Anatomy of a Public Inquiry

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I. INTRODUCTION – DARCY MACPHERSON

One of the goals that we had for the Manitoba Law Journal when we were appointed as its new co-Editors-in-Chief in 2010 was to shine a spotlight on important developments in Manitoba law. The one-day conference on “The Anatomy of a Public Inquiry” was such an event. The panelists were assembled by Bruce MacFarlane, Q.C., in conjunction with his course on “Preventing Wrongful Convictions”, and spoke at Robson Hall on November 2, 2012. There are many reasons to commend the speeches made that day, and commit them to paper.

* Formerly Deputy Attorney General of Manitoba, currently Lecturer at the Faculty of Law, University of Manitoba. The following are remarks reproduced from a presentation organized by Bruce MacFarlane for his class on Preventing Wrongful Convictions taught at the University of Manitoba, Faculty of Law; they were delivered on 2 November 2012 at Robson Hall.

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**** Former Sergeant with the Winnipeg Police Service, John Burchill graduated from the University of Manitoba’s Faculty of Law in 2010, and was called to the Manitoba Bar in 2011.
The first of these reasons is that the conference follows on from an earlier academic article by Professor MacFarlane, published by the MLJ, with respect to the review of potential wrongful convictions in Manitoba. Interestingly, the federal government in the United States has recently adopted a similar system. A second reason that this event is important is it is not restricted to Manitoba. Both Richard Wolson, Q.C., and the Honourable Jeffrey Oliphant served as part of the Mulroney Inquiry, which was not especially related to Manitoba. Our judges and counsel are making contributions throughout our country. This deserves to be recognized not only at a national level, but also locally and provincially.

A third reason to reproduce the words of these individuals is that they, for us, represent the best of what lawyers are supposed to be. They undertook their positions in various inquiries, largely out of what I would call personal conviction or public service. Each of them could undoubtedly have found reasons to refuse the request for service.

It would have been understandable if John Burchill – a police officer and not yet a lawyer who, when asked to review the investigation in the case of Thomas Sophonow – had said he was uncomfortable investigating the police investigation. Somebody else could have done that, so that it would not impact a police officer in the midst of his career. But, instead, he took a tough assignment, and thus became part of a process that made change happen.

And with respect to the Sophonow case, Deputy Attorney General (Mr. MacFarlane) could have said that the system worked, and that should be the end of it. Instead, he engaged with a difficult case, in an effort to make the system better.

It would have been acceptable for a lawyer like Richard Wolson to say that he did not have time for commission counsel work. With a busy practice,

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2 See The Innocence Project News Releases, Innocence Project and NACDL Announce Historic Partnership with the FBI and Department of Justice on Microscopic Hair Analysis Cases, online: <http://www.innocenceproject.org/Content/Innocence_Project_and_NACDL_Announce_Historic_Partnership_with_the_FBI_and_Department_of_Justice_on_Microscopic_Hair_Analysis_Cases.php>.
the public would have understood. Instead, he took on two different public-inquiry appointments.

Finally, the now-former Associate Chief Justice said that a public inquiry was worth doing even if it meant that the later stages of his career would be vastly different than he might have previously thought, including possibly delaying his retirement.

Yet all of these gentlemen found a way to do what they thought was right. We hope that this collection will be one way that history will record that they did what was in the best tradition of lawyers acting in the public interest. So when we all hear a lot of stories about lawyers having done horrible things that we shouldn’t do, keep in mind these gentlemen. They did not do this for the money, the fame, or for any reason other than that they thought they were serving the public interest. For that alone, we owe them all a debt of gratitude.

The Government of Manitoba did the right thing too, in apologizing to Thomas Sophonow for the treatment he suffered in his ordeal as an innocent person who was pursued with respect to a crime that he did not commit. The apology makes it clear that his innocence is not based on a legal technicality of any sort, but instead the facts show that Mr. Sophonow was not involved in the crime at issue in any way. Politically, this could have been very problematic for the government of the day. But they too had the fortitude to do what was morally correct.

II. BRUCE MACFARLANE

First of all, I would like to wish everyone a good morning and thank you very much for attending. My name is Bruce MacFarlane and I will be introducing the panelists in a moment. I would first like to welcome you to this special presentation on public inquiries.

Public inquiries have had a long and somewhat colourful history in the Anglo-Canadian tradition. In fact, they extend well back over hundreds of years. In 1979 it was estimated that over 400 public inquiries had been called in Canada alone.³ Public inquiries have covered such diverse issues as the economy, bilingualism, tainted water supplies, doping in sports, and wrongful convictions. In fact, there have been six public inquiries called by provinces

on the issue of wrongful convictions; more on that specific issue than any other issue in Canadian history.\(^4\)

Today we will examine public inquiries as a residual mechanism of government from the standpoint of a single, specific inquiry: that relating to Thomas Sophonow, who was imprisoned for three and a half years for a murder that he did not commit. This presentation will be the first of its kind in Canada because we will take you from the very beginning of the inquiry until its completion. That is why this panel discussion has been called “The Anatomy of a Public Inquiry”. Through our presenters, who I will introduce in a moment, we will walk you through the very beginnings of the process, how it was reviewed by government, and then we will take you through the inquiry itself and discuss some of the unique roles undertaken by the players in the inquiry until the final report was prepared.

Public inquiries usually start with the discovery of a fact of great concern to the public, often through some sort of re-investigation. That is what happened here.

John Burchill was a senior investigator with the Winnipeg Police Service who conducted a re-investigation of Mr. Sophonow’s case. He will outline the steps that he took, the report that he prepared, and its ultimate transmission to the Government of Manitoba for consideration and possible action. I should mention as well that Mr. Burchill subsequently entered into the law program at the University of Manitoba’s Robson Hall and is now a lawyer in Manitoba. So we are doubly blessed, as he will be able to describe his police investigation through trained legal eyes.

I received the Burchill Report\(^5\) in my then role as Deputy Attorney General for the province. I will take you behind the scenes and describe the review of the Burchill Report by Manitoba Justice, and also at the Legislative building. As well, I will describe the consideration of the options available to the Province and how that unfolded, decisions that were made, and how the inquiry was launched.

Richard Wolson was appointed Commission Counsel at the Inquiry. Mr. Wolson is one of Manitoba’s leading defence lawyers, and he will take you

\(^4\) For a list of these six inquiries, see AIDWC, *Education: Public Inquiries*, online: The Association in Defence of the Wrongly Convicted <http://aidwyc.org/Public_Inquires.html>.

\(^5\) This report was made by John Burchill during his investigation and ultimately led to the public inquiry regarding Thomas Sophonow being mandated.
through the conduct of the Inquiry itself. We are very fortunate to hear from him, as he has a wealth of experience when it comes to inquiries. He has subsequently been appointed as counsel for the Winnipeg Police Association in the Driskell Public Inquiry\(^6\) and was also appointed as commission counsel in the very recent inquiry into the Mulroney-Schreiber affair, now known as the Oliphant Commission.\(^7\)

Speaking of which, our final speaker is Mr. Justice Oliphant himself. He presided as Commissioner in the Mulroney-Schreiber Inquiry.\(^8\) Justice Oliphant is a judge of the Court of Queen’s Bench in Manitoba and for many years was the Associate Chief Justice of that court. He will discuss the role of commissioners, and describe the conduct of an inquiry through the eyes of a recently appointed inquiry commissioner at the Federal level.

Each of the presenters will speak in the order in which I have just introduced them. But the panel wishes to emphasize that we will protect some time at the end of the presentations so that you will have an opportunity to ask questions of any panel member, and so that we can have a bit of a dialogue on this important issue. To ensure we make the best of our time I am now going to turn to John Burchill so that he can talk to you about the very roots of the Sophonow inquiry.

### III. JOHN BURCHILL

Thank you very much Bruce. My involvement began back on June 15, 1999. At that time, I was given a letter that Thomas Sophonow had written to the Chief of the Winnipeg Police Department asking for a review of the evidence against him as a suspect in the murder of Barbara Stoppel. The Chief of Police assigned me that letter and asked that I review the file.

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8. Ibid.
A. Reinvestment of the Stoppel Murder

The first thing I did was pull the police file in the matter. I collected all the evidence that was still in police custody and all the evidence that had been entered in the various trials at the Court of Queen’s Bench. I had not been a police officer at the time of the original investigation or the original arrest, so I was not aware of all the details of the case. Although, as a teenager when that murder occurred, I had an idea about what generally had happened at that particular time.

Prior to being assigned this file, I was a fraud investigator and was aware that often you have incomplete details of a crime. For example, when money is missing, you have to track backwards on the evidence in order to find out what happened. I took a similar approach in this case. Like an auditor, you create a theory based on observations and then you test that theory. So, I began with an assumption, based on the facts that were in the police file, of what might have occurred. Then that assumption was tested to determine what was still provable using an approach very much like a fraud investigation: you analyze the available data, create a hypothesis, test the hypothesis, and refine and amend that hypothesis as needed.

When you are conducting a review of a case after the fact, your assumptions are based on the known facts as they have occurred. It is certainly different from starting fresh with an investigation because most of the evidence has already been collected prior to the start of the review. You do not have to go out and collect the evidence, and, in this particular case, 20 years had passed so the likelihood of any new evidence was probably remote.

The hypothesis about what might have occurred could relate to many things. It could be about the original murder investigation or it could relate to what might have occurred that took the original investigation down the wrong path. In this case it was the assumption that something caused the investigation to lead to the wrong person. This was based on Thomas Sophonow’s claim that he did not commit the crime. So if that was the case,

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9 Mr. Burchill talks at length about the factual background of the events of Barbara Stoppel’s murder and the subsequent investigation. For a more in depth and complete account, see The Inquiry Regarding Thomas Sophonow: The Investigation, Prosecution and Consideration of Entitlement to Compensation (Winnipeg: Manitoba Justice, 2001) [Sophonow Inquiry]; R v Sophonow, (1986) 2 WWR 481, (1986), 38 Man R (2d) 198 at 481 [Sophonow Trial].
the question was where did it go wrong, and what different paths could it
have taken, and where could it have led?

With a hypothesis in place, I started looking at the evidence that I had
collected. What convicted Thomas Sophonow in the first place? If he were
innocent, perhaps the evidence would not hold up any more after 20 years.
That was the first step that I looked at.

Broadly speaking, the evidence that convicted Thomas Sophonow could
be broken down into three broad areas. One was eyewitness identification
and the related procedures around it. The second, admissions or confessions
either to the police or to jail house informants. The last was circumstantial
evidence, including opportunity, motive, and post-offence conduct (such as a
disbelieved alibi).

Some of this review was done with a good deal of hindsight based on
changes in technology and experience over the past 20 years. Examples of
these changes include the extensive studies done on eyewitness identification
post-1982, and the fact that DNA technology had not even been developed
until around 1985. Organizations such as the Innocence Project did not exist
at the time, and when you consider their review of cases where DNA
evidence has found people innocent or cleared previously convicted people,
their work ties in well with the pre-trial identification procedures that the
police used in this case. The Morin Inquiry in 1998 certainly shed a very
strong light on the use of jailhouse informants, and from the perspective of
police techniques, the benefit of videotaping the statements of both your
suspects and witnesses.

First and foremost, I do not have anything new to say today, and nothing
revolutionary, because much of what I said, or read, or reviewed, or canvassed
during my review has come out in a number of different forums. Whether it
was the original trials, the appeals, or any of the number of books that have
been written on the case, including Commissioner Cory’s Report, most of
everything that transpired up until now is in some kind of published format.

10 The Innocence Project is a national non-profit organization that seeks to exonerate
wrongfully convicted persons and reform the criminal justice systems to avoid future
injustices. Online: Innocence Project <http://www.innocenceproject.org/> [Innocence
Project].
11 Report of the Kaufman Commission on Proceedings Involving Guy Paul Morin (Ontario: The
Commission, 1998) available online: <http://www.attorneygeneral.jus.gov.on.ca/
english/about/pubs/morin/>.
12 Sophonow Inquiry, supra note 9.
There were two books in particular that I read while I was reviewing this case. The first one, by Ronald Malloy, was “Guilty Till Proven Innocent – The Thomas Sophonow Story”.\textsuperscript{13} The second was “Manufacturing Guilt: Wrongful Convictions in Canada”\textsuperscript{14} which came out in 1998 and has a section in it with respect to Thomas Sophonow. Certainly reading those books in addition to the police file gave me a different perspective. It is not just the defence counsel’s perspective or the police perspective, rather you have the perspective of a third party. You have the perspective of a third party that is looking, perhaps objectively, from the outside and providing what they saw and what they thought was going on. You also have all of the media reports, what people said at the time, and the impressions that the media had of these trials as well.

