the Morin residence, or having heard the footprints.

And in light of my admission that she never claimed any of this stuff until the pretrial motion, did that aspect — those aspects, I'd invite you not to act upon?

.....

A. I'm suggesting that that's the job of the defence counsel.

.....

[I]n the charge screening [directive], the issue of credibility is discussed. And the Crown is not to usurp the trier of fact from determining the credibility of an issue. They are not to take that upon themselves, and they will not call [the evidence] if there's something obviously wrong with the essential evidence that is being called.

In this case I believed that the screams that were reported were made, because we had three people, two in particular who heard the words, and very closely resembled each other. We had the - I was convinced that they came from Guy Paul Morin. Now, you have the screams and you have the timing and you have what was said.

To me that's the essence of that evidence, whether there's shadows, whether she saw shadows, didn't see shadows, didn't hear footprints, is something that the jury can determine on their own from that. And so, and as I say, because she said there was shadows and she heard footprints, to go and say you said that, we think you're lying, we're not going to call this, is just not — just not realistic in the circumstances when it's the mother of a murdered nine year-old girl.

.....

Q. Just based upon your view as to the footprints -- and what I hear you saying is that, at least insofar as the footprints were concerned, you had a real

skepticism as to whether she could have heard footprints in the way she described; right?

A. That's correct.

Q. What did you chalk that up to? What did you think was happening?

A. Well, I don't know if I ever thought ... what was happening. I mean, in what regard?

Q. I mean, here you thought that you were really skeptical about whether she could really hear footsteps in the way that she described. What did you think was happening? I mean, did you think she was lying? Or did you think she was honestly mistaken? Or just, kind of overreaching a little bit to help the Crown's case? I mean, what was the thought process?

A. I didn't really consider that.

Q. Not at all?

A. No.

Mr. McGuigan said it was open for a Crown attorney to believe some, but not all of a witness' testimony and still call the witness, as long as the important evidence was believed.

Mr. McGuigan recalled that Officer Bunce had told him that Ms. Jessop may have conveyed to him information about the incident which he did not record. At that point in time, Mr. McGuigan added, Mr. Morin was simply a neighbour, not a suspect. He stressed the Crown's obligation not to call evidence if it was believed to be not true; however, in light of his basic acceptance of the *essence of the evidence*, McGuigan viewed it as the role of defence counsel and the jury to address aspects of the evidence which were suspect.

As discussed in the General Investigation section of the Report, during the Inquiry, Brian Gover said the prosecutors 'had concerns' about Ms. Jessop's volatile nature and the reliability of her 'evidence.' He added that Mr. Scott had warned him to be vigilant in ensuring that Ms. Jessop related only information within her personal knowledge. Mr. Gover also said that he was told by Mr. Scott that Janet Jessop would occasionally ask questions in the

course of a witness interview, apparently designed to elicit information that had an impact on her evidence. Mr. Gover was cautioned to be careful with Ms. Jessop because of her “willingness to buttress her evidence by going beyond personal experience.”

As stated elsewhere, when Mr. Scott was questioned during the Inquiry he could not recall this warning but stated that it was consistent with his beliefs. Scott further stated that while Ms. Jessop might try to ‘fill in the blanks’ of evidence he did not believe that she would intentionally mislead the prosecution.

Mr. Scott did not specifically recall but conceded that he may have had conversations with Mr. McGuigan about his concerns relating to Janet Jessop’s propensity to expound and expand on the evidence.

Mr. Smith recalled many frank discussions between Mr. Gover and himself on a number of issues. In terms of Ms. Jessop’s credibility he said:

I certainly had concerns about Mrs. Jessop and my concerns had to do with her emotional fragility. I never recall coming to the conclusion that Mrs. Jessop would do anything or say anything to convict Mr. Morin, and I certainly would not have been in a position to tell Mr. Gover that at interviews, Mrs. Jessop would have the habit of asking me questions to elicit information, because I hadn’t at that point interviewed Mrs. Jessop at all.

Mr. Smith had no recollection of telling Mr. Gover that Ms. Jessop was capable of saying unreliable things to implicate Mr. Morin. When asked if there was a feeling on the prosecution team that Janet Jessop would say anything to further the case against Mr. Morin, he replied: “I don’t think so.”

Mr. Gover said that he was aware that the substance of the evidence of the funeral night screams surfaced between the first and second trials; it was his view that the evidence had little value, if any:

[H]ere was something that Mrs. Jessop claimed to have recalled, not at a time when it happened, and of course when the investigation was ongoing, not when Mr. Morin came to be arrested, and he was the next door neighbour, not when he was arrested three months

later. Not when she testified apparently at his first trial, but far down the road when there emerged problems in proof of the Crown's case. It struck me as evidence that was highly doubtful.

Mr. Gover said that, perhaps he should have raised his concerns about her, but that,

[i]n large measure, I was deferring to the greater experience of Mr. McGuigan in cases of this type ... they had spent more time with her in preparing her to testify than I had. And there may well have been some other criteria that they had for believing the evidence.

