

DAY 77

JULY 22, 1996

WESTRAY MINE

PUBLIC INQUIRY

HEARD BEFORE: The Honourable Justice K. Peter Richard, Commissioner

PLACE: Stellarton, Nova Scotia

COUNSEL:

Solicitor for the Commission: Mr. John Merrick, Q.C.

Solicitors for Department of Justice Canada: Ms. Lynn Gillis, Mr. John Ashley, and Mr. Colin Campbell, Q.C.

Solicitors for the Department of Justice Nova Scotia: Messrs. Reinhold Endres, Q.C., Mr. John Traves and Mr. William Wilson, Q.C.

Solicitor for the United Steelworkers of America: Mr. David Roberts

Solicitor for the Westray Families Group: Mr. Brian Hebert

Solicitor for the Town of Stellarton: Ms. Roseanne Skoke and Mr. Clarence Porter, Mayor.

Representing the Canadian Union of Public Employees: Mr. Robert Wells

Representing the United Mine Workers: Mr. Robert Burchell

Representing the Nova Scotia Federation of Labour: Mr. Richard Clarke

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1 INQUIRY COMMENCED: 9:30 a.m.

2 COMMISSIONER Good morning.

3 ALL Good morning.

4 OPENING REMARKS

5 COMMISSIONER Now this is the day that has been set
6 aside for oral argument by counsel who were present
7 during the hearings. This is in addition to the
8 opportunity to provide written submissions, which counsel
9 have been informed of, and which are due -- I forget the
10 date, but sometime in mid-August. Counsel are aware of
11 this.

12 We're on a fairly tight schedule today because we
13 have a lot of different parties to hear from. The
14 scheduling which has been agreed to or has been in place
15 for the day is as follows:

16 The Province of Nova Scotia will lead off with one
17 hour time. The Federal Department of Justice with 30
18 minutes, the town of Stellarton with 30 minutes. Mr.
19 Wells, for CUPE, with 45 minutes, Mr. MacArthur or
20 Burchell, with United Mine Workers of America, 45
21 minutes. Mr. Rick Clarke of the Nova Scotia Federation
22 of Labour, 15 minutes. The Westray Family Group, one
23 hour, and Mr. Roberts, for the United Steelworkers of
24 America, one hour.

25 So we'll start off, Mr. Endres, with the Province of

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1 Nova Scotia. Thank you.

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3 MR. ENDRES Thank you, Mr. Commissioner. We
4 appreciate the opportunity to make this submission to
5 you, which, as you know, will be supported in due course
6 by our written brief.

7 In our submission this morning, I will focus
8 primarily on the lessons that we have learned about our
9 approach to safety in the work place and our involvement
10 with Westray.

11 I also want to touch in the submission on things
12 that Government has already done since 1992, and I think
13 that is important because you've heard very little
14 evidence about that.

15 And, finally, I will summarize the elements of a
16 workplace health and safety system that we believe holds
17 all the promises of being very effective, more effective
18 than what we've had in the past.

19 A disaster such as Westray forever changes the lives
20 of all of those who had any direct or indirect
21 involvement with the mine. The families of the victims,
22 more than anyone else, shoulder the burden of this
23 tragedy and the never-ending sadness of losing a loved
24 one. There is no formula for repairing the damage that
25 has been done, and we know that their struggle to cope

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1 will endure forever.

2 We all appreciate that the deceased and their
3 families were let down. They deserve better.

4 The May 9th explosion has devastated the lives of 26
5 families, forever altered the lives of all of Westray's
6 employees. It wiped out the immediate prospect for the
7 recovery of a valuable resource, and it provoked
8 questions about how the Province attracts business, how
9 it scrutinizes entrepreneurs and regulates and monitors
10 industrial activity.

11 Rightly, the family of the deceased miners and other
12 Westray employees who lost their jobs and members of the
13 community are asking how such a tragedy could have
14 happened.

15 With Westray employing technology, the best of
16 equipment, with no obvious shortage of working capital,
17 experienced miners, supervisors, and leading experts on
18 site, with regulators and inspectors watching and
19 legislation in place intended to protect the work force,
20 one would not have anticipated any serious problems.

21 The loss of the men at the Westray Mine came as a
22 shock, and there are many serious questions to which we
23 need answers. We have to find out why. The families and
24 the public have a right to know why 26 men perished in
25 this mine.

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1 All of us, very legitimately, expect and demand that
2 those who can contribute to the safety of coal miners
3 make the very best efforts and show their commitment in
4 their role in occupational health and safety. We need to
5 ensure that workers are not exposed to unacceptable
6 risks, risks of injury or risks to their health, that
7 they can make informed decisions, including ultimately
8 the decision to refuse work in unsafe conditions. In
9 this, we must act as one.

10 It is counterproductive and unacceptable for even
11 one person who has the means to impact on safety in the
12 workplace to ignore or avoid the responsibility of doing
13 the right thing all of the time.

14 The evidence before this Inquiry paints an
15 unfavourable picture of a number of parties including the
16 Province. For our part, we accept legitimate criticism.
17 We know that we could have and should have done better.
18 We are prepared to do what it takes to implement changes
19 necessary to improve the safety of workers.

20 The Province had a number of options open to it in
21 the aftermath of the explosion. It chose the most
22 transparent, compelling, and independent means of fact-
23 finding possible, namely this Commission. Government is
24 committed to getting to the bottom of this tragic event.

25 The whole idea of the Public Inquiry was to allow

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1 for the public scrutiny of all circumstances and all
2 players associated with Westray including the Province.
3 Discovery of what went wrong is an essential step before
4 we focus on prevention. In simple terms, this Inquiry
5 was set up to find out what caused the explosion and to
6 recommend steps to prevent another tragedy.

7 It has been recognized by the Commissioner,
8 yourself, that the business of assigning blame is not
9 part of your terms of reference, and there are solid
10 constitutional reasons for that. However, public
11 officials demonstrated accountability by appearing at
12 this hearing. Those who were asked to attend did so
13 voluntarily. They cooperated with the Inquiry, made
14 their notes and documents available, were examined and
15 cross-examined and did the best they could to assist this
16 Inquiry.

17 Unfortunately, senior Westray management were not so
18 cooperative, and, thus far, have refused to attend the
19 Inquiry. It is apparent from the evidence of witnesses
20 such as Benner, Clow and Eagles that company officials
21 are able to provide a perspective and make a contribution
22 which no other witnesses can make. We continue to
23 support the Commission in its efforts to obtain evidence
24 from Westray officials.

25 By convening this Commission and by providing the

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1 Commission with all the necessary cooperation, support
2 and resources so that it may complete its tasks, we have
3 set an example, and the lessons we learn will be of
4 benefit to all Nova Scotians and, indeed, persons outside
5 the jurisdiction.

6 The comprehensive review of all available facts,
7 analysis of the circumstances that led to the explosion,
8 and recommendations as to how this type of tragedy can be
9 avoided in the future will undoubtedly be of significance
10 to underground miners now and into the future.

11 Now I've mentioned in the beginning that I want to
12 spend a fair bit of time on what we have learned.

13 The evidence before you has identified a range of
14 shortcomings in the regulation and operation of the mine.
15 I want to concentrate on what we have learned about the
16 Province's approach to safety in this mine. In
17 retrospect, it now appears that the regulatory and
18 administrative initiatives applicable to Westray failed
19 to meet expectations. We agree that the Province could
20 have done better.

21 One of the first shortcomings that we need to
22 contend with arises with the legislative and regulatory
23 framework for coal mines that the Department of Labour
24 administered.

25 Nova Scotia's first Occupational Health and Safety

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1 Act was enacted in 1985. With it came the internal
2 responsibility system that was already in place in other
3 Canadian jurisdictions. Internal responsibility, and I
4 will say more about that shortly, is the product of a
5 series of commissions investigating workplace accidents
6 in many jurisdictions across the country and elsewhere.

7 These commissions concluded that the focus for
8 workplace safety should be on the involvement of the
9 employees, and that the employer and the employees are
10 responsible for health and safety. Under this system,
11 the role of the regulator is to ensure that the two
12 parties fulfil their legislated responsibilities and to
13 deal with non-compliance. As I said, I will get back to
14 that in a bit.

15 The Occupational Health and Safety Act, enacted in
16 1985 did not, however, displace other laws applicable to
17 coal mines. The Coal Mines Regulation Act, in
18 particular, continued to apply in full force, and it has
19 an entirely different focus. The Coal Mines Act put the
20 emphasis on the inspectorate controlling many aspects of
21 the operation.

22 The mix of the principles of internal responsibility
23 under the Occupational Health and Safety Act and command
24 and control under the Coal Mines Regulation Act did not
25 provide a sound foundation for the management of health

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1 and safety matters. As a result, roles and
2 responsibilities for safety were not clearly defined nor
3 understood.

4 We now understand that in 1992 Nova Scotia did not
5 have an effective internal responsibility system in place
6 in the coal mining sector. The Coal Mines Regulations
7 Act, as well as the Mineral Resources Act, which also
8 applies to coal mines, assigned to the regulator and the
9 inspectorate too great a role in operational matters.

10 This gives employees and employers the message that
11 it is okay to rely on the officials who must issue
12 approvals. No one took ownership of safety issues, and
13 it is apparent now that at Westray, safety issues were
14 simply not managed effectively.

15 In retrospect we now see that while the Coal Mines
16 Regulation Act continued to apply, internal
17 responsibility could not take hold in the coal mining
18 sector. The Occupational Health and Safety Act had only
19 minor impact on coal mines. The thrust of the
20 administration continued to be command and control by way
21 of approvals, permits, and enforcement of minimum
22 standards, which brought the inspectorate in very close
23 contact with mine management on a regular basis, also in
24 close contact with operational issues, but which did not,
25 like modern health and safety legislation, promote joint

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1 worker and management participation in mine safety.

2 We have learned that an approval-based system, such
3 as that under the Coal Mines Regulations Act. stifles
4 development of proper safety attitudes as well as
5 acceptance of responsibility for workplace safety.

6 Approval-based systems jeopardize the functioning of
7 the internal responsibility system. The Coal Mines
8 Regulation Act does not support the internal
9 responsibility system and the enactment of the
10 Occupational Health and Safety Act did very little to
11 change that.

12 The intention in 1985 was to build on the experience
13 gained elsewhere with the implementation as what we
14 always refer to "internal responsibility." As it turns
15 out, and we see that reflected in the Westray experience,
16 there was a failure to appreciate, a failure to recognize
17 the obstacles that were in the way of the internal
18 responsibility system.

19 And there were direct consequences to this
20 inconsistent legislation. Departmental policies, for
21 example, were not supportive of this internal
22 responsibility, nor were the officers' field services.

23 Inspectors were not provided with the type of
24 leadership, nor did they receive the necessary tools and
25 training that would allow them to see to it that the

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1 internal responsibility system was properly implemented
2 at Westray. Indeed, the inspectorate continued to
3 approach its tasks in the traditional manner.

4 In keeping with the Coal Mines Regulations Act, they
5 dealt mostly with the employer, concentrating on
6 compliance inspections, approvals, and permits. Even
7 these tasks were made much more difficult by the fact
8 that the Coal Mines Regulations Act had not kept pace
9 with developments in mine technology and mining methods
10 and provided the inspectors with very little or no
11 guidance in important areas suggests, for example, the
12 use of rubber-tired diesel tractors underground.

13 Inspectors were actually handicapped by the laws
14 that puled them in opposite directions and prevailing
15 regulatory arrangements and policies that did nothing to
16 resolve that conflict.

17 We see this reflected, for example, in the
18 inspectors' position in relation to the approval of
19 auxiliary ventilation fans at Westray. The inspectors
20 were provided with a very poor foundation, and no one
21 helped them to develop the necessary appreciation of the
22 internal responsibility system.

23 You have heard, Mr. Commissioner, about the pooling
24 of the inspection and monitoring services in the
25 Department of Labour following the introduction of the

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1 1985 Occupational Health and Safety Act. This was in
2 accordance with the recommendations by McKeough
3 Commission. It was a well-reasoned effort but poorly
4 executed.

5 Four units from the Departments of Labour, Health,
6 Mines, and the Workers' Compensation Board were brought
7 together, and they together should have formed one strong
8 occupational health and safety division. In fact, we now
9 know that each unit continued to operate largely
10 unchanged on the specific legislations such as the Coal
11 Mines Regulations Act, and with that, the benefits of an
12 improved safety focus were not fully realized.

13 It is not surprising then that the inspectors proved
14 unsure of their new role as external support, and I will
15 return to what that role should be in the internal
16 responsibility system and, as a result, were unable to
17 foster and support internal responsibility at the mine.

18 No one understood what was needed at Westray. Much
19 more than underground tours and equipment approvals, was
20 a determination as to whether the company had, in fact,
21 in place a properly trained and working safety committee
22 that developed the respective roles on the internal
23 responsibility and was governed by proper attitudes and
24 the necessary sense of responsibility about safety in the
25 workplace. Had the internal responsibility system been

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1 properly implemented, and if all parties at Westray had
2 accepted and discharged their respective roles
3 accordingly, the risk of an explosion would clearly have
4 been reduced significantly.

5 We have also learned, in the course of this
6 proceeding, that officials appear to have been too
7 closely associated with management and not accessible
8 enough to safety representatives at the mine and the
9 miners themselves. A number of Westray employees, and we
10 heard their evidence, felt that there was an impenetrable
11 alliance between the employer and the inspectors, leaving
12 no opportunity for consideration of the employees' views
13 on safety, and we say there is no room for that in a coal
14 mine.

15 Officials allowed themselves to be misled by
16 appearances and a misguided faith that officials were
17 looking after safety matters. By way of example, the
18 inspection tours themselves would have been much more
19 effective had employees been invited to attend. Instead,
20 as we know, the inspection tours invariably were between
21 the inspector and a member of the Westray management.
22 And that was wrong.

23 In retrospect, there was insufficient follow-up by
24 the inspectors on their demands, the orders, and
25 approvals they issued. Despite the fact that three

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1 previous orders had been carried out, apparently without
2 any difficulty, it would have been reasonable for the
3 inspectors to follow up on the April 29th orders which,
4 as we know, required immediate action on the part of
5 Westray.

6 However, it should be recognized that the April 29th
7 order was a timely response on the part of the inspectors
8 to the problems they identified, and if the orders had
9 been complied with as required, coal dust may not have
10 entered the equation of the explosion, and a failure to
11 follow up, consequently, on the part of the inspector
12 would have been of small significance.

13 From the evidence of Trevor Eagles we also know that
14 just two days prior to the explosion, a second warning
15 about coal dust was given to the company when all the
16 dust samples taken a week prior from the mine failed to
17 pass the minimum standards. Apparently nothing was done.

18 The lack of training and education of miners and
19 company officials in safety matters played a prominent
20 role in the failure to develop a culture that rejects
21 acceptance, condemnation, and participation in activities
22 which present unmanageable safety risks.

23 We agree that we could have done more to detect that
24 deficiency. We agree that we could have done more by way
25 of education.

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1 Policies, procedures and safety practices should
2 have been scrutinized more systematically for their
3 adequacy, and more effort should have been made to
4 determine their impact on day-to-day activities. We now
5 know that the reality at Westray often did not match
6 company records or what the inspectors were led to
7 believe by management or the things they saw at the mine.

8 Statutory reports, as well as minutes of the safety
9 committee, should have been reviewed more consistently
10 and better utilized as a safety check.

11 Statutory provisions should have been enforced more
12 readily.

13 There should have been more effective communication
14 and information exchange within and between the various
15 public agencies involved at Westray. The Mineral
16 Resources Act, which also applied to Westray, created
17 difficulties for the Department's resource managers. It
18 refers to safety, but fails to define the extent to which
19 safety considerations were part of their mandate. It
20 also fails to address what changes to the mine plan
21 requires their approval, and that in turn has led to
22 confusion as to what their role was in mine safety and a
23 review of mine plans.

24 Questions have also been raised about the practice
25 of monitoring compliance with approved plans on the basis

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1 simply of annual plan filings as opposed to direct
2 follow-ups at the mine. We've heard evidence that the
3 Department of Labour did not check for mine plan
4 approvals because they were deemed not relevant for its
5 purposes. There were gaps induced by legislative
6 deficiencies, by a lack of clear policies, and by a lack
7 of effective communication in and between departments of
8 Government.

9 It can also be fairly said that the resource
10 managers at the Natural Resources Department should,
11 under the circumstances, have had a better grasp on what
12 Westray was doing in the Southwest panel, which was
13 contrary to approved plans. And these resource managers
14 should have been more sensitive to Westray's ability to
15 plan the efficient extraction of a valuable resource.

16 We have learned that despite legislation to the
17 contrary, at least some miners feared reprisals and, as a
18 result, they did not dare to raise safety concerns with
19 management or the inspectorate. If there had been more
20 frequent contact between the inspectors and the men, a
21 better climate undoubtedly would have been established
22 for a better flow of information.

23 The one safety complaint in the life of the mine
24 that potentially could have made the difference
25 unfortunately could not be substantiated. As a result,

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1 and therein lies the significance, its value as an
2 indicator of a more pervasive safety problem at the
3 Westray mine was totally lost.

4 Having said all that, it would be misleading for any
5 of us to focus all attention on the regulators and the
6 inspectorate. Safety in the workplace is not simply a
7 function of the frequency and quality of inspections.
8 Intervention by way of inspections, orders, et cetera,
9 and enforcement has a limited impact on mine safety.
10 Intervention does very little to stimulate the desired
11 safety climate, and I would refer you in support of the
12 proposition to the Canadian Standards Council who has
13 published an article on this and reported that the
14 studies that the Standards Council reviewed concluded
15 that intervention such as inspection and prosecution on
16 the part of the inspectorate provides a false sense of
17 security and does not achieve compliance.

18 Closer to home, in it's 1995 report, the
19 Occupational Health and Safety Advisory Council
20 identified the following underlying problems in the
21 approach to workplace safety, and this is following three
22 years of intensive review and study of occupational
23 health and safety. The Council concluded, amongst other
24 things, that health and safety in Nova Scotia suffers
25 from a low level of awareness in public, industry and

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1 government circles.

2 There is little focus on prevention in the culture
3 of many workplaces. People tend to deal reactively
4 rather than proactively with hazards. Health and safety
5 responsibilities are not well understood.

6 The Advisory Council continued to point out that
7 prior to Westray the status quo was acceptable to many
8 and health and safety was not a priority of government.

9 And, finally, the Advisory Council noted that no one
10 thing will fix all the problems in one shot. Nova Scotia
11 needs a fundamental cultural change that focuses on our
12 health and safety responsibilities.

13 I indicated in my opening notes that I would want to
14 take a look at what the Government of Nova Scotia has
15 done since 1992. Much has been accomplished in the
16 intervening four years.

17 Government has taken steps that will bring about a
18 fundamental cultural change, focused on the health and
19 safety of workers. It has done that by way of changes in
20 the law, new policies, by review of the Coal Mines
21 Regulations Act, changes in the administration, by
22 instituting training and, finally, by way of the one-way
23 review of mine applications.

24 To go back, new legislation. Part of the necessary
25 corrective action which I identified early on by the --

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1 by saying that there is a problem with the Occupational
2 Health and Safety Act not working together with the Coal
3 Mines Regulations Act. Part of the necessary corrective
4 action has already been taken with the 1996 enactment of
5 the new Occupational Health and Safety Act as proposed by
6 the Nova Scotia Health and Safety Advisory Council.

7 And, as you know, that Council included
8 representatives from organized labour, industry, medical
9 and workers' compensation experts as well as public
10 officials. And their assigned task was to specifically
11 review occupational health and safety as well as related
12 policies.

13 The new Act builds on the 1995 Act. It finally
14 includes a plain language explanation of what the
15 internal responsibility system is, and it clarifies the
16 contribution for which workplace parties and the
17 Department's Occupational Health and Safety Division are
18 responsible. It is a much stronger statement on internal
19 responsibility than what we have thus far.

20 New policies have been enacted at the Department of
21 Labour. For example, under these new policies,
22 inspectors will not any longer give prior notice of up-
23 coming inspections.

24 Replacement of the Coal Mines Regulations Act is
25 presently underway. Government is considering

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1 recommendations offered by the Advisory Council,
2 including the recommendation that new safety regulations
3 for underground mines not include provision for pre-
4 approval by Government of plans, equipment and
5 procedures. That, of course, would be a major departure
6 from the current statutory scheme.

7 The departure lies in the fact that we are moving
8 away from control, and we are moving towards
9 responsibility.

10 Changes in the administration followed a review by
11 independent consultants who reviewed the management
12 practices at the Department of Labour, and that review
13 has resulted in the implementation of modern management
14 practices at that Department.