Because of our limited time here today I am just going to review, or focus on, one part of the case: the suspect identification procedures. It was certainly a very strong point in this case that led to Thomas Sophonow’s arrest, and I know Mr. Wolson will be talking about a number of the other procedures that came up during the Inquiry, so I will just focus on the suspect identification. Further information on this topic has been included in a comprehensive paper on eyewitness identification generally that has been made available to Mr. MacFarlane’s class on Miscarriages of Justice.\textsuperscript{15}

**B. The Eyewitnesses**

The victim in this case was Barbara Stoppel. She was 16 years old and she worked at the Ideal Donut shop at 49 Goulet Street. It was in the Dominion Mall right at the foot of what is now Queen Elizabeth Way. She was attacked and strangled while she worked alone at that donut shop on December 23, 1981. What I am going to do is attempt to go through a chronology of the events, because it has been 30 years now and pretty much every single store in that mall has changed, the bridge has changed, and the location of some of the stores, such as the Domo gas station, has changed relative to the mall. In

\textsuperscript{15} John Burchill, “That’s the Man! Admission of Positive Assertions in Court and Police Identification Procedures” (Paper delivered at Crown-Defence Conference, September 2002), updated for this presentation. It can be found at page 195 of this volume.
In this particular case there were at least seven relatively good eyewitnesses to the event. These names have been reprinted many times in the various formats I talked about earlier, but I will go through what they saw.

On the 23rd of December 1981, the police arrived at 8:46 pm; it is known that this was the time that the police respond to this case. The owner of the Ideal Donut shop collected the day’s receipts, the sales of the donut shop, and left at 8 o’clock at night. When he leaves, Barbara Stoppel is talking on the phone and she continues to talk on the phone from about 8:00 to 8:10. There is a lone customer in the store, Mr. Andy Dafoe, and he indicates that Barbara Stoppel is still talking on the phone when he leaves at about 8:15. Barbara Stoppel is now alone in the store.

Mildred King is an older lady and she is on her way to go shopping at the Dominion store, which is now a Shopper’s Drug Mart. As she is walking through the parking lot by the donut shop she bumps into a very angry man clenching his fists, quite tall with a cowboy hat on. She falls down. She estimates the time when this happened as between 8:00 and 8:15.

Paul McDougald brings his wife to the mall to buy some cigarettes at Boot’s Drugs Store. He estimates their arrival at the mall to be around 8:25. He drops his wife off and he remains sitting in his car, which is facing the donut shop. He sees a male walk around inside the donut shop she bumps into a very angry man clenching his fists, quite tall with a cowboy hat on. She falls down. She estimates the time when this happened as between 8:00 and 8:15.

Lorraine Janower works at Boot’s Drugs, the same store Mrs. McDougald is buying her cigarettes from. Mrs. Janower walks over to Ideal Donuts between 8:15 and 8:20 and finds that the door is locked. She thinks that this is rather strange, and walks back to Boot’s Drugs where the pharmacist also finds it strange that the donut shop is closed. They phone the store and nobody answers. They call one of the sister stores of Ideal Donuts’ and are told it should be open and the other store does not know why it is closed.

Paul McDougald leaves his truck and walks over to Boot’s Drugs Store. He finds that Lorraine Janower has already had the same concerns that he has. So he goes back to his truck, and then to a TV store that is right across the parking lot. He continues to watch what is going on in the donut shop, and is now joined by the owner of the TV store. The two of them watch a
man come out from the back washrooms of the donut shop. The unknown man crouches and slinks along by himself, and there is no longer any sign of Barbara Stoppel in the donut shop. The unknown man comes up to the door, grabs a box off the shelf, unlocks the door, and walks out. Mr. McDougald and the TV store owner place that time at around 8:45.

John Doerkson is working in the parking lot selling Christmas trees. He walks over to the donut shop at 8:35 and finds the doors locked as well. He waits for about five minutes right outside the front doors, when Mr. Janower walks over and stands with him. Mr. Janower went to the store because his wife had told him that something was going on. The two men are both looking in the front doors of the shop. It should be noted that nothing has changed with respect to the layout of the store in the past 30 years – the roofline has changed on the store, but the front windows and how it looks has not changed since the days it was an Ideal Donut shop. So the two men have a very good view right inside the store from the front doors and the front windows. They see what Mr. McDougald saw – a man come out of the women’s washroom at the rear. He is crouching, slinking along, and he picks up a box off the shelf. He comes to the front door and he takes the open/closed sign, flips it to closed, unlocks the front door, and he walks out facing right to Mr. Janower and Mr. Doerkson. He tells them “the store is closed.”

Mr. Janower goes into the store and he finds Barbara Stoppel on the floor in the washroom with twine wrapped around her neck. He comes out and asks his wife to call the police. The police are called and Mr. Janower tells John Doerkson, who is still standing out front, to follow the suspect.

The man/killer walks away towards the McDonald’s restaurant and then goes around the back of the McDonald’s, behind the mall, and then onto the Norwood (now Queen Elizabeth Way) bridge. He starts throwing things over the side of the bridge, including a pair of gloves, a box, and some twine.

John Doerkson is following the killer at this time. Doerkson makes a little detour to the Domo gas station in the parking lot, and asks the attendants for a baseball bat that he knows they have behind the counter. He tells them to call the police and he goes onto the bridge. The attendants call 911 but they do not know what has happened. The call to the police is received at 8:57. The police and ambulance have already responded previously to Mrs. Janower’s phone call. The attendants were probably already well aware that something was going on, but they do not know what. All they know is that John Doerkson has asked them to call the police.
One thing that should be noted about the timing of the events here is that because the attendants at the Domo do not know what is going on, they describe John Doerkson to the police dispatchers. They describe him as a guy in a snowmobile suit, he is about 5’6”, he is carrying a baseball bat, and he is going onto the bridge. Later on, this description causes the Court of Appeal to think that there is something suspicious about John Doerkson because his is the first description the police are given (of the suspect). The Court of Appeal questions Mr. Doerkson’s credibility because of some comments that he made that do not make sense in light of the call to the police.

After he obtains the baseball bat John Doerkson goes onto the bridge and confronts the man that he saw inside the donut shop while the man is throwing things over the side of the bridge. As this is happening, Marcel Gloux drives by and he sees the confrontation on the bridge. While he testified at the first trial, Mr. Gloux was not called as a witness for the last two trials of Thomas Sophonow. This also causes some concern for the Court of Appeal because it appears there are no witnesses to John Doerkson having a confrontation on the bridge – something that might be expected two days before Christmas on a busy bridge near a mall. This further adds to the credibility issues that the Court of Appeal finds with John Doerkson. Unfortunately, it was out of the Crown’s hands as to why Mr. Gloux was not called as a witness in the last two trials to corroborate Mr. Doerkson’s evidence – namely that he saw things getting thrown over the side of the bridge by a tall man with a cowboy hat.

In any event, the killer apparently pulls a knife on Mr. Doerkson and Mr. Doerkson lets him go. The killer continues north over the bridge and Mr. Doerkson returns the bat to the Domo before returning to the Ideal Donut shop. He sees that the police and an ambulance are in attendance, and he decides to leave. He does not talk to any of the policemen and they do not know his identity for about an hour and a half. Eventually they do speak with him and he does take them back to the bridge and shows them where the man was discarding items over the railing. The police search along the frozen ice and they find two sets of gloves, a cardboard box, and a bunch of twine that matches the twine that was wrapped around Barbara Stoppel’s neck.

C. The Rope

The police tried to identify and connect the twine they found to a business or store, but they were unable to do so. It turned out to be a very unique type of rope. After about a month and a half of trying to determine
where it came from, which included shipping the rope all over the country, one company said “absolutely that’s ours. We made that for British Columbia Hydro as shot line.” This company, Powers Twine, was actually based in Washington. They testified at all three trials that the rope was theirs and that they made it for BC Hydro. So this will be one of those hypotheses mentioned earlier that you would want to test – was the rope in fact made by Powers Twine? The significance of that claim is that it effectively turned the investigation from Winnipeg to BC.

In reading the report, there was mention of another company in Portage La Prairie that said ‘it is not our rope as far as we can tell visually, but for liability reasons we put a secret chemical in our rope. So if we are pulling a skier and it breaks and someone is going to sue us, we’re going to make sure it’s our rope. And that’s how we know it’s our rope because we put this chemical in it.’ The cost of the test was $100 and the company would perform the test themselves. But nobody followed up with the company. The Winnipeg Police did go to the RCMP lab but were advised that the RCMP did not do the kinds of test required – atomic absorption – and that’s where it ends.

So 20 years later, that was something that could still be tested. Berkley Canada is the name of the company in Portage but they have not made rope at that plant for probably 25 years. However, the headquarters still exists in Colorado and they still had the formula that they used to identify their rope. The rope was tested and it contained the trace element that Berkley put in for liability purposes (Powers Twine did not use a chemical tracer in their ropes).

So where the twine came from became rather important. The police could not find anybody locally, so they shifted their focus to British Columbia. One policeman remembered having to field an inquiry from BC regarding a man by the name of Thomas Sophonow. So he thought, well it is around the same timeframe I wonder what he looks like? The policeman obtains Thomas Sophonow’s picture and he looks similar to the composite drawing that had been prepared by the witnesses that had seen the killer inside the donut shop.

D. The Composite

One interesting thing, or maybe several interesting things, about the killer is that he certainly made no attempt to hide himself. He seems to be in that donut shop for 10 to 15 minutes with windows all the way around. It is dark outside and bright inside which makes the observation for the witnesses very
good. At least two of the witnesses are within a couple feet, and John Doerkson would appear to be hands on with the suspect on the bridge. It is at a busy mall. So is this person comfortable with his surroundings? Is he a local person? He escapes over a busy bridge. He does not appear to have a car because he had gone by foot over the bridge, and is not seen coming back. So it could be somebody local, but, contrary to that, you now have this indication from the twine that he may be from British Columbia.

So the policeman compared the composite of the suspect to Thomas Sophonow’s picture. While it was a couple of years old, the picture and the composite rather looked the same. That composite was made from six witnesses that got together. They sat down with the police sketch artist individually, and then collectively at the end they agreed with the composite picture that had been made by the police artist.

John Doerkson and Norman and Lorraine Janower were involved in the creation of the composite. These names you will recognize because I already talked about them. However there were two other names that were not eyewitnesses that we have not talked about. That is because they actually saw an identical person during the day. The murder happened around 8:30 at night and they saw this identical person at about 4 o’clock in the afternoon. They were believable, honest witnesses and they described the identical person having been at the mall earlier in the day, so the police believed these two individuals had in fact seen the same person that was in the donut shop four hours later. So these two individuals were included in the creation of the composite – even though they were not eyewitnesses.

Barbara Stoppel was put on life support, but she dies five days later. The newspapers run the police composite, saying ‘this is the suspect in the slaying’. However, some of the eyewitnesses that we did talk about, such as Mildred King and Paul McDougald, were not involved in the creation of the composite. So perhaps this was the beginning of some more problems in the investigation, as two people that were not really witnesses were involved in the creation of the composite, which could have influenced the actual eyewitnesses (when the composite is run in the newspaper). Could this cause the actual eyewitnesses to adopt the composite they did not help create as their own image of who the killer was?

So Thomas Sophonow became a suspect because he is from British Columbia and the rope was from British Columbia. Was there opportunity? The police made some inquiries and found out that Thomas Sophonow was in Winnipeg for two days, including the day of the murder, because his ex-
wife and child lived here. Did he have an alibi? Well that was to be tested, but he was in Winnipeg at the relevant time. Witness identification? He seemed to look like the composite sketch, so the Winnipeg Police requested the Vancouver Police pay Thomas Sophonow a visit. This occurs on March 3, 1982.

This visit may also have caused some of the problems that were to occur later on, because the Vancouver Police took Sophonow’s picture in such a way that made it very similar to the composite – wearing a cowboy hat. This type of suggestive influence may have affected later line ups.

I talked earlier about the Innocence Project. If you go back and you look at their first 130 DNA exonerations, most of the convictions were based on mistaken identification. The other exonerations had convictions based on informants, like we had in this case, and false confessions. But mistaken identification is a large factor in most wrongful convictions, and DNA has now confirmed that the identification was mistaken. You will also see that hypnosis was a factor, the use of a sketch, photo line-ups, and in-person line-ups. To varying degrees they all have been used and contributed to some of these wrongful convictions.

So in this particular case a Vancouver policeman visits Thomas Sophonow at his house and they have a conversation. Sophonow shares a number of characteristics with the suspect: Sophonow has a cowboy hat, the suspect had a cowboy hat; Sophonow has glasses, the suspect had glasses; Sophonow has a mustache, the suspect had mustache; Sophonow is tall, the suspect was tall; and Sophonow was in Winnipeg at the relevant time. The police officer asked if he could take Sophonow’s picture and Sophonow allowed him to. The officer used a Polaroid camera and took two pictures: a front view and a side view. The picture is taken outside, so Thomas Sophonow’s car is in the background; there is a tree on the right, a tree on the left, and the sun is setting behind his right shoulder. The Vancouver Police ship that picture off to the Winnipeg Police. In the picture Sophonow looks just like the composite drawing.

