



NOVA SCOTIA
PUBLIC
PROSECUTION
SERVICE

Report to the
Attorney General of Nova Scotia

The Prosecution of
Ernest Fenwick MacIntosh

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Nova Scotia Public Prosecution Service

The Nova Scotia Public Prosecution Service was established in 1990 as the first statutorily-based independent prosecution service in Canada.

All prosecutions within the jurisdiction of the Attorney General of Nova Scotia are the responsibility of the Director of Public Prosecutions. Crown Attorneys, responsible to the Director of Public Prosecutions, conduct prosecutions independently of the Attorney General.

The only limitation on the operational independence of the Director of Public Prosecutions permitted by the Public Prosecutions Act arises when the Attorney General issues written instructions to the Director of Public Prosecutions. These instructions are binding and must be made public. This procedure preserves the ultimate prosecutorial authority of the Attorney General. This is a means of ensuring accountability to the electorate for the manner in which public prosecutions are conducted.

Introduction

This is a review of the prosecution of Ernest Fenwick MacIntosh, the subject of an historical sexual assault case involving nine complainants. It focuses specifically on process and the length of time it took for that process to unfold.

A thorough examination of all the documents related to the case was conducted. This encompassed thousands of documents going back to 1995. In addition to consulting with appellate and trial counsel, input was obtained from the Crown Attorney in Port Hawkesbury who handled the file primarily from its beginning in 1995 until his appointment to the Provincial Court in November 2009, and from the former Chief Crown Attorney for Cape Breton Region from 1995 until his appointment to the Supreme Court of Nova Scotia in July, 2008.

This report seeks to explain – not excuse – the time periods involved throughout.

This review has disclosed a lack of diligence and oversight in the management of this file which is clearly unacceptable. The review includes a series of actions which the PPS is now taking to avoid a reoccurrence of such a situation in the future.

Role of the Crown Attorney

To provide context to this report, an explanation of the role and function of the Crown Attorney is necessary.

Crown Attorneys are responsible to the Director of Public Prosecutions for conducting all aspects of prosecutions including arraignments, show cause (bail hearings), preliminary inquiries, trials, sentencings, appeals to the Supreme Court of Nova Scotia, appeals to the Nova Scotia Court of Appeal and appeals to the Supreme Court of Canada. In addition, Crown Attorneys provide pre-charge advice to the police and provincial government enforcement officials, upon request.

It is important to note that Crown Attorneys are not investigators and do not lay criminal charges. Investigations into alleged criminal acts are conducted by the police. The police decide whether to lay a charge. After a charge is laid a Crown Attorney decides whether a charge should go forward. The Crown Attorney makes that decision by reviewing all the evidence and deciding:

- if there is a realistic prospect of conviction; and
- if it is in the public interest to proceed.

If the answer is affirmative in both cases the Crown Attorney will proceed with a prosecution.

A detailed policy on prosecutorial discretion describes the process of determining the viability of a criminal charge. This policy is one a series of policies which guide Crown Attorneys in the exercise of their duties. (The

Crown Attorney Policy Manual is publicly available on the PPS website at www.gov.ns.ca/pps/)

It is also important to understand that when a matter goes to trial the Crown Attorney's role is to present the evidence fairly. The Crown Attorney argues for the proper verdict based upon the evidence. The Crown Attorney is not aiming to "win" a conviction.

When handling a prosecution, Crown Attorneys must represent the interests of the general public. The Crown Attorney is not the victim's lawyer. There are times when the Crown Attorney must disagree with the wishes of the victim. Crown Attorneys have a responsibility to treat victims of crime with compassion and respect. Often, Crown Attorneys call upon Victims' Services workers of the Nova Scotia Department of Justice to help explain the prosecution process to the victim. They prepare the victim for court appearances and keep them informed of progress on the case.

Sometimes a verdict, a sentence or a special order made by a judge may be appealed by either the Crown or an accused. The defence has more flexibility when it comes to appeals. The Crown cannot initiate an appeal just because it disagrees with a decision; appeals initiated by the Crown must be based on errors made by a trial judge on a point of law.

Each year 90 Crown Attorneys in 18 offices across the province handle about 50,000 Criminal Code charges and about 10,000 provincial regulatory offence charges.

Overview of R. v. Ernest Fenwick MacIntosh

The First Complaint

In 1995 a man entered a British Columbia RCMP detachment to report that as a boy growing up in Port Hawkesbury, Nova Scotia in the 1970s he had been sexually assaulted by area businessman Ernest Fenwick MacIntosh.

And so began one of the longest and one of the most complex historical sexual assault cases Nova Scotia has seen. It would involve nine complainants and 43 criminal charges. It would see a fugitive brought back to Canada from India and it would see a journey all the way to the Supreme Court of Canada in an attempt to bring that fugitive to justice.

By the end of 1995 two criminal charges had been laid. The criminal complaint came about six months after Mr. MacIntosh had left Canada to work first in California and then in India.

A warrant was issued for his arrest in early 1996. The RCMP was trying to locate Mr. MacIntosh through family and friends in the Port Hawkesbury area. On August 25, 1996 the investigator was given a phone number in India and made the call. He spoke to Mr. MacIntosh and told him of the criminal charges and the warrant for his arrest. Mr. MacIntosh told the officer he had no intention of coming back to Canada and the line went dead.

The local Crown Attorney conferred with the Cape Breton Region Chief Crown Attorney who discussed the matter with Nova Scotia Public Prosecution Service management in Halifax. All agreed that the charges were serious and that it was in the public interest to pursue extradition.

Throughout this period of time, the RCMP continued the criminal investigation and consulted with the Crown on various options to return Mr. MacIntosh to Canada without a formal extradition process.

Meanwhile, the first complainant in British Columbia had begun writing letters to BC authorities asking that they help to bring Mr. MacIntosh back to Canada and to justice. They directed him to their Nova Scotia counterparts. He began to write to politicians, both provincial and federal, asking for the same thing.

Passport

In late 1997 the RCMP asked Canada Immigration and Passport to red-flag Mr. MacIntosh with Customs in the event he re-entered the country. If he did, he would be arrested. The Passport office initiated an application to have Mr. MacIntosh's passport revoked. It had just been renewed in May, 1997 from where Mr. MacIntosh resided in India.

Although passport revocation proceedings were initiated, they were inexplicably halted. The Federal Department of Justice and the Passport office sent letters to both Mr. MacIntosh and his lawyer dated April 16, 1998. The letters advised that the decision to revoke the passport had been withdrawn and confirmed a resumption of "normal passport services." But the provincial Crown Attorney was unaware of these 1998 events until these letters were submitted by the defence in court proceedings in 2009.

Overview of R. v. Ernest Fenwick MacIntosh

Preparing for Extradition

The International Assistance Group (IAG) of the Federal Department of Justice is the entity responsible for the extradition process. In 1997 the IAG and the Port Hawkesbury Crown Attorney began to talk about the case, how the process of extradition works and what was necessary to bring Mr. MacIntosh back to Canada. The Nova Scotia Public Prosecution Service formally asked the IAG in 1998 to begin working on the extradition of Mr. MacIntosh.

Because of the unusual nature of this case -- one involving an extradition request -- the Special Prosecutions section of the Nova Scotia Public Prosecution Service got involved. The Special Prosecutions Crown Attorney liaised with the IAG to clarify whether dual criminality could be established. Under international extradition law, the extraditing country -- in this case, India -- must be satisfied that the offence in the requesting country -- Canada -- is also an offence there.