Mr. Gover did, however, add that he “would have been loathe to lead the evidence of the funeral screams.” He agreed that the consequence of calling evidence of this type was to put a lot of witnesses on the stand and have the defence allege that they were all not truthful. He agreed with the notion that this permitted the Crown to suggest that the defence was making ‘paranoid’ allegations of conspiracies and that such a result would be within the “predictability of the mind of an experienced prosecutor.”

Mr. McGuigan told the Inquiry that his only contact with Ms. Jessop was in casual conversation and his preparation of her evidence at trial. Although it was obvious that she thought Mr. Morin was guilty, Mr. McGuigan did not have the impression that she was prepared to do anything improper to convict Guy Paul Morin. He found Ms. Jessop difficult to interview because her ideas were scattered. He testified that he was not aware of a view amongst the prosecutors on the case that Ms. Jessop's credibility might be an issue. He claimed that he did not know Brian Gover had been warned about Ms. Jessop's credibility. In his view, these concerns should have been brought to Crown counsel's attention.

Mr. McGuigan's closing address on this issue was read during the Inquiry. McGuigan reviewed Ms. Jessop's evidence and set forth his submission that apart from the voice identification, there was a strong circumstantial case that the voice she heard was Mr. Morin's:

Janet testified that she heard footsteps in the snow and observed a silhouette run in the backdoor of the Morin house. She called to see if anyone needed help, and she got no reply. Now all who heard this screaming or

shouting agreed in their testimony that one, the voice was male; two, it was a voice in fright or distress or desperation and that it came from outside and from the north. And there was no evidence as to whose voice that was and the voice didn't come from the Jessop property, the property immediately to the north is where the accused lived.

In his testimony he indicated to you he was home that night and he was home alone. And without any identification of the voice, circumstantially, I submit to you, that an inference can be drawn that the person responsible for that outcry would be the accused before the court. Janet Jessop who was familiar with the accused's voice when he was speaking normal from neighbourly contacts and also when he would raise his voice in his backyard for whatever reason recognized the voice and positively identified it as that of the accused.

.....

Wally Rabson testified in this court that he told a plain clothes officer at the Jessop residence that evening and that the officer did nothing. Janet Jessop testified that she and her husband either that night or the next day reported the incident to the police. She testified that there was never any doubt in her mind from the first time she heard the screams that it was the accused. And I submit to you that, as I said previously, that the accused was at home alone in his residence that evening, and he confirmed that himself in his testimony.

In his evidence before the Commission Mr. McGuigan was asked:

Q: ...[I]f one takes the natural consequences of one actions when you tell a jury four or five things as part of the evidence, absence (sic.) from a disclaimer, one might expect a jury to regard that as your position that the evidence is worthy of some acceptance. That's all.

A: Yes. I guess that's true.

While the trial judge made no comment on the 'late revelation' aspect of this evidence during the section of the charge which dealt with the funeral

night screams, he said, during a later portion of his charge:

If you reject Mrs. Jessop's and/or Mrs. Hester's evidence on the early reporting, you are invited to consider the late reporting of the information in assessing weight relative to that evidence. You may apply similar considerations to any cases of late recollection that you find on the evidence.

Findings

Ms. Jessop testified twice at the Inquiry. Some of her evidence was challenged by counsel for police or prosecutors, particularly as it related to her allegation that Fitzpatrick had discussed the offer made to May and X and as it related to her evidence on the timing issue. These aspects of her evidence have been explored elsewhere in this Report. The cross-examinations of Ms. Jessop were done with courtesy and utmost professionalism. No one relished the prospect of confronting or demeaning Ms. Jessop. The tragedy she has gone through is monumental. There can be no greater loss to a parent than a young child, particularly under these circumstances. It follows that the apprehension and conviction of her daughter's killer assumed great importance. The arrest and prosecution of Guy Paul Morin undoubtedly focused her anger upon him — understandably so.

I accept Mr. Gover's evidence that John Scott had warned him to be vigilant in ensuring that Ms. Jessop only related information within her personal knowledge. Mr. Gover was also told by Mr. Scott that Janet Jessop would occasionally ask questions in the course of a witness interview, apparently designed to elicit information that had an impact on her evidence.

One could construct an argument that the funeral scream evidence had some credibility because it came from several people, Guy Paul Morin was home that night, and because it tracked other utterances allegedly made by Mr. Morin. Despite the very significant problems with this evidence, including its untimely reporting, at least one collective discussion with the witnesses who gave this evidence, and other inherent difficulties with it, I again am not prepared to say that the prosecutors engaged in misconduct by calling the funeral scream evidence.

However, Janet Jessop did not simply articulate the hearing of the scream from a certain direction, as the other witnesses did. She claimed that

she heard ‘footsteps in the snow’, saw a silhouette of a person moving quickly into the back door of the Morin house and could identify the voice as that of Guy Paul Morin. There was no record of any contemporaneous suggestion to this effect by Ms. Jessop. Her identification of Guy Paul Morin as the screamer was not brought to anyone’s attention for years thereafter, even though Ms. Jessop met with police and prosecutors on a regular basis and was highly motivated to assist the prosecution. It was only after Guy Paul Morin’s acquittal that these claims came forth. Some aspects were only revealed to the Crown during the second trial proceedings. Mr. Gover indicated throughout his evidence that he recognized, and was prepared to defer to, Mr. McGuigan’s greater experience as a trial counsel. He was most complimentary of Mr. McGuigan. However, it was abundantly clear to me that it was extremely unlikely that he would have tendered Ms. Jessop as a witness to these purported funeral screams.

