

## **EXECUTIVE SUMMARY**

### **Chapter I: The Scope and Nature of the Inquiry**

#### **The Background**

Christine Jessop, a nine-year old girl, “who loved life, her family, school and sports,” was murdered on or after October 3, 1984. Guy Paul Morin, her next-door neighbour, was charged with her murder. He was acquitted in 1986, but a new trial was ordered by the Court of Appeal for Ontario and this Order was affirmed by the Supreme Court of Canada. A new trial was held, and Mr. Morin was found guilty of first degree murder. He appealed, and on January 23, 1995, on the basis of fresh evidence tendered jointly by the Crown and the defence, he was acquitted of the charge. “This course of events,” as the provincial cabinet later said, “has raised certain questions about the administration of justice in Ontario.”

Accordingly, on June 26, 1996, the Lieutenant Governor in Council directed that a Public Inquiry be held, and a commission was issued appointing the Honourable Fred Kaufman, Q.C., a former judge of the Quebec Court of Appeal, as Commissioner under the designation “The Commission on Proceedings Involving Guy Paul Morin.”

#### **The Mandate**

The Order in Council directed the Commission to “inquire into the conduct of the investigation into the death of Christine Jessop, the conduct of the Centre for Forensic Sciences in relation to the maintenance, security and preservation of forensic evidence, and into the criminal proceedings involving the charge that Guy Paul Morin murdered Christine Jessop.” The Commission was also directed to “make such recommendations as it considers advisable relating to the administration of criminal justice in Ontario.” The Order in Council specified that the Commission shall “perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization.” This prohibition has been observed in the Report.

The mandate of the Commission was threefold: investigative, advisory and educational. The investigative role required the Commissioner to determine, to the extent possible, why the investigation into the death of Christine Jessop and the proceedings which followed resulted in the arrest and conviction of an innocent person. The advisory role required the making of recommendations for change intended to prevent future miscarriages of justice. The educational role meant that the public inquiry should serve to educate members of the community as to the administration of justice generally and as to the criminal proceedings against Guy Paul Morin in particular.

### **The Hearings**

Public hearings began on February 10, 1997, and continued for 146 days. One hundred and twenty witnesses were called. The Commission also considered the transcripts of evidence and exhibits from both trials, as well as documents filed with the Ontario Court of Appeal. These totalled well over 100,000 pages. Twenty-five parties were given either full ‘standing,’ or standing limited to particular factual issues or to systemic issues only. The media were present throughout the proceedings.

The Inquiry was divided into eight phases to address the relevant issues raised. Phase VI of the Inquiry heard systemic evidence — that is, evidence from witnesses generally unconnected to the Morin proceedings who could cast light on the issues which transcend the facts of the Morin case and extend to the administration of criminal justice in Ontario generally. This evidence came from experts and participants in the administration of criminal justice from around the world. The Commissioner heavily drew upon this systemic evidence, together with the submissions of all parties, in framing his 119 recommendations for change.

### **The Innocence of Guy Paul Morin**

Guy Paul Morin was 25 years old at the time of his arrest. He had no criminal record. He lived with his parents in Queensville, Ontario. He had a Grade 12 education. He had attended various courses in auto upholstery, spray painting, gas fitting, air conditioning and refrigeration. He worked as a finishing sander with a furniture manufacturer in October 1984, when Christine Jessop disappeared. His acquittal by the Court of Appeal on January 23, 1995, was based on fresh DNA evidence, which established that he was

not the donor of semen stains found on Christine Jessop's underwear. Senior Crown counsel and then the Attorney General of Ontario conceded that Mr. Morin was innocent, and apologized to him for the 10-year ordeal he and his family had undergone. Ultimately, compensation was paid to him and his parents by the Government of Ontario.

### **The Facts of the Case**

The Jessops and the Morins were neighbours in the small town of Queensville, about 35 miles north of Toronto. On the afternoon of October 3, 1984, the school bus returned Christine to her home at about 3:50 p.m. No one was there. Her mother, Janet, had taken Christine's older brother, Ken, to the dentist in Newmarket. The precise time of their return to the Jessop home was a major issue at the second trial. Guy Paul Morin left work at 3:32 that afternoon and could have arrived home no sooner than 4:14 p.m.. Accordingly, the Jessops' time of return had an impact on any 'window of opportunity' for Mr. Morin to have committed this crime. Mr. Morin gave evidence to demonstrate that he arrived home well after the Jessops and therefore had no opportunity to abduct Christine Jessop. The prosecution vigorously disputed his alibi and suggested that he changed his time of arrival in various statements to avoid responsibility for the murder.

Christine was not in the house when the Jessops returned, but there was no immediate cause for alarm. But when she failed to show up by early evening, Ms. Jessop called the police. A search of the area was organized and it continued for several days. No trace of Christine was found. As time passed, concerns heightened that she had been the subject of foul play. York Regional Police conducted the investigation into her disappearance.

Her body was found on December 31, 1984, near the town of Sunderland in Durham Region, about 56 kilometers east of Queensville. Her body was on its back with her knees spread apart in an unnatural position. An autopsy determined that she had been stabbed in the chest several times and this had been the cause of death. The presence of semen on her underpants irresistibly suggested that she had been sexually assaulted. Her body was badly decomposed, and death could have occurred three months before its discovery. Because her body was found in Durham Region, the Durham Regional Police Service took charge of the case.

John Scott prosecuted Mr. Morin at his first trial. Susan MacLean

assisted Mr. Scott. Clayton Ruby and Mary Bartley defended Mr. Morin. Leo McGuigan was the lead prosecutor at the second trial, assisted by Alex Smith and Susan MacLean. Jack Pinkofsky, Elizabeth Widner and Joanne McLean defended Mr. Morin. Brian Gover was leading prosecutor during a lengthy motion by the defence to stay the proceedings at the second trial.

## **Chapter II: Forensic Evidence and the Centre of Forensic Sciences**

### **Background**

Phase II of the Inquiry examined the role that forensic evidence played in Guy Paul Morin's criminal proceedings and, more particularly, the role played by the Centre of Forensic Sciences.

The Centre of Forensic Sciences ("CFS") in Toronto is the principal laboratory where forensic examinations are conducted for criminal investigations in Ontario. It is publicly funded and accountable to the Ministry of the Solicitor General. Two CFS forensic analysts, Stephanie Nyznyk and Norman Erickson, gave evidence as to hair and fibre comparisons at the instance of the prosecution.

The prosecution relied on the hair and fibre findings made by these scientists to demonstrate that there was physical contact between Christine Jessop and Guy Paul Morin, and that Christine was transported in the Morin Honda to her death by Mr. Morin. The evidence was said to refute Guy Paul Morin's denial that he had any physical contact with Christine and his specific assertion that Christine had never been in the Honda. Stephanie Nyznyk testified at both trials; Norman Erickson at the second trial only.

### **The Hair Findings**

When Christine Jessop's body was discovered, a single dark hair was found embedded in skin tissue adhering to her necklace. This came to be known as the 'necklace hair.' This hair was not Christine's and it was presumed to have come from her killer. This hair was said to be microscopically similar to Guy Paul Morin's hair and *could have* originated from him. After Guy Paul Morin's first trial and before his second, an analysis

of hairs belonging to Christine Jessop's classmates revealed that two classmates had hairs which were also microscopically similar.

Three hairs found in Mr. Morin's car were said to be dissimilar to Mr. Morin's hairs. It was said that these were similar to Christine Jessop's hairs and *could have* come from her.