Meanwhile, local area publicity had brought another complainant to the RCMP. Two more charges were laid in 1999 and in the spring of 2000, the Crown Attorney in Port Hawkesbury became aware of several potential complainants. He asked the RCMP to put the investigator on the case full-time. This RCMP officer was familiar with the Port Hawkesbury area and could provide consistency throughout the course of the investigation.

The Crown Attorney had been cautioned by the IAG that all possible charges must be laid before a formal extradition request can be forwarded

to India. Under extradition law, the principle of specialty dictated that the accused could only be prosecuted for the charges specified at the time of extradition. It would not be possible to extradite him on the first few charges and prosecute him on others that arose later. So, the investigation would have to be thorough and complete.

One challenge early in the investigation was the absence of a quality photo of Mr. MacIntosh. Police were having difficulty with photographic line-ups for identification purposes. The first complainant couldn't identify Mr. MacIntosh due to the poor quality of the photo being used. So, the RCMP began efforts to acquire a current and good quality photo from Mr. MacIntosh's passport file. Police received that photo in May, 2000.

During 2000 and 2001 the police investigation widened. Statements from seven more complainants were taken and charges now numbered 43. The charges consisted mostly of multiple counts of indecent assault on a male and acts of gross indecency. Several complainants successfully identified Mr. MacIntosh from photographic line-ups.

Also in 2001, aware that Mr. MacIntosh's passport would be up for renewal in May of 2002, the RCMP confirmed that Mr. MacIntosh remained on the Passport Control List in the event he attempted to renew his passport.

Overview of R. v. Ernest Fenwick MacIntosh

Obtaining Sworn Affidavits

By April of 2002, the police investigation had made major progress and the Crown Attorney informed the IAG that Nova Scotia would like to proceed with extradition. But the IAG was now asking for sworn affidavits from all of the complainants. The Crown began to gather these affidavits. Complicating this effort was a geographic reality. Complainants lived across Canada and in the United States. Repeated letters to some complainants yielded no results.

In September, 2002 the RCMP notified the Crown that Mr. MacIntosh's passport had been renewed in May, 2002.

In June 2003 the Crown sent all the documentation it had to the IAG despite the fact that four complainants had not submitted a sworn affidavit.

The Crown Attorney heard nothing from the IAG for 11 months. So, the Crown contacted the IAG again. The IAG now advised that a detailed affidavit from the lead investigator would suffice in the absence of affidavits from the remaining four complainants.

It took almost two years to finalize this affidavit. On May 24, 2006 the lead investigator's affidavit was sent to the IAG.

Extradition Proceedings in India

In July of 2006, Canada made a formal request to India to extradite Ernest Fenwick MacIntosh.

It took almost a year before Mr. MacIntosh was arrested in New Delhi on April 5, 2007. He contested the extradition. After satisfying itself that dual criminality existed; that the offences with which he was charged in Canada were also criminal

offences in India, the Indian Court ruled on April 25, 2007 that Mr. MacIntosh should be extradited. The Government of India accepted the Court's ruling and on May 26, 2007 agreed to extradite Mr. MacIntosh.

An RCMP team of officers then went to India, took Mr. MacIntosh into custody and began the journey back to Canada on June 6, 2007.

Court Proceedings in Canada

Upon his return, Mr. MacIntosh was taken immediately to Port Hawkesbury and on June 8, 2007 a six year court process began. He was arraigned in Provincial Court and a date was set for a bail hearing. Bail was denied.

On July 23, 2007 the defence announced it was seeking documentation from the federal government on the extradition and requested that election and/or plea be adjourned pending an application challenging the extradition. Election and/or plea was adjourned a total of five times at the request of the defence. The Crown argued the documentation requested by the defence was immaterial to the issue of election; that what was initially disclosed to the defence was sufficient to address the criminal case.

Finally, on May 7, 2008, the defence elected to be tried by judge alone in Supreme Court and with a preliminary inquiry. Dates for the preliminary inquiry were set for October, 2008 with two days in January, 2009 if necessary.

Meanwhile, in March of 2008 the Judge had ordered Mr. MacIntosh's release on recognizance and under strict conditions.

The Extradition Process Explained

What Is It?

Extradition is a diplomatic process by which Canada may request the return of an individual found in another country to stand trial with respect to a crime committed in Canada, or to return a person found in another country convicted in Canada, and who has not yet served his or her sentence. The governing legislation in Canada is the Extradition Act, S.C. 1999, c. 18. The Extradition Act applies to requests made by foreign countries for the surrender of fugitives within Canada's territory and to requests made by Canada for the return of an accused person to Canada.

How does it work?

Canada has extradition treaties with many countries. Extradition treaties set out the offences for which extradition is possible and include any applicable limitation periods and certain offences, such as those of a political nature, for which extradition is not applicable. An extradition treaty also determines the nature of the extradition materials which must be presented as part of an extradition request. These materials may include:

- Affidavits setting out the facts of the alleged offences. These would include evidence respecting the identity of the accused person, certified copies of charging documents, and certified copies of arrest warrants; and
- one or more affidavits of law setting out the applicable Canadian criminal law respecting the offences charged.

There are two common law principles relevant to requests for extradition.

The Principle of Dual Criminality

This principle requires that an offence for which extradition is sought to Canada exists in the foreign jurisdiction.

The Principle of Specialty

This principle has been codified in Section 80 of the Extradition Act. It dictates that a prosecution may proceed only with respect to the specific offences for which the offender was surrendered. This means it is essential that all complaints brought to police are fully investigated and all possible charges against a fugitive are part of an extradition request, before that extradition request is made.

How is Extradition Actually Requested?

The request for extradition must be initiated by a competent prosecution authority. It is the Attorney General of this Province who makes a request to the office of the Federal Minister of Justice. Within the Federal Department of Justice is the International Assistance Group (IAG). This group provides advice to provincial officials with respect to the extradition process, reviews requests and determines if an extradition request should be forwarded to a foreign country. Extradition procedures include provision for seeking a provisional arrest warrant of an accused in a foreign country. The request for a provisional arrest warrant is appropriate particularly where there is a risk of flight by a fugitive from his current location.

Overview of R. v. Ernest Fenwick MacIntosh

On May 23, 2008 a defence motion to prohibit the extradition order was heard in the Nova Scotia Supreme Court. It was dismissed June 19, 2008. An effort to stay the preliminary inquiry, pending appeal of this decision, was dismissed in July, 2008. The defence appealed the Nova Scotia Supreme Court's ruling on prohibition of the extradition order to the Nova Scotia Court of Appeal. That appeal was dismissed in December, 2008.

Committed to Stand Trial

At the end of the preliminary inquiry in January of 2009 Mr. MacIntosh was committed to stand trial on 36 out of 43 charges. The judge did not agree to commit Mr. MacIntosh on seven charges involving three complainants.

In the Spring of 2009 the defence proposed that the remaining charges be severed into two trials. The first trial would deal with charges involving two complainants who are brothers as well as a third who is their cousin. The second trial would deal with charges involving the remaining three complainants. The Crown consented and the first trial was scheduled for November, 2009.

But the defence filed a notice of motion to the Nova Scotia Supreme Court on September 29, 2009 asking that all proceedings be stayed due to undue delay. It argued that Mr. MacIntosh's Charter rights were violated both by the delay caused by the extradition process and by delay in getting him to trial once he was back in Canada.

Just after Mr. MacIntosh was arrested in New Delhi, a Senior Crown Attorney in Special Prosecutions and based in Sydney was assigned to be co-

counsel for the prosecution. That senior Crown Attorney assumed primary responsibility for the file after the Port Hawkesbury Crown Attorney was appointed to the provincial court in November 2009.