Ms. Jessop did not hear or see footsteps in the snow, see a silhouette of a person moving quickly into the back door of the Morin house and could not identify the voice as that of Guy Paul Morin. Fueled by her understandable rage towards Guy Paul Morin and her concern that he not be again acquitted for Christine’s murder, she may have convinced herself that she had seen and heard these things. Objectively viewed, this aspect of her evidence, given all the circumstances outlined above, was patently unreliable. An experienced counsel should have known that. Mr. McGuigan indicated that he had some scepticism about her evidence that she heard the footprints in the snow. However, he gave no thought to why she was giving that evidence. Otherwise, he said that he accepted her evidence, because it was circumstantially supported. As for the other problematic aspects of her evidence, those were for the defence to address and the jury to explore. He said it was unrealistic to go back to the mother of a murdered child and tell her that the evidence would not be led because she was lying.

I have earlier found that Mr. McGuigan knew that Ms. Jessop’s evidence that she threw away the clock was untrue, if not before she testified, then during her testimony. His scepticism about her funeral scream evidence extended only to the footprints in the snow. If true, this again was tunnel vision of the most staggering kind. Her claims, objectively viewed, compelled a careful and introspective consideration of whether she should be called as a witness or, once called, whether the Crown should place any reliance upon her evidence before the jury. Mr. McGuigan did not have the requisite objectivity, as did, for example Mr. Gover and as Mr. Scott may well have,

had Ms. Jessop made these untimely claims to him. An objective assessment, giving full value to the Crown and defence roles in an adversarial proceeding, may well have compelled the Crown to advise the jury that aspects of Ms. Jessop's evidence, albeit perhaps well-intentioned, could not safely be relied on. He could still invite the jury to infer that the screams did occur and came from Guy Paul Morin on the remaining evidence. This approach would not compel the Crown to call Ms. Jessop a liar, as suggested by Mr. McGuigan.

The 'funeral night scream' were yet more evidence led to show Mr. Morin's 'consciousness of guilt.' Its reliability was highly doubtful. As is demonstrated in this chapter, the evidence led to permit an inference of 'consciousness of guilt' or 'consistency with guilt' was often unreliable or, in other instances, of so little probative value so as to be worthless. Nonetheless, the cumulative effect of this evidence must have impressed itself upon the jury. This cumulative effect likely gave it a credibility and importance that it did not deserve.

(vii) Mandy Patterson

Ms. Patterson's Evidence

Mandy Patterson and Guy Paul Morin played the clarinet and shared a music stand in the Whitechurch-Stouffville Concert Band. The band usually met to practise on Monday evenings. In August 1984, Ms. Patterson left the band to get married. She returned in February 1985, approximately four months after Christine Jessop had disappeared from her home. At that time she spoke to Mr. Morin about Christine's death. She claimed that the issue appeared to upset him and she got the distinct feeling that he did not want to talk about it, so she did not pursue it. As she said at the first trial, "I was shocked to hear he lived right be-side her and hadn't wanted to talk about it ... before." She added that this surprised her because she had always found Mr. Morin to be a very caring person.

On April 15, 1985, one week before Mr. Morin's arrest, she again raised with him the subject of Christine's death: "He just said, those things happen, what can you do. He said, 'The poor, sweet, innocent little girl.' things like that happen."

While there was nothing in the words that were unusual or inappropriate, it was the manner in which he expressed them that struck Ms.

Patterson. She thought he had said this in a “very uncaring” way. She later testified that she expected more animation in his voice: his tone displayed no expression; it “didn’t sound normal. I was surprised. I thought he would be a lot more concerned, him being her neighbour.”

When Ms. Patterson expressed the hope that Christine had not been held captive before she was killed, Mr. Morin replied that Christine was murdered the night she was taken. He said, in response to a question, that her body was too badly decomposed to determine whether or not she had been sexually abused. He also told Ms. Patterson that she had been stabbed to death (the media reports shown to Ms. Patterson during the second trial demonstrated that the newspapers had reflected this.)

At the Inquiry, Ms. Patterson testified that when Guy Paul Morin told her that he lived next door to Christine Jessop, she called Angela Taylor, her girlfriend, over. She did not know if Ms. Taylor was listening to the conversation she was having with Mr. Morin. When the two left band practice that night:

I think we may have said a few words ... to the fact of, that was really weird, or you know. We were eighteen years old at the time, so I’m sure it was probably something like that freaked us out, or something like that. But that’s all I can remember.

[W]e sort of looked at each other kind of went, jeez, you know, I wonder if Guy did this to Christine. And you know. I think we just sort of laughed it off and thought, you know, like it was just kind of silly.

Ms. Taylor was not called as a witness at Mr. Morin’s second trial. Her will-say reflected that she thought it odd that Mr. Morin had not involved himself more intensively in the search for Christine Jessop. She also recalled Mr. Morin saying “things like that happen”. She could not recall other things said in the ten to fifteen minute conversation.