The Commissioner found:

- Properly understood, the hair comparison evidence had little or no probative value in proving Mr. Morin's guilt. Generally, hair comparison evidence (absent DNA analysis) is unlikely to have sufficient probative value to justify its reception as circumstantial evidence of guilt at a criminal trial.
- Ms. Nyznyk did not adequately or accurately communicate the limitations upon her hair comparison findings to police and prosecutors prior to the second trial.
- Prior to Guy Paul Morin's arrest, Ms. Nyznyk conducted a hasty, preliminary comparison of the necklace hair and Guy Paul Morin's hairs in the investigators' presence. She communicated a preliminary opinion to the officers. That opinion was overstated and, to her knowledge, left the officers with the understanding that the comparison yielded important evidence implicating Mr. Morin.
- Had the limitations on Ms. Nyznyk's early findings been adequately communicated by her, Mr. Morin may not have been arrested when he was — if, indeed, ever.
- Detective Bernie Fitzpatrick testified about Ms. Nyznyk's early hair and fibre findings at Guy Paul Morin's bail hearing. His evidence was inaccurate. This was not deliberate, but can be explained, in large measure, by the inadequate way Ms. Nyznyk's findings (and their limitations) were communicated by her.
- The hair comparison evidence was misused by the prosecution in its closing address at the second trial (though the Commissioner did not find that this was done malevolently). Particulars of this misuse are contained in the Report.

## The Fibre Findings

Fibres were collected from the taping of Christine Jessop's clothing and recorder bag found at the body site, from the taping and vacuuming of the Morin Honda and from tapings of the Morin residence. Many thousands of fibres (perhaps hundreds of thousands) were examined. *Several* became significant. Ms. Nyznyk and Mr. Erickson testified at the Morin criminal proceedings that several of the fibres from the Morin-related locations were similar and *could have* come from the same source as several fibres found at the body site.

The Commissioner found that the similarities, even if they all existed, proved nothing. His findings included:

- The fibre evidence was contaminated within the Centre of Forensic Sciences. The timing and precise origin of the contamination cannot now be determined. However, it remains possible that this contamination tainted Ms. Nyznyk's earliest findings. No inferences can safely be drawn from any alleged fibre similarities, given the existence of this in-house contamination.
- This contamination was known to Ms. Nyznyk and Mr. Erickson prior to the first trial and withheld by them from the police, the prosecution, the defence and the Court. This may have been done to avoid embarrassment to themselves and to the CFS; it was not done out of personal malice towards Guy Paul Morin or with any desire to convict an innocent person. They believed, rightly or wrongly, that the contamination was unrelated to Ms. Nyznyk's original findings, but this afforded them no excuse.
- There was no real interest in documenting the contamination, how it had occurred, whether it had affected other cases within the Centre and how it might be prevented in the future. Indeed, Ms. Nyznyk declined to retain any documentary record of the contamination in her file.
- The existence of in-house contamination was known generally within the biology section of the CFS.

- Further examination on already contaminated fibres was ordered by Mr. Erickson for possible use at the second trial. This further examination yielded potentially exculpatory findings which were not communicated by Mr. Erickson to the prosecution or to the defence.
- Apart from internal contamination, the fibre similarities were not probative in demonstrating direct contact between Christine Jessop and Guy Paul Morin — instead, they were equally explainable by random occurrence or environmental contamination; the number and nature of the fibre similarities did not support the prosecution's position.
- Ms. Nyznyk and Mr. Erickson failed to communicate accurately or adequately the limitations on their findings to the police, the prosecutors and the Court.
- Mr. Erickson (and likely Ms. Nyznyk) provided the prosecution with a published study on fibre transference (the Jackson and Cook study) which did not support an inference that the fibre similarities in the Morin case were at all significant in proving direct contact.
- The study, properly understood, did not support the case for the prosecution. The details of the study were irrelevant to the Morin proceedings. They were elicited from both CFS scientists. Mr. Erickson and Ms. Nyznyk failed to accurately or adequately communicate the limited relevance of the study to the prosecutors or to the Court.
- The fibre findings and, more particularly, the Jackson and Cook study, were misused by the prosecution in its closing address. Although the Crown's closing address, in some respects, took the study farther than anything that the scientists had said about it, the Commissioner did not find that the study's misuse by the prosecution was deliberate.

The Commissioner also reflected the fact that original evidence was lost at the CFS between the first and second trials. Finally, he noted that certain terms, such as 'match' and 'consistent with' were used unevenly and were potentially misleading. The use of these terms contributed to misunderstanding of the forensic findings.

## **Conclusions**

The contribution of the CFS to Mr. Morin's wrongful arrest, prosecution and conviction was substantial. Hair and fibre evidence elevated Guy Paul Morin to prime suspect status; formed the justification, in large measure, for his arrest and for the searches of his car and home; was cited by the Crown to support his detention pending trial; was cited by the Ontario Court of Appeal and Supreme Court of Canada as evidence relevant to their consideration of whether his acquittal should be overturned; formed a substantial part of the case against Guy Paul Morin at his first and second trials; and undoubtedly was relied upon by the jury at the second trial to convict him.

The Centre of Forensic Sciences plays a vital role in the administration of criminal justice in Ontario. It cannot perform its duties unless its scientists are objective, independent and accurate. Further, they must be perceived to be independent by the participants in the criminal justice system. A large number of CFS scientists perform their work with distinction. On the other hand, it would be a serious mistake to assume that the failings identified are confined to two scientists. A number of those failings are rooted in systemic problems, many of which transcend even the CFS and have been noted in cases worldwide where science has been misused. Dr. James Young, Assistant Deputy Solicitor General with responsibility for the CFS, apologized on behalf of the CFS for any role in Guy Paul Morin's conviction and advised the Commissioner that he had not appreciated the depth of issues which would arise at the Inquiry. He outlined corrective measures undertaken by the CFS, a number of which were in direct response to the problems identified at the Inquiry. The Ministries of the Attorney General and Solicitor General also introduced a new policy guideline addressing the relationship between CFS scientists and prosecutors and the responsibilities of each. The Commissioner commended these initiatives. Recommendations 2 to 35 further address the systemic problems identified at the Inquiry.

## **'Indications' of Blood**

The prosecution also tendered CFS expert evidence that there were microscopic 'indications of blood' in the Morin Honda. This was a 'presumptive' or 'preliminary' test which did not prove that there was, indeed, blood in the vehicle, let alone human blood, let alone Christine Jessop's blood.

The Commissioner found that Mr. White, the CFS serologist, accurately articulated the limitations upon his findings. However, the evidence did not have sufficient probative value to justify its reception.

### **Chapter III: Jailhouse Informants**

#### **Background**

Phase I of the Inquiry examined issues arising from a confession to the murder of Christine Jessop allegedly made by Guy Paul Morin to Robert Dean May, a fellow inmate in Whitby Jail; it was allegedly overheard by Mr. X, an inmate in the next cell. Mr. X's identity is the subject of a publication ban imposed by the trial judge and upheld by the Ontario Court of Appeal.

May has a substantial criminal record for crimes of dishonesty. He admitted that he had a problem with lying in the past and had lied to the police and correctional authorities. He wanted badly to be released from jail in 1985 and would do whatever was necessary to accomplish this. He offered to implicate other inmates. (So did Mr. X.)

May was diagnosed by mental health experts at the second trial as a pathological liar. He had a deficient social conscience and was skilled in deceiving others. After the second trial, May recanted his trial evidence. He told a number of people that he had lied about having heard Mr. Morin confess and that he had committed perjury at the trials. Then he attempted to recant his recantations and took the position that his evidence at the trial about the purported confession was indeed true. The Commissioner found that he "spun a web of confusion and deceit about the issue of the confession."

Mr. X has a lengthy criminal record for sexual offences, particularly for offences against young children. He was diagnosed in 1988 as having a personality disorder with sociopathic tendencies. At the second trial of Mr. Morin, an expert testified that this is characterized by exaggeration, lying, suggestibility and disregard for social norms. Mr. X agreed that he has lied to the police and correctional authorities in the past. He told the Inquiry that at times he apparently lost contact with reality; he heard voices in his head which, sometimes, were so loud that he thought his head was going to

explode. He explained his history of sexual misconduct by the fact that he heard the voice of his uncle telling him to commit the illegal acts. X also bargained with the police for his information about Morin's purported confession. In June 1985, he was desperate to get out of the Whitby Jail and into the Temporary Absence Program. He told the police he would give them anything they wanted if they got him into a halfway house. After the first trial, he was convicted of another sexual assault. The Commissioner found that Mr. X is an untrustworthy person whose testimony cannot be accepted on any of the issues before the Inquiry.