15 Also, and you've heard some evidence on that, there
16 is a move underway towards a generic inspection service.
17 That service will have well-trained officials, trained in
18 safety matters and versed in the internal responsibility
19 system. This will reduce emphasis on coal mine
20 engineering. The inspectors will not necessarily be coal
21 mine engineers, but it will increase the emphasis on
22 workplace safety, and I believe that is the road on which
23 we have to travel.

24 There have been extensive changes in staff,
25 particularly in the Occupational Health and Safety

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1 Division of the Department of Labour, and you've heard
2 evidence on that.

3 The changed approach on the part of the inspectors
4 to mine safety will be facilitated by extensive training
5 that began in 1992. We acknowledge that there were
6 certain deficiencies in the training provided to the
7 inspectorate prior to Westray. We now point out that
8 this has been taken care of.

9 In addition, and that is a brand new development,
10 safety education is becoming part of the curriculum of
11 our community colleges and trade schools, and this is in
12 keeping with the new, that is, the 1996 Occupational
13 Health and Safety Act.

14 Finally, the Government of Nova Scotia has
15 implemented a one-window approach to reviewing,
16 permitting, and monitoring mineral exploration and mining
17 projects. This one-window process facilitates
18 cooperation between departments. It improves efficiency.
19 It improves communication and information exchange
20 between operators and Government departments.

21 The main departments involved are the Department of
22 the Environment, the Department of Labour, and the
23 Department of Natural Resources. Additional parties are
24 added to that one-window committee as required from time
25 to time. The one-window committee deals with the full

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1 range of mineral exploration and mining projects, as well
2 as project-specific issues. All of this demonstrates
3 commitment in improving workplace safety.

4 Government will consider with care your report and
5 recommendations and continue to implement additional
6 measures under the common goal of safer underground coal
7 mines. The impact on workplace safety will be positive,
8 significant, and it will be lasting.

9 The internal responsibility system deserves the
10 Commission's full support. It is not a fad; it is not
11 simply a way out for the inspectorate. Rather, the
12 inspectors take on the new role together with the joint
13 safety committee and, under the 1996 legislation, the
14 safety representatives are being contributors to
15 workplace safety in a carefully devised scheme. There
16 are, in our view, no better alternatives.

17 At Westray internal responsibility was not working.
18 It was not working because it had never been properly
19 implemented.

20 Internal responsibility is based on the realization
21 that regulatory control alone will not make the
22 difference in workplace safety that we are striving for.
23 In an effective safety system, employers and employees
24 take the lead by devising and implementing safety methods
25 for their own protection.

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1 Internal responsibility, properly legislated and
2 effectively administered, is natural justice for workers.
3 It gives them a voice and the necessary information on
4 which to make sound personal decisions as well as
5 influence in the decisions of management and the safety
6 representatives as well as the decisions of inspectors
7 and policy makers.

8 A strategy which purports to exclude workers from
9 this process in which operational occupational health and
10 safety decisions are made between the inspectorate and
11 management alone is simply incompatible with internal
12 responsibility. Such a strategy tells the workers that
13 their perspective is simply not relevant, and that is not
14 helpful. It is wrong to leave them outside of the
15 decisions that directly relate to their health and
16 safety.

17 Internal responsibility is not incompatible with
18 strong regulatory standards, inspections, and
19 enforcement. But more of this kind of intervention on
20 the part of the inspectors cannot replace the shared
21 responsibilities of the workplace parties for a safer
22 workplace.

23 In a properly functioning system, internal
24 responsibility must be supported by the contributing role
25 of the inspectorate, and one of the key aspects of that

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1 is that the inspectorate ensures that internal
2 responsibility is properly functioning at the workplace.
3 The focus, therefore, is on assessing the responsibility
4 system, not in the first instance, identification of
5 specific safety hazards.

6 Under the internal responsibility system, Government
7 lets employees know that they have the right to a safe
8 work environment and the right to refuse unsafe work.

9 Workers will be provided with the necessary comforts
10 and tools that will motivate them to refuse and
11 discourage, without any hesitation on their part, unsafe
12 work and hazardous activities. The Nova Scotia
13 Occupational Health and Safety Advisory Council has
14 specifically sought to address that concern with the new
15 Occupational Health and Safety Act.

16 It is a proper role for government to design and
17 deliver a system that protects employees who have
18 reasonable grounds to complain or to refuse work because
19 of safety or health concerns.

20 It is appropriate in our view for this Commission to
21 build on what the the National Labour Organization, Hamm,
22 Burkett and McKeough and others have done. You recognize
23 they all spoke about the internal responsibility system.
24 They all addressed considerations in relation to
25 workplace safety. And they all confirm that it is the

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1 employer who has the legal and the moral responsibility
2 and, indeed, the ability to provide a safe and healthy
3 workplace.

4 We have identified numerous other reports beyond
5 Hamm, McKeough, Burkett. In the bibliography, which we
6 intend to attach to our written submission, most of these
7 reports are in the context of the mining context, and
8 they all accept the principles of the internal
9 responsibility system. We commend those reports to you.

10 We can quickly look at the Burkett report on the
11 inquiry into mine safety in Ontario, and we know from
12 what you've told us that you are familiar with that
13 report, indeed, that you have spoken with Mr. Burkett
14 about that.

15 His report begins with a statement of recognized
16 principles on what the internal and contributive
17 responsibilities require of each party. He identifies
18 any weaknesses in how those responsibilities were
19 discharged and makes recommendations as to what should be
20 done in the future to correct these weaknesses for an
21 effective internal responsibility system in the mining
22 industry. We feel that this is a very sound approach to
23 a complex problem.

24 A great deal has been said about the role of the
25 inspectorate during this Inquiry, and I am certain that

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1 we will hear much more shortly. I would like to go back
2 for a moment and focus specifically on the role of the
3 inspectorate in the internal responsibility system. This
4 is looking forward because, in our view, we may dwell on
5 the past, but then we'll be stuck in the past. If we
6 want to move in the right direction, we have to look
7 forward.

8 And this is an important issue: What should be the
9 role of the inspectorate?

10 In keeping with the new Occupational Health and
11 Safety Act, which takes into account direct experience
12 gained elsewhere in the country, the role of the
13 inspectorate is that of an external contributor to the
14 employer and employee partnership in safety.

15 So if we can look it in terms of two circles, we
16 have the one circle in which we have the employer and the
17 employees. We have another circle which contains the
18 inspectorate, the safety committee, and the safety
19 representatives of the workers. The inspectorate and the
20 safety committee and the safety representatives are
21 external contributors to the partnership between the
22 employer and the employees.

23 This was developed out of experience and out of the
24 realization that it is not possible for the inspectorate
25 alone to create and maintain safe and healthy workplaces.

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1 The proper role of the health and safety officers is to
2 clarify the safety responsibilities of the parties under
3 the law. It is to support them in carrying out their
4 respective responsibilities, and it is to monitor and
5 intervene appropriately when those responsibilities are
6 not met.

7 Under I.R.S., that is the internal responsibility
8 system, the officer's role does not include directing how
9 to do things, and once we remove that element, they will
10 not be seen as collaborating with the employer on how to
11 run the operation or making operational decisions. The
12 officer's contribution to safe working conditions is
13 vital, but it can never be seen as more than a supporting
14 role in securing a safe workplace.

15 It is, and here I quote from Hamm, "a misuse of the
16 role of mines inspection for management to rely on this
17 external process of audit as a primary means of detecting
18 departures from standard conditions."

19 You have heard evidence of the use of checklists by
20 inspectors in the course of mine inspections. That
21 approach works best in a static environment. Room and
22 pillar mining, such as we had at Westray, is not a static
23 operation, and that argues in favour of an approach which
24 allows for some flexibility and discretion. In our view,
25 there is room for both in the inspectors' supporting role

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1 in mine safety.

2 I am near the end of our submissions.

3 It is one of the important tasks of the Commission,
4 of your Commission, to document all that went wrong at
5 Westray. Past actions and failure to act can only be
6 fairly assessed against the prevailing climate, and
7 particularly the administrative and regulatory structures
8 in place during the life of the mine.

9 Of course, we also need to learn from this tragedy,
10 and in that context it is appropriate for the Commission
11 to identify the elements of the very best system possible
12 and to develop your recommendations accordingly.

13 This Inquiry places you in a very unique position, a
14 position where you can educate and make recommendations
15 to Government, employers, employees and the public about
16 occupational health and safety for a major step forward
17 in workplace safety.

18 Mr. Commissioner, I left a few moments of my
19 allotted time so that there would be room for questions
20 if you have any. If not, those are our submissions.

21 COMMISSIONER Thank you, Mr. Endres. I don't think at
22 this point I have any questions. I thank you for a very
23 thoughtful submission, and I can assure you that both the
24 Hamm Report and the Burkett Report will be re-visited
25 quite thoroughly in my preparation of the final report.

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1 No, I have nothing at this time, but I reserve at
2 some -- later on, if need be, I will. Thank you very
3 much, Mr. Endres.

4 MR. ENDRES Thank you.

5 COMMISSIONER Now who is representing Mr. Rock this
6 morning? Mr. Campbell?

7 MR. CAMPBELL I am, sir.

8 COMMISSIONER Okay. Thank you. You're on.

9 SUBMISSION BY THE DEPT. OF JUSTICE CANADA - MR. CAMPBELL

10 MR. CAMPBELL Mr. Commissioner, both my colleagues and
11 myself have been in consultation with a number of the
12 Federal Government departments where relevant to the
13 matters of this Inquiry, and we have determined that when
14 that process is complete, we'll be in a position to give
15 you some written submissions on the issues that we hope
16 will be helpful to you. But I think until we've
17 completed that process of consultation, we'll reserve our
18 position and do it in writing, if that's acceptable to
19 you, sir.

20 COMMISSIONER That's fine then, Mr. Campbell.

21 MR. CAMPBELL Thank you.

22 COMMISSIONER Yes, certainly. Ms. Skoke?

23 SUBMISSION BY THE TOWN OF STELLARTON - MS. SKOKE

24 MS. SKOKE Thank you, Mr. Commissioner. It's respectfully
25 submitted that the concerns of the Town of Stellarton is

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1 with respect to our natural resources, and undoubtedly
2 our natural resources is not only our coal, but also our
3 people.

4 It's submitted on behalf of the Town of Stellarton
5 that the primary purpose and focus of this Inquiry to be
6 that of mining, which is both a public and provincial
7 interest. The Town of Stellarton does not view the
8 purpose of the Westray Public Inquiry as a substitute
9 criminal investigation or a proceeding to determine at
10 this time criminal or civil liability.

11 However, the Town submits that the terms of
12 reference require that this Inquiry focus on all issues
13 relevant to mining and its operation as it existed at the
14 time of the acquisition of the Westray mineral rights.

15 The Inquiry must also focus its attention on the
16 future of mining in our province of Nova Scotia.

17 The relevant provincial legislation to mining in our
18 province that requires careful scrutiny by you, Mr.
19 Commissioner, is the Mineral Resources Act, the Coal
20 Mining Regulations Act, and the Occupational Health and
21 Safety Act. It is recommended by the Town of Stellarton
22 that legislative changes be made to these three
23 provincial statues forthwith.

24 I will be submitting a formal brief to go into more
25 detail, Mr. Commissioner, as to what particular

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1 provisions of the Act and what our recommendations are,
2 and my comments now are general.

3 The Mineral Resources Act is the operative
4 legislation that determines the procedure for the
5 acquisition of the mineral rights, grants, and permits.

6 The Coal Mining Regulations Act is the operative
7 legislation that determines the licensing and
8 qualifications of mine inspectors and the operation of
9 the mine.

10 The Occupational Health and Safety Act is the
11 operative legislation that determines health and safety
12 standards and their enforcement.

13 The three statutes exist, Mr. Commissioner, to
14 operate together, complimenting each other. However, the
15 evidence before you clearly indicates that the Acts were
16 not complied with on occasion and were often in conflict
17 with each other.

18 It should be noted that the legislation, as it now
19 exists in the province, does not exist to regulate
20 surface mining or strip mining, and it is submitted that
21 it should.

22 From the outset, the Town of Stellarton submitted
23 that the Westray Public Inquiry included but was not
24 limited to the underground mine operation in Plymouth.
25 The reason for our position is very simple. The

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1 acquisition of the underground Westray mine, pursuant to
2 the Mineral Resources Act, was contingent upon Westray
3 acquiring the mineral rights and permits to the strip
4 mine operation in the town of Stellarton.

5 An examination of the maps and registries at the
6 Department of Natural Resources will disclose that the
7 mineral resources maps were changed to include the strip
8 mine operation and the underground operation as one
9 entity. Although it is submitted that the entry of the
10 Natural Resources Department in the registry is contrary
11 to and is a violation of the Mineral Resources Act, it's
12 effects is to consolidate the strip mine and the
13 underground operation as one entity. And this Inquiry,
14 therefore, it is our position, that the two mine
15 operations are inseparable.

16 It is submitted that although one entity, this
17 Inquiry has, by its very nature of the evidence
18 submitted, disassociated the two. The underground mine
19 was thoroughly considered. However, the strip mine was
20 not.

21 It should be noted that the strip mine was highly
22 profitable at the time of acquisition of the mineral
23 rights. The underground mine, on the other hand, was a
24 high-cost mine.

25 Not only has this Inquiry chose to treat the two

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1 mines as separate entities, so too has the Province of
2 Nova Scotia by recently granting approval of the mineral
3 rights to the strip mine to Pioneer Coal. It's our
4 position, Mr. Commissioner, that once consolidated,
5 there's no procedure to sever the rights pursuant to the
6 Mineral Resources Act. There is also no legislative
7 procedure to consolidate, and we're asking you, Mr.
8 Commissioner, in your deliberations to give some
9 consideration as to the Mineral Resources Act and its
10 Regulations and as to whether, at the time of acquisition
11 of the mine, was this Mineral Resources Act violated.

12 With respect, Mr. Commissioner, also economics to
13 taxpayers is a matter of concern. As I pointed out, it's
14 our position that the underground mine at time of
15 acquisition was a high-cost mine, and it proved to be a
16 high-cost mine throughout production. However, our strip
17 mine was very profitable.

18 The documents before the Inquiry will disclose that
19 Suncor, previous mineral right owner of the strip mine,
20 received 7.6 million dollars for its interest in the
21 strip mine. It's an unanswered question, and I would ask
22 you, Mr. Commissioner, to consider it, as to whether the
23 Provincial cash advance, Provincial Government cash
24 advance of 12 million dollars was used to pay Suncor for
25 a resource that was already owned and controlled by the

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1 Province of Nova Scotia.

2 We'd also ask you to give consideration to the
3 documented evidence before you with respect to the
4 corporate structures of Curragh Resources. Our concern
5 was that the provision was made by Curragh Resources for
6 20 percent of its share of profits to go to a company
7 called Boliden. My question is, Mr. Commissioner, what
8 was Boliden's cash investment, and I'm asking if this
9 Commission would pierce the corporate veil to see who is
10 Boliden, a company which I understand is a Swedish
11 company, who is the owners, and why was provision made
12 for 20 percent of the share of the profits to go to this
13 company?

14 The Town further requests, Mr. Commissioner, in your
15 deliberations, to consider once again the reason for
16 consolidation of mineral resources into one entity and
17 the effect that this has had on our natural resources.

18 We're asking you also to consider the financial
19 circumstances surrounding the transaction for the
20 acquisition of the mineral rights and the role of the
21 Provincial Government, specifically in the utilization of
22 taxpayers dollars to fund a mineral right that was
23 already owned and controlled by the Province.

24 We'd also ask you, Mr. Commissioner, to consider the
25 Nova Scotia Power Corporation and Provincial agreement

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1 which is on file before you. It's what we refer to the
2 take-and-pay agreement and the effect that that has had
3 on the operation and the management of the underground
4 mine.

5 We're here today, Mr. Commissioner, to make some
6 recommendations. I indicated earlier that we strongly
7 and highly recommend that there be legislative change,
8 and we will be submitting a written brief to specify
9 specifically what sections of the three statutes that we
10 propose to be changed.

11 It's our position that it's time to rescind the
12 three statutes and to do a consolidation, or perhaps in
13 your wisdom, to make a recommendation that will determine
14 the future of coal mining. And we ask that you seriously
15 consider including strip mining as well as underground
16 mining because strip mining is, in fact, mining, and your
17 mandate or your general reference is to consider the
18 future of mining in the province of Nova Scotia.

19 Historically, Mr. Commissioner, the documented
20 evidence before you will show that mining rights
21 acquisition in the County of Pictou would previously
22 disclose an open process, a process that always included
23 the Provincial Government, the municipal unit where the
24 natural resource was involved, the property owners, and
25 the company that was making application to acquire that

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1 resource.

2 Unfortunately, this was not so with the Westray.
3 The evidence is clear that the Province of Nova Scotia,
4 in our respectful opinion, formed an alliance with
5 Westray, costing taxpayers dollars, utilizing a
6 profitable natural resource that was controlled and owned
7 by the Province, and as a result of that, not only is
8 there financial loss to our taxpayers, but unfortunately
9 also loss of lives.

10 In conclusion, Mr. Commissioner, it's the
11 recommendation of the Town that our Coal Mines Regulation
12 Act, our Mineral Resources Act, our Occupational Health
13 and Safety Act, which is the legislative and regulative
14 framework for coal mining now in place in the province of
15 Nova Scotia, be rescinded and that new legislation be
16 implemented.

17 It's our submission that the process for acquisition
18 of mineral rights, the approval of the acquisition and
19 utilization of natural resources in our province must be
20 an open process. The authority to approve, to regulate
21 pursuant to this legislation at this point in time is
22 without public scrutiny and public accountability.

23 It is recommended that, in our case, being the Town
24 of Stellarton, a municipal unit, that wherein the natural
25 resource exists, be provided statutory notice of all

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1 mineral rights acquisition applications and that the
2 municipal unit be given a statutory right to participate
3 in the decision-making as to whether the mineral rights
4 should be granted and if so, under what conditions should
5 it operate.

6 This statutory right that we request to a municipal
7 unit will provide a system for public accountability of
8 the actions of the Province of Nova Scotia and the
9 bureaucrats in determining who will acquire ownership of
10 our natural resources, and it will afford the people of
11 the province of Nova Scotia a more open process.

12 It is requested that a recommendation be made that,
13 specifically, an open public process exists with respect
14 to our Department of Natural Resources, our Department of
15 Labour, and our Department of Environment, because it is
16 these three departments, Mr. Commissioner, where
17 decisions are being made by Government and by bureaucrats
18 to determine the future of our natural resources. The
19 ownership, management, and operation of our natural
20 resources, to determine the safety and health of those
21 individuals employed to mine our natural resources.

22 And I've started by saying that, in my submission,
23 when I refer to natural resources, I'm not only talking
24 about our coal, but I'm also referring to our people.
25 And, therefore, it is our submission that until coal

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1 mining in the province of Nova Scotia is an open process
2 with respect to the acquisition of our mining resource,
3 our natural resource, that it is very important that the
4 public have the right to see under what circumstances the
5 Province of Nova Scotia is utilizing our natural
6 resource.

7 It's our position that the Province of Nova Scotia
8 has a fiduciary trust with respect to utilization of our
9 natural resources, and that when any application is made,
10 whether it be by Westray or by any other company or
11 individual in this province, that the public have an
12 opportunity to be a part of that process, and it should
13 be an open process.

14 Likewise, with respect to our Department of Labour,
15 whereby decisions are being made that it will affect our
16 most important natural resource, and that is our people,
17 and also with respect to Department of Environment, which
18 will undoubtedly affect the environment, but also in the
19 case of the Town of Stellarton, we're concerned about the
20 property owners whereby there is strip mining and so
21 forth that takes place.

22 So that will conclude my oral submission. I will be
23 submitting to you in writing what sections we feel have
24 been violated as a result of the documented evidence that
25 I've reviewed and the viva voce evidence that has been

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1 presented here today, and we ask that you give serious
2 consideration to recommending legislative change, serious
3 consideration to recommending that there be a statutory
4 right afforded to the municipal units, and as you know,
5 that would be unprecedented, but in my written submission
6 I hope to convince you of the importance of that. And I
7 leave you with your deliberations. Thank you.

8 COMMISSIONER Thank you, Ms. Skoke. Mr. Wells?

9 SUBMISSION BY THE CANADIAN UNION OF PUBLIC EMPLOYEES -

10 MR. WELLS

11 MR. WELLS Thank you, Mr. Commissioner. We in C.U.P.E.
12 have been very pleased to have been able to be part of
13 this Inquiry and hope that these verbal comments and a
14 written submission to follow will enable you to work
15 towards your goal of making recommendations.