E. The Line-ups

The Winnipeg Police take that picture from Vancouver and place it in their photo line-up with seven other pictures. When you look at the photo line-up that was shown, and which was tendered in Queen’s Bench as an exhibit at all the trials, Thomas Sophonow’s picture is the only one that was taken outside. Everyone else has a white wall as a backdrop, but Thomas
Sophonow has two trees, a setting sun, and a car in the picture. The Polaroid paper they happen to use out in Vancouver was also bigger than the paper the Winnipeg Police were using to take their Polaroids. Everyone has their name written on the bottom except for Thomas Sophonow. This was because the police were trying to keep track of whom they had taken pictures of, since everybody seemed to wear a cowboy hat in those days, and the police were taking pictures of hundreds of people with cowboy hats. Thomas Sophonow was the only one wearing a sheepskin coat, while at least four others were just wearing shirts. Only two were wearing the cowboy hat, glasses, and had a mustache – distinguishing features of the killer – in both the side and the front views. The pictures were not shown individually either. They were shown as a photo array so the witnesses had to make a value choice about which picture looked most like the suspect by comparing them to one another, as opposed to testing their credibility one at a time with each different picture.

So basically all of the other pictures in the photo array are ‘pointing’ to Thomas Sophonow’s picture – saying ‘look at me I am different’ – and that is what likely happened. They show the pictures to Lorraine and Norman Janower who had very good observations of the killer. They were both right there in front of the store when the killer came out. They show it to Lorraine Janower and she says, “well if anything I think it’s number seven. If anything, he seems to be the closest.” Norman Janower says, “I know that guy from somewhere. I don’t know why. Can’t be certain though.”

So the Winnipeg Police fly out to Vancouver and they arrest Thomas Sophonow on March 12th and bring him back to Winnipeg. They now prepare a live line-up. They return on the 12th, and by the 13th they are in the Remand Centre. The Remand Centre used to be in the Public Safety Building (and run by the police), so it was very easy for the police to bring out the prisoners and put them in a line-up. They just bring the prisoners right from the jail, which was above the Crime Division, and stand them in line with Thomas Sophonow. And that is what the police do on March 13th. The only witness available that day is John Doerkson, and he cannot make a positive identification. While still flawed, the live line-up is better than the photo line-up, as everyone is against the same backdrop and Thomas Sophonow is not wearing his cowboy hat – one of the distinguishing features of the killer. Yet Sophonow is still one of only four people wearing glasses, and he is by far the tallest person in the group. He still stood out from the rest of the line-up, but it was certainly fairer than the photo pack.
John Doerkson, though, cannot pick Thomas Sophonow out from the line-up. After viewing the line-up Doerkson tells this to a newspaper reporter and is quoted the following day as saying “I’m not sure if Thomas Sophonow is the killer.” Basically he does not know who Thomas Sophonow is, he just knows that he could not pick anybody out and he tells the paper that. The same day the story runs, which is March 15th, 1982, John Doerkson is arrested on an outstanding warrant. While Doerkson is detained in the Remand Centre he either asks or he is shown who the suspect is in the Barbara Stoppel murder. At this time he now recognizes Thomas Sophonow. He is positive from that day forward that Thomas Sophonow is the person he saw in the donut shop, even though Sophonow looks exactly the same as he did two days earlier when Doerkson could not pick him out of the live line-up at the police station.

Also on March 15th, the Winnipeg Free Press and other newspapers report that Thomas Sophonow had been arrested and charged with the first degree murder of Barbara Stoppel. That evening, the rest of the witnesses are brought in to view the same live line-up. These witnesses likely already knew from the news reports that someone had been arrested and charged with murder, and this person’s name was in the paper. So the remaining witnesses come into the police station that night – Norman Janower, Marcel Gloux (from the bridge), and Mildred King (who slipped and fell at the feet of the angry cowboy in the parking lot). These three witnesses view the line-up at 8 o’clock and 8:20 that night.

Mr. Janower goes first – remember it was only seven days earlier that Mr. Janower saw the picture of Thomas Sophonow in the photo line-up – and he says “well from what I can see I’d say it’s number seven,” which was Thomas Sophonow. When asked why, Janower says that it is because Sophonow seems to be about the right height (he is also the tallest person in the whole line-up). So this brings up the question of whether Janower is making a value judgement because he is looking for a tall person, and that is why he picks Sophonow (notwithstanding he had seen his picture only seven days earlier in the photo line-up). After Janower is done he asks if he picked the right person and the policeman tells him that he has picked the person they are investigating as a suspect. But the newspapers have already said the police arrested and charged somebody with first degree murder, so the fact that Janower is told that he picked the right person could have tainted any further identifications he might make. In fact Mr. Janower is quite certain at every
single trial that Thomas Sophonow is the gentleman that he saw in the donut shop that night.

The question on reflection is, if at the trials Janower was identifying the person who looked like the composite, which does look like Thomas Sophonow, was he identifying the person who he saw just a couple days earlier in the photo line-up that looked exactly like the person he saw in the live line-up? Or was he identifying the person that the policeman told him was the suspect? Certainly the Court of Appeal had problems with that. The Court said the identification of the accused in the line-up may have seriously been impaired by Janower’s viewing of the photo array only four days earlier.¹⁶

Marcel Gloux, who saw the struggle on the bridge, said the person he saw on the bridge struggling with John Doerkson was not in the lineup.

Mildred King, when she sees the line-up originally, says “Nope. Person’s not there.” As they are starting to leave she asks to see the line-up again, at which time she says, “No, I can’t swear. Number seven is the closest from the side view.” Mildred King was one of the witnesses that was not involved in making the original composite drawing. She did provide a description that matched everybody else’s description, but she was not involved in the making of that composite which ran in the paper showing what the suspect looked like. So, does she pick the person that matches the composite, or her own independent recollection of the suspect?

Now I told you about two people that were involved in the making of the composite that were in fact not eyewitnesses. They had seen this identical person during the day. In fact, there were 10 different people that saw a similar person in the afternoon on the day Barbara Stoppel was attacked. Most of these witnesses were from the McDonald’s across the parking lot – they said that there was a similar guy in the McDonald’s that day, who was just sitting there drinking coffee and looking out towards the donut shop. Even though two assisted in the creation of the composite, there were 10 that all seemed to say there was an identical person around the mall that afternoon.

F. The Other Cowboy

Thomas Sophonow had an alibi that he gave to his lawyer. It was about an eight page statement. In it he related that he had gone to the Canadian

¹⁶ Sophonow Trial, supra note 9 at 513.
Tire, which is now a Giant Tiger on Pembina Highway, just across from the University of Manitoba. His alibi was that he was getting his car fixed and that he had gone to visit some relatives. He told most of that story at his preliminary hearing, which was only two months after his arrest. The police went out and verified that Sophonow was at the Canadian Tire, as he said, and that there were receipts on file showing he had his car fixed. There was also a long distance phone call to his mother back in BC from the payphone inside the Canadian Tire. That phone call lasted from 7:52 to 7:56 pm. However, we know that there was nobody inside the donut shop strangling Barbara Stoppel until at least 8:15pm. So the police do some time trials and determined that it took 14 minutes to drive from the Canadian Tire to the donut shop. This was used to show that there was plenty of time for Sophonow to hang up the phone, get his car, and drive to the donut shop and kill Barbara Stoppel.

So Thomas Sophonow is getting his car fixed at the Canadian Tire in south Fort Garry, but he is also visiting his in-laws, which he said he did during the day. The police verify that Sophonow was visiting at his in-laws from 3:00 to 5:00 in the afternoon. As he also phoned home while visiting his in-laws, there is an additional independent phone record of the time he was there – and not at the McDonald’s on Goulet.

So if everybody is accurate with their times, from 3:00pm to 5:00pm Sophonow is visiting his relatives, and he cannot be at the shopping mall at the same time the police are confident that the other witnesses saw the killer. So it is either not Thomas Sophonow that the witnesses see during the day (meaning that by coincidence there was another, identical person there earlier, and Sophonow arrived in the evening) or there was another, similar looking person there throughout the day, and Sophonow was not involved at all.

So I talked about the time trials already. My Google Maps tells me that it takes 16 minutes to travel between the Canadian Tire on Pembina (now a Giant Tiger) and the donut shop, and when W5, who looked at this case (back in 1985) and the Defence Counsel looked at this, their time trials took about 19 minutes. So there is some flexibility in the time. The other interesting thing is that if you were to drive straight from the Canadian Tire, whether it takes you 14 minutes or 19 minutes to get to the donut shop, where does Thomas Sophonow park his car? There is no time to walk. You are parking that car and going straight into the donut shop. We know Thomas Sophonow’s licence plate number, and the make and model of his
car because he had it in for repairs and it is recorded on the Canadian Tire invoice. The police wrote down every single licence plate in the parking lot but Thomas Sophonow’s car was not on the police list.

If John Doerkson follows the killer over the bridge and the killer is actually Thomas Sophonow, where did Thomas Sophonow park his car? There is a little problem here. Even if the time works, where does Thomas Sophonow leave his car? The police did not see the car in the parking lot. Nor does anybody see Sophonow come back to collect his car and sneak out of the parking lot before anyone has a chance to write down the licence plate numbers.

So if there is another person involved in this case, and it is not Thomas Sophonow, who would it be? In this case there were probably 700 different tips. The police went around and took Polaroid photographs of a lot of the people that seemed to match the suspect description. As it turned out, there was a number of people in Winnipeg that had glasses, a mustache, and a cowboy hat.

During my review, to filter through the vast number of tips, I looked for somebody that lived in Winnipeg at the time, looked similar to the composite, and may have had a shaky alibi. Was somebody the subject of more than one tip? What had their lifestyle been like in the intervening 20 years? Had they assaulted, sexually assaulted, or molested anybody of the same age? Did they have a violent temper? I looked at those kinds of things and before I get too far ahead, one thing that I’m sure Mr. Wolson will point out was that before John Doerkson identified Thomas Sophonow in the Remand Centre on March 15th, he had identified another man as the suspect less than two weeks after the incident.

Doerkson called the police to say the suspect was in the Norwood Hotel (across from the donut shop) at that very moment. He said if it was not the killer then “it is his twin.” So that was only ten days later, after the composite had been released and was still fresh in people’s memory. The police went down to see the gentleman, took his picture and then eliminated him as a suspect. He was quite confident within 10 days that he knows who the suspect is, and Doerkson had incredible difficulties identifying Tom Sophonow, so there should have been some concern with his ability to recognize the suspect at all.

Another concern relates to hypnosis. As the police were having a hard time finding a suspect in the first couple of months, the four main witnesses were all put under hypnosis. Unfortunately, there was no record made of
what was said during the hypnosis that could have influenced their memory or changed their memory. In 2007, the Supreme Court of Canada in *Trochym*\(^\text{17}\) said that it is inappropriate to use hypnotically refreshed testimony at trial because of the possibility of undue influence. Could that have happened here? (We don’t know as the recordings of those sessions were missing).

Those were some of the issues regarding eyewitness identification in this case – many of them similar to the first DNA exonerations identified by the Innocence Project.\(^\text{18}\) In hindsight, the suspect pool could have been narrowed by looking at things like the tips, looking more closely at the jail house informants, and at how they came about and how or why they testified, and looking at the eyewitness identification procedures that were used. Certainly somebody that lived across the street, with a bird’s eye view of the donut shop, who looked similar to the composite, who had a future life of violence against young women, and who was (in 1999) charged with murdering a young girl in British Columbia, made a viable suspect. The fact that such a person was the subject of several tips within days of the composite being released, and had phoned the hospital after Barbara Stoppel was taken in, inquiring if she was okay, is also compelling.

Basically, within a day of the attack, a gentleman who lives across the street, who looks like the composite, and who has a ‘future’ inclination to assault young girls, shows up at the hospital inquiring after her. He may be a much more viable suspect in this particular case than Thomas Sophonow. Based on that information, I prepared a report up to that date, indicating that there might be a much more viable suspect. Because of the report, the Chief of Police assigned a number of investigators to continue following up on that case.

As a result of my involvement in this case, and my understanding of pre-trial identification procedures, I wrote a paper on eyewitness identification evidence that was presented at the first Crown-Defence Conference in 2002,


\(^{18}\) See *Innocence Project*, supra note 10. A list of cases in which eyewitness misidentification has been identified as a contributing factor can be found online at: <http://www.innocenceproject.org/know/Search-Profiles.php?check=check&title=&yearConviction=&yearExoneration=&jurisdiction=&cause=Eyewitness+Misidentification&perpetrator=&compensation=&conviction=&x=35&y=2>. 
an outgrowth of a recommendation in Commissioner Cory’s report.\textsuperscript{19} It was updated for Mr. MacFarlane’s class and this seminar and is included at the end of this presentation.