Both May and X claimed that they reported the confession and gave their evidence because they were morally outraged at the crime committed by Morin. The Commissioner rejected that motivation and found that they were both seeking to further their own ends when they reported the confession and testified. The Commissioner accepted Guy Paul Morin's evidence that he did not confess to Mr. May.

Inspector Shephard was candid in acknowledging that a number of things that the informants said and did should have been more carefully scrutinized and investigated. The Commissioner found:

- Apart from their core evidence, some of the things that the informants said were patently unreliable. The prosecutors at the second trial did not *objectively* assess the reliability of these informants. When confronted prior to the second trial with the informants' personal records, which showed their diagnosed propensities to lie, emphasis was placed upon denigrating or minimizing this evidence, rather than introspectively questioning whether the informants' reliability should be revisited.
- Having said that, the prosecutors did regard May and X as truthful on the critical issue. There was some support for this view (most particularly, both informants passed polygraph tests though the polygraphist reflected the danger in placing undue reliance upon those results). The prosecutors' views were no doubt coloured by their genuine views on Guy Paul Morin's guilt; as a result, evidence which undermined the informants was more easily discarded and largely inconsequential evidence became confirmatory. However, no existing law or ethical standards prevented the prosecutors from calling even suspect evidence, so long as they did not know that the evidence was

perjured. There was no misconduct in the prosecutorial decision to call these informants. Nonetheless, the decision to call these witnesses raises important systemic issues.

### **Tunnel Vision**

The Commissioner also found that certain parties at the Inquiry continue to suffer from tunnel vision that is “staggering”:

Mr. McGuigan still believes that the informants were telling the truth and that Guy Paul Morin lied about his ‘confession.’ Detective Fitzpatrick holds similar views. Indeed, though Mr. McGuigan believes that Mr. Morin is innocent, he also believes that he and his family deliberately concocted a false alibi. An innocent person has been known to tender a false confession — though mostly in the context of a police investigation. An innocent person has been known to tender a false, concocted alibi. I have found that Mr. Morin did not confess to May; I also have no doubt that Mr. Morin and his family (however imperfectly conveyed) did not concoct his alibi. The fact that Mr. McGuigan still accepts Mr. May’s evidence, in the face of Mr. Morin’s proven innocence, May’s recantations, May’s non-rehabilitation, and most importantly, in the face of May falsely alleging that McGuigan himself was a conspirator in framing Morin, is ‘tunnel vision’ in the most staggering proportions. The fact that Detective Fitzpatrick still accepts Mr. May’s evidence, in the face of these facts and May’s false claims that Fitzpatrick had threatened to kill May, etc. demonstrates an equally persistent ‘tunnel vision.’ These findings of ‘tunnel vision’ also explain the need for the recommendations which later follow.

### **The Offer**

At some point during the second trial, both informants were given the opportunity to choose not to testify at the trial. Both rejected the offer. This information was not disclosed to the defence. It only became public knowledge after Mr. May divulged it in his response to the last question asked of him in re-examination by the prosecution. Mr. X then testified and also divulged it during his cross-examination. It was later used to full effect in Mr. McGuigan’s closing address to demonstrate that the witnesses were testifying voluntarily and at their own option and therefore unmotivated to lie.

The Inquiry was told by the three prosecutors at the second trial that the offer was made for compassionate and humanitarian reasons only and was not an attempt to artificially bolster the credibility of the informants. Mr.

McGuigan testified that he brought up the idea of making the offer to the informants after he learned of the abuse that Mr. X had suffered as a result of testifying at the first trial. He was mindful of his obligation to be kind and gentle to witnesses and knew that X would be dealt with harshly on cross-examination, as evidenced by the tenor of Mr. Pinkofsky's cross-examinations to that point in the trial. The idea first arose in mid-December 1991, shortly before the Christmas recess. Mr. McGuigan may have expressed his motivation by saying that he was "moved by the Christmas spirit." It was said that the offer was made to May as well so that he would not complain that he was being treated worse than Mr. X. Detective Fitzpatrick was delegated to speak to May and X. He told them that the Crown "might" give them the option not to testify. Both said they would decline such an offer. Accordingly, Fitzpatrick reported back that both elected to testify. Despite this, the offers were again made "formally" by Crown counsel to each informant.

Mr. McGuigan testified that the offer was not to come out in evidence at the trial. He suggested at one point that the witnesses would have been told not to mention the offer. Ms. MacLean's evidence, which was inconsistent with Mr. McGuigan's, was that the prosecutors discussed that the witnesses had the right to say they were there voluntarily, and she so advised Mr. X when he raised the matter with her in trial preparation. (She correctly noted that telling Mr. X not to mention the offer would be tantamount to telling him to lie.)

During his opening address on November 12, 1991, Mr. McGuigan had told the jury that both informants would be called as witnesses to Morin's confession. He described the informants and their anticipated evidence, including the words purportedly uttered by Guy Paul Morin. Mr. McGuigan testified that he forgot about his opening statement when he authorized the offers. He conceded that if the offers had been accepted and neither of the informants testified, a mistrial might have been caused because of his mention of the confession in his opening address, but that eventuality never occurred to him.

In lengthy reasons, the Commissioner found that the offers were made "for tactical reasons with the hope or expectation that their rejection would be revealed to the jury, and in the knowledge that, if revealed, it would enhance the credibility of the informants." He found that the offers were not intended to be unconditional and genuine as Mr. McGuigan claimed they were. He noted, *inter alia*, that:

- Mr. McGuigan's position that he never thought about a possible mistrial was inconsistent with his wide trial experience and his submissions to the Court on January 20, 1992, when he made reference to his earlier opening address on this very topic.
- On Mr. McGuigan's interpretation of the offers, it was possible that only Mr. May might have accepted it, leaving the prosecution with nothing but the evidence of the person who simply *overheard* the confession; it is inconceivable that Mr. McGuigan would not have foreseen this possibility.
- Had the informants accepted the offer, it would have deprived the Crown of the only direct evidence against Guy Paul Morin and might have resulted in his acquittal; there was a real possibility that the Jessops and the public would have been outraged if a murderer of a nine-year old girl went free because the prosecutors tendered an offer out of compassion. None of the prosecutors considered any of these consequences.
- May and X were not persons likely to evoke the degree of compassion put forward by Mr. McGuigan at the Inquiry. Indeed, it was uncontested that neither of these witnesses had even asked the prosecutors to excuse them from testifying.
- Mr. McGuigan contemplated that the informants would be challenged by the defence on their motivations for testifying. If it were disclosed to the jury that such witnesses declined an offer permitting them not to testify, it would seriously undermine such a line of attack. It was inconceivable that it never occurred to Mr. McGuigan until the offers were revealed in evidence that the declining of the offers would enhance the informant's credibility.

The Commissioner also found that Detective Fitzpatrick, an experienced officer, "knew that the offers were not made as the result of compassion for X and a consequent need to treat May in the same manner as X." If it appeared likely that the two informants (or either of them) would accept the offers, Mr. McGuigan would have ensured that the offers were not pursued. He sent Detective Fitzpatrick to find out what their reaction would be. "Apparently, the informants gleaned the real message because both of them purported to reject the offers, although one would have thought that

they would receive such news with sighs of relief at the opportunity not to be exposed to intensive cross-examination.”

The Commissioner considered the respective involvement in the making of the offers of the three Crown attorneys. He found that the evidence did not warrant a conclusion that Mr. Smith and Ms. MacLean, having regard to their junior position in relation to Mr. McGuigan, were aware that the offers were not genuine. When Mr. McGuigan said that he was imbued with the Christmas spirit, Ms. MacLean may have accepted the truth of that statement “because of her respect for him and his stature.”

### **Recommendations**

The informants were motivated by self-interest and unconstrained by morality. It follows that they were as likely to lie as to tell the truth, depending on where their perceived self-interest lay. Their claim that Guy Paul Morin confessed to May was easy to make and difficult to disprove. These facts, taken together, were a ready recipe for disaster. The systemic evidence emanating from Canada, Great Britain, Australia and the United States demonstrated that the dangers associated with jailhouse informants were not unique to the Morin case. Indeed, a number of miscarriages of justice throughout the world are likely explained, at least in part, by the false, self-serving evidence given by such informants.