Undue Delay Application

The trial was delayed until the hearing on undue delay could be held. Nova Scotia Supreme Court Chief Justice Joseph Kennedy heard arguments on February 10, 2010. Five weeks later he ruled against the defence. He was satisfied the defence was responsible for a significant portion of the delay both prior to extradition and after Mr. MacIntosh was back in Canada. He denied Mr. MacIntosh's request that charges be stayed on the basis of undue delay.

Overview of R. v. Ernest Fenwick MacIntosh

The First Trial

In April of 2010 the first trial began in Port Hawkesbury Supreme Court. Justice Simon MacDonald presided.

The six day trial wrapped up on July 9, 2010. Justice MacDonald rendered his verdict on July 27, 2010. He found Mr. MacIntosh guilty on 13 counts and not guilty on 13 counts.

Almost immediately the defence filed a Notice of Appeal from conviction with the Nova Scotia Court of Appeal.

On September 28, 2010 Mr. MacIntosh was sentenced to four years in prison less time served on remand. He was also ordered to provide a sample to the DNA databank and was given a lifetime ban on weapons.

The Crown had asked for eight years in prison less time served on remand, a DNA order, a lifetime weapons prohibition and to be registered as a sex offender under the Sex Offender Information Registry Act (SOIRA). In addition, the Crown asked for a lifetime prohibition from frequenting places where children gather; prohibition on employment or volunteering that would put Mr. MacIntosh in a position of trust with persons under 16; and a prohibition on using computers for the purpose of communicating with persons under 16.

The defence had asked for a sentence of 15 to 39 months with credit for 42 months. They suggested Mr. MacIntosh serve a four to six month sentence in the community on strict conditions.

Two weeks later, after being released from prison pending appeal, Mr. MacIntosh filed a notice of appeal of his sentence with the Nova Scotia Court of Appeal.

The Crown filed its intent to cross-appeal on the judge's refusal to order Mr. MacIntosh to register as a sex offender or to prohibit him from frequenting places children gather; to prohibit employment or volunteering that put him in a position of trust with persons under 16; and to prohibit the use of computers for communicating with persons under 16.

The Second Trial

In December, 2010 the second trial got underway in Port Hawkesbury Supreme Court. This time, Chief Justice Joseph Kennedy presided. This trial was dealing with 10 charges involving three complainants. The trial concluded on December 14, 2010.

On January 31, 2011 Chief Justice Kennedy found Mr. MacIntosh guilty on four counts and not guilty on six counts. In April Mr. MacIntosh was sentenced to 18 months in prison, was given a DNA order and a lifetime weapons ban.

The Crown had recommended a two year federal sentence served consecutively to his remaining sentence; a lifetime weapons ban; a DNA order; a SOIRA order; and a lifetime ban on frequenting places children gather; to prohibit employment or volunteering that put him in a position of trust with persons under 16; and to prohibit the use of computers for communicating with persons under 16.

Overview of R. v. Ernest Fenwick MacIntosh

The defence had recommended 30-90 days for each offence with a credit of 42 months for 14 months already served and for segregation and beatings suffered while in prison.

A month after sentencing Mr. MacIntosh filed a Notice of Appeal regarding his January 31, 2011 conviction and April 13, 2011 sentence.

Appeals Heard

The Nova Scotia Court of Appeal heard oral arguments on matters arising from the first trial on June 8, 2011. And six months later on December 8, 2011 the Court ruled against the Crown.

The Court quashed all convictions and entered a stay on all charges encompassing both trials. The Court found that undue delay violated Mr. MacIntosh's Charter rights to be tried within a reasonable time. The Court was particularly critical of the time involved in extraditing Mr. MacIntosh from India. The Court further found that Justice MacDonald had made a mistake in assessing the evidence and therefore, the Court would have ordered a new trial had it not entered a stay.

The Crown analyzed the decision of the Nova Scotia Court of Appeal and on February 2, 2012 filed a Leave to Appeal with the Supreme Court of Canada. In June, 2012 the Supreme Court agreed to hear the appeal.

It should be noted that the Federal Department of Justice was granted intervenor status to speak to extradition as it related to delay.

Oral arguments were heard at the Supreme Court of Canada on April 22, 2013. The Nova Scotia Crown Attorney and the Federal lawyer addressed the court. The defence was not called upon to address the court. After the Crown presented, the panel delivered its decision. The appeal was dismissed.

Outcome of Criminal Charges

Figure I

COMPLAINANT: DRS

Trial # 1 – April 19-July 9, 2010 Nova Scotia Supreme Court at Port Hawkesbury
Justice Simon MacDonald presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Dec 4, 1995	156	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 4, 1995	157	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	148	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Not Guilty
Dec 10, 2001	149	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Not Guilty
Dec 10, 2001	148	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	149	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	148	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	149	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	148	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	149	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	148	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Not Guilty
Dec 10, 2001	149	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	148	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Not Guilty
Dec 10, 2001	149	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Not Guilty
Dec 10, 2001	148	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	149	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Guilty

COMPLAINANT: JAH

Trial # 1 – April 19-July 9, 2010 Nova Scotia Supreme Court at Port Hawkesbury
Justice Simon MacDonald presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Dec 10, 2001	148	Indecent Assault	Jan 1, 1971 – March 23, 1977	Guilty
Dec 10, 2001	149	Gross Indecency	Jan 1, 1971 – March 23, 1977	Not Guilty
Dec 10, 2001	148	Indecent Assault	Jan 1, 1971 – March 23, 1977	Not Guilty
Dec 10, 2001	149	Gross Indecency	Jan 1, 1971 – March 23, 1977	Guilty

Outcome of Criminal Charges

COMPLAINANT: BAS

Trial # 1 – April 19-July 9, 2010 Nova Scotia Supreme Court at Port Hawkesbury
Justice Simon MacDonald presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Dec 10, 2001	156	Indecent Assault	Jan 1, 1972 – Dec 31, 1975	Not Guilty
Dec 10, 2001	157	Gross Indecency	Jan 1, 1972 – Dec 31, 1975	Not Guilty
Dec 10, 2001	156	Indecent Assault	Jan 1, 1972 – Dec 31, 1975	Not Guilty
Dec 10, 2001	157	Gross Indecency	Jan 1, 1972 – Dec 31, 1975	Not Guilty
Dec 10, 2001	156	Indecent Assault	Jan 1, 1972 – Dec 31, 1975	Not Guilty
Dec 10, 2001	157	Gross Indecency	Jan 1, 1972 – Dec 31, 1975	Not Guilty

COMPLAINANT: AM

Trial # 2 - December 6-14, 2010 Nova Scotia Supreme Court at Port Hawkesbury
Chief Justice Joseph Kennedy presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Dec 10, 2001	148	Indecent Assault	Feb 1, 1971 – Feb 1, 1973	Not Guilty
Dec 10, 2001	149	Gross Indecency	Feb 1, 1971 – Feb 1, 1973	Not Guilty

COMPLAINANT: RMM

Trial # 2 - December 6-14, 2010 Nova Scotia Supreme Court at Port Hawkesbury
Chief Justice Joseph Kennedy presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Dec 10, 2001	148	Indecent Assault	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	149	Gross Indecency	Sept 1, 1970 - Sept 1, 1975	Guilty
Dec 10, 2001	156	Indecent Assault	June 1, 1973 – Sept 30, 1973	Not Guilty
Dec 10, 2001	157	Gross Indecency	June 1, 1973 – Sept 30, 1973	Not Guilty