IV. BRUCE MACFARLANE

A. The Burchill Report

Thanks very much, John. I would now like to give you some context for the Burchill report. The Report was forwarded to Manitoba Justice, and to me, in my former capacity, to assess how to handle this from a broader criminal justice and social justice perspective. The immediate issue was that we had a problem with the case, in the sense that Mr. Sophonow had ultimately been acquitted by the courts. This was not a case of wrongful conviction as he was acquitted, so how were we to handle that?

I mentioned at the outset that in my former life I was the Deputy Attorney General for the province. I left government in 2005 to teach at Robson Hall, and my main course is Miscarriages of Justice. I wanted to design a course dealing with that subject, with a particular focus on wrongful conviction. I would like to step back a bit in my presentation because I am going to deal with the response by government in the next several minutes, and I wish to provide you with some context for this case because it is relevant to the question of how you get to a public inquiry.

The brutal death of Barbara Stoppel outraged the City of Winnipeg and outraged the Province of Manitoba. It occurred two days before Christmas. There is no happy way to die, but it was truly brutal and she was a relatively young girl. The pressure on the police was intense. They had to solve this case. As the days went on and as Barbara Stoppel died five and a half days after she had been strangled by the perpetrator, the pressure intensified even more. When time slipped into January, the media and the public were openly critical of the police. “What’s going on? Why haven’t you found this killer? Get with it.” And for those of you in my class, you will recognize some of the red flags: a brutal murder, a young girl, pressure on the police, pressure to solve the case, and ultimately pressure on the prosecution to successfully put the killer away.

\textsuperscript{19} Sophonow Inquiry, supra note 9 at 60.
Then all of a sudden there was a suspect who roughly looks like the police composite picture, roughly fits the description of the perpetrator, and who is from Vancouver, where police believed the rope used for the strangulation had originated. Pretty slim case, but then all sorts of jail house informants started to come out of the woodwork and wanted to testify.

We will be dealing with some of those issues as the panel continues this morning, but I just wanted to give you a sense of the type of case it was and how it gripped this province over a period of many, many months, if not many years.

When the Burchill Report was received by me on behalf of Manitoba Justice and the Minister of Justice, my immediate reaction upon reading it was, “well, wait a second now. There is no DNA to exculpate Thomas Sophonow, so this is not a DNA clearing case”—which is your typical scenario.

Secondly, as I mentioned before, this is not a wrongful conviction case. This was a case where Thomas Sophonow went through three trials and was ultimately acquitted by the courts. So it is not a wrongful conviction; at most it’s a wrongful imprisonment. My immediate question was “how did the police reinvestigate this and why did they reinvestigate an acquittal?” That was an immediate issue. Why would they reinvestigate an acquittal?

With tremendous credit to the Chief of Police and John Burchill, and the Winnipeg Police Service generally, they decided to take a principled approach to this because Thomas Sophonow had been acquitted, but everyone continued to see him as a murderer who “got off”.

The Court of Appeal, in finally entering an acquittal as opposed to a new trial, said that enough is enough. Thomas Sophonow has had three trials and the Crown cannot force him through a fourth. The evidence was not going to get better. That was a signal to the public that the case had not been dealt with on the merits, and that Thomas Sophonow was probably guilty. He just got off on a technicality.

So that was how Thomas Sophonow was seen for the next 10 to 15 years. He was branded. As Commissioner Cory subsequently said, “he bore the mark of Cain.”²⁰ He suffered because of that. I have spoken to him several times over the years and he has described to me the firebombing that took place at his house in Vancouver. He and his wife and young child were upstairs when they heard a commotion downstairs. Someone had firebombed

²⁰ Sophonow Inquiry, supra note 9 at 1.
his house at the front door and they barely got out alive. His children were ostracized at school because their father was a murderer who got off. The family had no friends in Vancouver for the same reason. He was a murderer who had evaded justice.

Thomas Sophonow, even though he was acquitted, decided he had to do something about the appearance of being a murderer when he was not a murderer. He started petitioning everyone he could think of. He put together an information package and sent a request for assistance to the Prime Minister, the Premier, Ministers of Justice, to the police, the Winnipeg Police Service, the RCMP, and I received one as well. Anybody who he could think of that could set a wheel in motion. For all of the right reasons and using a very principled approach, the Chief of Police in Winnipeg decided there might be something to this. He was the one that set those wheels in motion for the investigation. That was why there was the reinvestigation of a case that had resulted in an acquittal.

In fact, in the final Court of Appeal decision, what the Court said was this:

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\text{[t]he quality of the identification evidence would not be improved by its further repetition, as that would only give the witnesses an opportunity of being even surer than before...[and] it would be difficult, in view of the notoriety the case has gained...to find a jury of 12 citizens totally uninfluenced by what they have seen or heard already.}\]

In other words, during that period it was a notorious case and Thomas Sophonow was going to be stuck with that label for the rest of his life unless he was able to cause a change.

Upon receiving the Burchill Report, I sent it over to the Prosecution Division of Manitoba Justice for an analysis. Prosecutors agreed with the conclusions that had been reached by the Winnipeg Police Service: namely, that there was a strong likelihood that Thomas Sophonow had not committed the offence, that he had had no involvement, and that there was another viable suspect who probably was the killer.

I sat down with the Attorney General to discuss what the options were. The government at that time was relatively new, as they had just been voted into office a matter of months before. It was clear that they wanted to do the right thing by taking a principled approach to this case. If there was

\[21\] Sophonow Trial, supra note 9 at 529.
something wrong in the criminal justice system in Manitoba, we had to find out what was wrong and fix it. The fact that it was an acquittal was of no moment. It appeared that there was something very wrong in the Province of Manitoba in terms of the criminal justice system, whether it was in the realm of the police and police investigations, or whether it was in Manitoba Justice itself in the Prosecution Division. We did not know where it had gone wrong, but we knew something had gone wrong and something had to be done.

We looked at a number of options, and the option of a public inquiry was the favoured one. That conclusion was reached even though a public inquiry, as most of you know, is very costly. They are usually in the millions of dollars by the time all the dust settles. Public inquiries also take a fair amount of time. Other options could include a private review, which is shorter, faster, and less expensive, but does not carry the same level of confidence with the public.

B. Public Inquiries

It is also clear that once you set a public inquiry into motion you do not know where it is going to go, and you do not know how it is going to unfold. One author has made this statement, which I think is quite accurate, in describing a public inquiry and some of the risks, at least from the standpoint of government, in launching such an inquiry. This author said:

> Launching a royal commission of inquiry is a risky process – a bit like sending a ship out to sea. You don’t know where it will go, how long it will take, how much it will cost or what it will bring back. And trying to relocate a ship lost at sea and bring it back to port can be a costly experience (especially if the captain is not in a hurry to come home).

So just what is a public inquiry, and why were we looking at that as an option? And what are you going to get into once you do order a public inquiry? Because, as I said, once you announce it, it runs itself.

A public inquiry is one illustration, or one type, of an administrative tribunal. There are two basic types of inquiries: the advisory body, and the investigative body. Most public inquiries have elements of both. They have

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both an advisory element, advising government, and at the same time an investigative component, to find out what happened.

Fundamentally, commissions of inquiry receive their terms of reference (which is their mandate document), investigate based on that mandate document, report to government, and then cease to exist. They just disappear. It is a very ad hoc body with a time limit. For that reason, they form a very unique residual role in government if other processes are seen to be inadequate. It is a residual role because it is something that can be created very quickly. If other processes are not going to work, then you can set a public inquiry into motion, get the report, and then it disappears. But the government loses control over the information and, as well, loses control over how the information is going to be communicated to the public. In other words, once you set a public inquiry into motion, it is the commissioner and the commission that determines what information is pursued, and what the report is ultimately going to say.

I say that for a few reasons. From the standpoint of government, there are two absolutely critical things that must be taken into account when ordering a public inquiry. If there is one thing I am going to leave you with, it is these two critical decisions. The first is the appointment of the commissioner. That above everything else is very important. You need a commissioner with integrity; someone who is going to manage the process, who is going to focus the inquiry, and who you can count on to make the right and principled decisions throughout the entire process. That is so because once you toss it to the commissioner, the commissioner runs with it. The second is the development of the terms of reference, which is the mandate document. It defines where the commissioner is expected to go by providing the focus for the inquiry.

Those two decisions, because they were critical, were assigned to me. So for the next several months I spent a fair bit of time sitting down with counsel for Mr. Sophonow, and Mr. Sophonow himself, to work out terms of reference for the public inquiry. We felt that it was important that there be, in essence, a buy-in to the process and to the terms of reference. It was almost a negotiation process as opposed to a consultation. That took a fair bit of time because we had to work out each paragraph in the Order-in-Council. I will discuss the results in a moment.

The search for the commissioner was considerably easier. I reviewed potential commissioners who were likely available, with a preference for a former judge. I then took a potential short list to counsel for Mr. Sophonow.
There were three individuals listed. We had a recommendation for one, but we wanted to get Mr. Sophonow’s views. The recommendation was retired Justice Cory, who had just left the Supreme Court of Canada about a year earlier. I had not spoken to Justice Cory at that point; I first wished to get the view of Mr. Sophonow and his counsel. They sat on it for a week or so, as they wanted to do some consultation of their own. They wanted to speak with some people with AIDWYC (the Association in Defence of the Wrongfully Convicted), and with partners and other people on their assessment of the short list and retired Justice Cory. They came back and said that Justice Cory was perfect for the job. So you had a happy situation where the government favoured Justice Cory for commissioner, and Mr. Sophonow’s counsel heartily agreed and endorsed Justice Cory. It was a good match.

We hammered out the terms of reference and the appointment of the Commissioner. I approached Justice Cory and met with him on a few occasions. He was enthusiastic about taking on the job, so that worked out well. The announcement was set for early June. It was planned so that the Chief of Police would call a press conference in the morning – I think it was around 10 o’clock – announcing in essence that Thomas Sophonow had not been involved in the murder. He wished to make that point perfectly clear – a very bold move coming from a Chief of Police. One hour after, the Minister of Justice called a press conference and announced that based on the statement of the Chief of Police, a full public inquiry was being called into what had happened and how we can fix any problems that were discovered.

It is, parenthetically, perhaps telling and a bit mysterious that a statement from the courts acquitting someone did not carry weight with the public, yet a press conference where the Chief of Police announces innocence changed the whole picture.

The Order-in-Council is fairly lengthy and I will not go through the whole thing. It recites the background to the case, the concern on the part of the police, and the concern on the part of Manitoba Justice. Then there are four key paragraphs. These were the ones that had been worked out with counsel for Mr. Sophonow.

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24 Sophonow Inquiry, supra note 9 at 135-138.
The first paragraph is an obvious one – that the Commissioner is mandated to inquire into the police investigation and resulting prosecution against Thomas Sophonow. So it was a two-pronged inquiry involving both the police and the prosecution.

The second paragraph mandated the Commissioner to advise on practices or systemic issues that contributed to the miscarriage of justice, and to provide recommendations. That was the next most important part of the Order-in-Council: tell us what things happened to contribute to this miscarriage of justice, and provide us with recommendations on how to avoid them in the future.

The third was this: should Thomas Sophonow be compensated? If so, on what basis, and how much, given the fact that he had been acquitted but had spent three and a half years in jail because he had been refused bail on the charge.

The fourth was added because there was some sense that there might be some pushback from the Winnipeg Police Service in terms of cooperation and documents. I think this is the only time in any public inquiry that this type of paragraph has been included – namely, it provided that all government departments and agencies, including the Winnipeg Police Service, must assist the Commissioner. That was specifically included in the Order-in-Council to make sure there was not going to be any problems down the road.

The announcement went ahead, the media received the announcement well, and the public received the announcement well. There was virtually no criticism. It was recognized that Justice Cory was a perfect selection.

At the time that the announcement was made, Thomas Sophonow was in the Minister’s office. He received a written apology from the Attorney General. I will not read the whole thing but it essentially is an unqualified apology noting

...that legal proceedings led to imprisonment for almost four years, although the court system ultimately acquitted you of the offense. A recent police investigation has demonstrated that you are in no way involved in this crime and a review of that investigation by my department supports that conclusion. You were arrested, charged, and imprisoned for a crime you had not committed. I cannot begin to understand the anguish you must have felt as you were going through this process. I wish therefore to extend to you on behalf of the Province of Manitoba my full and
unqualified apology for your imprisonment under these circumstances as well as the lengthy struggle you subsequently endured to clear your name.25

I wrote the draft apology for the Minister, but the last 13 words were specifically added by the Minister himself. He wanted to make it perfectly clear that the struggle was something that he was apologizing for as well.