During this Inquiry, the Crown Policy Manual was changed to reflect a new policy on in-custody informers. The Commissioner found that Crown policy to be a laudable first step in addressing difficult policy issues. Recommendations 36 to 69 address the systemic issues arising out of the use of jailhouse informants in criminal proceedings.

### **Chapter IV: The Investigation by the York Regional Police**

Phase III of the Inquiry examined the investigation conducted by York Regional Police into Christine Jessop’s disappearance.

The Commissioner found certain failings in the investigation by York Regional Police. These included:

- The failure to preserve evidence at the Jessop residence.

- The failure to ‘dust’ the residence (and particularly Christine Jessop’s room) for fingerprints either to preserve her fingerprints or determine if foreign fingerprints were present. The house was not fingerprinted even in the ensuing weeks following Christine’s disappearance.
- The failure to conduct an in-depth canvassing of the Queensville homes to meticulously document and clarify the memories of prospective witnesses at the earliest opportunity.
- An inadequate system for keeping track of which officers were assigned to do what and whether they had completed those tasks.
- An inadequate system to ensure that all reports were read and processed in a timely way. The potential for leads and follow-ups to slip through the cracks was present and, unfortunately, this did occur. There was a failure to systematically prioritize and follow up on ‘hot leads.’ In one case (the sighting of a man who appeared to keep a child forcibly in a car) the follow-up came 12 days after the information was passed on to the police.
- The indexing system for reports was archaic. It did not permit an officer to search for all apparent sightings of Christine Jessop or vehicle sightings, without having the actual name of the author of each report or the name of the claimant for the sighting.

The Commissioner considered at what point a missing person investigation should be converted into a serious crime investigation. He concluded that this depends on the circumstances of each case, but he pointed to events which should have alerted the police to the possibility that a major crime was involved sooner than they were. The Report states: “The problem here was not that the police characterized their initial involvement as a missing person investigation. The problem was that the officers did not conduct themselves mindful of the *possibility* that they were dealing with a serious crime.” The Commissioner did note, however, that “the searches were wide-ranging and civilians and police were well mobilized in the circumstances.” He also reflected that “whatever the deficiencies in the search, police and civilian participants spared no effort and showed great dedication to this task.”

The Commissioner concluded that the investigation by York Regional

Police was “flawed,” resulting in “missed opportunities, an inadequate investigation, at times, of potentially significant leads, and a failure to document important information.” He could not determine whether the true perpetrator of the crime would have been apprehended if the investigation had been differently conducted.

The Report recognizes that “there have been significant changes in the organization and conduct of an investigation since then,” but further improvement is possible. Recommendations 70 to 72 address these issues.

The York Regional Police Association expressed serious concern that the commitment, backed by financial resources, shown in Durham to enhanced training and quality assurance for Durham officers has not been shown in York Region. The Commissioner’s recommendations address this concern as well.

## **Chapter V:     **The Investigation by Durham Regional Police and the Prosecution of Guy Paul Morin****

### **The Body Site**

On December 31, 1984, citizens were walking on a tractor path in Durham Region near their home. They spotted something off the path. It was the remains of Christine Jessop. They contacted the Durham Regional police who came to the scene. Her body was on its back and only partially clothed. A sweater was pulled over her head. Panties and blue corduroy pants were near her feet.

Sergeant Michael Michalowsky, of the Durham Regional Police Service arrived at 2:10 p.m. He was the chief identification officer, responsible for the collection and preservation of original evidence found at the scene. Inspector Robert Brown, then in charge of Durham’s Crimes Against Persons Squad, took charge of the investigation. Officers Shephard and Fitzpatrick ultimately became the lead investigators, once Guy Paul Morin was identified as the suspect.

A severe snowstorm was predicted for that evening and Detective Fitzpatrick suggested that a tarpaulin be used to cover the scene until the next day. Unfortunately, his suggestion was not followed. The area around the

body was cordoned off. Officers were organized to search the ground around the body site on their hands and knees. No formal 'grid search' was conducted. The Commissioner found inadequacies in the conduct of the search, which was not completed when darkness fell that night.

### ***Sergeant Michalowsky***

In March 1990, during the preparation for Guy Paul Morin's second trial, Crown attorney Susan MacLean learned that Sergeant Michalowsky had two notebooks for the Jessop investigation, containing a number of divergent entries for the same events. Following an investigation by the Ontario Provincial Police, Sergeant Michalowsky was charged with perjury and attempting to obstruct justice in connection, *inter alia*, with his evidence at the first trial relating to his notebook(s) and in relation to his evidence that a cigarette butt tendered as an exhibit at the first trial was the one found at the body site. The charges were judicially stayed in 1991 for reasons relating to Sergeant Michalowsky's health. The Commissioner ruled, after receiving independent medical evidence, that Sergeant Michalowsky would not be compelled to testify at the Inquiry.

### ***Smoking Paraphernalia Found at the Scene***

It was uncontested that Guy Paul Morin was not a smoker. Evidence that the perpetrator was a smoker would support his innocence. During the first trial and, to a greater extent, the second trial, the defence focused on the evidence found at the body site which, arguably, supported the inference that the perpetrator had left behind smoking paraphernalia: a cigarette butt or butts, a lighter, and possibly a cigarette package. The prosecution took the position that these items were irrelevant to the identity of the killer and, indeed, could be explained, in large measure, by searchers leaving items at the scene. The Commissioner found that the smoking paraphernalia identified at the body site may have had absolutely nothing to do with the identity of the perpetrator, but bore upon the quality of the police investigation and, further, upon the quality of some of the testimony which was elicited from the officers who were confronted with this issue at trial.

At least one cigarette butt, and possibly a second, was found at the body site on December 31, 1984. Constable Cameron had attended at the body site that day and butted out a cigarette while on duty. At the first trial, Michalowsky produced the cigarette butt which purportedly was found at the

scene. It was marked as an exhibit. Cameron testified at the first trial as to his smoking at the body site. The position of the Crown was that the cigarette butt found at the scene could be explained by Cameron's actions. The Crown took this position in good faith. Subsequently, Cameron determined that the cigarette butt that was found could not have been his. That butt was located before Cameron arrived at the scene. It was of a different brand and was found at a different location than the butt Cameron had left behind.

At the second trial, the Crown conceded that the cigarette butt introduced into evidence at the first trial was not the butt found at the scene and introduced as an exhibit.

Another officer allegedly told the OPP investigating Michalowsky in 1990, that he had found a cigarette package at the scene. He later did not adopt that position, but suggested that he may have seen a milk carton instead. Michalowsky, in a second notebook, attributed the finding of a milk carton to yet another officer who, however, truthfully denied that he found anything at the scene.

Yet another officer found a cigarette lighter at the scene several days after the initial search at the site. He bagged this lighter and said that he turned it over to Michalowsky. Michalowsky denied that he received a lighter from anyone and it was never produced. Another officer was to claim that he had dropped the lighter at the scene on December 31, 1984, and so advised an identification officer shortly after his return to the station. Then there was evidence that the lighter may have been found in a different location than that in which the first officer was searching. The evidence of various officers 'developed' or 'changed' as the criminal proceedings continued and the differences between officers' recollections narrowed.

The Commissioner found the quality of the evidence before the Inquiry bearing upon the smoking paraphernalia to be quite unsatisfactory at times. The 'development' of the evidence and the absence of contemporaneous records *before* Guy Paul Morin was arrested or became a suspect invite concern that details later supplied are tailored to support the prosecution's case or refute the defence position.

### *Michalowsky's Court Attendances*

At the second trial, Mr. Justice Donnelly ruled that Michalowsky

should testify at the instance of the defence, but that special conditions would apply to his evidence. Michalowsky's doctor was to sit beside him throughout his evidence and monitor his health and the need for recesses; no one, including the trial judge, would robe; everyone would remain seated throughout, including the questioner; counsel and judge would sit at the same level as the witness; Michalowsky's back would be placed to the audience and a screen was to be placed between him and the spectators. The videotape of his evidence was shown to the Commissioner.