Ms. Patterson testified at the inquiry that when she learned that Guy Paul had been arrested for the murder, her earlier conversation with him acquired more significance.

At the second trial Ms. Patterson testified that:

...[T]he conversation that I had with him that night was very significant to me. It stayed in my mind all week long and I thought about it almost every day.

On April 23, 1985, Ms. Patterson gave a statement to the police. She later said, before the Commission:

I wasn't giving my statement to the police because I thought it was evidence. I was giving my statement to the police because my mother thought I should, just for my overall benefit of feeling a bit better. I know I had the conversation with him and if, for some reason, there was something in that conversation that would help the police, that's why I gave my statement.

Guy Paul Morin's Evidence

Mr. Morin testified that he met Ms. Patterson through band-playing. He had a friendly relationship with her and he recalled a conversation during which she suggested to him that, perhaps, Christine had been held captive somewhere:

A. [S]he was speculating, saying things like maybe she was kept somewhere and I said from what I've heard it's possible that she was pretty well maybe, to have been found or taken shortly after, that night that she probably came home, or day, whenever she got back from school.

Q. And from where did you get your thought that Christine Jessop was killed the day she was taken?

A. Well, from what I read in the papers and heard on television and from Joe Loughlin, the first Durham officer I spoke to.

Mr. Morin only remembered speaking to Ms. Patterson once about Christine's disappearance and murder. He disagreed with her perception of his attitude as being uncaring.

Constable Loughlin testified that Mr. Morin asked him on January 3, 1985 about the cause of Christine's death. The officer said that he told Mr. Morin that he did not know, but that her remains had been sent to the Centre

for Forensic Sciences. He denied telling Mr. Morin that she died on the day she disappeared because he did not know this to be so. By the time of trial, the supplementary report that Constable Loughlin had made of their conversation had been lost. Newspaper articles were filed by the defence which included quotes such as “Police say she was abducted outside her house and likely was killed a short time later.”

Use of the Evidence by the Crown

At the second trial of Mr. Morin, Ms. Patterson was the last witness for the Crown before it rested its case. In preparation for her evidence, she was provided with a copy of the transcript of her evidence from the first trial. She kept this transcript throughout the years and gave it to Commission counsel at the Inquiry. It was highlighted in some areas, while in others, portions of her testimony were crossed out. She said that this had been done by Crown counsel. For example, a portion of the transcript where she said “I asked him where he lived, like if he lived close to Christine Jessop, and he told me lived right beside her,” was highlighted. The following testimony was bracketed and crossed out:

I was shocked to hear he lived right beside her and hadn't wanted to talk about it to me before. ... I started to say whoever had done this to this little girl had to be a very sick person.

Immediately following this, there is another highlighted portion which reads as follows:

He said, “Things like that happen, what can you do?”.
He said, “She was a sweet innocent little girl. Things like that happen”.

Further vetting of Ms. Patterson’s previous testimony was obvious, including wavy underlining of a passage wherein she said:

I called the police and told them what he said to me. I was thinking about it all week.

Ms. Patterson testified at the Inquiry about the markings on the transcript:

As far as I can recall, they crossed out the stuff that they didn't want me to say anymore. They said that it wasn't significant, and they highlighted the parts that they really wanted me to focus on.

Ms. Patterson presented to the Commission a document entitled "Questions for Mandy Patterson," consisting of 35 typed questions. Crown counsel had provided this to her in order to advise her of the questions they would ask while she was on the witness stand. On the bottom of the page, in Ms. Patterson's own handwriting, is this sentence:

It was totally opposite compared to anything I had ever discussed with him. His tone was very uncaring. I was surprised.³⁰

This is somewhat different than the testimony she provided during her first trial evidence, when she said:

He sounded like he really didn't care. He really surprised me by the way he was talking and by the tone of his voice.

Beside this statement reflected in the transcript of Ms. Patterson's first trial evidence, was a handwritten question mark in the margin.

During the second trial, Ms. Patterson repeated almost verbatim what she had written down on the question sheet:

It was completely opposite to anything that I'd ever discussed with him. His tone was very uncaring.

Ms. Patterson's evidence in examination-in-chief by Mr. McGuigan was, in part, as follows:

Q. [C]ould you describe for the jury the manner in which he said those things; those things happened, poor sweet, innocent girl?

³⁰ During the Inquiry Ms. Patterson could not recall why she wrote the notation cited above, but she agreed that it may have been because it was the most significant part of the evidence she was to give.

A. The way he said it was very uncaring.

Q. When he was talking about that particular incident to you, how would you compare his tone of voice and his manner with the way that he discussed other matters with you?

A. It was completely opposite to anything that I'd ever discussed with him. His tone was very uncaring.

And in cross-examination:

Q. That was the only distinction, that was the only thing about his voice that you were talking about that didn't sound normal to you. You thought somebody should have more animation than you heard from Mr. Morin on that occasion, on that day when he happened to be speaking to you?