From Thomas Sophonow’s standpoint, the apology was almost the most important thing he received. The inquiry was fine, but the fact that he had a written apology from the Attorney General of the province was something that he cherished. The two of them then had a private meeting together.

The last step in the setting up of the public inquiry was Commission Counsel. Generally speaking, the Commissioner is the one that selects Commission counsel. In this particular case, Commissioner Cory asked for my advice. I provided him with a very short list and recommended a particular person, namely Richard Wolson. I said that Mr. Wolson would be outstanding in this task, and he was. Commissioner Cory accepted that advice and asked that Mr. Wolson be approached to see if he would take on the assignment.

The public inquiry was thus announced; all of the main pieces were in place in terms of the infrastructure and the key players. At that point, government simply backs off. If there are any questions raised in the legislature the standard response is “I can’t discuss that case publicly, it’s before a public inquiry. A Commissioner is now in charge of it.” And that is the position that we took for the next many months, until the report was prepared.

It was then in the hands of the Commissioner and Commission Counsel. Commission Counsel was Richard Wolson, and he is with us here today.

V. RICHARD WOLS\'ON

It was the 8th of June 2000, I was just finishing a murder case in Vancouver and the verdict had been delivered that morning. When you do these types of cases, you are energized, and the adrenaline is flowing, but when the verdict arrives, it all vanishes. Even though it was a decent verdict, as I went back to my hotel room I was just exhausted. I fell into a chair; I was going to fly home that night, and I turned on the television looking for the news. I was changing channels and I saw Winnipeg’s Chief of

25 For a reproduction of the full apology, see page 154 of this issue.
Police, Jack Ewatski, on television and of course it piqued my curiosity. I was surprised when I heard him exonerate Tom Sophonow; I had no idea that this announcement was coming down.

I did not know Tom Sophonow, but I felt very happy for him. I was getting ready for my flight home, when as I always do, I called my office for messages. There was a message from Bruce McFarlane, the Deputy Attorney General, but did not necessarily connect the message to the Sophonow matter. I phoned Bruce, and he asked me if I would consider being Commission Counsel to Peter Cory in the public inquiry into the wrongful conviction of Tom Sophonow. It took me about two seconds to answer in the affirmative. The adrenaline started flowing again. As I flew home that night, without any intoxicants, I think I was higher than the airplane. For a criminal lawyer (and I’ve practiced criminal law since 1973), to do a post mortem, if you will, on a murder case or a series of murder cases – to find out what went wrong and even in a small way to be a part of recommendations for change is an awesome task. I could not have been happier.

I met with Peter Cory in Vancouver a few weeks later. I knew Peter Cory, as he and I were part of a teaching faculty, but I did not know him well. I had dinner with him and I was awestruck. He regaled me with his many stories of flying bombing missions in WWII. He is just an unbelievable person. I knew him to be a great judge, but I did not know of the kind of person he was. A gentle man, kind, caring, compassionate; such a decent person. He asked me that evening if I would formally become his counsel, his Commission Counsel, and of course I readily accepted.

In Peter I thought I hit the jackpot. I did not know then, that in 2009 I would hit the jackpot again with Jeff Oliphant as my Commissioner in the Mulroney-Schreiber Inquiry. In 2009 I would hit the jackpot again with Jeff Oliphant as my Commissioner in the Mulroney-Schreiber Inquiry. I can only say that Jeff Oliphant and Peter Cory are equally wonderful people, and great judges. I have had the honour then of working with two of Canada’s very best.

As for my colleague on this panel Jeff Oliphant, I could go on about Jeff, but let me say his conduct as commissioner at the Mulroney-Schreiber Inquiry should be a model for any future commission presiding over a public inquiry. He was brilliant as commissioner. His report is classic.

Now, I want to say something about my other two colleagues here today. Bruce MacFarlane is a very humble man, but I would say that he is one of the big players in this country in the exposition of, and education on, wrongful

26 Oliphant Commission, supra note 7.
John Burchill, my fellow panelist – I would say that if it had not been for John there never would have been a Sophonow Inquiry. Imagine a police officer investigating other police officers or investigating an investigation of other police officers. Consider the courage that that action took. Without question, I would say if it had not been for John, this Inquiry would never have taken place.

When I began my term as Commission Counsel, I wanted to meet Tom Sophonow. I went out to Vancouver and met with both Mr. Sophonow and his counsel. I asked his counsel if he would mind if I had a few minutes alone with Tom. The one thing I must tell you is that, from the time I met him in Vancouver until very recently, he was a fractured man; he was tormented. I took him aside on that first meeting and said, “Tom, what is this about for you? Is it about vindication or compensation?” He gave me an answer that was music to my ears – he said that it was not about either of those things. It was about working to ensure that there is not another Tom Sophonow. I knew his intentions were honourable. It was a meeting I would not forget.

As Commission Counsel, I would learn many of the things that John Burchill has told you about the murder of this young, beautiful girl, just 16 years of age, days before Christmas. I would learn that there were four eyewitnesses who testified at Sophonow’s trials. I would know about the identification they made of a large man – certainly fitting Tom’s description – wearing cowboy boots and a cowboy hat, with a pitted face, and dark glasses. I heard how the killer left the donut shop and was accosted by the witness John Doerkson, who wrestled with him on a nearby bridge. That he saw the killer throw articles over the side of the bridge (that later turned out to be gloves and twine). I would learn that the police came to the Ideal Donut Shop to find Barbara Stoppel in a washroom with a ligature made of twine around her neck. I learned that she would die a few days later in the hospital. I also learned that a man came to the hospital asking about Barbara Stoppel’s condition on the 28th of December. I will speak of that man later. I learned that Sophonow was in Winnipeg to visit his daughter. While he never actually connected with her, he visited other family. He intended to drive back to Vancouver. He had some car trouble and went to the Canadian Tire on Pembina Highway. While there, he struck up a conversation with some people. He made a long distance call to his mother in Vancouver that ended
some minutes before eight o’clock. Keep in mind, of course, that the critical
time was about 8:30 pm or so, as that was the time that Barbara was attacked.

I learned that Mr. Sophonow, because of his own difficult childhood, had
a practice at Christmas time of taking candies to sick kids in hospitals. In fact,
he had done that at around the very time that Barbara was attacked. He had
gone, we learned, to the Safeway in close proximity to the Canadian Tire and
bought some mesh stockings full of candies. He then distributed them at local
hospitals. I learned that a composite drawing of the killer had been circulated.
Mr. Sophonow had gone back to Vancouver but he was later arrested there by
Winnipeg police.

My task as Commission Counsel was to gather the evidence, to review it,
disclose it, and to put witnesses before Commissioner Cory. I took the
position that I would cross-examine these witnesses in search of the truth. Not
because I had an interest one way or the other, but because my task as
Counsel was to put all the evidence before Commissioner Cory in a fair and
impartial way. I was mindful that we were dealing with peoples’ reputations.
The reputations of the prosecutors, the investigating police officers, and the
witnesses who would appear before Commissioner Cory.

Systemically, when you look at wrongful convictions there are a number
of factors, and most, if not all of them were present in Sophonow’s case. I
learned quickly that, from start to finish, the Sophonow case was the perfect
storm for wrongful conviction. It had all the ingredients, the recipe was there,
and the outcome could have been predicted.

A. Eyewitness Identification

Keep in mind that the murder of Barbara Stoppel rocked the city of
Winnipeg. The killer had to be arrested. The police did everything within
their power to solve this crime.

So there was this perfect storm. Eyewitness identification, I can tell you as
a criminal defence lawyer, that if you have somebody come forward to say “I
saw the fellow leave the scene of the crime, and that's the man sitting in the
prisoners dock” – that is devastating evidence against the accused. In this case,
there were four of them. Four eyewitnesses – that is the kind of evidence that
would give you grey hair prematurely as a defence lawyer – it is devastating.
Studies have shown that systemically in about 81% of wrongful convictions, mistaken eyewitness identification plays a significant role.\textsuperscript{27}

Now of the four eyewitnesses that John Burchill talked about, I will look more closely at John Doerkson because he had the greatest interaction with the killer. He had gone to the donut shop for coffee sometime after 8:15. When he arrived, the door was locked. He saw a large man inside the shop. The man left, and Doerkson followed him to the nearby Norwood bridge, where he struggled with that man. The killer dropped a package over the side of the bridge that was later picked up by the Winnipeg Police Service. John Doerkson was shown a line up, but he could not pick out Tom Sophonow. This is after Tom was arrested in March in Vancouver and brought back to Winnipeg. The same John Doerkson called the Winnipeg Police about 10 days following the murder and said that the killer was in the Norwood Hotel. The police went to the hotel and investigated that person, and right away they exonerated the man. Doerkson said that if that were not the killer, it was his twin brother. A few days later John Doerkson picked out a Winnipeg Sun newspaper reporter as being the killer. The police went to that person, and right away he was exonerated. Doerkson would later say that that every tall person he saw might have been the killer. Now, the true significance of these misidentifications is that they were never disclosed to the defence. It got worse; Doerkson was arrested for unpaid fines. He was put in the Remand Centre where Sophonow was being held. He caught a glimpse of Sophonow (he had seen his picture in the newspaper). He asked if he could see that person again, and after he did, Doerkson tells the police that he’s 90% certain that was the man he saw on the bridge. Somehow, when it came to the preliminary hearing and over the course of the three trials he claimed to be 100% certain that Sophonow was the man. A skeptic might argue that Doerkson had seen the pictures of Sophonow in the newspapers, and been influenced by them.

Evidence at the inquiry revealed that John Doerkson in 1982 had eye trouble. He required glasses, and he had trouble with his eyes at night, and in

\textsuperscript{27} See \textit{Sophonow Inquiry}, supra note 9 at 27 (81%). See also Garry Wells & Elizabeth Olson, "Eyewitness Testimony" (2003) 54 Ann Rev Psychol 277, online: Iowa State University <http://psychology.iastate.edu/~glwells/annual_review_2003.pdf> (75%); Innocence Project, supra note 10, online: Innocence Project <http://www.innocenceproject.org/Content/Eyewitness_Identification_Reform.php> (around 75%); Barry Scheck, Peter Neufeld & Jim Dwyer, \textit{Actual Innocence: When Justice Goes Wrong and How to Make it Right} (New York: New American Library, 2003) at 246 (84%).
poor lighting conditions.\textsuperscript{28} This was never disclosed to the defence at the trials.

Further evidence at the inquiry disclosed that Mr. Doerkson had developed a relationship with a member of the Stoppel family. Did that influence him in picking out Tom Sophonow as the killer of Barbara Stoppel?

Now, I am not going to get into all the difficulties with eye witness identification, save to give this one example: when I was preparing for the inquiry, I interviewed one of the witnesses who had made a positive identification of Sophonow at trial. I had pictures of both Tom Sophonow and the new suspect of the Winnipeg Police Service, Terry Arnold. The witness said “there is Tom Sophonow,” pointing to Terry Arnold. At the Inquiry, one of the four eyewitnesses testified that when they saw the picture of Terry Arnold in the newspaper, they not only thought it was the killer, but they thought it looked more like the killer than Sophonow did. The evidence of the four eyewitnesses was devastating to Tom Sophonow. None of these witnesses made positive identifications at the beginning, but all of them, by the time of the preliminary hearing, were positive that the person they saw leaving the donut shop was Tom Sophonow. It is not difficult to see why eye witness identification has been described as frail at the best of times, in the best of cases.

There is no question that eyewitness evidence played a significant role in the wrongful conviction of Tom Sophonow. Commissioner Cory, in his report, made a series of recommendations regarding eyewitness evidence.

B. Jail House Informants

Jail house informants also played a prominent role in the conviction of Tom Sophonow. By the time of his third trial, there were three informants who testified that Sophonow had confessed to each of them at separate times. The first informant, Thomas Cheng, told the court at trial that Sophonow confessed to him. He said that Sophonow told him that he was in the donut shop. That he went there to rob it, and that when the young girl in the donut shop was not cooperating, he got mad and took her into the washroom and used the rope to kill her. From the defence perspective it does not get worse than a confession from the accused. When you look, however, at the jail house informants in this case, they had all lied for their individual reasons.

\textsuperscript{28} Sophonow Inquiry, supra note 9 at 22-54.
When Cheng testified at the trial of Tom Sophonow, it was suggested by defence counsel in cross examination, that Cheng had made a bargain with the police in exchange for his testimony. He denied this suggestion. When the prosecutor re-examined Mr. Cheng, he stated that he did not ask for any consideration for his evidence. While he hoped for favourable treatment, the fundamental reason he came forward was that it bothered him to see a murderer on the street. Consider however, what Cheng told a police polygrapher prior to trial. That the most important reason for him to come forward was to get his 26 charges of fraud dropped. The latter was never disclosed to the defence.