In the presence of the jury, the registrar shook Michalowsky's hand prior to swearing him in. The trial judge explained to the jury that the altered conditions were based upon medical advice to make the matter less discomfiting to the witness. Other comments were made by the trial judge in the jury's presence. As well, the trial judge shook Michalowsky's hand in the absence of the jury, stating, *inter alia*: "it's nice to see you again."

The Commissioner found that the trial judge's actions, while well-intentioned, were unfortunate. Accommodations to a witness must have limits, for otherwise the jury may get the wrong impression. Some comments may have seemed like a judicial stamp of approval of Michalowsky's testimony and may also have conveyed the impression that, for some unfathomable reason, the defence forced this poor man to testify, unmindful of the potential consequences. Though well-intentioned, the trial judge's conduct, in the absence of the jury, raised concerns as to the appearance of partiality — particularly given Michalowsky's alleged Morin-related crimes.

### ***Continuity Evidence and Constable Robinet***

At the second trial, Constable Robinet, another identification officer, was called by the prosecution to address, *inter alia*, the continuity of items found at the body site (such as Christine Jessop's clothing) which the prosecution sought to introduce at trial. (Fibres relied upon by the CFS were said to come from this clothing.) It was alleged both at the trial and at the Inquiry that, given the Crown's decision that it would not call Sergeant Michalowsky as a witness, Robinet's evidence 'developed' to meet the needs of the prosecution.

The Commissioner found that Constable Robinet demonstrated considerable, if not remarkable, improvement in his recollection respecting his involvement in the items collected at the body site. The Commissioner

concluded that, despite the absence of any finding that Robinet deliberately gave false evidence, he was left with the concern that Robinet's ultimate testimony no longer reflected an accurate recollection of his involvement in the events of October 3, 1984. He found that the prosecutors did not deliberately 'feed' information to police witnesses, but, at times, failed to take appropriate measures to preserve the integrity of the interviewing process. They were affected by the fact that these were police officers.

### ***Conclusion***

The Commissioner summarized in these terms:

In this case, it is truly remarkable the extent to which the memories of a number of Crown witnesses improved as the proceedings progressed. Some of this, as I have said, was expected and was responsive to the more detailed demands placed upon them in the later proceedings. I find that some of this was a product of an interviewing process (such as collective meetings or overly informative questioning of witnesses) that was not designed to create unreliable evidence, but which nonetheless had that very effect. I find that a number of witnesses adopted and incorporated into their evidence things they were told by others — often, done subconsciously; sometimes, I regret to say, done deliberately.

### **The General Investigation**

The Commissioner identified certain failings in the Durham investigation. One was that the investigators placed undue reliance, at times, upon the polygraph as a quick and ready means of clearing suspects. The structural failings in the investigation were also discussed. One failing was that investigators who developed the best suspect became the lead investigators. The most significant failing, an investigation coloured by the officers' early views, is discussed below.

#### ***Guy Paul Morin — The Suspect***

On February 14, 1985, Fitzpatrick and Shephard met with Janet and Ken Jessop who mentioned that their neighbour, Guy Paul Morin, was a 'weird-type guy' and a clarinet player. This directed some suspicion towards Mr. Morin. In his notes for February 19, 1985, Inspector John Shephard referred to 'suspect Morin,' but at the Inquiry he denied Mr. Morin was a suspect at that time. He said it was only 'police jargon.' The Commissioner

found that both officers regarded Mr. Morin as a suspect prior to their first interview with him on February 22, 1985. This finding bore upon the attitude with which the two officers approached Mr. Morin that day and which, quite subconsciously, had an impact on the inferences they drew from some of his remarks.

### *The February 22, 1985 Interview*

On February 22, 1985, Officers Fitzpatrick and Shephard interviewed Guy Paul Morin outside his residence. They had arranged to tape-record the interview surreptitiously, but the 90-minute tape in their machine ran on one side for only 45 minutes; they did not know that they had to turn it over. During their discussion, according to the officers, Mr. Morin said some things that they found unusual. Some of them were:

- “Otherwise I’m innocent,” which was said after a pause in a discussion about his work;
- “All little girls are sweet and innocent but grow up to be corrupt,” which was said during a conversation about Christine;
- “[The body] was found across the Ravenshoe Road.” Neither officer was familiar with the Ravenshoe Road, although it was a paved east-west route north of Queensville known to local residents as such.

In the recorded portion of the interview, Mr. Morin told the officers that he left work at 3:30 p.m. on the day Christine disappeared and got home around 4:30. He referred to the fact that he had shopped on the way. In the unrecorded portion, he extended his time of arrival home to “between 4:30 and 5:00.” This aroused suspicion in the officers’ minds.

In the face of Guy Paul Morin’s proven innocence, his comments on February 22, 1985 were innocuous. Some of his comments perhaps should not have excited any suspicion at the time. (For example, suspicions about Morin’s Ravenshoe Road comment were based more upon the officers’ ignorance of the area, than upon anything else.) It is difficult (and not terribly helpful) to assess now which items should have prompted further inquiry then. That analysis misses the point. Officers are entitled to investigate even based upon hunches. However, the comments here were not ‘hard evidence’ of anything. Nothing was said even remotely to constitute an admission, or a

demonstration of knowledge exclusive to the killer. The information in the officers' possession did not justify any fixed view as to Morin's guilt. However, Fitzpatrick and Shephard did 'fix their sights' on Guy Paul Morin—they, themselves, may not have appreciated the extent to which they did so. Subsequent interviews were unduly coloured by their premature, overly fixed views. This affected the quality of those interviews.

### *Timing and Morin's Place of Work*

After the interview, the officers obtained Mr. Morin's time card at work. It disclosed that he left work at 3:32 p.m. on October 3, 1984. A timing run from his workplace to his home (57.1 kilometers) took 42 minutes, and would bring him home at 4:14 p.m. if he did not stop on the way. This raised an issue as to his opportunity to commit the crime, given Janet and Ken Jessop's early accounts to the police that they arrived home at 4:10 p.m.

After their timing run, Shephard and Fitzpatrick went to the office in Newmarket of Dr. Paul Taylor, Ken Jessop's dentist, and briefly spoke to him and his receptionist, Lorraine Lowson. Those witnesses claimed that the Jessops left their office at 4:20 p.m. (Both of them testified to that effect in the criminal proceedings). The officers did a timing run from Dr. Taylor's office to the Jessop residence; it took 14 minutes. This led the officers to question the 4:10 arrival time originally provided to the police by the Jessops.

### *The Time That Janet and Ken Jessop Arrived Home*

At the second trial, Janet Jessop testified for the prosecution and indicated that she and Ken came home at 4:30 to 4:35 or even later. Ken Jessop was called by the defence. On cross-examination, Mr. McGuigan, through extrapolation, elicited from Ken Jessop testimony that supported, though less firmly, the later time home. Then, at this Inquiry, Janet Jessop and Ken Jessop firmly maintained that they got home at 4:10 p.m. Ken Jessop stated that he lied at the second trial. Ms. Jessop's evidence as to her state of mind was less clear.

The Commissioner reflected that the issue at this Inquiry was 'How did it come about that the Jessops' evidence or proposed evidence came to change in the way it did?'

On March 6, 1985, Fitzpatrick and Shephard interviewed Janet and

Ken Jessop at their residence regarding the timing of their activities on October 3, 1984. The interview went on for 2½ hours. No formal statement was taken from them, nor did the officers preserve any detailed notes. Fitzpatrick admitted that they told the Jessops that their times were wrong, having regard to the times provided by Dr. Taylor and Ms. Lowson. The officers suggested to Ms. Jessop that her kitchen clock (by which she had checked her time that day) might be slow. After the interview, the officers recorded that it was found that the Jessops arrived home around 4:35 p.m. and that Janet Jessop said it was possible that her clock could have been slow “as they are having problems with the electric clock.”