16 I also think this morning as I start, that we should
17 be reminded of ourselves that good can come out of an
18 Inquiry like this, and I remember back to the double
19 fatality on the highway near the airport in 1988, and at
20 that time in Nova Scotia we killed between one and four
21 people on the highway every year doing traffic control or
22 temporary workplace traffic control work. And we haven't
23 had a fatality since that Inquiry, and I think largely
24 that comes from the Inquiry and from the comments that
25 the judge made at the time, reminding people of their

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1 responsibility.

2 At that time the Province of Nova Scotia was able to
3 write a complete manual and have it in place in five
4 weeks, so things can happen.

5 With that said, looking at the Westray situation,
6 there has been a lot of conflicting evidence about how
7 gassy this Foord seam of coal was. The evidence cannot
8 dispute, though, the fact that the Pictou County region
9 has a horrific history of death and destruction in the
10 coal mines, and history seems to repeat itself.

11 In spite of this wealth of historical knowledge, the
12 Pictou County coal seams, management showed little
13 concern. If we have any doubt about that, we need only
14 to look at the training the miners and the supervisory
15 staff had.

16 Westray hired under-qualified managers and
17 engineers, and with no underground and/or coal mining
18 experience. Too few underground coal miners were hired.
19 This meant at times they didn't have enough certified
20 miners. The company had no true monitoring programs for
21 dusty and gaseous conditions. They did, though, permit
22 ongoing violations of the Occupational Health and Safety
23 Act, and the Coal Mines Regulation Act.

24 Were that not enough, they fostered a reign of
25 terror so that the workers and the management personnel

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1 were afraid to take any action to stop violations.

2 Staff had little choice, put up with the conditions
3 or quit. Many could not afford to quit because of the
4 commitments they made to the company over moving
5 expenses. There were those that tried to quit, only to
6 be told that they would be disqualified for receiving
7 unemployment insurance, and we heard that that came about
8 after people had visited the mine site from the
9 Unemployment Insurance Commission locally and determined
10 for themselves that the mine was safe after talking with
11 management and hearing about a safety award that had been
12 awarded.

13 Any time someone raised a complaint about health and
14 safety to management, they were told if they didn't like
15 it, there were thousands who wanted their jobs.

16 We heard of workers being told to get rid of safety
17 glasses in the mine, that there was no room for that kind
18 of safety in the mine.

19 A culture developed of "Hear no evil; see no evil."
20 Several witnesses told of the mine manager's screaming at
21 the crews in the dry, that somebody had gone to the
22 Department of Labour with a complaint, and he was going
23 to find out who it was. This was a dreadful, illegal
24 intimidation that went unchecked.

25 There did not seem to be anyone in charge of health

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1 and safety. There was no proper training done, there was
2 never a full health and safety committee meeting, and the
3 few on the committee were often inappropriately appointed
4 and were not given training as to how and what they were
5 to do. The committee did not know the law that they were
6 working under and were not performing the functions
7 outlined in Section 20 of the Occupational Health and
8 Safety Act.

9 The "training person" had no knowledge of the
10 requirements for health and safety training, no knowledge
11 if it was, in fact, taught and was never in the mine to
12 know if it was effective.

13 The chief engineer at Westray had no coal mining
14 experience, and though he signed documents and plans, he
15 claimed to have no responsibility for the safety of the
16 men working in the conditions he designed or at least
17 approved.

18 He continued to claim this even after admitting that
19 he has seen the very hazardous practice of standing on
20 top of the roof bolter and not doing anything about it.
21 Even now he declines to accept any responsibility,
22 choosing to try to leave the responsibility to
23 operations. We heard a few weeks ago that Mr. Clow also
24 admitted seeing the same practice of men working on top
25 of the bolters.

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1 The politicians were extremely involved with the
2 development of this mine but were unconcerned about
3 safety, even those whose constituents would be working in
4 those mines expressed no concern. Even worse, when
5 concerns were raised, they dismissed them as political
6 interference.

7 Cameron and MacKay must have been aware of the mines
8 in their area. Disaster after disaster has occurred.
9 Their only concern seemed to have been to smooth the way
10 for the management group to get funding and permits so
11 the mine could become operational.

12 This is a coal seam that has caused significant
13 death and maiming. The Federal Government's report
14 recommended not going ahead with the project, and it did
15 raise safety as an issue. This was ignored by all
16 politicians in power. The response to politicians about
17 safety concerns was to parrot the original proposal by
18 Curragh. Everyone lifted the convenient catch phrase,
19 "leading edge mining technology."

20 It was proposed that the so-called "new technology"
21 would take care of the poor safety conditions. This was
22 endorsed by the politicians.

23 Curragh's proposals were notable by their absence of
24 any detailed health and safety proposals. No politicians
25 raised health and safety as an issue to be dealt with

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1 before lending support to the project. To this day none
2 have admitted any regret that they did not do more about
3 health and safety or that they ignored the history of the
4 seam and the concerns of the Federal report. They did
5 not even ask their own health and safety officials to
6 prepare a report.

7 There has been a complete lack of an expression of
8 personal responsibility. If there were any question of
9 the interests and the sincerity of the politicians, it
10 evaporated with the bizarre and callous remarks of Donald
11 Cameron's evidence. His contention was that the miners
12 were to blame, based on rumour and driven by the need of
13 a scapegoat.

14 The Department of Labour's Health and Safety
15 Division's role in the events leading up to the disaster
16 was shameful. From the Minister down the chain of
17 management to the inspectors, they exhibited complacency,
18 incompetence, and a complete lack about health and safety
19 in Westray.

20 Their action or lack of action allowed the employer
21 to violate the very health and safety law that was put in
22 place to prevent the disaster.

23 Given the history of this seam, they should have
24 known that such a disaster was inevitable if strict and
25 proper prevention measures were not taken. Yet they did

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1 not require that an independent, properly trained and
2 qualified examiner be appointed. Instead the front-line
3 supervisors were given the title but had told the Inquiry
4 they could not have performed that task.

5 The Division did not require that a proper, regular
6 monitoring program be introduced to measure dust and gas
7 levels. That could have been required before the
8 exemptions were ever given to take the non-flameproof
9 equipment into the mine. In the absence of such a
10 program, they did not set up their own monitoring
11 program. The evidence given to us was that the Executive
12 Director said, "No, we don't do testing. That's the
13 employer's responsibility."

14 This logic is totally inexcusable. While the
15 Division may not be in the testing business on a
16 consultation basis, certainly for enforcement purposes,
17 they must be.

18 What this shows is there was no intent to enforce
19 the health and safety laws. If a traffic police, when
20 were not allowed to sample speed on the highway, there
21 would be chaos. At Westray there was total disaster.

22 To expand the traffic analogy, the Division's
23 request for dust sampling only amounts to a police
24 officer asking motorists to use a speedometer.

25 When they became aware of violations, they still did

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1 nothing to rectify this situation. They, in fact,
2 ignored the violations and, in many cases, allowed them
3 to continue.

4 The no-monitoring program went on and on.

5 They did nothing about the implemented 12-hour
6 shifts.

7 They knew or should have known that they were
8 working in unapproved sections. The mine continually
9 took acetylene torches underground. Nothing was done,
10 and at times we know that there were inappropriate or a
11 lack of mining examiners.

12 They did not write orders, and in most cases, they
13 refused to investigate further when those violations were
14 brought to their attention.

15 All of this, their supervisors had no method of
16 determining if the inspectors were doing their jobs
17 competently. In fact, the overall evidence seems to
18 point to the fact that they were doing their jobs exactly
19 as their bosses wanted them to, that is, not placing any
20 restrictions on the Westray operations.

21 This was highlighted by the contrasting evidence
22 given by the two Deputy Ministers. When the inspectors
23 were with the Energy, Mines and Resources Department, the
24 Deputy Minister insisted on a hands-on supervisory of his
25 officials with frequent and very detailed reports. He

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1 also had very specific instructions on what action his
2 officials must take when they find violations.

3 He suggested that the inspectors under his
4 department would have been expected to shut down the work
5 if they found serious violations of the Act and
6 Regulations. He said it was part of their operating
7 procedures. That changed when the mining inspectors were
8 reassigned to the Department of Labour. The Deputy there
9 only received reports if there was a political issue that
10 arose. He did not even accept the assistance offered by
11 John Laffin, Natural Resources Deputy Minister, to ensure
12 a proper amalgamation of the mining inspectors.

13 It would seem that the move to the Department of
14 Labour greatly changed how the mining inspectors
15 conducted their duties. As a result, the mining
16 inspectors adjusted to the philosophy of the Department
17 of Labour's Executive Director of Health and Safety and
18 acted accordingly. They ignored the violations, and they
19 exhibited no interest in finding out what was actually
20 happening.

21 For example, there was extensive evidence given
22 about roof conditions and the employees' and the
23 inspectors' concern about roof falls. Yet not once did
24 they go down to see the miners actually conducting roof
25 support work in the cavities that were created by the

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1 roof falls. They have high praise for management because
2 they hired consultants to investigate the problem, and
3 yet they did not investigate themselves.

4 They seemed to accept the premise that the employer
5 was hiring consultants to deal with the health and safety
6 issue. In reality, the consultants were dealing with an
7 engineering issue that would determine the future of the
8 mine. Health and safety was a secondary issue.

9 Had health and safety been the issue, the
10 consultants would have been addressing the unsafe
11 practice the workers faced in bolting the cavities caused
12 by the roof falls. The health and safety department
13 refused to hire its own consultant, and their own
14 engineer apparently was not qualified enough to conduct
15 an investigation of roof mechanics, rock mechanics.

16 The inspectors gave miners little chance to complain
17 to them. They always told the mine when they were
18 coming, and they had management with them. What
19 complaints they got from the miners, they ignored. As a
20 consequence, the miners had little faith in the
21 inspectors but saw them as a tool of management.

22 One only needs to look at the Carl Guptill case. A
23 man calls the Director of Mine Safety, listing numerous
24 concerns, has a meeting with two or more inspectors, only
25 to have his concerns reduced on the Division's

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1 correspondence to one accident. Although two inspectors
2 produced statements of Carl Guptill's accident, and he
3 signed one of them, the statement sent to Claude White
4 was prepared by the employer and was unsigned. This does
5 not show an unbiased approach.

6 While a system of checks and balances was supposed
7 to be in place in the Division, no one would show us what
8 those were. The evidence was that from the Minister on
9 down through the Deputy Minister to the Executive
10 Director to the Director of Mine Safety and to the
11 inspectors, no one asked or seemed to care about Westray
12 or what was going on in their area of responsibility,
13 i.e., safe operation of that mine.

14 The attitude was, "If I don't hear anything, then
15 that means everything is good."

16 There were no programs or policies in place to
17 ensure that compliance with the Act and Regulation was
18 taking place. No checks and balances in place to
19 determine that the safety programs were being followed.
20 Neither did the Division have a method of assessing how
21 well its staff performed in assuring the safety of the
22 workers under its jurisdictional coverage. The hear-no-
23 evil-see-no-evil syndrome extended to the division.

24 This was the Department of Labour's Occupational
25 Health and Safety Division's mode of operation and the

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1 Executive Director, who was left alone to run his
2 division as he saw fit. As a result, incompetence was
3 common and condoned as long as it did not raise political
4 complications. A pro management philosophy was instilled
5 throughout the ranks of the division. No process was put
6 in place to make sure those charged with responsibilities
7 were accountable. And so the Executive Director, who had
8 a drinking problem, allowed and encouraged the philosophy
9 of noninterference, nonenforcement.

10 In other unionized industries, there were complaints
11 about the mode of operation and the philosophy that
12 pervades the division. The director ignored written and
13 oral complaints about his department's reluctance to
14 enforce health and safety laws. He was allowed, and thus
15 encouraged, to ignore such complaints.

16 The Canadian Union of Public employees wrote letters
17 complaining about the direction of the department and
18 their nonapproach to the IRS. Those complaints were
19 either directed to the executive director, the deputy or
20 the various Ministers and had no effect. In fact, a
21 Minister even took exception to our comments. The
22 Minister and subsequent Ministers did not intervene to
23 make changes. The Deputy Minister did not intervene to
24 make changes.

25 We were told that they did try to deal with this

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1 drinking on two occasions and that his approach with
2 people might be too gruff. And so the division became
3 less and less effective in enforcing the Act and
4 Regulations.

5 As a result, the most dangerous coal seam in North
6 America went unregulated as far as the dust and gas
7 ventilation were concerned, the most crucial issues in a
8 coal mine. Those performing division responsibilities
9 did not, would not, could not act. The Health and Safety
10 Act and the Coal Mining Regulations Act failed to protect
11 the miners in Westray, not because they were greatly
12 inadequate but because they were not enforced by those
13 charged with that responsibility.

14 The whole system failed the miners at Westray and
15 yet during these hearings, we have heard no admission of
16 regret or remorse, let alone an admission that perhaps
17 the actions could and should have been taken to prevent
18 the disaster, and that might have changed this morning.

19 The employer, right from the inception of his
20 proposal, ignored the needs for a significant and
21 detailed health and safety program. They allowed
22 violations of the occupational health and safety law in
23 their rush to produce coal. For those who complained,
24 the response was intimidation and a choice between
25 working in an unsafe environment and losing their jobs.

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1 The government officials, whose sole responsibility
2 should have been to protect the workers against such a
3 disaster from happening at Westray, were incapable of
4 acting. They had no will to act when they became aware
5 of violations of the law. Their prime objectives seem to
6 have been to visit the mine and approve what management
7 was doing.

8 The inspectors admitted their incompetence regarding
9 a new mining technique. One inspector admitted he had
10 not been in a coal mine in 15 years. However, they
11 ignored the area where the law was specific and detailed
12 in the dust control and gas control. They finally did
13 write an order on the lack of rock dust in the mine but
14 did not stop work until it was provided. Nor did they
15 follow up to insure that it was provided.

16 The politicians put safety issues on a low priority
17 list and did not concern themselves about the safety of
18 their constituents who were to work in the mine. "Jobs
19 at all costs" were their credo. Even to this day, none
20 of them have admitted the cost was too high.

21 How could a system have failed so drastically
22 repeatedly? Internal responsibility has been used to
23 describe the preferred method of administering
24 occupational health and safety programs at the work
25 place. However, as shown by the evidence given, it has

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1 been used as an excuse not to have occupational health
2 and safety programs in place.

3 Internal responsibility has been the excuse for not
4 acting when it was obvious that the IRS system was not
5 working. IRS should not be accepted as working when
6 there are on-going violations of the Act and Regulations
7 and where there are on-going accidents and near misses.

8 Employers find it convenient to pretend they have an
9 internal responsibility program. Politicians use
10 internal responsibility as a catch phrase. Government
11 officials have relinquished their role as enforcers of
12 the law to the internal responsibility system. And it is
13 and was responsible for the Westray disaster.

14 So how should internal responsibility work? Work
15 place groups should develop health and safety policies
16 and programs based on the work site conditions. This
17 should be done through joint worker management health and
18 safety committees. Those sitting on committees must be
19 competent and fully trained to ensure they can develop
20 the programs. Proper time must be allowed to conduct the
21 duties. A proper monitoring program must be implemented
22 to ensure the programs are followed.

23 Government's job must be to enforce the laws of the
24 Province. The occupational health and safety laws have
25 internal responsibility as the system that is to drive

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1 the occupational health and safety laws. Therefore, the
2 health and safety division must particularly enforce
3 those sections of the law that govern the workings of the
4 internal responsibility system.

5 If it is to be taken seriously, inspectors should be
6 mandated to actively enforce and pursue prosecution where
7 possible of discriminatory action against workers for
8 using their right under the Act when there's a failure to
9 have a committee, failure to develop comprehensive health
10 and safety policies and programs, failure to provide
11 information to committees, and where there's interference
12 in the committee's duties.

13 Once a policy and program and is developed by the
14 committee, that should become the standard for that work
15 place. Violations of those policies and programs should
16 become violations of the Act and should be enforced by
17 the inspectors.

18 Section 9 of the Occupational Health and Safety Act
19 states: "Every worker shall take every precaution that
20 is reasonable in the circumstances to: (a) ensure the
21 health and safety of persons at or near the work place."
22 And that remains the same in the new Act. If those
23 workers or those employers, rather, have agreed with the
24 committee, then it must have been reasonable and should
25 be carried out and enforced.

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1 To guide health and safety inspectors, a proper
2 enforcement policy must be put in place by the Province.
3 The Province must insure the cost of violating the law is
4 significantly higher than the cost of compliance. There
5 must be high expectations of being detected if violations
6 occur. All violations must be recorded and acted upon.
7 Continue to violations must result in higher penalties.

8 An administrative penalty system must be introduced
9 to provide inspectors with a tool to assess penalties
10 without resorting to prosecutions and going through the
11 courts. The proposed underground mining regulations need
12 to be reviewed to see if the concerns discovered at this
13 Inquiry have all been addressed.

14 In the new Act, there are some attempts to give a
15 wider and more detailed scope to the internal
16 responsibility system. This might have been somewhat
17 hampered by the division's role in the development of the
18 Act and their interpretation of the division's role in
19 the IRS. If the department does not develop a
20 comprehensive enforcement policy and procedures, the
21 internal responsibility system will continue to be a
22 barrier to the better prevention programs, not the
23 progressive vehicle that it is supposed to be.

24 Mr. Commissioner, in making recommendations, you
25 might want to consider the new Occupational Health and

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1 Safety Act. Are there areas in that Act that need
2 further review either in the text themselves or the
3 administrative policies the division should employ in
4 their enforcement?

5 As I reflected on the Act, I think you might be
6 interested in, and I'll just go through a few sections.

7 First would be Section 2(d). This section might
8 understate the division's role to intervene.

9 Section 11. This section could allow the Natural
10 Resources staff to become involved in some form of
11 enforcement under the direction of the division.

12 Section 21. This section is designed to ensure
13 accountability of professional engineers. In view of
14 some of the evidence, consideration should be given as to
15 whether this includes all mining engineers.

16 Section 28. The occupational health and safety
17 program is an important new section. Would it be
18 adequate with the new proposed mining regulations?

19 Sections 35 through to 40 deal with, hopefully,
20 better communications of information to the committee and
21 workers.

22 Section 42 allows workers to be present for work
23 place monitoring and sampling.

24 Section 43 is a slightly changed refusal system that
25 might better enable workers to refuse unsafe work.

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1 Section 45. This section tries to fix up the method
2 of correcting cases of discriminatory action. This
3 section still seems to focus on correcting the wrong but
4 not punishing the offender.

5 Section 67 introduces an appeal process for the
6 first time.

7 These, of course, are just a few of the areas of
8 change in the new Act and I personally have spent
9 hundreds of hours working on the many drafts of the Act
10 before it went to the Legislature and would be more than
11 willing at a later date to answer any questions as to the
12 rationale and the consensus issues involved in the
13 development of that Act.

14 In closing, I want to emphasize that a conspiracy
15 permeated this tragedy. A conspiracy of see-no-evil-
16 hear-no-evil. The third part of the quotation is speak-
17 no-evil.

18 I want to suggest that the Commission should address
19 the third part when it makes its report. The Commission
20 should speak about the evil that took place and should
21 identify that the parties involved have acted evilly in
22 their actions, not only before the disaster but since the
23 disaster because of their lack of candour, their failing
24 to take any responsibility, and their on-going support of
25 a system that puts profits and growth above the lives of

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1 people. That's the evil that must be addressed and
2 answered by you. Thank you.

3 MR. COMMISSIONER Thank you, Mr. Wells. We'll recess
4 for 15 minutes at which time we'll come back and we'll
5 hear from you, Mr. Burchell.

6 HEARING RECESSED (TIME: 11:05 a.m.)

7 HEARING RESUMED (TIME: 11:20 a.m.)

8 MR. COMMISSIONER Thank you. Okay, Mr. Burchell.

9 MR. BURCHELL Thank you, Mr. Commissioner.

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11 I haven't prepared any notes here. I may not use my
12 45 minutes, but then again, I may.

13 MR. COMMISSIONER I'll be crushed.

14 MR. BURCHELL I guess we'll have to play it by ear.

15 But, on behalf of Brother MacArthur and myself, we would
16 like to thank you for the opportunity to have
17 participated in this Inquiry, and we certainly hope that
18 when the day comes to an end that something positive for
19 the workers and some closure will come from this for the
20 family members.

21 It's rather ironic that I come here today to make
22 oral presentation to this Inquiry. Today is the first
23 day of the annual miners vacation for the coal miners in
24 Cape Breton and, unfortunately, there's 26 miners that
25 will never get to have that experience nor their families

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1 to share that with them again.

2 As we've all seen through the last 70-odd days of
3 testimony at the Inquiry here, I think everyone can come
4 to one conclusion that coal mining is a very hazardous
5 occupation and it's not something that should be taken
6 lightly.

7 I am glad that I did come here today to get to meet
8 Mr. Enhart's[sic] twin because it's certainly a long way
9 off from what I've heard from my experience at the
10 Inquiry over here. And I guess in a way I'm glad to see
11 that the Government of Nova Scotia is now finally taking
12 a bit of responsibility for what did take place at
13 Westray.