A. His voice was very uncaring compared to the type of person that he was, that I knew him of. (sic) It was very on opposite to anything that I'd every discussed with him before. It startled me.

In cross-examination, Ms. Patterson was also directed to her evidence at the first trial in which she had agreed with defence counsel that one possible explanation for Ms. Patterson's perception was that Mr. Morin had simply talked about the incident enough over the months since Christine Jessop had disappeared. In re-examination on this point she said:

Q. You seemed to want to say something else. Is there anything you want to say about that?

A. I just wanted to say that I agreed because those questions that he did say to me were possibilities, they could be. They could be in any case, but I'm just saying, compared to the person that I knew, that I sat beside in band for two years or more, it was completely opposite.

The wording and order of the questions supplied to Ms. Patterson prior to her testimony were virtually identical, word-for-word, to the questions asked by Mr. McGuigan when he led her through her examination in-chief. Mr. McGuigan and Mr. Smith testified that this document was

prepared to ensure compliance with rulings made by Mr. Justice Donnelly, which had placed some limitations on the contents of her evidence. Mr. Smith said he was present when the list of questions was presented to Ms. Patterson. She was the only witness to receive such a list. Both Mr. McGuigan and Mr. Smith denied the allegation put to them by Mr. Morin's counsel that the notes written on the bottom of the list represented a script prepared by the Crown for Ms. Patterson to use. Mr. McGuigan also said that he did not know why some of her evidence was underlined or why there was a question mark beside the answer, referred to above.

Mr. McGuigan testified that Ms. Patterson's evidence was tendered to demonstrate that Mr. Morin had knowledge exclusively available to the killer — that Christine was killed the night she was taken. It also was significant because he talked about her death in an 'uncaring' manner. Mr. McGuigan testified that Ms. Patterson was intelligent, articulate, and seemed to have had substantial contact with Mr. Morin to support her observation which he invited the jury to consider as evidence of "unusual conduct or demeanor" on the part of Guy Paul Morin.

During the Inquiry, Mr. Smith acknowledged that the type of evidence that Mandy Patterson provided could be dangerous:

I think with any notorious case, there's an unfortunate phenomenon where people pick sides, and the side they pick has a real ability to influence the colour, if I can put that way, of their evidence. And more than that, I suspect that in some rare cases, the side they pick chooses (sic.) them to consciously or unconsciously fabricate evidence.

Ms. Patterson was approached by the defence prior to giving evidence at the second trial. She was at home on a Sunday evening when someone, representing the defence, arrived unannounced. She testified that the Crown had told her that she did not have to talk with the defence if she did not want to. She decided not to speak with them because "they were labeled the bad guys." She said that this labelling probably came from herself as a result of being previously cross-examined on the stand. This is what she told the Inquiry:

I had never been in a court room and I think I was young and I think they [people associated with the Crown side of the trial] wanted to prepare me to tell

me that, you know, the defence were going to take my testimony or my statement at that time and to try to twist things around to make it look like I was lying. And I guess that just left a bad reflection in my mind of the defence.

Ms. Patterson told the Inquiry that she felt she was part of the prosecution team:

The Crown wanted to make sure that he was found guilty and it was sort of like a – like the atmosphere of being around the Crown was “we’re going to get him” kind of thing.

Ms. Patterson also said that she regretted the role that she played in the conviction of Mr. Morin. Mr. Morin’s counsel challenged her on the level of her regret, considering her ‘tone of voice;’ Mr. McGuigan’s counsel objected to questions based on the tone of her voice. With respect, this was somewhat ironic considering that Ms. Patterson’s evidence was called, in part, to discuss Mr. Morin’s tone of voice during their conversations.

Mr. Smith described Ms. Patterson as a thoughtful witness and said that he would be surprised if she had fabricated her evidence because of the notoriety of this case. He reflected that many of the items used as evidence of consciousness of guilt were highly questionable and he queried whether such an inference could be drawn from the Mandy Patterson evidence.

This theme was raised with Ms. Patterson and Mr. McGuigan at the Inquiry. The following is an excerpt from Ms. Patterson’s examination by Commission counsel:

Q. “Things like that happen, what can you do? She was a sweet, innocent little girl.” It was the tone that struck you rather than the contents, as I understand your evidence; is that right?

A. Right. Yeah, he just -- no expression.

Q. Okay. So that there was nothing in the words that were unusual or inappropriate, it was the manner in which he expressed them that struck you at the time; do I have that right?

A. Right.

Q. And I guess I want to ask you this, had you ever seen him grieve the loss of a friend or relative?

A. No.

Q. Or seen him celebrate the birth of a family member or a family occasion of any sort?

A. No.

Q. Or seen him celebrate the birth of a family member or a family occasion of any sort?

A. No.

Q. Or had you ever seen him angry, that you can recall?

A. Not that I can recall.

Q. Had you ever seen him really, really upset?

A. No.

Q. No. And you hadn't been to his home, you've said, and he hadn't been to your home; am I right?

A. Right.

Q. And I guess what I want to ask you is, with the benefit of some reflection and hindsight, and so on, that really, you'd had very little, if any, exposure to the range or lack of range of emotions that Guy Paul Morin showed in those kinds of situations; am I right?