The Commissioner found that the March 6, 1985 interview was flawed. First, the officers should not have told the Jessops that their earlier times were wrong and were impossible, whatever their own views. Second, they should not have suggested to Janet Jessop that her kitchen clock could have been slow, believing this suggestion to be untrue. Ms. Jessop not only came to adopt this suggestion as truth, but came to later add that the faulty clock was thrown out for that reason. This, too, was incorrect, as Ms. Jessop herself now admits. Third, the whole interview process was inappropriately calculated to persuade Ken and Janet Jessop that their earlier times were wrong and to modify those times. The investigators genuinely believed that to be true, and they may have been right. However, the risk is that the evidence collected becomes a self-fulfilling prophecy. Fourth, the officers failed to preserve any detailed notes of this lengthy meeting at which the Jessops’ evidence purportedly changed. Indeed, the Report details inaccuracies in the supplementary report summarizing that meeting.

At the second trial, Ken and Janet Jessop testified that they were not pressured by the officers to change their times. At the Inquiry, Janet Jessop spoke of “pressure,” with some qualification, but not “bullying.” The Commissioner found that Janet and Ken Jessop were not prepared to say anything at the second trial that might adversely affect the prosecution’s case. Inspector Shephard denied that the officers pressured the Jessops to change their times, but could appreciate the Jessops’ perception, in hindsight, that they had been pressured.

Once Guy Paul Morin was charged, Janet and Ken Jessop were fully satisfied of Guy Paul Morin’s guilt. Ken Jessop testified that the officers ‘poisoned’ his attitude towards Morin and his family. The Report finds that the officers did communicate their strongly held views to the Jessops as to Mr.

Morin's guilt and other things which contributed to the Jessops' perception of Guy Paul Morin. The Jessops were understandably not reticent about contributing to this kind of dialogue themselves. The officers' approach lacked a certain professionalism and potentially heightened the unreliability of evidence emanating from the Jessops. The Commissioner found nothing untoward in the prosecutors' personal dealings with Ken Jessop.

Janet Jessop testified at the stay motion that her kitchen clock (upon which her 4:10 arrival time had been based) had been thrown out because it was not keeping proper time. She repeated this evidence to the jury. She was confronted with the facts which undermined this position (including a later re-enactment of the events on television which showed the clock still hanging in the background.) Ms. Jessop conceded that this aspect of her testimony was initiated by her and that her strong desire to see that Morin not 'get off' may have factored into this inaccurate evidence. Mr. Gover told the Inquiry that there was a general feeling among the prosecutors that Ms. Jessop was capable of saying anything, if she thought it would further the prosecution.

The Commissioner found that Mr. McGuigan believed that the core evidence given by Janet Jessop — that she and Ken arrived home at 4:30 to 4:30 p.m. or thereafter — was true. However, he knew that her 'clock' evidence was false. Though he thought (with some justification) that this would be obvious to the jury, he should have advised the jury that he placed no reliance upon it and should have re-evaluated, with some true introspection, the extent to which, if at all, the Crown should place any reliance upon her evidence, in light of what was known about her reliability generally, the 'clock' evidence and what she said about the 'funeral screams.'

The Commissioner accepted that Janet and Ken Jessop believed when they initially spoke to the police that they had arrived home at 4:10 (and that Janet Jessop was not lying about that time out of guilt over the late return home.) He also accepted that, rightly or wrongly, Janet and Ken Jessop genuinely now believe that they did return home at 4:10.

### ***The Interview Process Generally***

The evidence revealed numerous instances where interviews, sometimes lengthy, were held with witnesses, whose evidence was ultimately highly contentious and respecting whom it was alleged that their evidence had been 'developed' through the interviewing process. A number of times there

would be a wholly inadequate written record of those interviews. Hours of untaped interviews might be reflected in a single entry in a notebook or in an incomplete *précis* or description of the interview contained in a supplementary report.

Some interviews with witnesses were tape-recorded. The tape-recording was always surreptitious. The Commissioner found some selectivity in which interviews remained unrecorded — the officers were more inclined, though not invariably so, not to tape-record witnesses who potentially would give contentious evidence favouring the Crown.

The Commissioner also found that certain interviews, such as those conducted with Frank Devine, Guy Paul Morin's brother-in-law, Ken Doran, Mr. X's cellmate at the Whitby Jail, and Paddy Hester (dealt with below) were inappropriately conducted.

### *The Use of Criminal Profiling*

The Durham Police obtained FBI profiler John Douglas' assistance in preparing a profile of the killer of Christine Jessop. Criminal profiling involves the analysis of the details of a crime and clues left behind, in conjunction with an understanding of similar cases, to prepare a psychological profile of the killer. The Commissioner found that the information investigators provided to Douglas may have been contaminated by their pre-conceived views. This highlights the wisdom of not conducting a profile once a suspect has been identified. Though features of the profile did parallel Guy Paul Morin, it could not reasonably be said that it matched or even closely resembled Morin. This caused no introspection on the part of the investigators. Inspector Shephard's candid comment was that "if [the profile] said a female was responsible, probably we would have looked in the other direction."

A *modified* profile was released to the public. Characteristics which corresponded to Morin were released to the press; those which did not were excluded or amended to conform. The Commissioner found that the use of a modified profile was problematic. It was intended to 'spook' Morin. However, by tailoring the profile to fit him, the police helped ensure that he could never get a fair trial in that region.

### *The Arrest — April 22, 1985*

Detective Fitzpatrick and Inspector Shephard arrested Guy Paul Morin in the evening of April 22, 1985. Over the next six hours he repeatedly protested his innocence. At the second trial, the defence sought to introduce in evidence the statements made by Morin at the time of his arrest, both in the car and at the station. The statements were ruled inadmissible as self-serving. The Commissioner's recommendations address the admissibility of such statements at the instance of the defence.

### **Contentious Witnesses of the Crown**

The Report specifically examines the evidence of a number of contentious witnesses tendered against Guy Paul Morin. Some were witnesses at the second trial only and this frequently raised issues as to the veracity of 'late-breaking' revelations. A number of these witnesses were tendered to demonstrate that Guy Paul Morin exhibited, through his words and conduct, a *consciousness of guilt* or *strange conduct or demeanour consistent with guilt*. The Report concludes that much of this evidence had little or no probative value (apart from its unreliability) and should not have been so left with the jury. The Report reflects that there is no doubt that this evidence, which was a prominent part of the trial, Crown's closing address and trial judge's jury instructions, when viewed cumulatively, contributed to the miscarriage of justice. The Commissioner also found various instances where the prosecutors called evidence which, objectively viewed, was highly suspect. At times, their perspective was coloured by their strong views as to Morin's guilt. However, the decision to call these witnesses did not amount to misconduct.

### *Constable Robertson and his dog Ryder*

Officer Robertson was a member of the York Regional Police in October 1984. The York Regional Police did not have a canine unit. Robertson had an interest in dogs and in their use in police work. He testified at the second trial that his dog, using the scent of a blue sweater given to him from Christine Jessop's bedroom, indicated that Christine Jessop had been in the Morin Honda. The dog's 'indications' were led as evidence that Christine Jessop had been in the Morin Honda. The Commissioner found Officer Robertson's account to be implausible for a number of reasons, including:

- 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.
- There is no suggestion that his partner that night, his supervising officers or anyone else knew that the dog had detected anything at the Morin property.
- Robertson took no action to search the vehicle or even try the door of the vehicle where Christine's scent was purportedly detected.
- 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. These records contain no mention of the Morin vehicle, the dog's indications, or the use of the sweater as a scent object.
- When Guy Paul Morin, Christine Jessop's neighbour, was arrested, Robertson did not tell his fellow officers that his dog detected Christine Jessop's scent in the neighbour's Honda; indeed, he told no one in authority during Morin's first trial. His claim only came forth after Guy Paul Morin had been acquitted and was facing a new trial, and then only in the context of a collective meeting which explored police officers' potential relevance at a second trial.
- Robertson exaggerated the extent of his training and the extent of any relationship he had with an RCMP dog trainer, Peter Payne.