14 We've heard over and over again, and you'll probably
15 hear in the recommendations that go forth to you at the
16 end of this Inquiry about revamping legislation and
17 looking at different codes and we will also be making
18 recommendations to that effect.

19 But something that we may be overlooking and we've
20 heard it from some of the statements given here today
21 that we had inspectors that were ill-equipped with the
22 new technology of this mine and I think that is a
23 disgusting, shameful excuse for what took place at
24 Westray.

25 There's nothing new about coal dust in coal mines

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1 and how to regulate it and how to control it. There's
2 nothing new in how to ventilate a coal mine properly.
3 And there's nothing new about the proper equipment that's
4 to be used in a coal mine. And there are regulations
5 that are on the books now, although they are not up to
6 spec to the modern coal mining technologies that are in
7 use today, those regulations are certainly there to cover
8 what took place at Westray and to make sure that it was
9 dealt with properly under the current regulations that
10 are in place.

11 Unfortunately, there was a long chain of events that
12 took place at Westray that led us to where we're at here
13 today, and I think maybe we wouldn't be here today or had
14 been here over the last 70-odd days and May 9th, 1992 may
15 not have happened if proper coal mining common sense had
16 been used at Westray.

17 Some of the things that the mine workers are going
18 to be asking you, Justice Richard, is to look very
19 carefully at what took place over the last 70 days of
20 testimony here. There's been a lot of evidence
21 submitted, a lot of experts have testified, and we
22 commend you on your extra curricular activities. We know
23 that you've taken it upon yourself to go to other areas
24 where mining is high on the agenda. MSHA, my
25 understanding is that you have visited the Mining Academy

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1 at Beckley and you've spoken to many experts, and I would
2 hope that you would share any knowledge that you gain
3 through your visits and your discussions with the other
4 counsel here so that they, too, will have a better vision
5 of what proper coal mining should be and what regulations
6 should be in place.

7 When we look at what took place at Westray, it makes
8 one wonder, I guess. I spent the last several weeks
9 writing down notes preparing for this oral presentation
10 and they all ended up in the garbage because it seemed
11 like I just couldn't put down on paper what I wanted to
12 say here. And I don't know, I guess I could use the
13 excuse that someone broke into my hotel room last night
14 and stole my presentation because it looked a lot like
15 Brother Wells'. I commend him on his report because I
16 think there's not too much that he hasn't touched that
17 went on in the last 70 days of testimony here.

18 MR. COMMISSIONER I would be surprised if you didn't
19 have a lot in common with Mr. Wells, Mr. Burchell.

20 MR. BURCHELL Well, when I come up here last night, my
21 wife and I went down to the monument. I wanted her to
22 see what a beautiful job the families have done to keep
23 the memory alive, and my wife was really taken back by it
24 and felt very sad that, you know, that there hasn't been
25 a closure and how terrible the families must feel when

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1 they go there every day and not knowing what really
2 happened or if they'll ever know what really happened.
3 When she made those comments to me, I guess I felt a
4 strong sense of anger. From someone who has worked in
5 the mining industry and has been involved in the mining
6 industry over the past 20 years, I'll go back to one of
7 my opening remarks: Common sense mining practice would
8 have prevented this.

9 And I think the Province of Nova Scotia has to take
10 some kind of responsibility and have to be accountable
11 because they are the government. They are in charge of
12 the natural resources of this Province. They were a part
13 of the group that pushed to have this coal mine opened
14 and to have it operational. The same government that in
15 1979 commissioned a study on energy for this Province
16 that said that coal seam should only be used for
17 degasification. That the only coal mining that should be
18 done in this area is in the Stellarton-Westville area and
19 that the Foord seam in that area should be used for
20 degasification.

21 So, in 1979, it was documented by this government
22 the dangers of mining coal in that area. But yet all of
23 those dangers were side-stepped for the almighty buck and
24 the almighty political vote. That's what it all boils
25 down to here.

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1 I'm very disappointed that the Federal Government
2 did not give an oral presentation here today because
3 their bureaucrats were ones who fought to stop the
4 opening of the Westray Mine because of the dangers that
5 existed in that coal seam, and it's unfortunate that they
6 didn't elaborate more on their reasoning to this
7 Commission today. And I would hope that in their written
8 submission that they elaborate a little more on why the
9 bureaucrats in Ottawa felt that it was not a good
10 financial bet to open Westray.

11 But, unfortunately, those are things that we can't
12 change. It's happened. It's in the past. The mine was
13 opened. I don't know.

14 I guess it's your mandate not to point the finger or
15 to put the blame on anybody. I commend you for pursuing
16 the subpoenas to go out of province to have it mandated
17 that they be allowed to subpoena out of province. And
18 maybe you should go one step further with that, Mr.
19 Commissioner.

20 Maybe you should go the step that Commissioner
21 Krever went in his Inquiry. Maybe you should change your
22 mandate. Because who gave you the mandate? The Province
23 of Nova Scotia gave you the mandate. The Premier of the
24 day was a contributing factor to Westray. So maybe you
25 should sit back and re-evaluate your mandate and look at

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1 ways within the law that you might be able to change that
2 so that there could be some closure put on what took
3 place at Westray.

4 Some of the things that went on at Westray, we've
5 heard a lot of testimony here, a lot of it was
6 contradictory to other people that testified. A lot of
7 witnesses had very little memory of what took place. And
8 sometimes that's understandable. It was four or five
9 years ago. But a lot of witnesses had very selective
10 memory and a lot of witnesses couldn't recall. But, of
11 course, being a judge, I'm sure that's not the first time
12 you've been faced with something like this from your
13 years of experience. And I just hope that you will
14 consider what those witnesses have to lose and what they
15 have to gain and maybe that will help you better
16 understand who was telling the truth and who wasn't
17 telling the truth. Because the public and the families
18 deserve to know what really went on at Westray, what
19 their family members were put through. It needs to come
20 out and you're the man to do it.

21 Now on August the 9th, we'll all be submitting
22 written recommendations to you on things that we feel may
23 prevent another Westray from happening. I've been
24 involved in other inquiries and the unfortunate thing
25 about inquiries is that they're not mandated to be law.

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1 The Provincial Government, or whoever the Inquiry is
2 acting on behalf, will decide what to do with those
3 recommendations.

4 And I implore Mr. Roberts, Mr. Hebert, Mr. Wells,
5 Mr. Clarke, along with our organization, that once your
6 recommendations are made and once the dust has settled on
7 this Inquiry, that we pick this Inquiry up because that's
8 not the end of this Inquiry. That's then the start of
9 this Inquiry as far as we're concerned and the workers of
10 Nova Scotia and the rest of Canada are concerned.
11 Because we've got to see to it that no longer will
12 Inquiry recommendations be put on shelves by bureaucrats
13 to look at once in awhile or to dust. They have to be
14 implemented and acted on and legislated. And if your
15 recommendations, in our opinion, and we will meet and we
16 will go over them. And if we feel, which from my
17 knowledge of you from this Inquiry, I certainly believe
18 will be valid legitimate recommendations, then that's
19 when our fight starts to make sure that the Government
20 act on those recommendations and not just give them air
21 time. But I can assure you, Mr. Commissioner, that if we
22 feel that your recommendations are not in the best
23 interests of the workers of Nova Scotia, then we will
24 certainly be fighting those recommendations and trying to
25 implement our own through the government bodies. But,

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1 fortunately, from watching the way you've conducted this
2 Inquiry, I don't think we have that problem facing us.

3 There's areas that you're going to have to take a
4 serious look at it when you make your recommendations and
5 I'm sure you're going to get a lot of help from Mr.
6 Roberts, Mr. Wells, Mr. Hebert and myself, Brother
7 MacArthur. But there are some of those areas that
8 haven't been mentioned here today and one particularly
9 that I'm certainly going to be putting forward to you in
10 our written submission is some changes, not only made to
11 the Labour Act.

12 I mean, if we look back at since Westray, I think
13 we've had four or five Labour Ministers in this Province
14 in the last four years. I don't recall seeing any of
15 them appear before this Commission as a spectator to even
16 see what took place at Westray. That tells me the
17 Province of Nova Scotia still does not care. They just
18 want to cover their butts. And I commend Mr. Endres,
19 he's tried to do a good job of that, but his twin showed
20 up today and took that away. Because they finally showed
21 some accountability. And the onus is now on us to see
22 that they deliver.

23 And we're going to get a lot of excuses from the
24 Provincial Government that budget restraints, this is
25 going to be costly, but we can't allow that to interfere

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1 with our mission. Because let me tell you, one worker's
2 life is too damn costly in this Province.

3 One of the saddest missions that I've ever had to go
4 on was shortly after the Westray Explosion. I had to go
5 and deliver 26 Bibles. No man should ever have to do
6 that, Mr. Commissioner. No man should ever have to look
7 at a widow or their children and give them a Bible in
8 memory of their husband.

9 And I hope that the Province of Nova Scotia acts on
10 the recommendations that come from this Commission and I
11 will give my commitment to the families that we will
12 pursue it to no end. Our full being will be committed to
13 see that the Government does act on them.

14 But we've also got to look at other areas. I don't
15 think we can depend and I don't think we can put all of
16 our eggs in one basket here. It's already failed. The
17 Inspectorate has already failed. I think we have to look
18 at some other form of Inspectorate over and above the
19 Inspectorate, whether it be an ombudsman-type department
20 set up specifically with no government interference,
21 where that individual has the proper knowledge and
22 training of the occupational health and safety and the
23 work force and have the authority to enter any work place
24 and investigate any complaint made by any worker on a
25 confidential basis so that worker does not have any fear

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1 of intimidation. And that individual or that department
2 should also have the authority to take action against the
3 Inspectorate if they feel the Inspectorate have not done
4 their job properly. And I think that's an area that you
5 should look at in your final summations.

6 I think the Trades Union Act of this Province is a
7 vital part of this Inquiry. Not only the mining. It's a
8 vital part and I know first-hand because I was the person
9 involved in the organizing drive at Westray and those men
10 were scared to death of their jobs and their livelihoods
11 to even talk to a union representative. And we should
12 maybe look at other provinces, like British Columbia as
13 an example, on changing some certain areas of our Trades
14 Union Act to make it easier for a worker to be protected
15 without fear of loss of job or intimidation.

16 The Province today stated that they made a lot of
17 changes since 1992, that they've come a long way. I
18 haven't seen any of those changes and I represent workers
19 in this Province. I don't think they've come a long way.
20 I don't see the inspectors being trained as they say they
21 are, in fact, to the contrary. We've got people going in
22 and inspecting strip mines that were spoken about by the
23 Town of Stellarton today that still don't have any mining
24 experience. We've got mine inspectors going in and
25 conducting votes on labour relation issues because in

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1 1985, they threw the baby out with the bath water. They
2 combined four departments and put them all under one and
3 made a mess out of it. Instead of being progressive,
4 they were regressive and we're now paying the price for
5 it.

6 I don't envy you, Commissioner Richard, Justice
7 Richard. You have a big task on your hands and you're
8 going to be watched very diligently and very closely by
9 us, the labour representatives in the Province of Nova
10 Scotia. And we're going to expect a lot from you. From
11 watching you over the last several years, I've noticed a
12 lot of compassion and a lot of interest in what took
13 place here, and I would certainly expect you to deliver
14 on my expectations of you as an individual.

15 I think you realize the importance that the worker
16 plays in this province and they're not someone who should
17 be pushed aside for the almighty dollar. It's about time
18 Nova Scotia became known for its workers' rights and its
19 safety legislation and not known because it is the only
20 Province in Canada with the highest mining fatality rate.
21 When are we going to learn? When are we going to start
22 implementing recommendations? When are we going to stop
23 slaughtering coal miners and workers in this Province?
24 And that's exactly what's been happening. We have an
25 Inquiry.

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1 Mr. Wells mentioned that there's been no fatalities
2 on the highway since the Inquiry into the two fatalities
3 at the airport. We had an Inquiry back in Glace Bay
4 numerous years ago called the Elfstrom Inquiry. Plugging
5 up the sniffers. We never learned anything from that.

6 The Coal Mines Regulations Act was never changed.
7 It was never changed. They call us in as labour groups
8 and say we want to form a committee, we want to meet on
9 revamping the Coal Mines Regulations Act. Anyone who
10 would come to Nova Scotia and pick that Act up who wants
11 to open a coal mine and make a lot of money, all they
12 have to do is pick that Coal Mines Regulations Act and
13 laugh their way to the bank. There are still areas in
14 there for pit horses. They still talk about pit horses.
15 And you know the sad part about it, Commissioner, when we
16 had pit horses in the mines, there's an old saying that
17 miners had about pit horses, "You look after that pit
18 horse. You don't let him go under a bad roof." And when
19 a miner would ask the boss, "Why can't the pit horse go
20 under a bad roof but yet we have to go under it?" The
21 boss would tell him quite clearly, "We've got to buy
22 another pit horse if it gets killed. We can replace you
23 up on the street."

24 And, you know, it's a sad state of affairs that that
25 is still the feeling of some of the corporate elite in

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1 this Province in this country. That they know there's
2 5,000 unemployed people out on the street that will take
3 your job tomorrow. So you do what you got to do. If you
4 don't like it, hit the streets. It's time that that has
5 stopped. That has to stop and I would hope, Mr.
6 Commissioner, that based on our recommendations to you
7 and your recommendations to the Government, which I would
8 hope would incorporate a lot of the recommendations that
9 come from the representatives of labour at this Inquiry.

10 And then I would hope at the conclusion of those
11 recommendations that we don't walk away from the museum
12 in Stellarton here and say, well, it's over. Because
13 it's not over. It's not going to be over until all those
14 recommendations that are [parole?] to the safety, health
15 and safety of the workers of this Province are enacted in
16 legislation and they are enforced. And I'm not going to
17 rest until that day comes.

18 And I hope this has been a real experience for you,
19 Commissioner Richard, and I hope that you make it one of
20 your main goals to see that your recommendations be
21 legislated where need be and that the Government don't
22 have to put up like that filing cabinet over there where
23 they can collect dust until something happens 10 or 15
24 years down the road and people go to them to get notes to
25 give at the next Inquiry.

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1 We've got to stop killing our workers. We've got to
2 stop leaving our families without parents. And we've got
3 to stop making widows in this Province. That's not what
4 we're all about. Thank you.

5 MR. COMMISSIONER Thank you, Mr. Burchell. Just a
6 couple of points I'd like to get clarification. I think
7 maybe I'm misunderstanding. When No. 26 had the accident
8 that resulted in the appointment of the Elfstrom Inquiry,
9 was Devco in existence then?

10 MR. BURCHELL Yes.

11 MR. COMMISSIONER Or was that under the Province? So
12 it was provincial legislation?

13 MR. BURCHELL It was Devco.

14 MR. COMMISSIONER Huh?

15 MR. BURCHELL It was Devco but --

16 MR. COMMISSIONER So it wasn't provincial legislation.

17 MR. BURCHELL It wasn't provincial legislation but
18 something that we keep forgetting here. All the
19 inspectors and all of the coal miners in Devco, the coal
20 miners in Devco are tested under Nova Scotia legislation.

21 MR. COMMISSIONER Yes, I realize that, yeah. I see,
22 that was your point.

23 MR. BURCHELL Yes.

24 MR. COMMISSIONER Okay, fine.

25 MR. BURCHELL Are mine overmen the bosses at Devco?

SUBMISSION OF UNITED MINE WORKERS - MR. BURCHELL

1 They're trained and inspected and tested and qualified
2 under Nova Scotia legislation, not under federal
3 legislation. They work under federal legislation, but
4 when it comes to getting their competency, that's the
5 word I'm looking for, I guess, their competency is based
6 on the Nova Scotia --

7 MR. COMMISSIONER Okay, I partially misunderstood you
8 then. Thank you, Mr. Burchell. The only other point, I
9 say this in defence of past government reaction to
10 Commissions of Inquiry that the last one that I have
11 recollection of was the Marshall Inquiry and, indeed, the
12 reaction of the Province to that was very swift and very
13 decisive. So, hopefully, that is the legislative
14 environment that this Inquiry will be in also. Okay,
15 thank you very much, sir.

16 Mr. Clarke?

17 MR. CLARKE Thank you, Mr. Commissioner.

SUBMISSION OF N.S. FEDERATION OF LABOUR - MR. R. CLARKE

19 On behalf of the Nova Scotia Federation of Labour, I
20 would like to thank you for the opportunity to make our
21 oral submission to you and that we will be following up
22 with a more detailed written submission in conjunction
23 with the other parties. Whereas our time is fairly
24 limited, I will be focusing primarily on the internal
25 responsibility system and the enforcement of or lack of.

SUBMISSION OF N.S. FEDERATION OF LABOUR - MR. CLARKE

1 I would like to begin by supporting the positions
2 made by Brothers Wells and Burchell and also to say that
3 we're very pleased to see through the Province's
4 presentation that they have accepted some responsibility
5 for what took place and that we could have done more as a
6 legislative regulatory body, which is somewhat different
7 than what we had heard out of a previous premier where he
8 pointed and blamed everyone else other than the
9 regulatory system.

10 I would like to point out, though, also after
11 hearing the concern of where occupational health and
12 safety is today, or since 1992, that things aren't all
13 well, and that Westray, I would suggest to you, is a
14 tragic reality of what's wrong with occupational health
15 and safety in Nova Scotia, both in 1992 and today. It's
16 a reflection of what happens when an internal
17 responsibility system is left on its own. It's what
18 happens when government does not place a priority on
19 occupational health and safety and protection of workers.

20 Reference has been made and evidence heard or
21 submitted and, again, reference made on the McKeough
22 Committee and the IRS. Well, the Nova Scotia Federation
23 of Labour has been involved in the McKeough Committee,
24 but also under the current review of the Occupational
25 Health and Safety Act and Regulations, and I personally

SUBMISSION OF N.S. FEDERATION OF LABOUR - MR. CLARKE

1 have been involved and am a member of the McKeough
2 Committee.

3 And I want to, I guess, put before you that the view
4 that we have as a labour movement is that in 1985 when
5 the report of the McKeough Committee had been adopted
6 into legislation, the government of the day, and
7 supported by governments after that then walked away from
8 because of the IRS system, walked away from their
9 responsibility of occupational health and safety in our
10 work places.

11 The McKeough Committee had some fear that this would
12 happen and had offered, and it is in documentation, had
13 offered to be retained to develop regulations to support
14 the Occupational Health and Safety Act and also a matter
15 of public record is that the labour movement since 1985
16 had been actively pushing for the adoption of proper
17 regulations to support the new Act rather than existing
18 under old regulations before the new Act and the IRS had
19 been put into place.

20 And, again, with great foot dragging by government
21 and, again, very unfortunately, but due to the tragedy in
22 1992 in Westray where 26 workers lost their lives did the
23 government finally say there has to be a revamp of the
24 Occupational Health and Safety Act and Regulations in
25 order to give some comfort or some assurance to workers'

SUBMISSION OF N.S. FEDERATION OF LABOUR - MR. CLARKE

1 health and safety.

2 As a member of the McKeough Committee, and also of
3 the current review, it's a sad statement but I have to
4 say after hearing the testimony that's come before and
5 the evidence that's come before this Commission that I
6 really don't have the comfort zone that things are going
7 to be any better or that the Government has, in fact, any
8 type of more priority on adopting better work place
9 protection. And because of that, and I'll probably state
10 this twice through my brief presentation, but we are
11 going to be watching for the report that comes out of
12 this Inquiry.

13 We, too, have confidence that the report is going to
14 address what was wrong. We realize a lot of evidence
15 pointed to various, and numerous, I should say,
16 violations of the Occupational Health and Safety Act,
17 violations of work practices and endangerment of workers'
18 lives.

19 But I think that once you weed through all this
20 evidence, there's one thing that's very, very clear and
21 that we have a system in place that allowed that to
22 happen. And that's what has to be addressed. We have a
23 system in place that permitted or that restricted workers
24 from being able to accompany the work place for
25 inspections. That little support had been given to the

SUBMISSION OF N.S. FEDERATION OF LABOUR - MR. CLARKE

1 concerns raised by workers. And when you look at a mine
2 and, as Bob had mentioned, that Nova Scotia doesn't
3 really have a real glaring good example of mining in this
4 province with the number of fatalities we've had with the
5 history of coal mining in this province.

6 My own home town, which had been a mining community,
7 has monuments dedicated to over 400 workers that have
8 lost their lives and that's Springhill. And one has to
9 wonder how many lives have to be lost before we realize
10 that we have to put something in place that's going to
11 assure that the workers have the right to a safe and
12 healthy work place.