A. Right. The only emotions that I really had that he had showed to me was just the relationship that we had, basically.

Q. So that how he expresses his losses or how he expresses anger or how he expresses grief or bitterness, you didn't know anything about those aspects of his personality, I take it?

A. No.

Q. Is that fair?

A. Mm-hmm.

Q. And as I understood the answer that you gave to Mr. Scott at the first trial and to Mr. McGuigan at the second trial, what struck you here was that his tone was basically the tone that you would have in every day conversation, there was nothing other than an every day tone that he used when he spoke those words; am I right?

A. Right.

Q. Did you know when you spoke to him in April of 1985 how many times he had or hadn't discussed with neighbours, or friends, the Christine Jessop death between January and April of 1985, or her disappearance between October '84 and April of 1985? Did you have any idea about how many times he had had to or chosen to discuss this matter before he spoke to you about it?

A. No.

At the Inquiry, Mr. McGuigan was asked:

Q. [Do you see] any of the following dangers in this kind of evidence. The first, that evidence of someone's emotion, or demeanour, or uncaring attitude, is being given by witnesses who have no exposure, or little or no exposure to Guy Paul Morin's range of emotions.

No knowledge of his emotional range, how he does or doesn't express emotion. Do you see that as a danger that a witness can look at someone's so-called uncaring look, and misconstrue it based on little or no knowledge of how that person does or doesn't express emotion?

A. Well, based on your hypothetical set of facts that you relate, I'd agree with that. But I don't think Many Patterson is someone who didn't know his emotion. She had spent some considerable time with him, talked to him and had shared a music stand with him.

Q. [W]ould you agree with me that there could be a danger in exposing a jury to this kind of evidence absent some foundation that the witness, indeed, has an appreciation of the range of emotions to be expressed by the accused?

A. Yes.

The above excerpt of Ms. Patterson's evidence was read to Mr. McGuigan. He was asked:

Q. Was your understanding of her position that, that she communicated to the Inquiry in those questions and answers? Is it any different than that which you understood back then?

A. I haven't read her evidence for some period of time, but I thought one of the things she tried to demonstrate in the first trial was a tone to Mr. Ruby that would indicate how different he had spoken these words to how he normally spoke.

.....

Q. Had she said those things to you in an interview that she said to me at the Inquiry, do you think that her evidence on that point would have had any probative value in establishing guilt or innocence?

A. Well, I'm not so sure that it had a great effect in any event because she was cross-examined on this, I think a fairly excellent cross-examination.

.....

[A]lthough it's not necessarily part of the narrative, it's part of the whole scenario. And it just seems to me that every day we make, as human beings, we make these kinds of decisions when we've dealt with people and say they're different today, they must be down, what the hell happened to him, or, you know, that sort of consideration. And we, as human beings, I think become sort of experts on that.

The Trial Judge's Ruling

Mr. Justice Donnelly, in a pre-trial ruling on the admissibility of Mandy Patterson's evidence, held as follows:

The murder of Christine Jessop was heinous. The body had recently been discovered. Mr. Morin's immediate neighbour was the victim. As a fellow band member, Mrs. Patterson was familiar with Guy Paul Morin's normal behaviour and thereby was able to form an opinion and arrive at a conclusion about his demeanor. Her observations of his insensitive and uncharacteristic response were scaled against her familiarity with Mr. Morin and not against her expectation of a universal standard of response. Guy Paul Morin's emotional reaction draws its relevance as a departure from his usual norm.

Mr. Morin's emotional response can only be judged against the context in which it occurred. For the purpose of conveying meaning, words, conduct and demeanour are inseparable. The relationship between words and demeanour is well recognized as a fundamental consideration in assessment of evidence by triers of fact. That Mr. Morin's emotional condition may be taken in conjunction with the words spoken at the time is supported by the former 'recent complaint' line of sexual assault cases where the emotional condition of the victim was capable of being corroborative on the issue of consent.

.....

The central issue in the Guy Paul Morin retrial will be the identity of the killer. This demeanour evidence as observed by Mandy Patterson is tendered on that issue. The evidence draws relevance as the words and conduct of the accused relative to the specific crime with which he was charged one week later. The accused's uncharacteristic verbal response and accompanying demeanour are capable of connecting the accused to the crime by supporting a logical inference of consciousness of guilt based upon the premise that inner consciousness of guilt leaves a psychological mark. That evidence may logically be accepted by the jury as probative of a fact in issue - the

identity of the killer. Mr. Morin's conversation with Mandy Patterson and his emotional state are not evidence of bad character which might support an inference that the accused had a general disposition rendering it probable that he was the type of person who would commit this crime.

Ms. Patterson's reference to her "shock" that Guy Paul Morin hadn't wanted to talk to her about the occurrence and her view about the "sickness" of the killer are not probative of any fact in issue. Her 'shocked' reaction and her view about 'sickness' have no relevance and will not be admitted into evidence.