The second jailhouse informant, Adrian McQuade, was a known informant for the Winnipeg Police Service. He had often bargained information for some kind of compensation. He was arrested on break and enter charges. He told the police that he would give them information on some drug matters, but they were not interested. So he asked them to put him in a cell with Tom Sophonow. He went in with Sophonow and when he came out he told the officer that made the arrangement, that Sophonow did not say anything to him about the homicide. Later though, he told the police that, in fact, Sophonow did confess. At Mr. Sophonow’s third trial, when McQuade was about to be called as a witness, (the only trial in which he testified), he told the police that if they put him on the stand, he was going to sabotage their case. He told them that he did not wish to testify. The police told him that they would publically disclose the fact that he was an informant. In doing so, McQuade feared, the disclosure of him as informant would jeopardize his life. McQuade cooperated, and testified that Sophonow confessed to him. Defence counsel testified at the public inquiry that he was not told of McQuade’s initial position that Sophonow had said nothing about the homicide. Further, defence counsel testified that it was not disclosed that McQuade changed his mind about testifying, and only did so after he (McQuade) was threatened.

The third informant, Douglas Martin, was the best example of the danger of jailhouse informants. He had testified nine times in Canadian courts as an informant. He had previously been convicted of perjury. He too testified that Sophonow confessed to him.

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29 Ibid at 64.
30 Ibid at 75-6. Commissioner Cory found that the non-disclosure was not deliberate yet had a significant impact on the outcome of the trial.
To say that Commissioner Cory was not impressed with jailhouse informants is an understatement. Regarding Martin, Commissioner Cory said he seems to have heard more confessions in his life than the most dedicated priest.\footnote{Ibid at 69.} He talked of informants this way: “[t]hey rush to testify like vultures to rotting flesh or sharks to blood.”\footnote{Ibid at 63.} As a result, Commissioner Cory made recommendations on jail house informants. He recommended that jail house informants should not be allowed except in the rarest occasions, and only then with certain guarantees of trustworthiness.\footnote{Ibid at 73; Commissioner Cory recommended that only in rare case such as kidnapping where the location of the victim is revealed and only where the information obtained could not have been obtained by any other source should jail house informant testimony be admissible.}

C. Terry Arnold

Well, as mentioned above, a gentleman came to the hospital to find out about Barbara’s condition after she was taken there. The gentleman was a fellow by the name of Terry Arnold, and at the time of the announcement of the Inquiry, was considered to be the number one suspect, by the Winnipeg Police, in the murder of Barbara Stoppel. As John Burchill said, he went on to have a life committing horrible crimes. He had been charged with murder in another province, and was also investigated in the States for other murders.\footnote{Arnold had been convicted of sexually assaulting four girls in Newfoundland, the murder of a fifteen year old girl in BC and was the prime suspect in the murder of Denise Lapierre in Calgary: “Convicted killer suspect in two old murders”, CBC News (10 November 2000) online: CBC News <http://www.cbc.ca/news/canada/story/2000/06/14/stoppel_suspect000614.html>.} He was never brought to justice as he died of an overdose. He is the fellow that went to St. Boniface Hospital right around, I believe, the 28\textsuperscript{th} of December, several days after Barbara had been taken to the hospital (she was on life support) to inquire as to her condition.\footnote{Terry Arnold visited St Boniface Hospital on December 28th, Sophonow Inquiry, supra note 9 at 35.}

Terry Arnold lived just a short distance away from the scene of the murder. One could see the donut shop from his apartment. He had a cowboy hat and cowboy boots, and his face was pitted (matching the composite drawing). He knew Barbara Stoppel, and he told the police that he had a
crush on her. He did not have an alibi for the critical time. Yet somehow, while he had been interviewed by the WPS, he slipped through cracks. The police ultimately focused on Tom Sophonow to the exclusion of anyone else. They became satisfied that Mr. Sophonow was the killer, and that they had their man. Commissioner Cory found that the Winnipeg Police Service investigation was flawed by tunnel vision, that is, they focused on Sophonow exclusively. The commissioner made a number of recommendations regarding tunnel vision.

D. Interview of Tom Sophonow in Vancouver

In March, after receiving some information about Mr. Sophonow, two Winnipeg homicide detectives went out to Vancouver, where he was living, to interview him. Initially, a Vancouver police officer interviewed Sophonow when certain matters came to light, which prompted Winnipeg detectives to interview him. The Winnipeg detectives interviewed him over a four hour period, in five different sessions. These interviews amounted to a cross examination of Mr. Sophonow. Sophonow initially denied any involvement. Then something happened between the second and third session. The detectives decided that they would strip search him; conduct a cavity search for no reason. Sophonow ultimately testified at the inquiry that this had the effect of taking his dignity from him, of shaking him to the core. The interview, the Commissioner noted, was hardly fair and crossed the line in several instances. The commissioner found that the officers were not taking verbatim notes of the interview, and it was not audio or video recorded. One of the officers recorded the following comments attributed to Tom Sophonow, “I stopped for coffee where that chick got killed between eight and nine o’clock.” As noted earlier, the commissioner had grave concerns both in the manner of interview, and the failure to record accurately. He further found that he had grave concerns about the conduct of the Winnipeg detectives. Sophonow testified that this interview haunted him to the very day of his testimony at the inquiry. He testified that they broke his will. He told his psychiatrist that at the end of this interview he thought for a while he

36  *Ibid* at 13; the Vancouver police officer who initially interviewed Sophonow recorded Sophonow as saying that he could have been at Ideal Donut, although Sophonow later testified that it should have stated I could not have been in Ideal Donut.

37  *Ibid* at 17.

might have committed this crime, even though he knew that he had not. The police did not charge and caution him, they did not give him the right to a lawyer even though Sophonow asked for one, they lied to him, and they told him he was lying. They strip searched him, as I noted, and traumatized him. It ended up in a veiled confession of sorts. Well, add everything up: four eye witness identifications, three jail house informants, and the comments purportedly made by Sophonow, all strongly suggestive of Sophonow’s guilt.

E. The Twine, Crown Misconduct

I discussed earlier that when Barbara Stoppel was discovered in the bathroom of the donut shop there was a twine ligature around her neck. The origin of that twine became a significant issue at Mr. Sophonow’s three trials. The prosecution argued that the twine was manufactured on the west coast, and it was used by BC hydro on a number of sites in Vancouver. Mr. Sophonow was living in Vancouver. This Vancouver connection was an indicator that Sophonow was the killer. The twine was never tested, even though the cost for such testing was only $100. By such tests, its origin could have been determined conclusively. To compound matters, in advance of the initial trial of Mr. Sophonow, a witness from the west coast twine company, the night before he was to testify, met with the junior Crown attorney here in Winnipeg. As they were talking the witness said, “I have to tell you that this twine is also produced in Portage-la-Prairie, Manitoba.” This statement by the witness as to a second source of the twine was never disclosed to the defence. Had it been disclosed, the connection to the west coast and Tom Sophonow would have been destroyed.

F. Alibi

Alibi evidence was put forward by Tom Sophonow through his counsel. He was at the Canadian Tire on Pembina highway at around 8:00 pm on the night in question. He had car trouble. He had phoned his mother from the Canadian Tire, to her home in BC. He had purchased these mesh stockings full of candy from the Safeway store near the Canadian Tire. He had taken the candies to hospitals for sick kids. He had talked to a nurse at one of the hospitals. The prosecution argued that the alibi was unreliable, in that it was late in coming (the alibi had been presented to the prosecution prior to the first trial). The prosecution further argued that there was no mention of it to the detectives who interviewed Sophonow in Vancouver. They argued that the alibi was not true. While this evidence did indeed establish Mr.
Sophonow's innocence, the prosecution argued that Mr. Sophonow, accepting that he was at the Canadian Tire around 8 o'clock, had sufficient time to drive to the murder scene and commit the crime. Detectives testified that it took them 14 minutes to drive that distance. I have driven that distance on a number of occasions. It took me longer than 14 minutes. Consider too, that this was around Christmas time, when traffic would have been heavier. Consider as well, that Sophonow's vehicle was not located at or near the murder scene. For the prosecution to be correct in their argument, Mr. Sophonow would had to have parked his vehicle and walked to the donut shop. There was not time to do so. Evidence disclosed at the inquiry that a man had attended at the Saint Boniface hospital on the night in question, and delivered these red mesh stockings with candy. The police had seized such a stocking from the hospital, but never disclosed this fact to the defence. Had disclosure been made, surely the alibi would have been given great consideration by the jury. Commissioner Cory made recommendations regarding alibi evidence.

G. Aftermath

Commissioner Cory was a perfect fit for this inquiry. He is a very compassionate man. Sophonow, who had justifiable trust issues, did, however, trust Peter Cory. I have to tell you, as I said before, that the anguish that I could see when I first met Tom followed through to the inquiry, where I saw him absolutely fractured. There were days where he could not come to the inquiry because he was in a terrible state. He was depressed beyond description. He was, of course, reliving his whole nightmare publicly. But now I can jump ahead because there is, I think, somewhat of a happier ending. I was at the Driskell Inquiry,\(^39\) the opening day, and as I walked into the inquiry to commence that day, I saw Tom Sophonow. He came to support James Driskell. I walked up to him, and I saw him smiling – I had never seen that before. I asked him how he was, he gave me his hand and told me he was doing great. I could see on his face that he has some sense of peace. It made my day. At the first break I phoned Peter Cory, and told him about Tom. I

\(^{39}\) James Driskell was charged and convicted of first-degree murder in 1991. By 2003, it was accepted that Driskell had been wrongfully convicted. In December 2005, the Government of Manitoba called a public inquiry which reported in January 2007, *Driskell Inquiry, supra* note 6.
could hear the relief in his voice; Commissioner Cory had felt so much for this man who was truly a victim of wrongful conviction.

The tragedy of this event is the depth of harm it created: a family lost their child; an innocent man went to jail and was haunted for years; the real perpetrator, Terry Arnold, was free, and had the opportunity to kill again.

Commissioner Cory made a series of recommendations. I am happy to say many of them were accepted and adopted both in Manitoba and across Canada. I am extremely proud to have been a small part in the process. I will leave you with this small thought, that if we are not diligent, it could happen again. Thank you.

VI. JUSTICE JEFFREY OLIPHANT

Thank you very much Bruce. I have never conducted an inquiry into a wrongful conviction but I have been exposed to several lectures and listened to people who have talked about what has happened. As my friend Richard said, with Thomas Sophonow it was a perfect storm. Just about every contributing factor to wrongful convictions that you can think of could be found there. I should tell you that although I have never done a public inquiry on a wrongful conviction, I played a small role in the James Driskell matter because prior to any inquiry being called, I made an order on the application of Mr. Driskell’s lawyer that compelled the Winnipeg Police Service to disclose a report that had been secret for many years. It was a report that was done very much like the one that John did on Sophonow. Mr. Driskell had been convicted of murder, and the report that I had in my possession disclosed to me, to my horror, that James Driskell was probably innocent.\footnote{\textit{Ibid} at 89-91; in September 2003 the \textit{Hall/Ewatski Report} was completed which suggested several key witnesses in the Driskell trial had exchanged testimony for compensation and one witness was threatening to recant.} I ordered the disclosure of the report, and opened the Pandora’s Box with the result that there was a public inquiry; he was wrongly convicted and the inquiry demonstrated that.

A. Wrongful Convictions

My first exposure to wrongful convictions was when I was at Cambridge University in the UK attending a conference of lawyers, judges, and other interested people, where I had the benefit of hearing from a man by the name
of Guido Calabresi. The academics in the room will recognize Calabresi as the former dean of Yale Law School in the United States. At the time I heard from him, he was sitting as a Court of Appeal judge in the Second Circuit Court of the Federal court system in the United States in New York City. Justice Calabresi spoke on the causal factors of wrongful convictions, but he also touched on something else that has not been mentioned yet today. When you look at the roster of people wrongly convicted in Canada (provably wrongly convicted because there have to be others who have not been proven to be wrongfully convicted), you will appreciate what Calabresi had to say. He referred to the frailty of eyewitness identification evidence, but went on to say that in almost every case where a wrongful conviction has occurred there has been a horrible crime of violence with corresponding public outrage and pressure on the police to solve the crime quickly. The most common feature alluded to by Calebresi was that the targets of the investigations were people who could be described as marginalized. According to Calebresi, they became scapegoats. Look at the people who we know were wrongly convicted in Canada. We have Marshall, an alcoholic, in Nova Scotia, who was an Aboriginal person living a very marginal lifestyle. He was wrongly convicted.41 David Milgaard, a young kid 16-17 years of age, wandering across Western Canada smoking “Mr. Weed”, and probably using lots of other drugs.42 Marginalized. Morin in Ontario, a very strange man convicted of killing a little girl and later found to have been wrongly convicted.43 And others, including Driskell himself living a marginal lifestyle. All scapegoats. You know I sit as a judge and listen to people and I have to tell you having heard what I have, one of my worst nightmares ever would be to participate in the wrongful conviction of an individual. I try and I know my colleagues try to be so careful.