Apart from Robertson's credibility, the Commissioner expressed serious concerns about the admissibility of evidence as to the dog's 'indications' that Christine Jessop had been in the Morin Honda.

### ***Constable McGowan and the 'Stare'***

Constable McGowan was another witness whose evidence surfaced only at the second trial. He was a York Regional Police officer who was the first to attend the Jessop residence in response to Janet Jessop's phone call to

police. During the second trial, he testified that on the night of October 3, 1984, at approximately 8:18 p.m., he went to the Morin household to speak with the neighbours. He was greeted by Ida Morin. While questioning her, he observed a side profile of a person who appeared to be looking straight ahead. When he later saw the news report of Guy Paul Morin's arrest on television, it 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.

The Commissioner was left with serious doubt as to whether McGowan even attended the Morin residence that evening. More problematic was McGowan's 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. At the second trial, Mr. Pinkofsky cross-examined McGowan vigorously on his 'late-breaking' allegation. McGowan conceded that his claims about Morin were not reflected in his early will-say. At the Inquiry, he swore that his claims about Morin were reflected in his earliest will-say; everyone just got the order of his three will-says confused at the second trial. The Commissioner found McGowan's reconstruction of the order of his will-says was seriously flawed.

The Commissioner found that he could not safely rely upon anything that Officer McGowan said on the critical issues. Apart from his credibility, the prosecution should not have been permitted to use the testimony that Guy Paul Morin stared straight ahead as evidence of Morin's conduct or demeanour consistent with guilt. Further, 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 neighbor" are 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.

### ***Paddy Hester***

Ms. Hester, a Queensville resident, was yet another witness who testified only at the second trial. Her present ill-health precluded her from

testifying at the Inquiry. The Commissioner had the benefit of hearing her on tape, in the context of a February 1987 interview conducted by Officer Fitzpatrick. This tape, which seriously undermined her credibility, was not provided to the prosecutors or to the defence.

The day after Guy Paul Morin's arrest, Paddy Hester came forward with a story. It described a discussion with Christine Jessop's neighbour whose "heart was not in the search effort." She was not called as a witness at the first trial. Prior to the second trial, she 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 Guy Paul Morin staring straight ahead, dressed in a trench coat) 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. However, there was no contemporaneous record that confirmed that report. (The Commissioner found that perhaps some, but not all, of the 'late-breaking' evidence could be explained away by inadequacies in the records kept or preserved by York Regional police. 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.)

The Commissioner found the February 1987 interview that Officer Fitzpatrick conducted with Paddy Hester disturbing, both in what it said about her attitude and what it said about Fitzpatrick's approach. Her animosity towards Guy Paul Morin was patent. Her admission that "she almost did cartwheels and flips" when Morin was charged 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 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. The Commissioner found this was "a text book example of how *not* to conduct an interview." This was an example, albeit an extreme example perhaps, of what was happening with a number of witnesses.

The Report concluded that Paddy Hester's evidence could not be safely relied upon.

*Leslie Chipman*

Leslie Chipman was Christine Jessop's best friend. She testified at the second trial that she and Christine talked with Guy Paul Morin several times. During these conversations, Morin had his hedge clippers in hand and he held them so tightly that his knuckles were white. Mr. McGuigan invited the jury to look at Morin's very unusual and strange type of conduct and demeanour:

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.

Ms. Chipman testified for the prosecution at the second trial only. To Mr. Scott's credit, he chose not to call her at the first trial. Ms. Chipman testified at the Inquiry that her trial evidence was untrue and 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.

The Commissioner found that Ms. Chipman attempted to be truthful in her testimony before the Inquiry, but that her most serious allegations were unfounded. She did not deliberately lie at Guy Paul Morin's second trial, but 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.

The Commissioner concluded:

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.

### *Evidence of Funeral Night Screams*

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.

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.

The Commissioner found that Ms. Jessop did not hear or see footsteps in the snow or 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 Brian Gover was suitably sceptical about her evidence. 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. The Commissioner found that an objective assessment of Ms. Jessop's evidence, 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 upon. Mr. McGuigan did not have the requisite objectivity, as did, for example, Mr. Gover and as Mr. Scott may well have, had these untimely claims been made to him. The evidence of the 'funeral night screams' was more evidence led to show Mr. Morin's 'consciousness of guilt.' Its reliability was highly doubtful.

### *Mandy Patterson*

Mandy Patterson and Guy Paul Morin were fellow band members. Ms. Patterson testified that in February 1985, approximately four months after Christine Jessop had disappeared from her home, 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 beside 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 was 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.

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.’

The Commissioner found that Ms. Patterson did not intentionally mislead the Court or the Inquiry. But she did take sides and it did colour her approach to the evidence.

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’ — coming, 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.

### ***Morin’s Failure to Search, Attend the Funeral or Express Condolences***

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.

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. 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.

Mr. Morin's failure to express condolences also was worthless evidence and ought not to have been admitted.

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.

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 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.

### **The Alibi Defence**

At both trials, Mr. Morin testified that he did not murder Christine Jessop and told the jury of his whereabouts on October 3, 1984. The defence led evidence as to the time Mr. Morin left work on that day, his subsequent shopping activities and his arrival time home. Alphonse and Ida Morin supported their son's evidence that he came home with groceries, took a nap and worked on renovations to the family home after dinner.

There was a lengthy debate at the Inquiry over the Crown's conduct in connection with the alibi. The position advanced on behalf of the prosecutors was, simply put, that they regarded the alibi to be false and were fully entitled to draw upon any perceived weaknesses in the alibi to full effect.

The position advanced on behalf of the Morins was that the prosecution converted exculpatory evidence and innocent conversations into incriminating evidence as a result of their tunnel vision or their desire to secure a conviction.

Mr. Morin's proven innocence casts a different light upon many of the problems which the Crown attorneys identified with the alibi defence. This is not surprising. However, the Commissioner found no impropriety in the approach taken by the prosecutors to the alibi at trial. They believed that the alibi was false. This necessarily followed from their view, also genuinely held, that Guy Paul Morin was guilty. There were weaknesses that could be exploited in the alibi. The prosecutors were highly skilled in doing so. Of course, their approach meant that they gave sinister interpretations to conduct which is equally capable of an innocent explanation. However, in this instance, their approach was not unreasonably coloured by tunnel vision. (Though Mr. McGuigan does have a certain tunnel vision now about the truth or falsity of the alibi.) The inferences which they asked the jury to draw could be supported by the evidence (and indeed, in some instances, by uncontested evidence of prior statements made by Mr. Morin). They were entitled, as well, to rely upon the 'improvements' in the recollections of the defence witnesses to try to undermine the alibi.

### **Conduct of the Defence and Crown**

It was suggested, by counsel for Messrs. McGuigan and Smith in particular, that the conduct of the defence be considered as a factor contributing to the wrongful conviction of Mr. Morin. Mr. Levy cited the testimony of a number of witnesses heard at the Inquiry:

- Constable McGowan, who testified that when he was being cross-examined by Mr. Pinkofsky, the jurors appeared unfocused and "as though they didn't want to be there." During a break, a member of the jury told McGowan in the washroom that he had done "okay" and "Mr. Pinkofsky is really being an asshole."
- Guy Paul Morin, to the effect that the jury members eventually developed a distaste for Mr. Pinkofsky and, indirectly, for himself. He agreed that he saw the trial judge's distaste for Mr. Pinkofsky.
- Mr. Scott, who had dealt with Mr. Pinkofsky previously, advised Susan MacLean how to deal with him in the light of his lengthy and

contemptuous treatment of witnesses. He suggested that Ms. MacLean maintain her focus; it would be difficult. He told her Pinkofsky's cross-examinations could seem abusive.