Otherwise the evidence of Mandy Patterson is probative as relating to the issue of consciousness of guilt. It is thereby relevant and not subject to any exclusionary rule. The evidence is not subject to exclusion under the original or reinterpreted rule in *R. v. Wray* regarding considerations of balancing probative value of evidence, as it relates to consciousness of guilt, against the prejudicial effect relative to the disposition and propensity of the accused. Guy Paul Morin's conversation with Mandy Patterson and her observations of his demeanour will be admitted into evidence.

Findings

Ms. Patterson advised the police of conversations which she allegedly had with Guy Paul Morin, as a fellow band member. Her evidence was tendered by the prosecution at both the first and second trials. At the second trial, Donnelly J. excluded part of her evidence and was correct in doing so. The prosecutors provided Ms. Patterson with a transcript of her first trial testimony, crossing out those portions which were now inadmissible. I accept the evidence that those excisions were done to ensure compliance with Donnelly J.'s order.

Ms. Patterson was also provided with a list of each question that she would be asked at the second trial. These questions were virtually identical to the questions that were asked of her by Mr. McGuigan at trial. During her testimony at the Inquiry, counsel for Mr. Morin suggested that this constituted a "script." Mr. McGuigan later responded by noting that no other witness was provided with a list of questions and that this approach was again reflective

of the need to carefully ensure compliance with the trial judge's order. Again, I am prepared to accept this explanation.

However, there was an aspect of the interviewing process that concerned me. A portion of her previous testimony was underlined. This portion reflected that she had been thinking about her conversation with Guy Paul Morin all week. Another portion had a question mark beside it. Then, at the bottom of a second document (the typed list of "questions for Mandy Patterson) in Ms. Patterson's writing is a slightly more assertive version of the same evidence. This more assertive version of the same evidence was extremely similar to the ultimate evidence which she gave in examination in chief, cross-examination and during re-examination. Ms. Patterson indicated that, to the best of her recollection, the prosecutors crossed out the "stuff" they did not want her to say anymore and "highlighted the parts that they really wanted me to focus on." Mr. McGuigan had no specific recollection of how Ms. Patterson came to reflect her handwritten answer on the bottom of that page or how or when the other markings were placed on the copy of the transcript of her evidence at the first trial.

Witnesses must, of course, be prepared, and all good counsel will do so. It is obvious to me that the preparation by both sides in this case was extraordinary. But it is wrong to suggest that certain things should be said, while others should not. I am uneasy with the highlighted portion of the transcript she was given, and also with the final sentence, written in her own hand and repeated almost verbatim in her testimony. Though I do not find that Mr. McGuigan told Ms. Patterson what to say, I am concerned that the interviewing process may have overly contributed to the final version of her evidence. I am mindful of Mr. Lockyer's concession in this regard.

Ms. Patterson suggested that her conversation with Guy Paul Morin had concerned her even prior to his arrest. This may or may not have been so. I am convinced that Guy Paul Morin's arrest did colour or solidify her perceptions about the conversation(s) she had with him. Ms. Taylor may have been present for part of the conversation; she was not called as a witness at the trial.

Ms. Patterson reflected the mind-set of various Crown witnesses: she felt like 'part of the prosecution team'; she was enveloped to some extent by the confidence and determination of the authorities, and she labelled the defence as 'the bad guys.' She said that she was told that she did not have to

speak to the defence and that the defence would try to make her out to be a liar. Ms. Patterson's evidence at the Commission was that she felt stronger at the second trial than at the first; she had had the experience of testifying already, she was older, and she walked in "with the kind of an attitude where I was going to give my testimony and I was going to tell them what was said to me and I wasn't about to let anybody try to push me around over it." Interestingly, her perception as to how defence counsel had treated her at the first trial was, itself, coloured; the first trial transcript reveals that Mr. Ruby asked her only a few questions and, rather than attack her, simply sought to demonstrate, in a non-confrontational way, the limited inferences that could be drawn from her evidence.

Ms. Patterson did not intentionally mislead the Court or this Inquiry. But she did take sides and it did colour her approach to the evidence. Crown counsel must be extremely careful not to encourage this adversarialism on the part of their witnesses, even though it might make the witness more favourable. Further, though Crown counsel is entitled to advise the witness that he or she has no obligation to speak to the defence, the message should not be communicated in a way that, again, invites the witness to take sides and effectively makes it unlikely that the witness will speak to the defence.

The real problem with much of Ms. Patterson's evidence is that it should have formed no part of the trial. Her feelings or perceptions that Guy Paul Morin should have sounded more concerned or caring when speaking about Christine Jessop was evidence that contributed little more than prejudice and constituted the most dangerous kind of evidence. Its use at this trial as yet more evidence 'consistent with Guy Paul Morin's guilt' — indeed, from the last witness for the Crown — was inappropriate. In that regard, the Crown cannot be faulted; it sought and obtain a ruling favouring its admission as evidence.

Ms. Patterson's evidence that Morin said that Christine Jessop was killed the same night was also of dubious value. We do not have any proof that what he did say could only be known to the killer, yet that was precisely the inference the jury was invited to draw. Many people thought she was killed the same night. This was equally explainable as speculation. (The credibility issue between Officer Loughlin and Guy Paul Morin complicates an assessment of the admissibility of this evidence.) It is unnecessary to determine its ultimate admissibility for the purposes of this Inquiry.