Richard mentioned the work that Bruce MacFarlane has done in this area, and I think Bruce is a true hero. I think that not only is he highly recognized in Canada, but around the world for the work he has done in terms of wrongful conviction. Bruce organized the conference44 that we had

44 Unlocking Innocence: An International Conference on Avoiding Wrongful Conviction,
here in 2005 that drew people of international acclaim to speak. These included Janet Reno, the former Attorney General of the United States, and people from all over Europe. We had people from every continent except South America, I think, attending the conference in Winnipeg, and everyone learned. You know the saying, that from little acorns tall oaks grow. Out of that conference, the National Judicial Institute, which is the educational arm of the Federal Judiciary in this country, now holds an annual conference on the role of the judge in avoiding wrongful convictions. In fact, I happen to be going to the conference in Montreal in March of next year to see what has developed since we started this in 2005.

I was on circuit out in Brandon in the month of June 2008, and I got a message from the receptionist that the deputy clerk of Privy Council, who is the second most senior bureaucrat in Canada, and the second most senior bureaucrat reporting to the Prime Minister, was on the phone and wanted to talk to me. I said sure. Believe it or not my colleagues are a playful bunch and like to play practical jokes. But I answered the phone and indeed it was Yvan Roy who told me there was going to be a public inquiry. It was all very confidential at this point, and the inquiry was to deal with certain allegations that had been made about certain business affairs of a former Prime Minister, Brian Mulroney, and a man described to me, not by Yvan Roy, as a very notorious arms dealer by the name of Karlheinz Schreiber. He told me that the Prime Minister wanted a judge from Western Canada to lead this inquiry, and I was the one who had been selected. He said to me “Will you do it?” I said I could not agree to do it at the moment. I guess Mr. Roy is not used to hearing that kind of response from people he is phoning on behalf of the Prime Minister because he asked why not. I said I needed to speak with my commander in chief. He thought I was speaking of the Chief Justice, but I was talking about my wife. I also had to speak to my Chief Justice to get permission, which I did. That began a two year odyssey for me and for other people that were involved in the inquiry. I can truly describe probably the most exciting and interesting professional experience of my now 28 year career as a judge.

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B. Public Inquiries

While the inquiry that I headed did not deal with wrongful conviction, let me tell you that all inquiries have certain common principle functions and features. I see people in the audience that I know have been involved in inquiries, and I think they would agree with me that the principle function of a commission of inquiry dealing with the wrongful conviction of a person must include, in my view, a review of the judicial or administrative branches. When I use the term administrative branches, I include the police and prosecution branches. Indeed, where there is an inquiry into the wrongful conviction, the commissioner may well also want to ask how, if at all, members of the judiciary played a role in the conviction of the individual whose conviction was said to be wrongful. One of the interesting things about Peter Cory, who is a true gentleman, is that in addition to heading the Sophonow inquiry, he has written more about public inquiries than any judge of the Supreme Court of Canada. I was looking last night and of the 27 Supreme Court decisions that deal with public inquiries one way or other, Peter Cory has written judgments in several of them. Speaking about the role of judges let me tell you that Peter Cory wrote the judgement in what I will call the Blood Inquiry case, the tainted blood inquiry headed by Justice Krever, former Justice of Ontario Court of Appeal. He followed up on something that is always included in the mandate of commissioner. It was included, I believe, in the Sophonow inquiry and certainly in mine. In the mandate, it states a commissioner should not imply or state that a person is guilty of any crime, or in any way liable on a civil basis for what that individual did in the course of the incident or incidents that lead to the inquiry. So you have that prohibition, but Justice Cory then went further in the Tainted Blood case. That had an impact on me because he said not only should you not make findings of criminal or civil liability but as Commissioner great care should be taken to avoid giving impression of criminal or civil liability, although commissioners may ultimately make

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findings of fact that have adverse effects upon reputations.\footnote{Blood System, supra note 45 at paras 51-2.} As I said, that statement played a role in the commission that I headed, and if I had time I would tell you about that.

Any inquiry has a number of stages: the beginning, the team building stage, getting organized; the investigation stage, preparing for hearings, conducting hearings, and writing the report. Those are the areas where I, as Commissioner, played a role in the Mulroney-Schreiber case and where Richard played a role in the Sophonow case where Justice Cory was the Commissioner. Every commissioner deals with that.

The Commission that we had, had two functions: the first was a factual inquiry into the dealings between Schreiber and Mulroney; the second was a policy review, where we heard from very highly qualified people about the issue of conflict of interest. I am not going to deal with the policy parts except to say a professor here in the Political Science department, Paul Thomas, played a major role. I commissioned him to write a paper about the relationship between the Prime Minister’s Office and the Privy Council Office. I will not say any more about the Privy Council Office except to touch briefly on it.

Inquiries in Canada are statutory vehicles. Inquiries at the federal level are under the \textit{Inquiries Act},\footnote{Inquiries Act, RSC 1985, c I-11 s 2.} and inquiries at the Manitoba level are under the \textit{Evidence Act}.\footnote{The Manitoba \textit{Evidence Act}, RSM 1987 c E150 s 83.1; CCSM c E 150 s 83.1.} Almost every inquiry into wrongful convictions, I think, has been under provincial legislation and not under the \textit{Inquiries Act}. Bruce knows the explanation for that and you can ask him about it if you wish.

A commission of inquiry is an agency of the executive branch of government and therefore acts in the parameters set by the Governor in Council federally or, provincially, by the Lieutenant Governor in Council. Operating in the parameters means that the jurisdiction of the commissioner appointed to head the inquiry is confined to responding to the questions and directions set forth in the mandate or the terms of reference set by the order in council respecting or establishing the commission. We have already heard about the mandate given to Justice Cory in the Sophonow Inquiry, dealing with inquiring into the conduct of the investigation and the circumstances surrounding the resulting criminal proceedings. On occasion, the Supreme Court of Canada has dealt with issues of public inquiries. The case I will refer
to is an inquiry into what I will call the Westray Mine Tragedy. That was an inquiry established after the death of several people in a mine tragedy in Nova Scotia, and the case emanating from that is called *Phillips v Nova Scotia*. Justice Cory wrote that decision, and he referred to public inquiries in the following way:

They are often convened in the wake of public shock, horror, disillusionment, or skepticism in order to uncover the “truth”. Inquiries are, like the judiciary, independent; unlike the judiciary, they are endowed with wide ranging investigative powers. ... At times of public questioning, stress and concern, they provide the means for Canadians to be appraised of the conditions pertaining to a worrisome community problem and to be part of the recommendations aimed at resolving the problem. Both the status and high public respect for the commissioner and the open and public nature of the hearings help to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole. They are an excellent means of informing and educating concerned members of the public.

That is in my view a very apt description of what a public inquiry is and does. I use, and have quoted, the term “worrisome community problem”. I do not think there is anyone in this room – I hope that there is not anyone in this room – who would disagree with the proposition that a wrongful conviction is a worrisome community problem.

Edward Ratushny in his text *The Conduct of Public Inquiries* talks of the common features of commissions of inquiry. The first of which is that it inspires public confidence in its independence. Second, the confidence the public has in the effectiveness of the commissioner to get to the bottom of the problem, and third, that it enhances public confidence in the transparency of proceedings. Getting to the bottom of the problem means to follow the commission’s mandate addressing the very questions that have to be answered. These are questions that have given rise to public concern, and this is of particular importance, I think, when it comes to public inquiries whose mandates are the establishment and investigation of the reasons behind a wrongful conviction.

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51 *Westray Mine, supra* note 45.
52 Ibid at 62.
53 Ratushny, *supra* note 22.
C. The Mulroney-Schreiber Inquiry

After I got the phone call from Yvan Roy, I recalled the situation that led up to this calling for a public inquiry. I had occasion to watch the news and watch proceedings of a Parliamentary committee, the Ethics Committee, which I thought was a pretty strange name for the committee in light of the way they were conducting themselves. But this committee was investigating the same allegations as the inquiry would, and Brian Mulroney, the former Prime Minister, had testified, as had Karlheinz Schreiber. I watched politicians try to play Perry Mason and ask questions of those guys and others. I thought it was a terrible exercise unless you were trying to score political points, and for anybody who appreciates due process, what I had observed was a nightmare. And I was absolutely adamant that the same thing was not going to happen at the Commission of Inquiry I had agreed to head. There likely would not have been a commission of inquiry called in this matter except for one fact: Karlheinz Schreiber had talked about giving Brian Mulroney money in cash; thousand dollar bills in brown envelopes. He was sort of a disreputable guy (I am referring to Schreiber). I will not comment on the money in brown envelopes, but that was not enough for Schreiber as he then made an allegation that he had written to Prime Minister Harper disclosing all of this on more than one occasion, but had never received a response. It was that allegation that caused the Prime Minister to act. I remember listening to something Bud Estey said. Willard Estey was a Justice of the Supreme Court of Canada who had done a number of inquiries after he retired. He said every time he was asked to head a public inquiry there was a worried politician on the other end of the line. I will not say that was true of Prime Minister Harper, to whom I spoke at great length, but he was concerned with the allegations that had been made and wanted me to get to the bottom of this.

But even once I had agreed to the job of commissioner, one important thing preceded a final decision. I said I needed to speak with my wife, and my Chief Justice, but I also wanted to ascertain whether Richard Wolson was interested in the role as lead counsel. I was not prepared to take the job unless Richard was prepared to do this. I do not say that to flatter him; I felt that Richard was not only one of the best lawyers in Manitoba but one of the best

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54 Justice Estey headed such inquiries as the Commission of Inquiry into the Events of March 18, 1996 at Queen’s Park, Inquiry into the Collapse of the CCB and Northland Bank (Canada), and the Air Canada Inquiry.
lawyers in Canada. I felt that if he took the job, a lot more Canadians would learn that and appreciate that pretty darn soon, and they did. You know, it is funny talking about ethics. My appointment was announced by the Prime Minister at 2 o’clock in the afternoon in Ottawa, and within about ten minutes I had a telephone call from a lawyer asking if I would retain his services as counsel — it was not Richard by the way, it was somebody else. I indicated I had already made a selection. Some period of time went by between when I spoke to Richard and when the inquiry was announced and I did not really announce that he had been retained until after the inquiry was announced because it was all so confidential. But I had probably fifty letters and phone calls from lawyers across Canada seeking to become counsel on the Commission of Inquiry. I had always thought touting was not supposed to be done by lawyers but even if that is the case there certainly was a lot of touting done.

We had a mandate and one of the things judges and commissioners of inquiry can do is to negotiate that mandate with the government because, after all, you are the commissioner and this is the road map you are going to follow. However, with Richard’s advice, I did not do that with this case, because leading up to the calling of the Commission of Inquiry, Prime Minister Harper had retained the services of Dr. David Johnston. Dr. Johnston had written two reports on this issue for the Prime Minister; the first one dealt with whether an inquiry was called for, whether it was desirable, and he thought it was. The second report was, well, okay if you want to do an inquiry what should the commission inquire into? And he wrote a report there. Perhaps more importantly from our perspective (because this became a bit of a bugbear) he told us what we ought not to do, and that was to deal with Airbus.

So we received the mandate and we started to build. The first thing we had to do was to design rules. Richard went over a number of rules, and we put them on to our website. I should say while all of this was going on, Richard chose the team. I chose one other senior counsel, and I ended up

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55 At that time, Dr. David Johnson was the Vice-Chancellor and President of the University of Waterloo. He served in this capacity from 1999-2010.

56 There had been allegations made that Prime Minister Mulroney had received secret commissions from Schreiber on the sale of Airbus aircraft to Air Canada, which at the time was a Crown corporation. These allegations had been thoroughly investigated by the RCMP over a twenty year period but no evidence of such payments was ever found.
with four senior counsel and maybe at most ten junior counsel, four permanent and others used from time to time. I selected Nancy Brooks as Senior Counsel as well because I know Richard well; he is a criminal lawyer and I know criminal lawyers well, and they hate paper. I wanted a civil litigator, who knew paper and knew how to organize paper and deal with it, so I got Nancy Brooks. Then I said, “Richard, build the team,” and he did. He got the other members of the senior team as well as the junior team, except for one that I hired personally, and that was his daughter. Then I said, “we’ve got a federal inquiry going here, let us get a francophone,” so off Richard and other members of the team go to Quebec. They came back and said, “we’ve got your francophone lawyer.” I asked who it was, and was told it was Giuseppe Battista. I thought that does not sound like a francophone to me; that sounds like an Italian. But I was told the common wisdom in Quebec now is that if you are fluently bilingual, you are considered to be a francophone whether your name is Basttista or Levesque. So away we went.