COMPLAINANT: WJMR

Trial # 2 - December 6-14, 2010 Nova Scotia Supreme Court at Port Hawkesbury
Chief Justice Joseph Kennedy presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Oct 22, 2001	156	Indecent Assault	Jan 1, 1972 – Dec 31, 1972	Guilty
Oct 22, 2001	157	Gross Indecency	Jan 1, 1972 – Dec 31, 1972	Guilty
Oct 22, 2001	156	Indecent Assault	Jan 1, 1972 – Dec 31, 1972	Not Guilty
Oct 22, 2001	157	Gross Indecency	Jan 1, 1972 – Dec 31, 1972	Not Guilty

Outcome of Criminal Charges

COMPLAINANT: DLB

Preliminary Inquiry - October 7-21, 2008; January 27 and 29, 2009 Port Hawkesbury Provincial Court
Judge John Embree presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Dec 10, 2001	156	Indecent Assault	Jan 1, 1972 – Jan 1, 1974	Dismissed at Preliminary Inquiry
Dec 10, 2001	157	Gross Indecency	Jan 1, 1972 – Jan 1, 1974	Dismissed at Preliminary Inquiry
Dec 10, 2001	156	Indecent Assault	Jan 1, 1972 – Jan 1, 1974	Dismissed at Preliminary Inquiry
Dec 10, 2001	157	Gross Indecency	Jan 1, 1972 – Jan 1, 1974	Dismissed at Preliminary Inquiry

COMPLAINANT: GFB

Preliminary Inquiry - October 7-21, 2008; January 27 and 29, 2009 Port Hawkesbury Provincial Court
Judge John Embree presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Dec 10, 2001	156	Indecent Assault	Oct 1, 1975 – Oct 1, 1977	Dismissed at Preliminary Inquiry
Dec 10, 2001	157	Gross Indecency	Oct 1, 1975 – Oct 1, 1977	Dismissed at Preliminary Inquiry

COMPLAINANT: CM

Preliminary Inquiry - October 7-21, 2008; January 27 and 29, 2009 Port Hawkesbury Provincial Court
Judge John Embree presiding

Date charge was laid	Criminal Code Section	Description of Charge	Date of Alleged Offence	Outcome
Dec 10, 2001	156	Indecent Assault	April 8, 1974 – April 8, 1975	Dismissed at Preliminary Inquiry

Significant Causes of Delay in MacIntosh Case

I. Bringing Ernest Fenwick MacIntosh Back to Canada

There are a number of reasons that contributed to the length of time it took to extradite Mr. MacIntosh. They are:

A. Extradition Principle of Specialty

The need to adhere to the extradition principle of specialty contributed to the delay.

The Crown had to be careful to ensure that all possible criminal charges were laid before proceeding with a request to extradite. Ultimately, under this principle, the Crown would only be able to prosecute charges laid prior to extradition. Although the first complainant came forward in January, 1995, and the first charge was laid in December, 1995, the investigation was not complete until 2001. Statements from the remaining eight complainants were taken by March of 2001. In December of 2001, all possible charges were laid and an arrest warrant was issued on those charges.

B. Passport

The passport issue was a likely contributor to delay in bringing Mr. MacIntosh back to Canada.

Despite having criminal code charges pending and an outstanding warrant for his arrest, Mr. MacIntosh was able to renew his Canadian passport from where he was residing in India in May of 1997. Proceedings were begun to have Mr. MacIntosh's passport revoked but those proceedings were halted. A letter from the Federal Department of Justice dated April 16, 1998 was sent to Mr. MacIntosh's lawyer advising him that the decision to revoke the passport had been withdrawn. No reasons were given. A letter, also dated April

16, 1998, was sent from the Passport office to Mr. MacIntosh providing the same advice and confirming the "resumption of normal passport services." The provincial Crown Attorney was unaware of this development at the time. These letters were filed in court proceedings in 2009.

In 2002 the RCMP received confirmation that Mr. MacIntosh's Canadian passport was again renewed from India. At that point all the RCMP could do was to confirm that Mr. MacIntosh remained red-flagged at Canadian borders. It was their understanding that should he re-enter the country, the arrest warrant would be executed.

The reasons why his passport was renewed twice and never revoked have never been explained. If Mr. MacIntosh's passport had been revoked in 1998, or not renewed in 2002, this may have forced his return to Canada or perhaps facilitated his arrest in India by Indian authorities.

C. Requirements for Sworn Affidavits of the Nine Complainants

The pursuit of sworn affidavits from the complainants added to the delay.

In April, 2002 the Crown advised the IAG it was ready to proceed with extradition. But the IAG advised that a sworn affidavit from each complainant would be necessary. In addition, the IAG wanted them sworn before a judge as opposed to a notary public.

Beginning in May of 2002, the Crown sent letters to the complainants requesting sworn affidavits. Hindering the situation was the geographic location of some of the complainants. Complainants lived across the continent – Florida, Manitoba, Alberta, British Columbia as well as Nova

Significant Causes of Delay in MacIntosh Case

Scotia. The Crown sent some complainants three and four letters with no response. Four of the nine complainants never swore affidavits.

In June of 2003 all available documentation – absent those four remaining affidavits – was forwarded to the IAG with the expectation that Ottawa would now make the extradition request to New Delhi.

D. International Assistance Group

A nearly year-long pause in communication from the IAG added to the delay.

The Crown forwarded all of the available documentation for extradition to the IAG in June 2003. Nothing was heard from the IAG for almost a year. The Crown contacted the IAG in May, 2004 and asked for an update. At that time the IAG asked for clarification on some points and advised that a photographic line-up for AM was required. The IAG also advised that a detailed affidavit from the lead investigator would suffice in the absence of the affidavits from the four remaining complainants.

E. Final Affidavit

The two year interval to draft and forward the lead investigator's affidavit added to the delay.

In May, 2004 after the IAG advised that an affidavit sworn by the lead investigator would suffice, the Crown Attorney made efforts to consult with the officer. The lead investigator had been transferred from Port Hawkesbury in 2003 to another detachment in the province. The Crown wrote to the lead investigator on June 11, 2004 and asked him to contact the Crown to discuss the affidavit. Because the lead investigator had taken the statements from the complainants and conducted the photographic line-ups, the Crown needed his input in order to draft the affidavit.

The Crown wrote to the lead investigator again on January 26, 2005 asking him to come to the office to discuss the affidavit. On June 20, 2005 the Crown forwarded a partial draft to the officer and asked him to make an appointment to see the Crown so they could complete drafting this affidavit. It was around this time that the lead investigator was transferred out of province. The Crown Attorney went on a six-month leave in August, 2005 and returned in February, 2006. During this time the lead investigator consulted with the interim Crown Attorney. When the lead Crown returned from leave, contact with the officer was made and on April 12, 2006 the Crown forwarded a draft affidavit to the lead investigator. The Crown asked the lead investigator to review it, make any necessary changes and have it sworn. The lead investigator did so on May 16, 2006, and the sworn affidavit was forwarded to the IAG on May 24, 2006.

F. Government of India

The 11 month wait for the Indian government to act added to the delay.

The sworn affidavit from the lead investigator was the last bit of documentation the IAG needed. Two months after it was sent to Ottawa a formal request for the extradition of Ernest Fenwick MacIntosh was sent from Canada to India. This occurred in July of 2006.

Mr. MacIntosh was arrested in New Delhi on April 5, 2007. He contested extradition and went to court. After the court decided he should be extradited it took another month for the Government of India to agree to the extradition. In June of 2007 Mr. MacIntosh was escorted back to Canada by the RCMP.