- Brian Gover, who testified that Mr. Pinkofsky tended to take a sarcastic tone with witnesses which appeared to "batter" them. Mr. Gover agreed that Pinkofsky's approach might court the displeasure of the jury and that his demeanour and tactics might sorely test the trial judge's patience. Mr. Pinkofsky's nickname among the Crown attorneys was "The Prince of Darkness."
- Ms. Pike felt that Pinkofsky was very condescending in his cross-examination of her.
- David Robertson grew to hate Pinkofsky due to his dealings with him.
- Detective Fitzpatrick said that a number of witnesses were upset at their treatment in the courtroom by Mr. Pinkofsky.
- Alex Smith testified that the cross-examination of some of the witnesses by Pinkofsky was abusive and vigorous; sometimes it was full of sarcasm.
- Susan MacLean swore that Pinkofsky's tone of voice when he questioned the witness John Carruthers was mocking and sarcastic, and that the jury looked upset by it. One of the jurors was red in the face and had his fist clenched.
- Mr. McGuigan testified that Pinkofsky ridiculed and harassed some witnesses; he was vigorous and sarcastic. The jury were not pleased with the manner in which he conducted the case.

The Report concludes, in part:

Having regard to all the evidence, to the submissions which have been made to me, and the considerations which I have outlined, I have concluded that some tactical decisions taken by the defence at Mr. Morin's second trial were not the best, and it may be argued that they adversely affected the jury. However, some of the forensic skills demonstrated at that trial were

exceptional. Unlike the situation in a number of the notorious cases of wrongful convictions cited by some of the systemic witnesses, I do not see this as a case of defence incompetence, neglect or misconduct. Any criticisms of Mr. Pinkofsky are idiosyncratic to his style and approach and are not reflective of systemic issues or to be addressed by any systemic recommendations I may make.

Some Crown counsel regard Mr. Pinkofsky's approach to involve a wholesale attack on virtually every witness, particularly police witnesses, who testify for the Crown, without appropriate distinction. The Report notes that "however well or ill-founded this criticism might be in other cases, there is no doubt that a disquieting number of witnesses for the prosecution in this case gave evidence which could justifiably be regarded as suspect."

### **Relevance of the Insanity Defence**

During the first trial, after calling evidence of Mr. Morin's alibi, Mr. Ruby applied to Mr. Justice Craig for a bifurcated trial in order that the 'defence of insanity' could be raised, should the jury find Mr. Morin guilty. The application was unsuccessful.

Mr. Ruby then adduced opinion evidence on Mr. Morin's mental health from Dr. Graham Turrall, a psychologist who had spent approximately 14 hours with him administering numerous tests, and Dr. Basil Orchard, a psychiatrist who had examined Mr. Morin for approximately five to six hours. The conclusion of both witnesses was that Mr. Morin suffered from simple schizophrenia, a major mental illness characterized by a thinking disorder that affected the way he communicated with others. In Dr. Orchard's opinion, Mr. Morin's illness was "moderately severe" and in an advanced state.

During this psychiatric evidence the experts were questioned on the hypothetical mental state of Mr. Morin *if* he had killed Christine Jessop. Assuming that Mr. Morin had killed Christine Jessop, the jury was told that he would have been in an acute psychotic state and unable to appreciate that by stabbing her he was causing her death.

Several parties sought to explore at the Inquiry the factual and systemic issues arising out of the 'insanity defence.' The Commissioner ruled that he would not explore whether the psychiatric and psychological evidence was valid or invalid, and whether this evidence should or should not have been

tendered by the defence at the first trial. These issues had limited relevance to his mandate, since the ‘insanity’ evidence was not heard by the jury that convicted Guy Paul Morin, and the tactical decision to call this evidence during the trial proper has no systemic interest, given the change in the law. (A bifurcated trial is now mandated.) He also had no doubt that the exploration of these issues, undoubtedly intriguing, would be extremely time-consuming. However, the presentation of the alternative ‘defence of insanity’ at the first trial, and the evidence in its support, affected the investigators’ and prosecutors’ state of mind and was considered on that basis. The relevance of this evidence does not depend upon its validity. The Commissioner noted that its recitation is undoubtedly painful to Mr. Morin who, it is clear from his counsel’s comments at the Inquiry, does not adopt it in any way. The Supreme Court of Canada held that, even taking the evidence at its highest, it did not make it more likely that Guy Paul Morin committed the crime; the critical expert evidence was based upon the *assumption* that he committed the crime.

The Commissioner found that John Scott, Leo McGuigan, Alex Smith and Susan MacLean wholeheartedly believed, throughout their involvement in the Guy Paul Morin proceedings, that Mr. Morin was guilty of the offence with which he was charged. Crown counsel at the first trial, believed that Mr. Morin was guilty prior to any knowledge that the alternative insanity defence would be raised. Accordingly, the insanity defence did not change their views, but they saw it as confirmation of what they already knew (or thought they knew). Mr. McGuigan and Mr. Smith, who came to the case after the insanity defence had been raised at the first trial, were affected by it in a similar way. This was not unreasonable — the ‘insanity evidence,’ carefully scrutinized, may not have made Mr. Morin’s guilt more likely, but the fact that such a defence would even be advanced had to impress itself on most anybody.

The prosecutors at the second trial also drew upon other evidence — such as that of Officer Gordon Hobbs — to support their firm view that Guy Paul Morin was guilty. All of this is perfectly understandable.

It is also understandable that this belief would affect the prosecutors’ assessment of their own evidence and the evidence tendered by the defence at the second trial. Their failing was that this belief so pervaded their thinking that they were unable, at times, to objectively view the evidence, and incapable at times to be at all introspective about the very serious reliability problems with a number of their own witnesses. Their relationship with the

police at times blinded them to the very serious reliability problems with their own officers.

### **The Stay Motion and Issues of Disclosure**

Prior to the commencement of the second trial before the jury, the defence moved for a judicial stay on the basis, in part, of misleading disclosure and material non-disclosure. In light of the problems with disclosure to date, the defence also sought access to the complete investigative file (“open box access”). Both motions were denied. The Report only briefly addresses the disclosure issues, given their more limited relevance to the Commissioner’s mandate. Very substantial disclosure was effected prior to the commencement of the second trial at which Guy Paul Morin was convicted. The Commissioner concluded that errors in judgment were made by Mr. Scott in failing to disclose certain items (which the Inquiry did examine) to the defence, but that Mr. Scott did not deliberately breach his disclosure obligations. Though the Commissioner did not agree with everything Mr. Justice Donnelly said in his ruling referable to alleged non-disclosure and misleading disclosure, he did agree with him that any failings on Mr. Scott’s part were not malevolent. The trial judge’s original decision on the motions predated the seminal judgment of the Supreme Court of Canada in *Stinchcombe*. Mr. Scott is fully aware of the Crown’s disclosure obligations at present. The obligations at the time were less settled.

The Commissioner also noted that the police failed to adequately disclose information to John Scott. Mr. Justice Donnelly found no misconduct on the part of the police in this regard. Given the prioritization of issues at this Inquiry, and the resulting small role that disclosure issues played, the Commissioner did not explore in any meaningful way the investigators’ responsibility for not disclosing items to the Crown or to the defence and, accordingly, did not make findings in that regard.

### **Recommendations**

Recommendations 73 to 119 address systemic issues arising out of the failings identified in the Durham investigation and the prosecution of Guy Paul Morin. These recommendations also address systemic issues in connection with the conduct of appeals and the jurisdiction of appellate courts. The last section of the Report also summarizes much of the evidence heard during

Phase VI of the Inquiry (the systemic phase) bearing upon the systemic causes of wrongful convictions here and throughout the world, identified, *inter alia*, in the literature, by other inquiries, by participants in the administration of criminal justice and by those who have themselves been wrongly convicted. The Commissioner found that many of these causes are resonant with those found in the Morin case.

The Commissioner commended the direction taken by the Durham Regional Police Services Board to address some of the failings identified at the Inquiry and, indeed, the Board's approach to the Inquiry itself. He cautioned, however, that many of the failings identified go to the heart of the police culture:

An investigation can be perfectly structured, but flounder due to tunnel vision or "noble cause corruption" or loss of objectivity or bad judgment. Older techniques and thought processes are, at times, deeply ingrained and difficult to change. Police culture is not easy to modify. The failings which I identified were systemic and were not confined to several officers only. The challenge for Durham will be to enhance policing through an introspective examination of the culture. I am convinced that such an examination has commenced.