The junior lawyers did a terrific job right from the start. We had thousands of documents to look at and they did the job. Now you know that we ran into a real serious problem because every document from the Government of Canada or any agency had to flow through the Department of Justice. They had a team of eight to ten lawyers working on the documents before they would disclose them to us. Believe it or not, despite the fact that the federal government had document management systems that are electronic, different departments use different systems. The RCMP used a system that was not used by the Department of Justice so every document that the Department of Justice got from the RCMP – and believe me there were tons of them as there had been a 20 year investigation into this – had to be converted into the Justice Department’s system and into the system we used called Ring Tail. The RCMP used a system called SuperText. Unbelievable! It held us up for six months, while I kept pressing to start. This was the only serious disagreement I had with my lawyers. They did not want to start because they were not ready to go, which sounded pretty reasonable to me, but I wanted to get going.

Finally, we got going, and Richard and the legal team did an extremely good job. Just for the law students let me tell you, you know real estate agents talk about location, location, location; in your job its preparation, preparation, preparation. I can tell you about an example of just how hard the lawyers worked. Because they were pretty well all from Winnipeg, except Giuseppe and Nancy and some junior Quebecois lawyers we had, the lawyers
had to fly from Ottawa to Winnipeg and back. Two of the lawyers from Winnipeg flew back one Sunday night to Ottawa. There’s a flight that gets in about 11:30 pm Ottawa time (about 10:30 Winnipeg time). They went for a smoked meat sandwich to a restaurant called Dunn’s, and then they worked from about 12:30 to 4 o’clock in the morning to prepare for the next day. Then they got up at 7am and were in the Inquiry for the rest of the day. Now, that is dedicated and that is preparation. The guy that worked the hardest is sitting to my left [indicating Richard Wolson]; he was Senior Counsel, but his secret was preparation and that was shown by the job that he did.

I am going to tell you a story that is true. Brian Mulroney’s 70th birthday was celebrated and there were a lot of former Progressive Conservatives there to help him celebrate. And there happened to be another man who had been a witness at another inquiry, and Richard had cross examined him there at the inquiry. Anyway this man goes up to Brian Mulroney, this is way after the inquiry had finished, and says “Mr. Mulroney we have shared a common experience.” Prime Minister Mulroney responds “what was that?” The man says, “we have both had the pleasure of being examined by Richard Wolson.” Mulroney responded: “it might have been a pleasure for you.” If you want to see a master at work, you can go to CPAC and plug in Oliphant Inquiry, and watch Richard Wolson perform surgery on the witnesses he examined. Because it was a great job.

We had a great relationship with the media – we stayed absolutely clear of them. They respected that, and we had a communications guy and we had no problems with anyone, with the exception of the Fifth Estate, who wanted us to go after Mulroney for Airbus. They had done a number of shows where they had made all kinds of allegations and they really wanted us to go after it. But David Johnston had done a report asking us to stay away from it, as it was well tilled ground, and there had been a 20 year investigation by the RCMP. I will tell you how anxious they were to get Mulroney. We had disclosed every document given to us on our website. There was one document with Schreiber’s notes stating “PM $400,000”. Fifth Estate implied this was a $400,000 commission paid to the Prime Minister, who was Brian Mulroney at the time. As this is all coming out we had as a junior lawyer from Montreal, Paul Grondan. He was bilingual and he also spoke German. He came to me and he said, “Commissioner I want to tell you something: I speak German and Schreiber’s notes are in German. PM $400 000 does not refer to the Prime Minister. The words “per machine” in German start with a P and an
M. This is the payment of a commission to Schreiber on the sale of an Airbus to Air Canada. This has nothing to do with Mulroney.”

So we dealt with the facts, and I made my recommendations and there it was. Let me just say that I think the making of the recommendations and the report are the most important part of the role of the Commissioner. Justice Cory in Sophonow has made recommendations that I read just about every time I start a criminal trial, especially where eye witness identification is involved or photo line ups are involved. And also on the use of jailhouse informants, because he has written the text and I hope every judge in Canada reads that over and over and over again. If they do, they will play a role in avoiding wrongful convictions, which is something that all of us that toil in the vineyards of the system of justice should be trying to achieve on a day to day basis. Thank you very much.

VII. QUESTION AND ANSWER PERIOD

Bruce MacFarlane: Thank you very much Justice Oliphant, we have some time for questions, and all of the panelists have indicated that they are prepared to take questions if there are any.

Question: I have a question regarding the nature of an inquiry versus the nature of a criminal trial which would be an adversarial system. How would you compare it to an inquiry, how do you view your role as counsel?

Richard Wolson: Well when I represent an accused for instance, I advocate for that accused. I try to take all the evidence and diminish it or enhance it if I can. The simple way is to accentuate the positive and to diminish the negative. When you are doing a public inquiry, you have no mandate in a sense, the mandate you have is the Order-in-Council, but my job as Commission Counsel is to simply put everything before the Commissioner in a fair and public way so that I would not take a side. I would not become involved in one side or the other. If these were arguments to be made to the Commissioner during the Inquiry, the various parties would advance them, and the Commissioner make a ruling. Commission counsel should be impartial and be seen that way. I can say a lawyer as Commission Counsel has a lot of power; the reputations of various people are involved. I wanted to use that power to try and level the playing field. I have never been a prosecutor, but prosecutors have that same power. I have seen too often that it has been
abused. For me as Commission Counsel, I wanted it said at the end of the day that I did what I did in a fair way or at least that’s how I perceived my role.

**Justice Oliphant:** I would just like to add to that from my perspective, if I could. Commission Counsel are counsel to the Commissioner, often referred to as the alter ego of the Commissioner. Where the Commissioner has to be impartial, has to be seen as impartial, so does Commission Counsel have to be impartial, have to be seen as impartial. So Richard has told you that when an issue arose in the inquiry that he and I did, and the Commission of Inquiry is not adversarial but it can certainly run it in situations like that in ours because you had two guys who were bitter opponents, Commission Counsel would not make a submission. No closing submission was made, except Richard made a closing statement, a basic statement about the Commission of Inquiry and what had occurred. But he took one other step to demonstrate the impartiality that he had shown from day one and that was he gave an undertaking to all counsel involved that my Senior Counsel would not help me write my report. That is contrary to a lot of cases, a lot of commissions the lawyers actually write the report or at least participate to a large degree in writing the report. Richard undertook to ensure that would not occur in our case. Which of course meant I was out to dry, to write the report myself. That was an interesting experience let me tell you. With days starting at 6 in the morning going to about 9 at night with a half hour lunch at my desk. Day after day after day; starting at about the first of February 2010 and going to the end of April. It was a pretty arduous exercise. But that’s the big difference. The other thing you should know is being Counsel to the Commissioner we met on a daily basis, and at a trial the judges do not met with counsel in private. At the Commission we met several times a day, I sat around the big table with the lawyers dealing with issues of strategy, etc. Which is totally different, it is a real different experience for lawyers and for the person heading the inquiry, if that person is a judge.

**Richard Wolson:** I can tell you in Sophonow’s Inquiry when the Inquiry was over I said to Peter Cory what can I do? He said your job is done. I said there must be something you want me to do. With Peter I saw the second draft of his report, he asked me to comment only as to facts, as he wanted to make sure he had the facts right. The same was true with Justice Oliphant in the Mulroney inquiry. For me I prefer it that way, I think it goes the distance to
demonstrate that I want to prepare and put it before the Commissioner and let them deal with it after that.

**Question:** My question is for Mr. Burchill, given that you have duel perspectives, that of a police officer and a lawyer, do you feel that the type of training that law students undertake in law school with courses like Miscarriages of Justice, could it help police officers prevent errors in cases like Sophonow?

**John Burchill:** Well I can tell you it was my experience as a policeman, and I certainly had more experience dealing with Mr. Simons who is with Mr. Wolson’s law firm and some of the Crown attorneys that gave me the perspective made me want to go to law school to learn more to help me be a police officer. The goal at the beginning was not to end up leaving the police service to become a lawyer. I wanted to learn more about my own job from what I saw going on in the courtroom that I thought perhaps I was missing in policing, and try to understand things. For me it was the other way around.

I can tell you that certainly from this Inquiry it changed the way the Winnipeg Police Service does their practices: they videotape all their statements with the accused and with very important witnesses; the way they do their photopacks; they do not do line ups anymore more really, the physical ones; the jail house informants, it came from a provincial policy but its adopted with the City of Winnipeg. So it changed a lot of our policies that will hopefully prevent some of the things that had happened in the past. It would not hurt but for me it was the other way around.

**Question:** Are there mechanisms within the police or Department of Justice to look into cases again?

**John Burchill:** Within the police service, something would need to prompt it because my experience has been that the police were pretty convinced that Thomas Sophonow was the person. They went to three trials. And if he had not written a letter when he did to the right person, who thought maybe it should be looked at, I don’t know that it would have been.

**Richard Wolson:** At the time of the Sophonow case, the climate in this city was much different from where it is now: Crown and Defence had a cool relationship, not cool in the modern sense but cool in terms of distant. It was
frosty. Crown attorneys, I would say, did not have a good view of defence counsel. And the police on the other hand had a close relationship with the Crown. You would have a jury trial and the jury would go out and the police and the Crown would go downstairs in the Robing room together. It was unbelievable the connection between the two, it was actually one not two. Since Sophonow, time has changed matters. The Crown and Defence have a much better relationship than ever before. The police and the Crown have a much more distinct role and they do not have the same friendship that they used to. I would say things have changed markedly. The Commissioner is reminding me to mention that every year we have a Crown-Defence conference, which is attended by lawyers (Crown and Defence), policemen, and judges. It is a product that came out of the Sophonow Inquiry in terms of humanizing the whole process a little more. I must say while I have done defence work my whole life, I have strong positive feelings towards the police. I have no problem with police officers. They have a most difficult job. The problem in the Sophonow investigation was that errors were made and major errors of judgement. While police have a difficult job, they can surely do much better than they did in the Sophonow investigation.

John Burchill: What I might point out, when I started as a policeman it might be hard for you to believe if you have been down to the Remand Centre right now. There is the Public Safety building as it is now, on the third and fourth floor were the men’s and women’s jail and the courts were there. The defence did not have their offices there but the Crown did, the police interacted on a regular basis with the Crown. Some of those relationships go back historically, that is where the preliminary courts were, the jails were, and the police departments were all in one building. I was never in those jails but I cannot imagine what those jails were like. You look at the size of the Remand Centre now and I cannot imagine the jails crammed in those two floors of the Public Safety Building.

Richard Wolson: Well Thomas Sophonow spent so much time in the Remand Centre as a prisoner, waiting for his trials. Because compensation was an issue for Commissioner Cory all of those issues had to be explored. Now I had been going to the Remand Centre for some time, it was just a brutal place. But one of the guards that was there testified that it was a hell

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57 Sophonow Inquiry, supra note 9 at 60.
hole; hell hole was an understatement, and it was right in the police station so the police could have access to the accused. The police had a great relationship with Crowns and the jailers. It was not a good time. Maybe a good time was had but it was not a good time for justice.

**Bruce MacFarlane:** I would just like to add one further comment about changing of cultures which is hard to do. One of the products of the Sophonow Report was an emphasis on Crown and Defence liaising more closely, an annual event of some description. I was not sure where that was going to go but it blossomed into a huge event every September where we have the Crown, Defence, RCMP, city police, correctional officials just about everyone involved in the criminal justice system together for two to three days. The agenda is developed jointly between Crown and Defence. A few years ago we invited Brian Stephenson, who is a leading lawyer in the United States in Alabama and New York and he looked around the room – he was one of the keynote speakers – he looked around the room and saw judges and defence lawyers and police and Crown, and said where I came from we could not even get all you in the room, let alone organize an event like this. It was very telling that we have changed the culture in this province. I am not sure how other provinces are faring but that was a direct result of the Sophonow Report. I would like to thank all our panelists and all of you for coming out on a Friday afternoon.
MINISTER OF JUSTICE
ATTORNEY GENERAL
Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V9

Apology

To: Thomas Sophonow

On the 12th of March 1982 you were arrested and charged with the murder of Barbara Gayle Stoppel in Winnipeg, Manitoba. Subsequent legal proceedings led to your imprisonment for almost four years, although the court system ultimately acquitted you of the offence. A recent police investigation has demonstrated that you were in no way involved in this crime, and a review of that police investigation by my Department supports that conclusion.

You were arrested, charged and imprisoned for a crime that you had not committed. I cannot begin to even understand the anguish that you must have felt as you were going through this process. I wish, therefore, to extend to you, on behalf of the Province of Manitoba, my full and unqualified apology for your imprisonment under these circumstances, as well as the lengthy struggle you subsequently endured to clear your name.

Gord Mackintosh
Attorney General

Dated at Winnipeg, in the Province of Manitoba, this 8th day of June 2000.