13 When I mentioned your Inquiry or the report of your
14 Inquiry, I hope that you have better assurances than we
15 do through the advisory council process that's reviewing
16 the Act today and regulations and, in particular, coal
17 mining regulations, that they're going to be acted upon.
18 Because the concern we're having today is that we're
19 already seeing some of these.

20 Throughout the process, we bring experts in from the
21 respected fields to deal with this as we had with the
22 coal mining regulations and we had made a pact ourselves
23 for those of us that are involved in the process that we
24 would have one objective in mind and that is to better
25 the occupational health and safety of workers in this

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1 province. Today, we're seeing some and we're keeping our
2 own biases, our own adversarial, as you can appreciate,
3 business and labour sometimes sitting at the table. We
4 don't always see eye to eye, but we're leaving that
5 adversarial attitude outside with the concern of workers
6 supposedly being to the forefront.

7 Unfortunately, we're now seeing that our regulations
8 that have gone through this process are being held up
9 because of lobbying and that what we're seeing now is
10 political interference in the adoption of regulation.
11 And a glaring example of that is what we thought would be
12 the simplest of regulations, the adoption of new first
13 aid regulations, have been before Priorities and Planning
14 since February of this year and still haven't been
15 adopted. And we have grave concern of where the rest of
16 the regulations are going because of lack of full
17 commitment of this government to what we believe to
18 accept the responsibility for workers' protection.

19 I want to maybe focus on one other piece of
20 occupational regulations that we have some concerns on
21 and it deals with the work places that we're talking
22 about today and that, of course, is underground mining.
23 And we've had evidence before us about and heard people
24 pointing fingers at the workers because they had the
25 rights and the responsibilities and where was their joint

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1 committee? I'd suggest to you that, again, this is a
2 problem that we've experienced with the Provincial
3 Government or the Department of Labour by not providing
4 enforcement, by not ensuring that the work place, that
5 the proper committees were established, if they were, by
6 training their own inspectors.

7 And this is not an isolated problem that we've
8 experienced with Westray, but that the inspectors are not
9 properly, when they put the four departments together, we
10 had people that were not trained properly on the
11 Occupational Health and Safety Act, what the rights and
12 responsibilities of the employer and the workers are, and
13 I suggest that that's been a major problem here.

14 When I refer to the disasters and the tragedies
15 we've seen in the mining history in this Province, and we
16 talk about the number of lives that have been lost, it's
17 very clear to us that underground mining is a unique work
18 site. We had made presentation at one time to government
19 that there ought not to be a mining permit issued unless
20 that work site is organized. It was viewed by the
21 representatives of that day that we were looking at an
22 easy route to organize. And that's not so. We were
23 looking so that the workers would have somebody in order
24 to speak and that they could depend on to protect their
25 rights. As can be appreciated, one of the very few work

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1 sites that the employer has total control over is
2 underground mining. That and perhaps on a vessel at sea.
3 The employer controls who goes in, where those people go,
4 when they go in. And because of that, we feel that there
5 ought to be special provisions for work places. Ideally,
6 they should be organized so that they have some body
7 that's there to stand up for the rights.

8 But, failing that, we would urge you to give very
9 serious consideration on the workers' rights that are
10 outlined in the Occupational Health and Safety Act to
11 ensure that there are special provisions to provide that
12 these workers are given every opportunity for full
13 knowledge and exercising of the rights that are
14 prescribed under Occupational Health and Safety Act.

15 The other concern that we have is the -- Excuse me,
16 I'm trying to read my own scribble.

17 MR. COMMISSIONER I have that problem, too.

18 MR. CLARKE I didn't have fear of Bobby reading
19 them because I can't read them. The concern that we
20 have, I guess, Mr. Commissioner, is the advisory council
21 process itself. We believe that there's something that
22 you could be doing as part of your recommendation and
23 review on this is that we absolutely in this Province,
24 whether it's the advisory council or another entity. And
25 I'll take this from what Bobby had said. We have to have

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1 some place out there that workers can reach out to, some
2 place where they feel they have a conflict with the
3 department or where they have a conflict with their
4 employer or with the Department of Labour or an
5 inspector. There has to be some at arm's length
6 organization that's out there that a worker can reach to.
7 I use the advisory council as the example of perhaps
8 expanding their role and responsibilities because we
9 already have that structure in place.

10 Where there are worker representatives, it's equally
11 representative between employers and employee
12 representatives. That could be the vehicle, but
13 something has to be there so that somebody that's being
14 bullied about job security said if they complained,
15 they'll lose their jobs, there's some place that they can
16 make a phone call and see what can be done to protect
17 their health and safety in the work place. I believe
18 that's very, very critical because, as I said, Westray is
19 a tragic example of what happens when workers are left
20 out there on their own without protection. So we would
21 implore that you give very serious consideration of this
22 and that this be an area to address.

23 And a final position or comment is in reference to
24 the internal responsible system in itself. The Province
25 talks about that it's not unique in Nova Scotia. That

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1 it's something that they're seeking this Commission to
2 endorse. It's true that it is in other jurisdictions but
3 it's also true that it cannot stand alone. It has to
4 have enforcement. There has to be enforcement of an
5 internal responsibility system. I'll refer to our
6 highway system with the speed signs and whatnot we have
7 on our highways. I've experienced what happens when I
8 don't follow the internal responsible system on the
9 highways.

10 MR. COMMISSIONER You, too, eh?

11 MR. CLARKE Yeah, there's somebody out there that
12 enforces these regulations and we need that in our work
13 places. And it's a sad testament today that we see more
14 people enforcing our game laws in our forests than we do
15 workers' lives. And I think this has to be turned around
16 and we have to have full training to ensure that workers'
17 health and safety become a top priority. And I think
18 that it has to be a top priority, not only of a
19 department or a Minister, because I'll again reflect on
20 the comments made by Bobby on the turnover we have with
21 Ministers and Deputy Ministers within Labour, but it has
22 to be a commitment of government. Because the people
23 that finalize and recommend and accept regulations are
24 within the Committee that I call Priorities and Planning,
25 or that is called Priorities and Planning on which the

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1 Minister of Labour doesn't sit on. So we have to have a
2 commitment of the government on workers.

3 And a final note is that we push hard to this
4 government and past governments and we will future
5 governments on job creation. But it's not jobs at any
6 cost. We cannot allow our health and safety or workers'
7 health and safety be the price or one of the prices or
8 one of the subsidies of bringing in business or
9 supporting business. I think it's time that we drew the
10 line in the sand and say that workers' health and safety
11 is not for sale. Thank you.

12 MR. COMMISSIONER Thank you, Mr. Clarke. We'll recess
13 until 1:30 and we'll hear the balance of the submissions
14 at that time. Thank you very much.

15 HEARING RECESSED (TIME: 11:57 a.m.)

16 HEARING RESUMED (TIME: 1:29 p.m.)

17 MR. COMMISSIONER Thank you. Okay, Mr. Hebert.

18 MR. HEBERT Thank you, Mr. Commissioner.

19 SUBMISSION OF WESTRAY FAMILIES GROUP - MR. HEBERT

20 Mr. Commissioner, I want to commence by saying that
21 the Westray Families Group views the Westray Mine
22 Disaster and certainly the evidence that has come to
23 light in this Inquiry as really part of an overall
24 problem with health and safety in the Province of Nova
25 Scotia. In this regard, the Westray Families Group has

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1 welcomed and appreciates the support and the
2 participation of the various unions and the Federation of
3 Labour which have been present at the Inquiry and who
4 have shown their support for the Westray Families Group
5 over the past four years. They are firmly of the belief
6 that this inquiry process has been assisted with the
7 input of these groups.

8 The Westray Families Group would also like to extend
9 their heartfelt appreciation to the public as well as to
10 the media who have shown sensitivity and compassion and
11 understanding through four very difficult years.

12 The Westray Families Group recognizes that after
13 your report, Mr. Commissioner, there will be plenty of
14 room for governmental improvements and that the process
15 will really be in the hands of the government as well as
16 the labour movement to address the issues that have
17 arisen here which have been identified and which you will
18 identify in your report and to implement and address the
19 recommendations that you will make.

20 The Westray Families Group recognizes that it does
21 not have the expertise in fields of labour relation and
22 occupational health and safety and will be relying on
23 these groups to complete your mandate and carry out your
24 mandate.

25 The Westray Families Group nonetheless extends to

SUBMISSION OF WESTRAY FAMILIES GROUP - MR. HEBERT

1 you, Mr. Commissioner, as well as government agencies and
2 members of the union movement their full support in their
3 endeavours and if the Westray Families Group can be of
4 any assistance at any time, they will certainly render
5 service as called upon.

6 Mr. Commissioner, I want to take you back to the
7 Order-in-Council which establishes your mandate, that
8 being the Order-in-Council of May 15th of 1992. There
9 were seven matters which you were mandated to address, of
10 which you're no doubt very familiar at this stage. I
11 just want to touch briefly on some of those points from
12 the point of view of the Westray Families Group.

13 The first thing, Mr. Commissioner, that you were
14 empowered to inquire into and report your findings on and
15 make recommendations with respect to was the occurrence
16 on Saturday, the 9th day of May, 1992 which resulted in
17 the loss of life at the Westray Mine.

18 It's clear from the evidence of the experts and the
19 miners and others who have testified that the disaster
20 occurred as a result of a methane ignition and explosion
21 which led to a coal dust explosion at the mine. I think
22 it's beyond controversy. With respect to the exact
23 ignition point, that remains a matter of some
24 speculation. The Westray Families Group at this stage
25 must be satisfied with that. From their point of view,

SUBMISSION OF WESTRAY FAMILIES GROUP - MR. HEBERT

1 it matters not the precise point of ignition but what is
2 more important from their point of view are the factors
3 which combine to give rise to the disaster as it unfolded
4 on May the 9th.

5 The second part of your mandate, Mr. Commissioner,
6 was whether or not the occurrence was or was not
7 preventable. The Westray Families Group, Mr.
8 Commissioner, have come to the conclusion, and invite you
9 to draw the same conclusion, that this disaster was
10 preventable. Without any equivocation, without any
11 doubt, these 26 men need not have lost their lives. It
12 was preventable by different people at different times at
13 different stages of the operation. It was preventable at
14 the outset with respect to the decisions that were made
15 in terms of funding of this mine, Mr. Commissioner. And
16 we will review these in some detail a little bit later
17 on.

18 It was preventable at the stage of planning the mine
19 on the part of the company and it was preventable at the
20 stage of approving the mine plans on the part of our
21 government agencies. It was preventable with respect to
22 the compliance with mine plans and directives of our
23 officials. It was also preventable with more
24 intervention on the part of our officials with respect to
25 the operation of this mine. It was preventable if the

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1 Coal Mines Regulations Act, which was in place, had been
2 enforced and respected by the company. And, perhaps
3 above all else, it was preventable if the proper health
4 and safety attitudes on the part of all players had been
5 in the forefront. The Westray Families Group, Mr.
6 Commissioner, invites you to conclude that this was
7 preventable.

8 The next point in your mandate, Mr. Commissioner, is
9 whether any neglect caused or contributed to the
10 occurrence. Mr. Commissioner, the Westray Families Group
11 have come to the conclusion, the inescapable conclusion
12 that neglect did result, certainly caused and it
13 contributed to this disaster. And, again, Mr.
14 Commissioner, the neglect really starts at the level of
15 funding. The very initial start-up of this project.

16 With respect, Mr. Commissioner, the Provincial
17 Government agency involved at the time in determining
18 whether funding should be given to this project neglected
19 the health and safety of the workers that would be
20 working at the Westray mine and, indeed, neglected their
21 duty to protect the resources of the Province and to
22 protect the loans that were put in place for this
23 project. In particular, Mr. Commissioner, there is
24 absolutely no doubt that the Minister of Industry, Trade
25 and Technology at the time, Donald Cameron, allowed

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1 politics to interfere with his decision-making as to what
2 was best for the Province.

3 After the establishment of the mine and during the
4 establishment of the mine, Mr. Commissioner, the same
5 Minister failed to respect the proper procedures and
6 failed to support the inspector at the Department of
7 Labour by going directly to the mine manager when he
8 wanted information with respect to the mine. And, in
9 particular, with respect to the roof conditions. I would
10 suggest, respectfully, Mr. Commissioner, that the proper
11 attitude to be taken on the part of a senior member of
12 government, and I believe the evidence was that he was
13 Premier at that time, was to go through the proper
14 channels within his department if he wanted information
15 with respect to the mine. Because, at the very least, he
16 had implied to others that, number one, the company had a
17 direct link with senior government officials and to the
18 departmental officials that the information coming from
19 them would not have been good enough and, again, the same
20 appearance that there was a direct link.

21 Indeed, I would submit, Mr. Commissioner, that the
22 failure to distance himself from the day-to-day
23 operations of the mine by attending at the site on a more
24 than occasional basis by contacting senior mine officials
25 gave rise to an appearance that the mine somehow have

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1 held political sway over the government of the day.
2 Again, when the allegations that there may have been
3 political overtones surfaced, again by failing to
4 distance himself at that time to clear the air, so to
5 speak.

6 This same Minister, Mr. Commissioner, was prepared
7 to enter into side agreements with a company in an effort
8 to seek funding at all costs from the Federal Government,
9 and by this I'm referring to the agreement between Donald
10 Cameron, Minister Cameron at the time, and Curragh, that
11 there would be no efforts made on the part of the
12 government to enforce the take-or-pay agreement and,
13 indeed, the Minister's own attitude that they would not
14 get one red cent from the Province and the agreement was
15 simply put in place on the understanding it would never
16 be used and for the purpose of obtaining federal
17 government and, indeed, Bank of Nova Scotia funding.

18 I submit, Mr. Commissioner, that the same Minister
19 failed to take into consideration the health and safety
20 of workers and, indeed, his attitude when he gave
21 evidence at this Inquiry, I submit to you, and it's
22 certainly been taken by the Westray Families Group, to be
23 demonstrative of his attitude towards worker health and
24 safety in this Province. And as it's been reiterated
25 time and time again at this Inquiry, health and safety,

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1 proper health and safety attitude must start at the top
2 and the Families Group have seen that this was lacking.

3 The same Minister when he gave evidence here made
4 what the Westray Families Group believed to be very
5 irresponsible remarks as to the cause of this explosion,
6 choosing, rather to accept any responsibility on his own
7 behalf or on behalf of the Government of the day, to
8 blame this occurrence on what happened in the mine that
9 morning. This, Mr. Commissioner, without having had the
10 courtesy to review the testimony and the evidence
11 presented to this Inquiry, which had gone on for over 50
12 days, I believe, by this time and without the least bit
13 of expertise in the area and without any possible means
14 of supporting those allegations. The Families Group, Mr.
15 Commissioner, find that behaviour, even at this stage, to
16 be reprehensible.

17 Mr. Commissioner, with respect to neglect, Item (c)
18 again of your mandate, the Westray Families Group have
19 scrutinized to an extent the involvement of the Federal
20 Government in establishing the Westray Mine. And, as Mr.
21 Wells, I believe, pointed out this morning, issues of
22 safety were raised. Issues which affected safety were
23 raised but, in the end, ignored.

24 And perhaps more importantly again we have a
25 situation where there was a substantial waste of

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1 taxpayers' money as a result of the financial commitments
2 made to Curragh. And, in the end, it's evident that the
3 Federal Government really failed to properly supervise
4 the investment, and that's what it was, the investment of
5 the Federal Government, people of Canada, in this
6 project.

7 Had there been more scrutiny on the part of the
8 Federal Government with respect to the manner in which
9 the funds were being utilized and the way the mine was
10 developing here in Pictou County, there may have been a
11 difference and we may not have been here today.

12 And I realize to some extent, Mr. Commissioner, that
13 that is somewhat speculative and the Families Group
14 recognizes that the Federal Government did not have the
15 primary responsibility for overseeing the Westray Mine,
16 but nonetheless they believe it was a contributing factor
17 to this disaster.

18 Mr. Commissioner, with respect to neglect, I think
19 it goes without saying that the mine operator, Curragh
20 Resources, and various of the managers of the Westray
21 Mine were neglectful in many of their duties. Too
22 numerous, in fact, Mr. Commissioner, to mention within
23 the one-hour time limit that we have today. One need
24 only look at the 52 allegations arising out of the
25 Occupational Health and Safety Act and the Coal Mines

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1 Regulations Act, which were put in an information by the
2 Department of Labour following the disaster, to get some
3 idea of the scope to which this mine operator failed to
4 meet the standards, the minimal standards, for operating
5 a safe mine in this day and age. The evidence is replete
6 with stories of improper management, decisions affecting
7 both the operation and personnel as well as outright
8 ignorance of their legal obligations and duties opposed
9 by the Occupational Health and Safety Act and the Coal
10 Mines Regulations Act and their outright refusal to
11 follow the directives of the Department of Labour with
12 respect in particular to rock dusting and other known
13 safety grievances of the workers.

14 With respect to neglect again, Mr. Commissioner, I
15 turn now to the Department of Labour. The Families Group
16 welcomes the comments made by Mr. Endres on behalf of the
17 Province this morning but, in their view, it's too little
18 and too late.

19 Many members of the Department of Labour sat here
20 before you and gave testimony and, as has been pointed
21 out, none accepted any degree of responsibility for this
22 disaster. And it's all well and good at this stage to
23 say, yes, the Province could have done more, but without
24 a more rigorous analysis of how the Province could have
25 done more, it really does not help this Commission. And

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1 perhaps my learned friend, on behalf of the Province,
2 will be more particular in his written brief to you, Mr.
3 Commissioner, and will point out those areas where the
4 Province acknowledges it was deficient and the specific
5 steps that have been taken or will be taken to address
6 them.

7 Mr. Commissioner, it's obvious that the mine
8 inspectorate let down the Westray Families Group and the
9 men working at Westray. It's clear that there was
10 neglect of their duties, most statutory duties, and other
11 common-law duties on the part of the mine inspectors.
12 Clearly, Mr. Albert McLean was identified as being the
13 deputy inspector in charge of the Westray Mine. Under
14 the Coal Mines Regulations Act, he had specific statutory
15 duties, many of which through his own evidence of what he
16 did and what he did not do, led to no other conclusion
17 that those duties were not met.

18 Mr. McLean failed to properly see the warning signs
19 with respect to the sacrifice of safety in favour of
20 production at the Westray Mine. Mr. McLean failed to
21 ensure compliance with a proper and safe mining plan. He
22 failed to act when there were clear violations of the
23 Coal Mines Regulations Act and, in particular, when he
24 saw the inadequacy of the stoppings at the entrance to
25 the Southwest 1 panel and when he knew, and he did know,

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1 Mr. Commissioner, that the coal dust levels in the
2 Westray Mine were unacceptable. And he knew, Mr.
3 Commissioner, I submit, that the level of noncombustibles
4 in the coal dust at Westray Mine were well below the
5 legal requirements under the Coal Mines Regulations Act.
6 Mr. McLean failed to properly address those issues. And
7 those two issues, Mr. Commissioner, we submit, are at the
8 very heart of this matter.

9 It's clear, Mr. Commissioner, that Mr. McLean failed
10 to conduct whatever the duties that he did conduct in a
11 prudent and reasonable matter. One need only examine his
12 method for taking readings of methane in the Westray
13 Mine. Here's a man who has given instruction on mine
14 rescue. He was well familiar with the methane gas and
15 the properties of methane gas being lighter than air.
16 And yet, in order to take readings of the methane, would
17 stand in the roadway and raise his methonometer above his
18 head, reaching just over half-way to the ceiling of the
19 roadways. Mr. Commissioner, if that wasn't bad enough,
20 Mr. McLean was the one who indicated in evidence that he
21 was actually training the mine examiners at the Westray
22 Mine, and he demonstrated to them the method by which
23 they should take readings at the Westray Mine and showed
24 them the same defective method as he himself was using.

25 The obvious link between that, Mr. Commissioner, and

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1 a possible and postulated layer of methane proceedings
2 from the Southwest 1 section into the Southwest 2 section
3 is inescapable. Had there been proper monitoring of the
4 roadways and gases in the Westray Mine, this explosion
5 may never have taken place.

6 Mr. Commissioner, the other two inspectors at the
7 Westray mine, Mr. John Smith and Mr. Fred Doucette, they
8 did not have primary jurisdiction over the Westray Mine
9 but nonetheless, as safety officers, the Westray Families
10 Group are convinced that they had a duty, if they knew,
11 had reason to believe that there were safety violations
12 and violations of the Coal Mines Regulations Act, if they
13 were aware of this, they had a duty to take positive
14 steps to rectify the situation.

15 Mr. Smith, you will recall, there was evidence of
16 Mr. Smith indicated that he did not want to travel in the
17 Westray Mine. He was afraid to go down. He wanted to
18 retire. Mr. Doucette was also present in the Westray
19 Mine at times when evidence later establishes that there
20 were visible signs that stone dusting was not being
21 applied properly. These two individuals must also share
22 some of the responsibility, Mr. Commissioner.