Significant Causes of Delay in MacIntosh Case

Figure 2 - Criminal Code Cases Prosecuted by Port Hawkesbury Office – 1996 - 2008

*Category rolled up under another category for that year

Category of Offence	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Homicide & Related	0	0	0	0	1	0	0	0	2	0	0	0
Attempted Murder	0	3	0	2	0	0	0	0	0	0	0	0
Robbery	1	0	0	2	0	0	7	0	1	0	1	0
Sexual Assault	33	10	15	21	21	6	39	23	16	11	15	18
Sexual Abuse	13	7	2	3	3	2	15	16	4	3	3	4
Kidnaping	0	4	3	1	0	1	1	3	0	3	1	7
Abduction	0	0	0	0	0	0	0	0	0	0	*	*
Break & Enter	56	53	20	16	10	40	43	70	68	77	70	50
Weapons	32	21	17	12	23	5	15	20	33	43	11	49
Fraud	32	45	5	21	9	9	26	18	32	23	25	45
Major Assault	22	21	27	67	73	29	20	48	53	32	38	29
Simple (Minor) Assault	126	118	79	77	98	75	62	128	138	123	102	136
Theft	43	38	25	*	45	29	72	133	62	54	48	48
Theft Under	*	*	*	15	*	*	*	*	*	*	*	*
Possession Under	*	*	*	15	*	*	*	*	*	*	*	*
Stolen Property	20	19	11	*	16	21	25	16	13	9	20	9
Arson	0	1	1	4	0	1	1	4	1	7	7	5
Property Damage	40	55	36	37	37	*	*	*	*	*	*	*
PD – Mischief	*	*	*	*	*	48	48	152	62	49	49	84
Morals – Sex	2	0	5	7	7	57	0	4	6	2	1	4
Morals – Gambling	2	0	0	0	0	*	0	1	0	0	*	*
Public Order	32	25	8	10	17	23	6	35	48	18	15	20
CC Traffic	26	30	18	22	14	24	11	14	19	27	33	28
Administration of Justice	135	173	129	145	158	205	153	213	326	390	342	344
Impaired Driving	333	284	214	218	193	177	163	178	203	208	159	144
Threats	55	55	0	*	*	*	*	*	*	*	*	*
Criminal Harassment	9	4	0	*	*	*	*	*	*	*	*	*
Other Criminal Code	19	8	46	74	51	59	62	97	87	74	58	68
Theft Over	*	*	*	2	*	*	*	*	*	*	*	*
Joy Riding	*	*	*	4	*	*	*	*	*	*	*	*
Possession Over	*	*	*	2	*	*	*	*	*	*	*	*
Unknown	*	*	*	0	0	0	*	0	1	0	0	0
Totals	1,031	974	661	777	776	811	769	1,173	1,175	1,153	998	1,092

Source: Nova Scotia Public Prosecution Service Annual Reports 1996 - 2008

Significant Causes of Delay in MacIntosh Case

G. Port Hawkesbury Senior Crown Attorney

The Port Hawkesbury Crown responsible for the file contributed to the delay by failing to follow-up promptly.

In 1995 there was one Crown Attorney in the Port Hawkesbury office of the Nova Scotia Public Prosecution Service. He was the original Crown Attorney on the file. A Special Prosecutions Crown Attorney provided some assistance for a number of months commencing in 1997. That involvement ceased in early 1999.

A second Crown Attorney was added to the Port Hawkesbury office on a contract basis in 1997. That position became permanent in 1999.

Both Port Hawkesbury Crown Attorneys had a heavy court schedule. The number of Criminal Code charges dealt with by Port Hawkesbury Crown Attorneys during those years are illustrated in the chart on the left-hand side. In addition, Port Hawkesbury Crown Attorneys were prosecuting hundreds of provincial regulatory offences each year. (See chart on this page)

Both Port Hawkesbury Crown Attorneys appeared in provincial court up to four or five days a week. They were also responsible for conducting jury trials in Supreme Court and any summary conviction appeals. Extensive overtime hours were the norm.

The reality of the Port Hawkesbury office workload provides an explanation as to why the Crown was often unable to respond more promptly to correspondence or to provide more frequent follow-up on requests made to complainants and to the lead investigator.

There is no excuse for not responding or acting promptly but there is an explanation. And that explanation is found in the day-to-day Port Hawkesbury office workload and court schedule.

It is apparent from our records that the Chief Crown Attorney for Cape Breton Region did not play an active role in managing the progress of this file after the case was assigned to the Port Hawkesbury Crown Attorney.

The delay in the MacIntosh case was and is unacceptable and the PPS has taken steps to ensure this situation does not arise again. Key to those steps is a more hands-on role for the Chief Crown Attorney in ensuring that cases involving extensive delay or special circumstances such as extradition are managed more effectively and resourced adequately.

Figure 3 - Provincial Statute Cases Prosecuted by Port Hawkesbury Office – 1996 - 2008

Year	Number of Cases
1996 - 1997	1,706
1997 - 1998	578
1998 - 1999	134
1999 - 2000	156
2000 - 2001	136
2001 - 2002	221
2002 - 2003	85
2003 - 2004	153
2004 - 2005	137
2005 - 2006	180
2006 - 2007	191
2007 - 2008	178
Total	3,855

Source: Nova Scotia Public Prosecution Service Annual Reports 1996 - 2008

Significant Causes of Delay in MacIntosh Case

2. Back in Canada, Bringing Ernest Fenwick MacIntosh to Trial

Once Mr. MacIntosh was arraigned in Port Hawkesbury on June 8, 2007 and the matter of bail was decided, the next step was having Mr. MacIntosh elect his mode of trial and to enter a plea.

A. Election and/or Plea Adjourned for II Months at Defence Request

This next step was held up for almost a year. The defence requested an adjournment on election and/or plea a total of five times while it sought documentation from the federal government on the extradition. The Crown argued the documentation requested by the defence was immaterial to the issue of election; that what was initially disclosed to the defence was sufficient to address the criminal case.

Finally, on May 7, 2008 – 11 months after Mr. MacIntosh arrived back in Nova Scotia – the defence elected to be tried by judge alone in Supreme Court and with a preliminary inquiry. Dates for the preliminary inquiry were set for October, 2008 with two days in January, 2009 put aside if needed.

B. Defence Motion to Prohibit the Extradition Order

On May 23, 2008 a defence motion to prohibit the extradition order was heard in the Nova Scotia Supreme Court. It was dismissed June 19, 2008. An effort to stay the preliminary inquiry, pending appeal of this decision, was dismissed in July, 2008.

The defence appealed the Nova Scotia Supreme Court's ruling on prohibition of the extradition order to the Nova Scotia Court of Appeal. That appeal was dismissed in December, 2008.

This process did not cause delay once the documents sought in support were provided to defence counsel, on May 1, 2008. The defence had earlier sought to put off election until this process ran its course; but, the court agreed with the Crown that election should proceed. It did on May 7, 2008.

The preliminary inquiry concluded January 29, 2009. On May 1, 2009 the Court committed Mr. MacIntosh to stand trial on 36 out of 43 charges. The remaining charges involving three complainants were dropped.

The Crown consented to a defence request to sever the charges into two separate trials and the first trial was tentatively scheduled for November, 2009.

C. Defence Applied to Supreme Court to Stay Proceedings Due to Undue Delay

The delay argument was originally scheduled for October 28, 2009. However, the central witness was unavailable due to health issues and the hearing was rescheduled for February 10, 2010.

On February 10, 2010 Chief Justice Joseph Kennedy heard arguments on undue delay.

Five weeks later he issued his decision. He was satisfied that the defence was responsible for a significant portion of the delay both prior to extradition and after Mr. MacIntosh was back in Canada. He denied Mr. MacIntosh's request that charges be stayed on the basis of undue delay.

