

Anatomy of a Public Inquiry

BRUCE MACFARLANE, Q.C. (CHAIR), *

HON. JEFFREY OLIPHANT, **

RICHARD WOLSON, Q.C., ***

JOHN BURCHILL****

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.

** Formerly Associate Chief Justice of the Court of Queen’s Bench, Commissioner appointed to the recent Commission of Inquiry into Certain Allegations Respecting Business and Financial Decisions between Karlheinz Schreiber and the Right Honourable Brian Mulroney.

*** Partner of Gindin, Wolson, Simmonds, Roitenberg; Commission Counsel at the Sophonow Inquiry and the Mulroney-Schreiber Inquiry.

**** 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,¹ 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.²

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 Mulrone 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,

¹ Bruce MacFarlane, “Wrongful Convictions: is it Proper for the Crown to Root Around, Looking for Miscarriages of Justice?” (2012) 36:1 Man LJ 1; see also Bruce MacFarlane, “Convicting the Innocent: A Triple Failure of the Justice System” (2006) 31:3 Man LJ 405.

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

³ Law Reform Commission of Canada, *Report on Advisory and Investigatory Commissions* (Ottawa: The Commission, 1979) at 1.

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 Report⁵ 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 Inquiry⁶ 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.

⁶ *Report of the Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell* (Winnipeg: Manitoba Justice, 2007) at 3 [*Driskell Inquiry*].

⁷ *Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney* (Ottawa: Minister of Public Works and Government Services Canada, 2010) [*Oliphant Commission*].

⁸ *Ibid.*