23 Moving up the ladder, we go to Claude White, who was
24 director of mine safety at the time. Mr. White was
25 responsible for the inspectors underneath of him. He was

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1 responsible to ensure that they were doing their job
2 properly. The flagrant failure, if you will, to carry
3 out their duties was not lost to Mr. White. To the
4 extent that there were problems with the inspectors, to
5 the extent that they failed to properly carry out their
6 duties, he must take responsibility. Indeed, Mr. White
7 himself was present during some of the inspections and
8 appeared to take into his own hands the issue of the
9 stone dust sampling plan, stone dust removal and
10 stonedusting. In that regard, Mr. Commissioner, he bears
11 primary responsibility and shares that with Mr. McLean
12 with respect to the failure on the part of the Department
13 of Labour to ensure that the company was following the
14 regulations and the legislation as regards stone dusting
15 and removal of coal dust. Indeed, Mr. Commissioner, that
16 is perhaps the most significant failure on the part of
17 the Department of Labour with respect to the Westray
18 Mine.

19 As Director of Mine Safety, Mr. White gave approval,
20 authorized approvals, with respect to diesel equipment
21 when the same were prohibited by the Coal Mines
22 Regulations Act. He failed to take any action when he
23 discovered that the Westray Mine was operating 12-hour
24 shifts contrary to the legislation. When one listens to
25 Mr. White's evidence, it's almost as if the Coal Mines

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1 Regulations Act did not exist. Mr. White failed to
2 review the statutory reports, the health and safety
3 committee walking reports. He failed to ensure that
4 those were being reviewed by his inspectors and, indeed,
5 had they been reviewed, Mr. Commissioner, it is clear
6 that the very concern of the stone dusting, even the
7 amounts of stone dusting would have been known to the
8 inspectorate because it was listed in there and we
9 reviewed evidence of that. When stone dust was spread in
10 the Westray Mine, it was recorded.

11 I submit that a proper review of the reports would
12 have given the inspectors everything they needed to know
13 what was going on in that mine during the periods when
14 they weren't there, and it is woefully inadequate and it
15 insults the intelligence, Mr. Commissioner, for the mine
16 inspectors and the directors to come forward and state
17 that they had no responsibilities when they weren't there
18 and they were not aware and could not have been aware of
19 what was happening at the Westray Mine in their absence.
20 That's totally false. It's nonsense. The opposite is,
21 in fact, true.

22 There was a failure on the part of Mr. White to
23 properly review and to ensure that the mining plans were
24 safe. Mr. White was in attendance, saw the stoppings
25 into the Southwest 1 and, again, must bear, share primary

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1 responsibility for the failure of the department to
2 adequately address the improper ventilation plan which
3 existed at the Westray Mine on May the 9th in which in
4 all probability led directly to the explosion.

5 Mr. Commissioner, the Executive Director at the
6 time, formerly known as the Assistant Deputy Minister,
7 Jack Noonan, within the Department, failed to respond to
8 the identified need for regulatory reform. This is not
9 something new that we're just learning in 1992 and
10 afterwards. The need for changes in the Coal Mines
11 Regulations Act were well documented within the
12 department as far back as 1986. They were reiterated by
13 Mr. White to his credit in 1989. Problems were
14 identified. Lack of staffing. Conflict in regulations.
15 These have been known now for the past 10 years. And
16 yet, during Mr. Noonan's term as executive director,
17 nothing was done. During his term, there were no
18 performance evaluations for mine inspectors or any of the
19 staff. And we'll address that later when we come to
20 recommendations, Mr. Commissioner.

21 Apparently, his absenteeism from work due to health-
22 related problems had an impact on the operation of the
23 department. When it comes to any neglect for overseeing
24 the Department of Labour and to ensuring that it was
25 carrying out its mandate, this must be laid at the feet

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1 of Mr. Noonan. And, likewise, Mr. Commissioner, at the
2 feet of the Deputy Minister at the time, Mr. Hugh
3 Macdonald.

4 My learned friend, Mr. Endres, indicated that the
5 Department had failed to be properly managed and has
6 taken steps in that direction by hiring a consultant.
7 But it does not escape or you cannot escape from the fact
8 that it wasn't properly managed at the time. We don't
9 know yet what recommendations were made. We haven't had
10 an opportunity to review that.

11 Mr. Commissioner, if we look at the Department of
12 Natural Resources, Department of Mines and Energy, again,
13 these individuals came forward and washed their hands of
14 any responsibility for safety and washed their hands of
15 any responsibility for this tragedy.

16 All of them, Mr. Commissioner, and in particular,
17 John Campbell, Donald Jones and Pat Phelan, mining
18 engineers, experienced in the mining industry, absolutely
19 no excuse, Mr. Commissioner. Both theoretical and
20 practical experience. And yet a mine plan was submitted
21 which appears to be inadequate. The mine plan was
22 changed on the basis of inadequate information. The
23 department recognized, and I refer, in particular, to the
24 April 9th, 1992 memorandum to the Minister, recognized
25 that Westray was operating without any understanding of

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1 the pillar widths and the roadway sizes that should have
2 been in place at the Westray Mine. They identified early
3 on that there was a problem with the management at the
4 Westray Mine in that the mine manager had too many
5 responsibilities and had identified the very
6 organizational problems within the Westray Mine operator
7 that were confirmed by Colin Benner and others from the
8 company at this Inquiry.

9 And yet, Mr. Commissioner, Westray was allowed to
10 operate, was given basically a blank cheque with respect
11 to the mine plan and the officials within the Department
12 of Natural Resources turned their backs on the men
13 working underground at the Westray Mine. To the point
14 that Mr. Campbell indicates in his testimony that he did
15 not even know what the mining plan was when he visited
16 the Westray Mine shortly before the explosion and,
17 indeed, denied any responsibility for even having an
18 understanding of what the plan was.

19 Mr. Jones and Mr. Phelan approved plans which were
20 obviously defective. They knew and there's evidence as
21 of late after Mr. Jones left the stand, there's evidence
22 that Mr. Jones, in fact, did have up-to-date knowledge
23 and was provided with the plans and the mining method of
24 the company in February and March, rather, of 1992.
25 Plans which, in retrospect when the principles, basic

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1 principles of engineering were applied, were found to be
2 woefully inadequate.

3 Mr. Phelan, the evidence is that Mr. Phelan was
4 involved in advising the mine management at Westray of
5 visits, and the only unannounced visit by the inspectors
6 at the mine site and the purpose for that visit.

7 Mr. Commissioner, the Deputy Minister of Mines at
8 the time, Mr. Mullaly, admitted that he had little or no
9 understanding of the legislation which was within his
10 purview. Indeed, he did not appear to recognize the role
11 that he, as Deputy Minister, played within the
12 legislative scheme. Again, there was no formal
13 evaluation process in place within the department and
14 there appear to be some major managerial problems within
15 that department as well.

16 So, Mr. Commissioner, with respect to Item (c) of
17 your mandate, the Westray Families Group has concluded
18 and urge you to conclude as well that, indeed, neglect
19 did cause and contributed to this disaster. And, for the
20 assistance of both the families, legislators, Mr.
21 Commissioner, it is necessary for you in your report, if
22 you do find there was neglect, to be specific about that.
23 Because it's only when one gets to the level of
24 specificity that one can address the problems in a
25 concrete manner.

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1 Mr. Commissioner, the next item in your mandate was
2 whether or not there were any defects in or about the
3 mine or the modes of working the mine. Mr. Commissioner,
4 I think I've touched on these and the Westray Families
5 Group has concluded that there are defects, there were
6 defects and, in particular, the mine ventilation plan,
7 the lack of a mining plan, presence of coal dust, failure
8 to properly dilute the coal dust, 12-hour shifts. All of
9 these, Mr. Commissioner, are defects from their point of
10 view.

11 The next item, Mr. Commissioner, is whether or not
12 the mine in its operations were in keeping with the known
13 geological structures or formations in the area. Two
14 points here, Mr. Commissioner. Number one, it has been
15 well established that the Westray Mine had a shale roof,
16 and it certainly raises a question of whether or not roof
17 bolting and the roof support systems that they had in
18 place could ever have worked in that situation. And
19 we've heard from Mr. Clow from the horse's mouth, so to
20 speak, that he was really in doubt as to whether or not
21 they could have ever supported that roof. And that's
22 something, Mr. Commissioner, which was or should have
23 been known at the time.

24 The second point with respect to geological
25 structures in the area. In the Southwest section, Mr.

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1 Trevor Eagles testified that the company knew that they
2 would be shut out of that section very shortly as a
3 result of a fall -- a fault which was crossing the
4 headings. I believe his evidence, Mr. Commissioner, was
5 that it was only a matter of days before they would have
6 moved out of that section completely.

7 Mr. Commissioner, the next item on your mandate or
8 of your mandate is whether or not there was compliance
9 with applicable statutes, regulations, orders, rules or
10 directions. Again, Mr. Commissioner, I'm not going to
11 delve into the various violations of the statutes and
12 regulations or we would be here all day. There was a
13 number of them, Mr. Commissioner, and I'm sure that you
14 will address them in your report and, again, in an effort
15 to assist those working with your report in the future,
16 the Westray Families Group hopes that you will be
17 specific with respect to where there was noncompliance.

18 Mr. Commissioner, the last item of your mandate is
19 all other matters related to the establishment and
20 operation of the mine which the Commissioner considers
21 relevant to the occurrence.

22 Mr. Commissioner, there are two points that the
23 Westray Families Group would raise under these matters
24 and would urge upon you as being relevant. And these
25 are; number one, the post-explosion protocol in the case

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1 of a disaster such as this. And, secondly, the forensic
2 accounting problem which exists and its been alluded to
3 by the Town of Stellarton this morning, and I will
4 address those two points a little bit later on.

5 At this point, Mr. Commissioner, I would like to
6 turn momentarily to the recommendations that the Westray
7 Families Group would have, in light of the foregoing
8 submissions.

9 Mr. Commissioner, the Westray Families Group -- and
10 this arises, Mr. Commissioner, from your power to make
11 recommendations to the Government-in-Council and the
12 people of Nova Scotia respecting the items that we've
13 just reviewed. Mr. Commissioner, the Westray Families
14 Group respectfully requests that you would recommend a
15 complete housecleaning within the departments involved in
16 this disaster. And I use the word "disaster" in all
17 respects, Mr. Commissioner.

18 The Westray Families Group are quite -- I use the
19 word "cynical" here, Mr. Commissioner, with respect to
20 the families, but they are quite cynical when they look
21 at and see what has happened since the explosion.

22 The Premier, previous premier, of course, has gone
23 to the Senate. He testified and took no responsibility.
24 Mr. Cameron is now the Consul-General for Canada in
25 Boston. Others within these departments have been

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1 offered a retirement or settlement packages. Everybody
2 else seems to have kept their position.

3 Mr. White was shuffled to a -- he looked at it as a
4 lateral move and an opportunity. Mr. Noonan was
5 apparently asked to leave and later obtained some form of
6 settlement with the Government.

7 Mr. Commissioner, the Families Group is concerned
8 about the message that this sends out to other people in
9 similar positions into the future and, indeed, now.

10 In order for the internal responsibility system to
11 ever be effective anywhere in any shape or form, there
12 must be accountability. And to date, Mr. Commissioner,
13 the Westray Families Group have not seen any
14 demonstration of accountability on the part of the
15 Provincial Government.

16 Mr. Commissioner, the families, counsel present,
17 indeed the public, the watching public, have been shocked
18 at the testimony of some of these officials and that, Mr.
19 Commissioner is why the Westray Families Group call for a
20 complete review, a personnel review within these
21 departments. They believe that there is sufficient
22 evidence from the testimony before you alone to
23 demonstrate incompetence sufficient to warrant dismissal.

24 Indeed, Mr. Commissioner, even going beyond the
25 departments, the Westray Families Group, again, as I

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1 mentioned earlier, saw the comments and the behaviour of
2 Mr. Cameron here as so reprehensible that they would call
3 for a review of his position as a representative of
4 Canada to the United States.

5 Mr. Commissioner, once the appropriate personnel are
6 in place in our Provincial Government, the next item to
7 be addressed would be training of the inspectors. The
8 Westray Families Group, Mr. Commissioner, would recommend
9 that these positions, positions of health and safety
10 officers and indeed any position within the Provincial
11 Government which has direct responsibility for the health
12 and safety of workers, should be filled with people who
13 come from a Labour background with a proven track record
14 for health and safety.

15 The Westray Families Group, Mr. Commissioner, would
16 recommend an independent certification of inspectors
17 within the Province of Nova Scotia. Whether that
18 certification is through a an existing agency or whether
19 some tripartite agency must be created within the
20 province. There should be some objective standard on
21 which the people of Nova Scotia and the work force can be
22 assured that these people have received proper training
23 and are suitable to the positions which are entrusted to
24 them.

25 The inspectors, Mr. Commissioner, the Westray

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1 Families Group would recommend that the inspectors be
2 required to participate in annual refresher-type courses
3 so that their qualifications are kept up to date.

4 With respect to the certification, the Westray
5 Families Group would call not for a general inspector,
6 but indeed for more specialties, such that certification
7 could be provided with a speciality in certain areas
8 which one would qualify for by reason of experience and
9 study.

10 Mr. Commissioner, the Westray Families Groups calls
11 upon the people of Nova Scotia, the Provincial Government
12 and the Labour movement to make safety a priority and
13 they welcomed the comments of Mr. Endres today that
14 health and safety is now a course or it's being addressed
15 at the community college level. They would go further
16 and say it should be addressed at the high school level.
17 It should be present in all aspects of education. It
18 should be a requirement, certainly for engineers in the
19 province; it should be part of their curriculum. There
20 should not be any profession or occupation which must be
21 involved in the work place to escape some training in the
22 fundamentals of health and safety so that the proper
23 respect can be developed.

24 Mr. Commissioner, with respect to health and safety
25 decisions or decisions of the Government of Nova Scotia

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1 which will impact on health and safety, the Westray
2 Families Group would call for a process similar to the
3 process which now exists in reviewing government
4 decisions from the perspective of environmental
5 protection.

6 Because of public demand, Mr. Commissioner, and
7 because of the apparent need, the governments at all
8 levels have put in place a very complex system to review
9 government decisions from the point of view of the
10 environment, complete, Mr. Commissioner, with checklists
11 and double checklists and cross-references.

12 I do not think, Mr. Commissioner, that a similar
13 process exists in the Province of Nova Scotia with
14 respect to worker health and safety. And indeed had such
15 an emphasis been placed and had there been some basic
16 checklists in place when reviewing this mine for funding
17 purposes, the glaring insufficiencies, and particularly
18 of the staff and the management of that mine, should have
19 been recognized. There's absolutely no way, Mr.
20 Commissioner, that under such a system a company could
21 operate a mine without proper training of the work force
22 as was the case here.

23 The Families Group, Mr. Commissioner, wish there had
24 been in place and would recommend that there be put in
25 place some kind of an independent agency which would

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1 address particularly the health and safety concerns of
2 non-unionized employees in the province which is a
3 recognition that as much as health and safety can be a
4 problem in a unionized setting, that it is even more so
5 in a non-unionized setting where the workers have no one
6 to turn to with respect to their concerns.

7 Mr. Commissioner, the Westray Families Group knows
8 that the refrain of budget, budget, budget will no doubt
9 resurface when the government is forced to address your
10 recommendations.

11 The Westray Families Group feel strongly that in
12 order to move ahead with health and safety and to prevent
13 this type of disaster in the future, there must be some
14 form of legislated base funding for health and safety
15 training of inspectors and workers in the Province of
16 Nova Scotia. Such a fund could be paid for partly
17 through the industry, Mr. Commissioner.

18 Mr. Commissioner, with respect to the legislation,
19 there will no doubt need to be some reforms. The Westray
20 Families Group does not have the expertise to really
21 address those matters. Certainly, though, Mr.
22 Commissioner, I would repeat what has been said here, and
23 that is that if the Coal Mines Regulation Act, as
24 outdated as it was, had been in force with respect to
25 ventilation and stone dusting, this tragedy would very

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1 likely not have occurred. And the reason I say "very
2 likely," Mr. Commissioner, is that there is some evidence
3 that the percentages of noncombustible material in coal
4 dust should be increased to 85 percent as a minimum. And
5 I'm sure, Mr. Commissioner, that you will be addressing
6 that in your report.

7 Mr. Commissioner, there are a number of other areas
8 that legislation could address. There should be some
9 approval system in place so that the governments can be
10 satisfied that the work force is trained. The whole
11 system of the Board of Examiners has to be re-examined.
12 There has to be an objective and competent review agency
13 to provide certificates of competency to mine personnel
14 in the Province of Nova Scotia.

15 And again, Mr. Commissioner, this should involve
16 some form of tripartite system as, again, the internal
17 responsibility system must start from the very foundation
18 of our legal system.

19 Mr. Commissioner, with respect to government review
20 of mine plans, the Westray Families Group believes that
21 this should be beefed up and, if necessary, the operator
22 should be required to pay whatever fees the government
23 incurs with respect to independent reviews of mine plans,
24 just as they would when they are submitting a proposal to
25 a bank.

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1 Mr. Commissioner, there must be something put in
2 place to make safety officers and other government
3 officials responsible for their actions. Perhaps
4 consideration should be provided for penalties against
5 government safety officers who knowingly refuse or fail
6 to enforce legislation where in fact it is likely that
7 such refusal or the continuance of a problem with result
8 in loss of life or health to workers in Nova Scotia.

9 With respect to ministers and deputy ministers, Mr.
10 Commissioner, there's very little in the way of
11 enforcement procedures for people in such positions.
12 There must be some way found to ensure that these people
13 are not acting for their immediate benefit, but are
14 having some regard for health and safety. And there
15 should be some way to reach out beyond their term in
16 office, such as if their conduct has resulted, knowingly
17 resulted, in loss of life or loss of revenue, funds to
18 the Province, that there be some way to attach their
19 pensions or some assets.

20 In other words, Mr. Commissioner, the accountability
21 has to be put in place because it was the failure of that
22 accountability which had a major impact here.

23 Just briefly, Mr. Commissioner, I want to address
24 the two other items that I deferred. One was with
25 respect to the financial audit, forensic audit. The

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1 Westray Families Group had recommended early, early on in
2 the Inquiry that a firm such as Linguist Avery, forensic
3 accountants, be engaged to really review the financial
4 transactions surrounding the Westray Inquiry and the
5 company's actions. That has not been done to date.

6 There are still some unfinished questions or
7 unanswered questions with respect to funding. One again
8 was raised by the Town of Stellarton this morning with
9 respect to the account of the company set up in Europe.
10 At this point, as far as I can understand, Mr.
11 Commissioner, all we have is the company's records or a
12 brief overview of the company records as to what money
13 was spent where, and those have been accepted to date and
14 have not been contradicted. I think, too, in order to
15 fully clear the air that a forensic accountant should be
16 engaged to really closely examine the transactions which
17 went on with respect to the establishment and operation
18 of this mine.

19 Finally, Mr. Commissioner, the Families Group is
20 adamant that victims' rights be addressed for those in
21 the province who are unfortunate enough to find
22 themselves in a similar position to the families.

23 The families would call for some form of protocol to
24 be put in place in advance with respect to, in
25 particular, mine disasters and indeed, in the more

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1 generic sense, with respect to health-and-safety related
2 incidents within the province.

3 In particular there is a need to identify someone to
4 take charge and be known to be in control of any rescue
5 efforts. Somebody, Mr. Commissioner, in advance, should
6 be designated to take control of the site in any work
7 place where a death occurs.

8 Mr. Commissioner, in circumstances such as this
9 there should be a prior absolute ban on the shredding of
10 any documents, whether these are duplicates, whether
11 these are unrelated. There should be an absolute ban on
12 the shredding of any documents in circumstances such as
13 this where a major disaster occurs. There should be a
14 mechanism for the automatic appointment of an independent
15 investigator. There should be a person in charge who is
16 recognized to be in charge of communications, whose job
17 it would be to report, amongst others, to the victims.
18 And, again, the victims should have access to the
19 communication coordinator and indeed access to the
20 information as and when it arises. There's been some
21 evidence, Mr. Commissioner, with respect to that
22 throughout these proceedings.

23 Mr. Commissioner, the victims must have
24 participation in the investigation process, as
25 appropriate, and in whatever investigatory proceedings

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1 are instituted, whether it's an Inquiry of this nature or
2 whether it's under the Fatality Inquiries Act.

3 Mr. Commissioner, the participation requires
4 funding. This should be recognized in legislation.
5 After following a tragedy such as this, families are
6 really too emotionally drained and their financial
7 circumstances are such, in general, that it makes it very
8 difficult for them to address and recognize the need for
9 funding immediately after an event occurs. And this
10 should really be recognized in advance and there should
11 be some system put in place to address this.