Significant Causes of Delay in MacIntosh Case

On April 19, 2010 – almost three years after Mr. MacIntosh was brought back to Canada – the first trial began in Nova Scotia Supreme Court at Port Hawkesbury. It resumed on July 5 and concluded on July 9, 2010. On July 27, 2010 Mr. MacIntosh was convicted on 13 counts and found not guilty on 13 counts.

The second trial began on December 6, 2010 and concluded on December 14, 2010. Mr. MacIntosh was found guilty on January 31, 2011 of four counts and not guilty on six counts.

Actions Going Forward

Immediate Actions	Deadline
1. Establish an electronic alert system	September 1, 2013
<p>The computer databases already available to the PPS are the Prosecution Information Composite System (PICS) and the Justice Enterprise Information Network (JEIN). These programs are now being enhanced to generate alerts to Chief Crown Attorneys in those cases where 8 months or longer has elapsed since the first court appearance. These alerts will result in Chief Crown Attorney follow-up with the Crown Attorney on the file. The cause or causes of delay will be identified and the Chief Crown Attorney will direct the Crown Attorney to take specific steps to remedy the delay so the file may be moved more quickly through the court process. The Chief Crown Attorney will assess the situation to determine if more resources are required; if so, the Chief Crown will provide those resources. Follow-up meetings will be held as needed.</p>	
2. Establish PPS Executive Committee standing agenda item	Immediately
<p>The Nova Scotia Public Prosecution Service Executive Committee consists of Chief Crown Attorneys, Regional Crown Attorney and Head Office managers. The Committee meets at least every two months to discuss and manage province-wide prosecutorial issues. As a second fail-safe method to the electronic alert system referenced above, a standing agenda item on delay has been established. Chief Crown Attorneys will bring an inventory of the lengthy cases in their region or section, i.e. those where the longest time has elapsed since the first court appearance. Managers will discuss ways to remedy delays which are the Crown's responsibility. Chief Crowns will provide advice and counsel to their colleagues to assist in finding solutions. Depending on the situation, the DPP may direct the reallocation of resources to address the delay in the most expeditious manner.</p>	
3. Training will be provided to Crown Attorneys on Delay	September 12, 2013
<p>The Public Prosecution Service will establish a standing agenda item at the annual educational conference on delay. Crown Attorneys will be provided with training specific to delay. Basic practice issues will be covered as well as a review of current case law. This training will begin at the first available opportunity – the annual fall educational conference in September, 2013.</p>	
4. Develop and implement an extradition policy	August 1, 2013
<p>The PPS has now drafted a policy to guide Crown Attorneys when faced with a decision whether to initiate an extradition request. This initial draft document is consistent with similar documents in other provinces. The PPS will consult with the International Assistance Group of the Federal Department of Justice before implementing this policy.</p> <p>The policy stipulates that the Deputy Director of Public Prosecutions is the designate to assist and guide Crown Attorneys in all current and future extradition matters. This senior lawyer will serve as the liaison with the IAG in Ottawa and with Chief Crown Attorneys across the province to ensure that all pending matters are being dealt with in a timely manner and that all necessary documentation is in place to support the extradition request.</p>	
5. Training will be provided on extradition process and principles	September 12, 2013
<p>The Public Prosecution Service will provide Crown Attorneys with basic training on the process and principles of extradition. Further, the PPS will collaborate with the RCMP and other police agencies on mutual education initiatives surrounding extradition.</p>	

Longer Term Actions to Address Systemic Delay

Longer Term Actions to Address Systemic Delay

The Public Prosecution Service, along with other justice system partners, has been involved since 2010 in a system-wide initiative to identify ways to reduce delay and improve efficiency in the processing of criminal cases, particularly in provincial court. These include:

1. Electronic Disclosure

The product of police investigation – disclosure – turned over to the Crown Attorney is transitioning from paper files to electronic files. The PPS is taking the lead to ensure disclosure from all police agencies across the province is received in a format that is accessible, organized and standardized. The PPS is currently wrapping up a pilot project in Cape Breton. The PPS has developed a standard format for e-disclosure and has worked closely with police and other justice partners to pilot the use of this format. Work now begins on rolling out e-disclosure province-wide. E-disclosure is an effective tool to reduce delay and increase efficiency.

2. Crown File Ownership Model

This concept sees each Crown file handled by only one Crown and the Court scheduling matters to accommodate the schedule of the particular Crown Attorney. Crown File Ownership places an increased emphasis on early resolution with Crown and defence adhering to established timelines designed to ensure that prior to the second court appearance all necessary steps are taken to move the case forward. A pilot project has been underway in Sydney since August, 2012. Evaluation has not yet been completed but early reports from Crown Attorneys indicate the Crown File Ownership pilot has resulted in reduced trial wait times and an increase in early resolution of cases.

3. Case Management System

The PPS will continue its efforts to obtain an electronic Crown Case Management System. Such a system will better enable PPS supervisors to fairly distribute work and to track workloads and delay in the processing of cases. This initiative is at an early stage. The PPS will expedite the development of a business case which will identify the benefits of such a system and the drawbacks if such a system is not implemented. The business case will describe the project scope, a projected timeline and a cost estimate. The Department of Justice is assisting the PPS with this important initiative.

Conclusion

The MacIntosh case was a long and complicated one.

It was assigned to an experienced senior Crown Attorney in a very busy, small, rural office. It involved nine complainants living across Canada and the United States. It generated a lengthy international extradition process necessitating a coordinated effort among prosecutors, police and the federal government. It focused on 43 criminal charges pertaining to sexual offences – the most difficult criminal code offences to prosecute and even more so when the historical aspect is considered. And, at the centre was an accused individual who mounted a vigorous defence at every level.

There were, indeed, lessons learned. We learned that a single Crown Attorney in a small and busy rural office should have been better supported. We learned that case tracking and electronic case management must be given top priority. We learned that our Crown Attorneys must be given general guidance on the extradition process and that every extradition process must be overseen by a senior manager.

There were a number of processes over which the Public Prosecution Service did not have control. These included the extradition principle of specialty; the federal government's decision not to revoke Mr. MacIntosh's passport; IAG affidavit requirements; the nearly year-long pause in communication from the IAG; and the time it took for the Indian government to act.

We have taken action on those processes we do control. We are improving technology; changing our management practices; implementing a new extradition policy; and providing specialized training to all Crown Attorneys.

The lessons learned from the MacIntosh case will, indeed, serve to produce a better Public Prosecution Service for Nova Scotians.

The final word goes out to the victims. Their strength and courage throughout this process must be recognized. We thank them for being brave enough to come forward and strong enough to endure the pain of reliving their experience.

We know the role we played in the delay involved in this case is unacceptable. And we know that letting these courageous victims down is unacceptable. Perhaps they can take heart in knowing that, because of them, new measures are being put into place to ensure other victims don't have the same experience.