Failure to Search

One of the elements of consciousness of guilt that was put forward to the jury by the Crown attorneys was Mr. Morin's failure to join the search for Christine Jessop, his failure to attend her funeral and his failure to express his condolences to the family. While Mr. McGuigan acknowledged that he had never led this kind of evidence before, he stated that he never considered such evidence to be "ground-breaking."

In explaining the probative value of Mr. Morin's failure to participate in the searches for Christine Jessop, Mr. McGuigan stated that the evidence was indicative of consciousness of guilt because Mr. Morin was her next-door neighbour, who liked Christine and had not participated in the tremendous community search effort. In addition, although he had been asked by the Jessops one day to participate in a search, he declined, indicating that he had to work that day. The evidence indicated that he did not work that day.

Ms. MacLean also considered it odd that a next-door neighbour would not have searched, given that community of Queensville was searching and busloads of individuals were coming from Toronto to assist in the endeavour.

Mr. McGuigan was queried during the Inquiry as to whether he would have attempted to lead evidence that, had Mr. Morin *participated* in the search, this behaviour was *indicative* of guilt. He stated that he would not have done so as engaging in the search would have been the rational and reasonable thing to do. He acknowledged, however, that he could see how an accused person in such a situation could be in a "Catch-22" position.

Failure to Attend Funeral and Funeral Home

Mr. Morin's failure to attend Christine Jessop's funeral was also adduced as evidence of consciousness of guilt. It was suggested, however, by counsel for Mr. Morin, that his attendance at the funeral might equally have been adduced as *indicative* of his guilt on the theory that, in investigating an murder, the police attempt to identify those attending the victim's funeral, thinking that the killer might attend. In fact, in the Jessop homicide, considerable investigative efforts were expended by the police at the funeral in this regard.

While Mr. McGuigan did not recall these efforts, he stated that his

understanding was that in such cases police are looking for strangers, not acquaintances of the victim who would have every reason to attend the funeral. Mr. McGuigan did not consider the evidence of Mr. Morin's failure to attend Christine's funeral as overreaching, nor did he see this as raising the same "Catch-22" issue as with the failure to search.

During this trial testimony, in cross-examination, Mr. Morin testified that he did not attend Christine Jessop's funeral because he had not received an invitation.

Mr. Smith testified before the Commission that he would not now call such evidence. He stated that his view of consciousness of guilt evidence is affected by developments in the law, events at the Commission, and a reflection on the fact that they obviously drew the wrong inferences from the evidence. Mr. Smith stated that if an innocent explanation exists for the consciousness of guilt evidence, it should not be called. There was an innocent explanation for Mr. Morin's failure to attend; he could have been socially shy.

Failure to Express Condolences

Similarly, Mr. Morin's failure to offer condolences to the family was viewed by the Crown attorneys as relevant to his guilt. In Mr. McGuigan's opinion, it was not a valid explanation to say that Mr. Morin did not express his condolences because of his age and social awkwardness in dealing with the grief of his next-door neighbours. Mr. Morin testified during the second trial that he did not go over to the Jessop home with his mother and father when they offered their condolences as he "thought that was more of a parent sort of thing to do."

Findings

It is undoubtedly clear at this point that, with due respect to the trial judge, I am of the view that much of the 'consciousness of guilt' evidence not only should not have been left with the jury on that basis, but should not have been admitted at all. In my view, the failure to search for Christine Jessop was worthless evidence and ought to have been excluded. The situation was compounded in that Morin's answer as to why he did not search on one day was shown to be wrong, and his explanation was left to the jury as further

evidence of his consciousness of guilt. Ironically, Douglas' profile suggested that the killer might be overly cooperative, and assist in the search to divert attention from himself. This points up the worthlessness of this evidence.

Mr. Morin's failure to express condolences also was worthless evidence and ought not to have been admitted. Indeed, Mr. McGuigan invited the jury to note that Morin had not expressed his condolences up to the present date. Apart from the overall inadmissibility of this evidence, it was surely incorrect to invite the jury to infer anything from Morin's failure to express condolences, once he was charged with Christine Jessop's murder. Mr. McGuigan conceded, on reflection, that this is so. (He had not intended to include the time-frame after arrest.)

Mr. Morin's failure to attend the funeral or funeral home was worthless evidence and ought not to have been admitted. Again, the situation was compounded in that Morin's answer (that he was not invited) was, not surprisingly, used to reflect upon his credibility. The issue should never have been before the jury in the first place.

As I have earlier reflected, the introduction of all of this evidence, together with other problematic evidence of consciousness of guilt, was bound to have had, in its accumulation, a significant effect on the jury. The leading of this evidence demonstrated that the prosecution, led by Mr. McGuigan, sought to squeeze every drop out of the information available to them, to support their case. However, there was no impropriety in the leading of this evidence, since it was presented to the trial judge who ruled on it. Further, in fairness to both the trial judge and Crown counsel, there has been some greater sensitivity to the limited use of consciousness of guilt evidence expressed by appellate courts more recently than was the case during the currency of the trial. My later recommendations further address the use of 'consciousness of guilt' and related evidence.

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