12 The families of victims should participate in those
13 decisions which would have a direct impact on them such
14 as, in the present case, Mr. Commissioner, one would look
15 at the recovery of bodies, the reclamation of the mine
16 and indeed the flooding of the mine.

17 Mr. Commissioner, the Westray families, throughout
18 the various legal proceedings that have gone on to date,
19 have felt isolated and marginalized. And they do not
20 want others to be placed in the same position as them.

21 Mr. Commissioner, the families felt isolated when
22 calling for the forensic audits. They felt isolated when
23 they had to address funding issues. They felt isolated
24 when it was implied that their interests might merge with
25 other groups in these proceedings.

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1 They felt isolated when decisions were made with
2 respect to investigating the mine, recovering the bodies
3 which they were not part of. The Families Group stood
4 alone in opposing the flooding of the Westray mine. They
5 had to find whatever resources available to them to
6 address their recovery of bodies, Mr. Commissioner. The
7 families feel strongly that that should have been part of
8 the mandate of this Commission and it should have been
9 something that the Province would have done, but they
10 alone had to go and eventually approach the Feds and
11 receive some assistance from the Federal Government with
12 respect to an analysis of whether recovery was feasible
13 or not.

14 In these proceedings, Mr. Commissioner, the families
15 felt isolated and marginalized. Their feelings were
16 deeply hurt when there was a difference of opinion with
17 respect to the location of these hearings, the limits
18 placed on cross-examination and the practical limits
19 placed on their representation here as a result of
20 decisions made with respect to funding.

21 The Families Group welcome, Mr. Commissioner,
22 recommendations in this regard. They are prepared to sit
23 down and meet with you to discuss these aspects further
24 so that others may benefit from the experience that they
25 have gone through. And often times, Mr. Commissioner,

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1 it's not a question of any intent, it's just the outcome,
2 the effect of decisions, which seen from the victims'
3 point of view, are seen in a different light. And it's
4 that kind of input that would certainly welcome if they
5 had the opportunity to really sit down with whether it be
6 the Province, Mr. Commissioner, or yourself in coming to
7 some of your recommendations and really brainstorming and
8 reviewing what can be put in place to really avoid the
9 kind of feelings that have arisen in these proceedings.

10 Mr. Commissioner, I have not mentioned --

11 MR. COMMISSIONER I may as well be consistent, Mr.
12 Hebert, your time is up.

13 MR. HEBERT Okay.

14 MR. COMMISSIONER Let's wrap up.

15 MR. HEBERT I had just one point, Mr. Commissioner. I
16 guess my timing isn't as good today. I haven't mentioned
17 the workers themselves, Mr. Commissioner.

18 You are to look to see whether there was any
19 neglect. Clearly there is no evidence that the 26 men
20 who died in the Westray mine were engaged in any
21 activities which implied neglect on their part which
22 resulted in this tragedy.

23 Indeed, Mr. Commissioner, it seems that some of the
24 best were taken away. There's been ample evidence of Mr.
25 Bates and the concern he demonstrated for safety as just

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1 one example, Mr. Commissioner.

2 I have mentioned the training that even the mine
3 examiners receive from the mine inspector. Mr.
4 Commissioner, it can be said that whatever neglect or
5 lack of due diligence there was on the part of these men,
6 they have certainly been made accountable for them.

7 Mr. Commissioner, I thank you very much.

8 MR. COMMISSIONER Thank you, Mr. Hebert. Mr. Roberts?

9 MR. ROBERTS Thank you, Mr. Commissioner.

10 MR. COMMISSIONER I don't know what's left for you,
11 but --

12 MR. ROBERTS I've got some notes.

13 SUBMISSION UNITED STEELWORKERS OF AMERICA - MR. ROBERTS

14 Mr. Commissioner, as you noted at the start of these
15 public hearings, this Inquiry was given a very broad
16 mandate and one that encompasses all aspects of
17 financing, development, operation, regulation and
18 supervision of the Westray mine. And it has been pointed
19 out already that the first question in your mandate is
20 was the explosion preventable?

21 The United Steelworkers of America submits that,
22 having heard the testimony of the last 76 days of
23 evidence, the answer can only be yes, the explosion at
24 the Westray mine on May the 9th was preventable.

25 The evidence shows:

1 (1) The explosion would have been prevented if the
2 operator of the mine had acted prudently and followed
3 widely-accepted safe mining practices.

4 (2) The explosion would have been prevented if
5 public officials responsible for regulating the mine had
6 enforced the statutes within their authority and carried
7 out their duties competently and diligently.

8 The evidence shows, Mr. Commissioner, that the
9 Westray Mine was allowed to operate in a regulatory
10 vacuum with public officials deferring to mine managers,
11 rather than carrying out their statutory
12 responsibilities.

13 The evidence does not show, and this was just
14 alluded to at the conclusion of Mr. Hebert's remarks, the
15 evidence does not show that the people who were
16 underground on the night of May the 8th, the morning of
17 May the 9th, were themselves engaging in unsafe acts
18 which in any way contributed to the explosion. They were
19 mining the coal. They were trying to support the roof.
20 They were following the directions of their supervisors.
21 There is no evidence that they did anything other than
22 what was expected of them and we would ask that you state
23 that conclusion emphatically in your report.

24 In our submissions today, Mr. Commissioner, we want
25 to review the evidence as it relates to three groups; the

1 regulators and public officials associated with the mine,
2 the men and women who worked at the mine and the people
3 who ran the mine. In the course of our review, we're
4 going to ask you to make findings on the evidence and we
5 will propose reforms to regulations and practices to help
6 reduce the likelihood of tragedies like Westray happening
7 in the future.

8 It would be difficult to overstate the importance
9 that we attach, the United Steelworkers of America, that
10 we attach to the report you are about to begin writing.
11 It's no exaggeration to say that there are tens of
12 thousands of members of this union in Canada and the
13 United States who are looking to you who are in the
14 mining industry today and are looking to you for a clear
15 decisive statement that will give them some assurance
16 that at some time in the future they will not find
17 themselves in the position that the employees of Westray
18 found themselves.

19 And from our perspective, Mr. Commissioner, your
20 recommendations should reflect four broad principles:

21 First, we must say "No" to deregulation of health
22 and safety. This is a public issue that concerns the
23 whole community and our laws must reflect that fact.

24 Second, the people who represent the public interest
25 must be trained and professional. They must be the equal

1 of those they regulate.

2 Third, the regulator must be accountable to workers
3 and to the community at large.

4 And, fourth, the process of regulation by which the
5 public interest is protected must be transparent and open
6 to public scrutiny at every level.

7 If these principles are embodied in your
8 recommendations, Mr. Commissioner, your report will be a
9 milestone in the evolution of occupational health and
10 safety in North America.

11 I want to begin my review of the evidence with the
12 evidence about the role of the regulators. And while we
13 appreciate the tone that Mr. Endres brought to his
14 presentation this morning on behalf of the Province, it's
15 simply not good enough to say we now know we could have
16 done better; we didn't properly implement the internal
17 responsibility system.

18 As one of the witnesses before you, Mr.
19 Commissioner, I believe it was Mr. Laffin said in his
20 testimony, "internal responsibility is basically common
21 sense."

22 We had laws in 1992, laws that would have prevented
23 this explosion and commonsense says they should have been
24 enforced. The evidence before you is that they were not
25 enforced and that's why we need to have a very close look

1 at what the duties of the regulators and what they did
2 pursuant to those duties.

3 From the perspective of the United Steelworkers of
4 America, the most striking and most troubling feature of
5 the evidence is the picture drawn of this failure by the
6 regulatory system to work. And it was not an abstract
7 problem for the people who worked in the mine because, in
8 a very real way, they depended on the regulators, the
9 inspectors and the government mining engineers. At the
10 time they had no union; they had no functioning health
11 and safety committee. Their boss, the underground
12 manager, was not the kind of person they could turn to
13 for assurance or support.

14 The failure of the regulators to place effective
15 constraints on the operators of the Westray mine left the
16 mine employees without any protection from an employer
17 that did not place a priority on safety.

18 Mr. Commissioner, this regulatory vacuum did not
19 arise by accident. It was created by politicians who
20 valued economic growth over occupational safety and by
21 bureaucrats who deferred to the mine operators at almost
22 every opportunity.

23 There can be no doubt from the evidence that the
24 Westray Mine project enjoyed a special place in the
25 hearts and minds of Nova Scotia's political leaders and

1 for Donald Cameron, MLA, Minister of Industry and
2 Premier, the establishment of the mine was a prime cause.
3 Though his efforts and the efforts of like-minded
4 politicians, Westray came to life surrounded by
5 government support and concessions. Indeed, I think it's
6 clear from the evidence that there would have been no
7 mine without this government support.

8 And even a cursory review of the support package
9 shows what a good deal Mr. Frame and Mr. Pelley and Mr.
10 Phillips, helped at strategic points by Mr. Cameron, were
11 able to get from the Province.

12 Just point by point, we had the \$12-million loan, we
13 had the \$8-million interim loan, we had the guaranteed
14 sale to Nova Scotia Power, the take-or-pay agreement, an
15 extraordinary and generous arrangement. We had a federal
16 loan guarantee, a federal interest buy down and then
17 permission to take a 200,000 tonne so-called "sample" of
18 coal.

19 When you compare this generous treatment against the
20 resources that were provided to the mine safety division
21 of the Nova Scotia Department of Labour at the time, a
22 clear picture of the priorities of the Provincial
23 Government emerges. The inspectors in the mine safety
24 division knew they were not ready for Westray and they
25 asked for help. You remember, they asked for a new

1 engineering position. They asked for training on the
2 mining method to be used at Westray. They asked for
3 permission to hire expert consultants to help them in
4 ground control problems. Each request was turned down.
5 There was no new money to help the inspectors meet the
6 challenges of Westray and, in fact, as you recall, the
7 staff of the mine safety division was actually cut by one
8 important body at the same time that Westray was
9 struggling to get into production. As I think it was
10 John Smith testified, Mr. Commissioner, perhaps they
11 should have gone to Clifford Frame for the money.

12 We submit you should find that the Government of
13 Nova Scotia, which generously assisted the establishment
14 of this mine, failed to provide adequate resources to the
15 public officials who were supposed to inspect the safety
16 of the mine. Economic development was more important
17 than the safety of workers.

18 A second point of significance, Mr. Commissioner, in
19 the government's support for the mine is the creation of
20 a political aura around the mine and its operations. And
21 this aura, we submit, inevitably affected the regulation
22 of the mine. And while no public servant testified to
23 having been directly influenced by a politician, there
24 are several instances in the evidence which show that
25 regulators carried out their duties fully conscious of

1 the political controversies surrounding the mine and were
2 in fact influenced by those controversies. And I'm just
3 going to review them briefly:

4 Albert McLean, you remember, he finally took steps
5 to talk to the safety representatives at Westray, not
6 because it was something he should have been doing all
7 along, but because an opposition politician was attacking
8 Premier Cameron over safety concerns at the mine.

9 John Smith admitted in the interview he gave to the
10 Commission that the political sensitivity of Westray may
11 have affected the way he carried out his duties.

12 Claude White systematically altered minutes of
13 meetings involving government officials and mine
14 operators to remove any references which might be
15 embarrassing to the government, the company, or to both.

16 Don Jones warned Gerald Phillips that the government
17 was coming under increasing pressure because of roof
18 falls at Westray and it might be forced, and note that
19 word "forced," to do something unpopular. Although Mr.
20 Jones apparently forgot that he made that statement, it
21 is recorded in minutes at the time and was recalled by
22 other witnesses who testified before you.

23 Pat Phelan fretted about the "spin" put on Westray
24 controversies by senior officials in the Federal
25 Government.

1 And then we have John Mullally who admitted in
2 testimony that he was aware of the political significance
3 Westray had for the government and felt it desirable for
4 the Department of Resources to help Westray meet its
5 production commitments.

6 And, finally, there's Donald Cameron. Judging from
7 the tone of the testimony of the former premier, Westray
8 was all about politics from the start to the finish and
9 even today he is unable to distinguish political
10 posturing from objective reality.

11 We submit, Mr. Commissioner, you should find that
12 the public officials responsible for regulating the
13 Westray Mine were affected in the performance of their
14 duties by political controversies surrounding the mine.

15 The third reason for looking closely at the
16 government support given to Westray is because in
17 significant instances, the people who helped put the
18 package of assistance together were the same people who
19 were responsible for regulating the mine and this created
20 a serious conflict of interest at the highest level of
21 the Department of Natural Resources, a conflict which was
22 recognized by the Department's senior solicitor at the
23 time.

24 Now consider this: In November and December of
25 1991, Pat Phelan, the Director of Mines, had reached a

1 conclusion that Westray was breaking the Mineral
2 Resources Act by not following approved plans, something
3 that could lead to the loss of the company's mining
4 permit. At the same time Pat Phelan was helping Westray
5 get an amendment to the take-or-pay deal that Westray
6 wanted, but which put the Province at a disadvantage.

7 Also at the same time Pat Phelan was helping Westray
8 get access to coal in the strip mine, the so-called "bulk
9 sample," the 200,000 tonnes Westray needed to meet its
10 production targets.

11 Mr. Mullally, the Deputy Minister, was candid enough
12 to admit in his testimony that it would be fair to
13 conclude the Department gave Westray preferential
14 treatment in order to help the project succeed.

15 We submit, Mr. Commissioner, you should find that
16 the involvement of public officials responsible for
17 regulating the Westray mine in measures intended to
18 promote the success of the mine created a conflict of
19 interest which weakened the regulatory system.

20 The structure of the regulatory system in which
21 Westray operated can be divided into two main areas and
22 both of them have already been mentioned today, the
23 Department of Resources and the Department of Labour.
24 And the evidence shows that both clearly failed.

25 The Nova Scotia Department of Resources failed to

1 enforce key provisions of the Mineral Resources Act in
2 relation to the Westray mine, and it failed to carry out
3 its statutory duty to ensure that Westray engaged in
4 mining that was both safe and efficient.

5 The Department's initial review of the Westray
6 proposal didn't recognize the challenges posed by the
7 Foord seam and the means by which Westray planned to mine
8 it. You remember they were satisfied that it followed
9 basic engineering practices and that they employed a
10 standard mining method. And that was pretty much the
11 extent of their review.

12 The position of this Department stands in sharp
13 contrast with the view of the Westray project to develop
14 within the Federal Government. And here I'm referring to
15 the CANMET review. Even a six-day review by officials in
16 CANMET led them to the conclusion that while the project
17 was feasible, the combination of features it presented
18 would create an unusually complex mining environment
19 which would stretch the limits of existing technology.
20 CANMET also noted that the mining sections in the
21 feasibility study on which the project was to be based
22 were brief and general in content and that much more
23 detailed engineering work should be done before the
24 project began. The evidence of Dr. Brown was that any
25 experienced mining engineer or regulator should have come

1 to the same conclusion.

2 Mr. Commissioner, the officials in the Department of
3 Resources who reviewed the Westray proposal should have
4 recognized the serious challenges facing the operator and
5 should have required more detailed and comprehensive mine
6 plans before approving the project. Had they done so,
7 they might have forced the company to confront some of
8 the problems that were to bedevil the mine in its short
9 existence.

10 The Department's approach to deferring to the mine
11 operator rather than carrying out its statutory
12 responsibilities is illustrated by the issuance of a
13 mining permit in August of 1991. This permit was
14 required, you will recall, under the new Mineral
15 Resources Act, and it would be automatically issued under
16 that Act if the mine held a lease and was producing
17 saleable coal on the date that the Act came in effect
18 which was March the 6th of '91.

19 Now the evidence, of course, is that Westray had a
20 lease at that time, but was not producing coal for sale
21 on that date, March the 6th, 1991. Kevin Atherton, whose
22 job it was to trace the production of coal in that mine
23 was absolutely certain in his testimony. The earliest
24 Westray started producing coal for sale was June, not
25 March the 6th.

1 The person who recommended that the permit be issued
2 was Don Jones and he testified he did so on the basis of
3 assurances from Gerald Phillips that the mine qualified.
4 However, he took no steps to verify Mr. Phillips'
5 information.

6 Now the significance of this is that if Westray had
7 been required to apply for a permit under the new Act, it
8 would have had to meet more rigorous requirements of the
9 new legislation and, in particular, would have had to
10 submit detailed engineering studies on mining methods,
11 ventilation, and ground support for each phase of the
12 development of the mine. This is the work that several
13 witnesses testified should have been done by Westray but
14 was not done.

15 We submit, Mr. Commissioner, you should find that
16 Westray was not entitled to receive the mine permit that
17 was issued to it in August of 1991 and that by granting
18 the permit, the Department of Resources allowed Westray
19 to proceed with development without having done the
20 engineering and planning required by law.

21 Now there's been a lot of testimony before you about
22 all the various changes in the mine plan that were
23 approved by Westray or by the Department for Westray. I
24 want to focus my remarks on the proposed change that was
25 not approved, and that's the plan that was submitted in

1 October of 1991 and the process that followed the
2 submission of that plan.

3 The evidence is that in early October Gerald
4 Phillips submitted a plan that significantly differed
5 from the approved plan. And the submission triggered a
6 searching re-analysis in the Department of Resources of
7 Westray's mine planning.

8 On the 20th of November, Don Jones produced a highly
9 critical assessment. Westray had made revisions to its
10 main tunnels without fully realizing the implications of
11 those changes. The company had rushed into the Southwest
12 block to get coal early and changed the original
13 alignment of the section, probably exacerbating its
14 ground control problems. It proposed penetrating the
15 barrier pillar to the Allan Mine without doing any
16 geotechnical work. It realigned other mining blocks
17 without providing justification. It changed the mine
18 design under the Trans Canada Highway, possibly
19 increasing the danger of subsidence. And it failed to
20 show depillaring operations were to be conducted without
21 endangering the safety of miners.

22 You remember now that Mr. Jones' analysis was
23 endorsed by his superior, Pat Phelan, and Mr. Phelan
24 passed on the Jones' critique to his Deputy Minister and
25 added his own assessment: Westray was clearly in

1 violation of the Mineral Resources Act and was making
2 important decisions on its mine plan without sufficient
3 input from experienced professionals and could lose its
4 mining permit.

5 At this point, it appeared that the Department had
6 recognized serious deficiencies in the planning of the
7 Westray Mine and was determined to bring the operation
8 back into conformity with the Mineral Resources Act.
9 However, instead of maintaining its resolve, Mr.
10 Commissioner, the Department capitulated. Gerald
11 Phillips simply denied the criticisms of Jones and
12 Phelan. He submitted new plans, one showing the mine
13 consisting only of main tunnels, the other showing a plan
14 for the Southwest section that was unusual, difficult to
15 execute, and potentially dangerous. And as we know, both
16 plans were approved.

17 There has been no credible explanation in the
18 evidence for the dramatic change in the position of top
19 officials in the Department of Resources during this
20 period. Their resolve was clear in November and the
21 Department's own solicitor believed they were about to
22 stop the mine and this is consistent with the documentary
23 record you have.

24 During their testimony before you, both Mr. Phelan
25 and Jones tried to lessen the impact of their written

1 words by suggesting they now believe they had exaggerated
2 their concerns. Their memoranda speak for themselves,
3 Mr. Commissioner, and they stood on the record for almost
4 five years without being withdrawn or amended, and we
5 submit that is the evidence you should believe.

6 In the end, we're left to speculate about what
7 happened in the Department of Resources in these weeks.
8 Was Gerald Phillips able to persuade John Mullally or Pat
9 Phelan to back off? Did anyone else intervene? Were the
10 regulators simply hobbled by the work they were doing to
11 support the mine and keep it in production?

12 What we do know is that after this episode, the
13 operators of the Westray mine acted as if they could
14 develop the mine as they saw fit, regardless of the
15 approvals issued by the Department. The ink was barely
16 dry on the approved plan for the Southwest section when
17 Westray began developing a different area of the section
18 with a different pillar design.

19 We submit you should find that the failure of the
20 Department of Resources to enforce the Mineral Resources
21 Act in relation to the Southwest section in the months
22 leading up to the explosion is one of the most serious
23 lapses in the exercise of regulatory authority that
24 emerges from the evidence. The explanation which was
25 given in testimony is that even though they were

1 underground several times in this period and even though
2 they participated in discussions about problems being
3 encountered in the Southwest section, neither Don Jones
4 nor his colleague, John Campbell, realized what was going
5 on.

6 Now remember, both of these men are mining
7 engineers. Mr. Jones claimed he didn't know what the
8 actual mining was. Mr. Campbell, he claimed he didn't
9 know what the approved plan was. We submit this is not
10 acceptable performance of the important public duties
11 held by these men and we ask you to find they were
12 derelict in not determining how Westray was mining the
13 Southwest section in relation to the approved plan.