Appendix

Timeline of Key Events

Year	Month	Day	Event
1994	August		Ernest Fenwick MacIntosh leaves Canada first to work in California and then to work in India.
1995	January	04	DRS, now living in British Columbia, reports sexual assaults by Ernest Fenwick MacIntosh in the 1970s to RCMP in BC.
	February	08	JAH reports a sexual assault by Ernest Fenwick MacIntosh in the 1970s to Port Hawkesbury RCMP.
		10	Letter sent to Halifax Police Dept. from Port Hawkesbury RCMP lead investigator with attached statement of JAH indicating JAH was assaulted in Halifax County. When HRP followed-up, JAH indicated he wasn't ready to deal with it.
	October	01	Port Hawkesbury Crown Attorney Richard MacKinnon is consulted for the first time by RCMP lead investigator.
	December	04	Two criminal charges are laid in relation to the DRS complaint.
1996	January	24	The RCMP investigator begins to make repeated calls to numbers for Mr. MacIntosh both in India and in Montreal. He has no success.
	February	21	Court issues arrest warrant for Ernest Fenwick MacIntosh on two Criminal Code charges.
	August	25	The lead investigator reaches Ernest Fenwick MacIntosh in India by phone and is informed by Mr. MacIntosh that he has no intention of returning to Canada. The lead investigator then advises Mr. MacIntosh of the criminal charges against him and the warrant for his arrest. The line goes dead.
1997	April	29	Crown Attorney Richard MacKinnon recommends extradition be pursued.
	May	22	Ernest Fenwick MacIntosh renews his passport in India.
	August	15	Communication begins between the Crown Attorney and the International Assistance Group of the Federal Department of Justice regarding potential extradition.
	October	17	RCMP requests Canada Immigration and Passport red-flag Ernest Fenwick MacIntosh with Customs in case he re-enters the country. Canada Customs Lookout Bulletins issued at the request of the RCMP. Efforts begin by the Passport office to have Ernest Fenwick MacIntosh's passport revoked.
	December	17	Director of Public Prosecutions approves initiation of a formal request to International Assistance Group for extradition.

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1998	February	07	The lead investigator provides the Crown with first disclosure.
	April	02	Ernest Fenwick MacIntosh's lawyer, David Bright, contacts the Crown Attorney for the first time and requests disclosure. He follows that up with three more letters.
		16	A letter from the Federal Department of Justice is sent to Mr. MacIntosh's lawyer advising that the decision to revoke Mr. MacIntosh's passport has been withdrawn. A letter from the Passport office is sent to Mr. MacIntosh advising same and confirms resumption of normal passport service.
	May	25	Crown Attorney replies to Mr. Bright and provides disclosure.
	June	29	DRS swears an affidavit.
	August	14	A letter is sent to the International Assistance Group from Martin E. Herschorn, Deputy Director of Public Prosecutions, formally requesting extradition with supporting documentation.
		20	Crown Attorney provides defence with the address of the contact person with the International Assistance Group.
	November		Crown Attorney is advised that identification affidavits are required from all complainants for extradition to proceed.
1999	January	21	DRS is shown a photographic line-up in BC. He cannot identify Ernest Fenwick MacIntosh due to poor photo quality. This identification is required for the International Assistance Group to proceed with extradition. Efforts begin to acquire a quality photograph of Mr. MacIntosh through his passport file for the purpose of a photographic line-up. RMM reports a sexual assault in the 1970s by Ernest Fenwick MacIntosh to the lead investigator.
	February	18	Two criminal charges are laid against Ernest Fenwick MacIntosh in relation to RMM complaint, which are later folded into a 37-count Information on December 10, 2001.
	November	01	International Assistance Group notifies the Crown it is still waiting for material regarding identification in order to transmit request to India.

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2000	March	27	CM comes forward with a complaint of sexual assault in the 1970s by Ernest Fenwick MacIntosh.
	April	14	The Crown becomes aware of several potential complainants and requests that, for the sake of consistency and because he is familiar with the Port Hawkesbury area, the lead investigator take all statements from new complainants.
	May	31	RCMP receives quality photo of Mr. MacIntosh from passport file for the purposes of photographic line-up identification.
	July	16	CM identifies Mr. MacIntosh from a photographic line-up.
		17	Statement of JAH taken by the lead investigator in Halifax. He identifies Mr. MacIntosh from a photographic line-up. (In 1995 JAH had filed a complaint but decided he wasn't ready to deal with it; by 2000 he wanted to go forward.)
		18	Statement of WMR taken by the lead investigator in Edmonton.
		21	DRS identifies Ernest Fenwick MacIntosh from a photographic line-up.
	August	25	Crown Attorney is advised by the International Assistance Group that all possible charges against Mr. MacIntosh must be laid before an extradition request proceeds. The Crown will be barred from proceeding on additional charges due to the extradition principle of specialty.
		28	Crown Attorney formally requests RCMP to assign the lead investigator to the investigation on a full-time basis so as to complete the investigation as soon as possible. RMM identifies Mr. MacIntosh from a photographic line-up.
	September	07	Statement of AHM taken by the lead investigator in Port Hawkesbury.
October	18	Statement of GFB taken by the lead investigator in Port Hawkesbury.	
2001	January	09	RCMP requests Ernest Fenwick MacIntosh be added to Passport Control list in the event he applies for another passport.
	March	14	Statement of DB taken by RCMP in Winnipeg.
	October	22	Four criminal charges are laid against Ernest Fenwick MacIntosh in relation to the WMR complaint.
	December	10	Thirty-seven charges are laid involving complainants DRS, RMM, JAH, GFB, AM and BAS.
		12	Court issues an arrest warrant on a 37 count Information. Criminal Code charges now total 43.

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2002	April	18	Crown advises IAG of new charges and that Nova Scotia would like to proceed with extradition based on these charges.
		26	International Assistance Group advises a first-person affidavit sworn before a judge will be necessary from each complainant.
	May	07	Crown begins pursuit of sworn affidavits by nine complainants including photographic line-ups. Repeated letters to several complainants are necessary. Further, all complainants must identify Ernest Fenwick MacIntosh from a photographic line-up.
		30	Ernest Fenwick MacIntosh's passport is renewed in New Delhi despite pending criminal charges and an outstanding arrest warrant.
	July	11	AM swears an affidavit.
	September	26	RCMP notifies the Crown that Ernest Fenwick MacIntosh's passport was renewed on May 30. RCMP advises Ernest Fenwick MacIntosh remains red-flagged. Should he attempt to re-enter the country the arrest warrant will be executed.
	October	18	CM swears an affidavit.
2003			Lead RCMP investigator is transferred from Port Hawkesbury to another detachment in the province.
	June	09	International Assistance Group requests confirmation from Crown regarding extradition. Crown advises that complainants now living in Florida, Manitoba, Alberta and Nova Scotia respectively, have still not responded to requests for sworn affidavits.
		20	Letters are sent again to these complainants by the Crown.
		21	RMM swears an affidavit.
		24	All available documentation necessary for extradition is sent to the International Assistance Group by the Crown. Four sworn affidavits are pending.
2004	May	13	As nothing has been heard from International Assistance Group since June, 2003 Crown asks International Assistance Group to advise as to status of extradition.
	June	07	International Assistance Group advises by phone that three more Information items are required. These are: <ol style="list-style-type: none"> 1. Affidavit of the lead investigator with respect to photo line-ups put to complainants; 2. Clarification regarding facts of subsequent charges concerning DRS and whether they were included in affidavit of DRS; 3. A photo ID line-up by AM. <p>Crown is advised a detailed affidavit from the lead investigator will suffice in the absence of affidavits from the four remaining complainants.</p>
		11	Crown Attorney writes to the lead investigator asking him to contact the Crown to discuss the affidavit.

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2005	January	17	International Assistance Group requests a status report from the Crown.
		26	Crown Attorney again writes to the lead investigator asking him to come to the office to discuss the affidavit.
	June		Former lead RCMP investigator is transferred out of province.
		20	The Crown forwards a partial draft of an affidavit to the lead investigator and asks him to make an appointment to see the Crown so they can complete the affidavit.
	July	14	Canadian High Commission provides a diplomatic note to the Indian Ministry of External Affairs regarding MacIntosh's extradition.
	August	02	Crown Attorney Richard MacKinnon goes on a six month deferred leave and transfers carriage of file to term Crown Attorney Kevin Patriquin.
2006	February	01	Crown Attorney Richard MacKinnon returns from deferred leave.
	April	12	Crown Attorney forwards a draft affidavit to now former lead investigator.
	May	24	Sworn affidavit of the lead investigator is sent to the International Assistance Group.
	July	06	Canada makes a formal request to Government of India to extradite Ernest Fenwick MacIntosh.
2007	April	01	Special Prosecutions Senior Crown Attorney Diane McGrath is assigned to the case as co-counsel.
		05	Mr. MacIntosh is arrested in New Delhi. He contests the extradition.
		25	Indian Court delivers a verdict recommending the extradition of Mr. MacIntosh.
	May	26	The Government of India agrees to extradite Mr. MacIntosh.
	June	08	Mr. MacIntosh makes his first appearance in Port Hawkesbury Provincial Court. The matter is set for a bail hearing.
		13	A bail hearing takes place.
		18	The court issues its decision. Bail is denied.
	July	23	Defence seeks further disclosure including documentation from the Federal Government in relation to extradition. Election and/or plea is adjourned.
	October	29	Defence again asks election and/or plea be adjourned as they are seeking copies of every e-mail between the Crown, RCMP and Federal Department of Justice concerning the extradition process.
	December	17	Defence requests a second bail hearing claiming the extradition treaty allows for such and suggests election and/or plea be dealt with at the same time due to recent voluminous disclosure.

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2008	February	20	A bail hearing is held as the Court determines it has no jurisdiction to re-litigate the issue. Defence again requests election and/or plea be adjourned as they wish further documentation related to extradition process and material supplied to the Court in India in support of the request.
	March	26	Mr. Macintosh is released on recognizance and under strict conditions as per the order of Supreme Court Justice Frank Edwards.
	April	17	Defence requests adjournment of election and/or plea pending hearing of defence application challenging the extradition. Crown does not agree and wants matter brought back at earlier date arguing that documentation that has been requested is not material to the issue of election of mode of trial as initial disclosure sufficiently identified the case to be met.
	May	01	Crown forwards to the defence extradition documentation received from the federal government.
		07	Defence indicates they are content with disclosure and ready to elect. Election is made to Supreme Court without a jury and with a Preliminary Inquiry. Preliminary Inquiry is set for October 7-10, and 20-22 with further dates to be set as necessary.
		23	Nova Scotia Supreme Court hears an application brought by defence to prohibit the Preliminary Inquiry from proceeding.
	June	19	Nova Scotia Supreme Court rules the Preliminary Inquiry may proceed.
		31	Defence argues for a stay of the Preliminary Inquiry in the Nova Scotia Court of Appeal.
	August	07	A Judge of the Court of Appeal in chambers rules the Preliminary Inquiry can go ahead.
	October	07-22	Preliminary Inquiry is held in Port Hawkesbury Provincial Court. It is adjourned to January 27, 2010 to call further witnesses.
	December	10	Defence argues before the Nova Scotia Court of Appeal that the extradition principle of specialty has been violated, the accused's Charter rights have been violated and proceedings should be halted.
		22	The Nova Scotia Court of Appeal rules against the defence.

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2009	January	27	Preliminary Inquiry continues.
		29	Preliminary Inquiry is adjourned for written submissions.
	May	01	Accused is committed to stand trial on 36 out of 43 charges: 16 charges involving DRS; 4 charges involving RMM; 4 charges involving JAH; 2 charges involving AM; 6 charges involving BAS; 4 charges involving WJMR. Two charges involving GFB; four charges involving DLB; and one charge involving CM are dropped.
	June	05	Matter is adjourned to set dates until June 22, 2009 in order to allow defence and Crown to discuss issue of severing the matter into two trials.
		16	Defence proposes proceeding to trial on charges involving complainants DRS, BAS and JAH with the remaining charges in a second trial. The Crown consents.
		22	Trial dates with respect to three of the complainants are set for late October, early November 2009.
	September	29	Defence files a Notice of Motion pursuant to s.7 and s.11 of the Charter of Rights and asking for all proceedings to be stayed due to undue delay.
	October	28	Scheduled undue delay hearing is delayed because a key witness is unavailable due to health issues.
	November	10	Crown Attorney Richard MacKinnon is appointed Provincial Court Judge.

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2010	February	10	A hearing is held in Nova Scotia Supreme Court in Halifax on the Charter issue of undue delay before Chief Justice Joseph Kennedy.
	March	19	Chief Justice Kennedy issues his decision. Chief Justice Kennedy is satisfied that the defence is responsible for a significant portion of delay both prior to extradition and post-extradition and denies Mr. MacIntosh's request that charges be stayed on the basis of undue delay.
	April	01	Halifax Region Crown Attorney Alicia Kennedy is assigned to assist Ms. McGrath with this case.
		19	First trial begins in Nova Scotia Supreme Court in Port Hawkesbury before Justice Simon MacDonald.
	July	5-9	First trial continues, concluding on the 9th.
		27	Verdict rendered. Mr. MacIntosh is found guilty on 13 counts and not guilty on 13 counts.
		29	Mr. MacIntosh files Notice of Appeal from conviction with the Nova Scotia Court of Appeal.
	September	28	Mr. MacIntosh is sentenced to four years in prison, is ordered to provide a DNA sample to the DNA databank and is banned for life from owning weapons. He is given credit for time served on remand.
	October	7	Mr. MacIntosh is released from prison pending appeal.
		13	Mr. MacIntosh files a Notice of Appeal from sentence with the Nova Scotia Court of Appeal.
		21	The Crown files Notice of Appeal regarding the Judge's refusal to order Mr. MacIntosh to register as a sex offender or to prohibit him from frequenting places children gather; to prohibit employment or volunteering that would put Mr. MacIntosh in a position of trust with persons under 16; to prohibit the use of computers for communicating with persons under 16.
	December	6	Second trial begins in Nova Scotia Supreme Court at Port Hawkesbury with Chief Justice Joseph Kennedy presiding.
		7-14	Trial continues, concluding on the 14th.

Appendix

2011	January	31	Verdict rendered. Mr. MacIntosh is found guilty on four counts and not guilty on six counts.
	April	13	Mr. MacIntosh is sentenced to 18 months in prison. The Judge also makes a DNA Order and a lifetime weapons ban.
	May	18	Mr. MacIntosh files a Notice of Appeal regarding conviction of January 31 and sentencing of April 13 with the Nova Scotia Court of Appeal.
	June	08	Nova Scotia Court of Appeal hears oral argument on matters arising from the first trial.
		09	The defence makes a bail motion to the Nova Scotia Court of Appeal. The Crown consents to release on strict conditions: Crown maintains mortgage on Mr. MacIntosh's property; freezing of Mr. MacIntosh's accounts; and \$60,000 cash.
		13	Mr. MacIntosh is released on recognizance with conditions pending appeal.
	August	26	Legal Aid advises that Mr. MacIntosh has applied for representation.
	November	16	Crown is notified that the Nova Scotia Court of Appeal will hear arguments on the second set of convictions on March 27, 2012.
	December	8	The Court of Appeal renders its decision. All convictions are quashed. A stay is entered on all charges (both trials). The court found that undue delay violated Mr. MacIntosh's Charter rights and thus stayed all charges. The Court further found Justice MacDonald had misapprehended the evidence and thus, the Court would have ordered a new trial had it not entered a stay.
2012	February	02	The Crown files a Leave to Appeal the decision of the Nova Scotia Court of Appeal with the Supreme Court of Canada.
	June	28	Supreme Court of Canada notifies Crown it will hear appeal.
2013	April	22	Oral arguments heard before Supreme Court of Canada. Appeal dismissed.

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