14 We submit further, Mr. Commissioner, that there are
15 serious issues of credibility concerning the testimony of
16 Don Jones and John Campbell which suggest they did know
17 what was going on in the Southwest section but, for some
18 reason, did nothing about it.

19 There is evidence before you in Mr. Jones' statement
20 to the RCMP and Nancy Ripley-Hood's statement to the
21 Commission that as a result of the experience with
22 Westray in October and November of 1991, the Department
23 had decided to keep a closer watch on the mine to ensure
24 it was following the approved plan. And it just makes
25 sense, Mr. Commissioner, that they would do this. Seen

1 in that light, the idea that Mr. Jones or Mr. Campbell
2 noticed nothing amiss in the series of visits they made
3 to the mine is even harder to accept.

4 As well, you now have direct evidence that the
5 Department of Resources knew how Westray was mining the
6 Southwest section before the explosion. Trevor Eagles
7 testified that on April the 10th Don Jones was at the
8 mine and requested Westray's current mine plan. And Mr.
9 Eagles says he gave him three plans, two of which clearly
10 showed how the Southwest section had been mined to date
11 and the plans for further mining.

12 Mr. Eagles testimony is supported by a memo he wrote
13 to David Waugh on April the 10th, advising him that the
14 plans were given to Mr. Jones, and we know from the
15 record that Mr. Jones was in Stellarton on April the 10th
16 to visit the strip mine.

17 Trevor Eagles' evidence is credible and believable.
18 In the absence of any explanation from Don Jones, we can
19 only conclude Mr. Jones did not tell the truth when he
20 denied knowing about Westray's mining activities in the
21 Southwest section until the morning of May the 9th. Mr.
22 Jones knew by April the 10th, at the latest, that Westray
23 had abandoned the approved plan for the Southwest
24 section, had implemented a plan for extracting coal that
25 had failed and had started another development that was

1 contrary to the approved plan. The question then becomes
2 why did he do nothing about it? Here again, Mr.
3 Commissioner, we have no answer, but that is a question
4 we believe should be asked of Mr. Jones before these
5 hearings end.

6 This is important because Don Jones testified that
7 if Westray had submitted the plan for the Southwest
8 section as it was executed, he would not have approved
9 it. And that means that if the Mineral Resources Act had
10 been followed and enforced in relation to the Southwest
11 section, one of the key factors in the explosion, a large
12 body of gas in the failed district, might not have been
13 there.

14 Second, by not acting when Westray had deviated
15 significantly from the approved plan for the Southwest
16 section, senior officials in the Department of Resources
17 failed entirely to meet the statutory duties imposed on
18 them by the Mineral Resources Act.

19 The other major area of regulation of the Westray
20 Mine with we are concerned, Mr. Commissioner, is the
21 operational regulation by the Department of Labour. And
22 there's been much comment already and we submit you have
23 abundant evidence before you to conclude that the
24 responsible officials in the Department failed to carry
25 out their statutory duties. They didn't enforce the laws

1 they had under their charge and they were, in a word,
2 incompetent. Moreover, Mr. Commissioner, their lax
3 regulation of the operation of the Westray Mine allowed
4 conditions to persist that were directly linked to the
5 causes of the explosion. The Coal Mines Regulation Act
6 confirms a broad mandate on a mine inspector.
7 Essentially, he's empowered to do whatever is necessary
8 to ensure the health and safety of miners and anyone else
9 employed in or about a mine. And that is the duty of the
10 inspector, Mr. Commissioner, and it is against that
11 mandate we say the actions of the Westray inspectors must
12 be judged.

13 Their failures are well catalogued in the evidence,
14 overlooking a whole host of violations of the Coal Mines
15 Regulations Act and elementary safe practices of mining.

16 I want to focus, though, on three areas of
17 particular concern. Those are coal dust, ventilation,
18 and the Department's response, or lack of response, to
19 safety warnings from the employees of Westray.

20 First, the coal dust. The facts in the evidence are
21 pretty basic. From the beginning of the mine to its end,
22 the operators had no program to remove coal dust from the
23 mine or to apply stone dust. Efforts that were made were
24 ad hoc and sporadic and the dust problem grew as the mine
25 developed. The problem was obvious to miners, Mr.

1 Commissioner, and it was obvious to visitors.

2 The inspectors were aware of the problem and began
3 documenting their concerns in July of 1991. In September
4 they exacted a promise from the operator that a program
5 for the control and inerting of coal dust and the
6 sampling of dust would be in place by the end of the
7 month. As we know, that promise was never kept.
8 Instead, it was renewed regularly by the operator until
9 the coal dust exploded.

10 We submit you should find that the repeated failure
11 of the Department of Labour to follow through on its
12 request for a program to control coal dust at Westray was
13 a fundamental lapse in the exercise of its
14 responsibilities under the Coal Mines Regulation Act.

15 I just refer briefly to Mr. White's tortured
16 attempts before you to have you believe that they were
17 not asking for a coal dusting program; they were asking
18 for a dust sampling program.

19 Mr. Commissioner, it's clear that Mr. White knew the
20 difference, as everyone else in this room knew the
21 difference. That's why they were asking for both a coal
22 dust sampling program and a coal dusting program.

23 Nothing better illustrates the incompetence with
24 which the inspectors dealt with the dust problem at
25 Westray than their actions after the coal dust orders

1 were issued on April the 29th. You don't need to be
2 reminded of the orders, four parts, two to be carried out
3 immediately, two to be carried out within 15 days. And
4 the company was to notify the Department in writing when
5 it had complied with each part of the order.

6 As we know from the evidence, nothing was done.
7 Mechanics were directed to begin installing a sprinkler
8 system on the main slopes, but there was no removal of
9 coal dust and no application of stone dust. And what's
10 worse, Mr. Commissioner, nothing was done by the
11 Department to monitor compliance. Albert McLean planned
12 to come back in a month. Claude White said he might send
13 him back in a couple of weeks.

14 But, in fact, we know that the evidence shows Mr.
15 McLean actually visited the mine property on May the 6th.
16 He was there for four hours to give a test. And even
17 though he knew by this time that there had been no
18 communication from Westray and he knew by this time that
19 there was no compliance with the orders, he did nothing.
20 He didn't go underground. He didn't bring up the issue
21 with Westray management. If he had bothered to go
22 underground on May the 6th, Mr. Commissioner, it's clear
23 he would have found the mine much as it was on April the
24 29th.

25 We submit you should find that by not taking any

1 action to monitor compliance with the orders of April the
2 29th, the responsible officials in the Department of
3 Labour failed in their statutory duties. Implicit in the
4 orders of April the 29th was the recognition that the
5 coal dust problem at Westray was a threat to safety that
6 required urgent attention. The failure of the Department
7 of Labour to act accordingly is, in our submission,
8 indefensible.

9 The inspectors also failed to respond to a serious
10 threat to the safe ventilation of the mine that was
11 obvious on April the 29th. That threat was posed, as we
12 know, by the plywood barriers to the abandoned Southwest
13 section.

14 Now the evidence shows that the mine inspectors
15 lacked the capacity to deal with mine ventilation on
16 anything but the most rudimentary level. During his
17 testimony, Mr. McLean admitted his lack of knowledge
18 about ventilation. He was able to take gas readings in a
19 general air body, but that was about it. He didn't
20 understand the phenomenon of layering. He didn't check
21 air volumes or air velocity. He didn't review the
22 company's ventilation surveys or its ventilation plans.
23 Indeed, during his testimony he showed that he did not
24 understand the ventilation route, as it existed, in the
25 Southwest section when he was in the mine on April the

1 29th. We submit Albert McLean was not capable of
2 carrying out his duties of inspecting the Westray mine in
3 relation to ventilation issues.

4 The inspectors knew that methane gas was being
5 produced by the crushing of the pillars behind the
6 barriers to the Southwest section and they knew the
7 plywood barriers would not and could not keep the gas
8 from coming out. They knew the intake air of the
9 Southwest 2 section flowed past the barriers and the
10 barriers were leaking. Westray employees recorded
11 methane readings of anywhere from one and a quarter to
12 nine percent within ten feet of the barriers. And the
13 barriers had buckled from the weight of the roof above.
14 By April the 29th the evidence is the holes were big
15 enough for someone to stick their head in if they were so
16 inclined.

17 On that date three inspectors toured the mine and a
18 look at the barriers. And as a result of their
19 inspections, Mr. Commissioner, we submit they knew gas
20 was escaping from the barriers.

21 Now there is conflict in the evidence on this point,
22 but we submit Albert McLean's testimony that he recorded
23 no gas at all when he checked the barrier on B Road is
24 not believable. We know the stopping had buckled. We
25 know that same day Trevor Eagles recorded readings of

1 between one and a quarter and two and a half percent ten
2 feet away from the barriers. And you remember Mr. McLean
3 saying he went right up to the edge, he brought his
4 methanometer around the edge of the barrier and he got
5 nothing. Claude White testified that Mr. McLean told him
6 he had recorded some gas that day, but Mr. White didn't
7 ask how much.

8 And we know that after the explosion, the Department
9 recommended charges under the Occupational Health and
10 Safety Act against Westray based on Mr. McLean recording
11 a reading of four percent methane on April the 29th. And
12 those recommendations were reviewed by Mr. McLean and Mr.
13 White before they were passed on. The reading could not
14 have been made on March the 30th, as was suggested in
15 some questions before you because on March the 30th there
16 was no barrier in front of which an inspector could have
17 taken a reading.

18 It's likely that the gas from the Southwest 1
19 section played a significant role in the explosion on May
20 the 9th. There doesn't seem to be much debate about that
21 among the experts. The experts agree that the conditions
22 were right for the gas to layer in the roadways leading
23 into the working faces and that gas in fact became the
24 fuel that ignited the coal dust.

25 We submit you should find, Mr. Commissioner, that

1 Albert McLean recorded significant levels of methane at
2 the barrier on April the 29th and that this constituted a
3 significant and serious violation of the Coal Mines
4 Regulation Act. You should find that Mr. McLean and Mr.
5 White were derelict in their duty under the Act in taking
6 no action after inspecting the barriers on April the
7 29th.

8 Now the third area in which the exercise of
9 regulatory authority by the Department of Labour broke
10 down involved the safety concerns of the miners
11 themselves. The claim which is made by Mr. McLean and
12 others was that the miners never told them what was going
13 on. Well, this claim, Mr. Commissioner, is simply not
14 supported by the evidence. The evidence shows that Mr.
15 McLean and his colleagues were fully informed about the
16 concerns of the miners through direct and indirect
17 contact. And the evidence shows further that Mr. McLean
18 and Claude White deliberately misrepresented the concerns
19 of miners in two significant instances.

20 One of the most troubling stories to emerge from the
21 evidence is the story of Carl Guptill. This miner, who
22 was an experienced health and safety representative at
23 another mine, was injured at Westray in December of 1991.
24 He complained to the Department of Labour about his
25 injury and about a series of other safety hazards in the

1 mine, including unsafe work practices, excessive dust and
2 methane, poor ventilation, and unqualified mine
3 officials.

4 But before anything was done, Claude White went to
5 Gerald Phillips, told him about the complaints and
6 identified Mr. Guptill as the complainant. The
7 Department's investigation was compromised before it
8 began.

9 Then Mr. Guptill was interviewed by inspectors
10 McLean and Smith. For some reason, they each took
11 separate statements about the injury, but recorded
12 nothing about the other complaints even though they were
13 much more serious.

14 Mr. McLean closed his investigation after meeting
15 briefly with three of the men on Mr. Guptill's crew and
16 gathering statements about the accident that had been
17 taken by the company. He produced three versions of a
18 report on the incident dealing with the injury, but
19 nothing about the other complaints. And in the meantime,
20 Westray terminated Carl Guptill's employment.

21 We submit, Mr. Commissioner, the evidence points
22 strongly to collusion between the Department of Labour
23 and Westray over the Guptill case. How else are we to
24 explain the immediate disclosure of the complaints to
25 Gerald Phillips, the failure to investigate serious

1 safety issues or the distortion of those complaints in
2 the reports produced by Albert McLean? And what else
3 would explain Claude White's decision to change the
4 minutes of a meeting with the company to make it appear
5 as though a lengthy discussion of the Guptill case had
6 never taken place? While there is no direct evidence
7 that the Department and Westray conspired to silence the
8 Guptill complaints, there is reason, Mr. Commissioner,
9 for deep suspicion.

10 But one thing is clear, if the Department's
11 intention had been to discourage any miner from coming
12 forward with concerns about safety at Westray, it could
13 not have handled the Guptill case any better.

14 About six weeks after Carl Guptill came forward,
15 Albert McLean had another opportunity to hear directly
16 from Westray miners about safety concerns and that's the
17 evening, you recall, when he met with three mine safety
18 representatives. They talked for an hour. They talked
19 about many of the same hazards Carl Guptill had
20 identified, gas, excessive gas, dust, diesel equipment
21 travelling throughout the mine, the use of torches,
22 untrained miners and unqualified supervisors.

23 But instead of taking any action, Albert McLean
24 produced a memo for Claude White that hid the fears of
25 the miners. The memo contained no reference to the

1 concerns that had been expressed by the safety
2 representatives. In fact, it made it appear as though
3 they had engaged Mr. McLean in some kind of general
4 discussion of a number of topics without any reference to
5 actual conditions in the mine. We submit you should find
6 Albert McLean's memo to Claude White was another
7 deliberate attempt to distort the record of discussions
8 of safety problems at the Westray Mine.

9 The evidence is that mine inspectors got other
10 warnings from the men about how bad things were at
11 Westray and you have that before you.

12 But if they really wanted to know about the safety
13 concerns of the miners, all the inspectors needed to do
14 was look at the mine safety reports, the reports on the
15 safety walks. You recall there were five reports
16 produced between October and April, October of '91, April
17 of '92. The reports covered the full range of known
18 safety deficiencies in the mine, many deficiencies which
19 were direct violations of the Coal Mines Regulations Act.
20 They were circulated to the mine inspectors and each one
21 of the mine inspectors, Albert McLean, John Smith, and
22 Claude White testified they reviewed some of them. Not
23 systematically, but they did review some of them.

24 However, the evidence is also that no action was
25 taken by anyone in the mine safety division as a result

1 of information acquired from the safety walk reports.

2 And the most serious deficiencies, of course, we know
3 were not dealt with by the company.

4 Having reviewed the evidence, Mr. Commissioner, the
5 question that emerges is not why didn't the miners tell
6 anyone about what the conditions were in which they
7 working. The question is, why didn't the inspectors in
8 the Department of Labour respond to the wealth of
9 information they were receiving about conditions
10 underground at Westray?

11 Now one reason for the paralysis in the Department
12 may lie with the dominant philosophy in the health and
13 safety division. It was, and perhaps still is, a
14 philosophy of non-engagement that in this case encouraged
15 blind deference to the mine operator. The concept of
16 shared responsibility became a means by which regulators
17 evaded responsibility. They deferred to internal safety
18 organizations without first determining that those
19 organizations were in place and functioning properly.
20 And the result was a void that left Westray employees
21 unprotected. We submit you should recommend changes to
22 the health and safety laws of this province to ensure
23 that internal responsibility never again becomes an
24 excuse for inaction and incompetence on the part of
25 public officials concerned with occupational safety.

1 I want to turn, Mr. Commissioner, now to evidence
2 concerning my clients, the employees of the Westray mine.

3 And on one point there should be no doubt the
4 employees of Westray Coal wanted the mine to succeed and
5 they did their best to see that that happened. For many,
6 this was the first chance they had to work at a good
7 paying job close to home. The promise was 15 years of
8 employment with a young, forward-looking company.

9 Now the reality of Westray, as they soon learned,
10 was quite different. Their bosses were more concerned
11 with production than safety and turned out not to be
12 competent to run a modern underground coal mine. They
13 worked in an atmosphere of intimidation, were subjected
14 to abuse from the underground manager, and were
15 threatened with their jobs if they complained about
16 working conditions.

17 When the miners testified here about conditions
18 underground, there were suggestions, Mr. Commissioner,
19 that they were exaggerating, that it couldn't have been
20 that bad, and that you were getting a distorted picture
21 of life in that mine.

22 After 76 days of evidence, we submit the testimony
23 of the miners has not been contradicted on any
24 significant point. In fact, their description of working
25 conditions in the mine has been corroborated by their

1 supervisors, by second-level supervisors, by the
2 engineering staff, and by senior executives of Curragh.

3 It has been suggested that if things were as bad as
4 the miners said they were, there should have been more
5 complaints inside and outside the company. I've already
6 dealt with the series of complaints to the Department of
7 Labour and what happened to them. The evidence is that
8 there were numerous complaints inside the company as
9 well. The men took their concerns to their supervisors,
10 to their overmen, they complained to the engineers and to
11 Curragh executives such as Graham Clow. Some went to
12 Roger Parry and Gerald Phillips. Given the
13 circumstances, Mr. Commissioner, it's not clear what more
14 they could have done to draw attention to their concerns.

15 Now because there has been no challenge to the
16 evidence of the miners about their working conditions,
17 there's no need to review it in any detail. I just want
18 to deal with a couple of specific issues that arise from
19 their testimony.

20 First, is the suggestion that underground employees
21 deliberately engaged in unsafe acts that endangered
22 themselves and their fellow workers. Some of those
23 allegations came inside this hearing room, but others
24 came from outside, from somebody who has not done what my
25 clients have done, and that is come here voluntarily to

1 testify.

2 Mr. Commissioner, there is no evidence that the
3 underground employees of Westray Coal carelessly or
4 wantonly engaged in unsafe conduct. As Jay Dooley
5 testified, the underground employees did their best to
6 work safely in the circumstances in which they found
7 themselves.

8 It has been alleged, for example, that some
9 continuous miner operators developed a practice of
10 overriding the automatic shutoff on their mining machines
11 to continue mining the coal face. There was a lot of
12 testimony on this point and the evidence is clear. There
13 was no such practice in the mine. No one saw it done and
14 no one admitted to having done it. It's not even clear,
15 Mr. Commissioner, if it was possible to do what is
16 alleged, that is, simultaneously ride the reset button,
17 lower the heads, operate the heads, and drive into the
18 mine face. We submit that issue has --

19 MR. COMMISSIONER My information is that the most
20 acceptable way to do that is to jump it.

21 MR. ROBERTS Well, fair enough. We submit the evidence
22 on that issue has been put to rest, Mr. Commissioner.

23 Another area of testimony concerns the blocking of
24 ventilation tubing. The evidence is that this was done
25 on the instruction of supervisors in order to increase

1 air to the mining machine and maintain production. There
2 is not one instance in the evidence where the miners did
3 this on their own initiative. There were cases when they
4 would ignore the request or take the screen and plastic
5 blocking the tube down after the supervisor had left the
6 area.

7 The management at Westray had a policy of blocking
8 ventilation tubes to increase air flow to the mining
9 machines and the miners were in no position to prevent
10 that policy from being implemented.

11 Mr. Commissioner, when you review the evidence
12 before you, we are confident you will agree that the
13 employees of Westray did their best to work safely.

14 And considering the evidence, the fact that no one
15 was killed or seriously injured before May the 9th is
16 very a tribute to their safe work practices.

17 There can be no doubt, Mr. Commissioner, that the
18 direct responsibility for the working conditions in the
19 Westray mine rested with the management of the mine. In
20 practice, the on-site management of Westray Coal was two
21 people, one who was stretched beyond his limits and the
22 other who was unfit to perform the job he held.

23 In practice, the mine manager and the underground
24 manager controlled most of what happened in the mine.
25 They established the priorities. They hired the staff.

1 They planned the mine and they directed the operations.
2 The public face of Westray was Gerald Phillips. He dealt
3 with head office. He dealt with the media, politicians
4 and the regulators. Underground, the face of Westray was
5 Roger Parry. Together, they were responsible for
6 creating the working conditions that were described so
7 graphically by the miners in their testimony here.

8 They were supremely confident in their abilities to
9 manage a modern coal mine. They didn't need an
10 experienced engineering department, and it didn't matter
11 that their chief engineer had never worked in a coal mine
12 before, that their geologist had never even been in a
13 coal mine, or that their other engineers were right out
14 of school. The most experienced coal man in the office,
15 the surveyor, Ray Savidge, quit in disgust and his
16 replacement didn't have enough experience to be certified
17 under the Coal Mines Regulation Act.

18 When they needed help with roof problems, they hired
19 a potash geologist who had never worked in coal. As a
20 training officer, they hired someone who had never worked
21 as a trainer or in mining, but who knew the politicians
22 and had been on television as a wrestling announcer.

23 It was as if Gerald Phillips believed he could will
24 this mine to be a success by the sheer force of his
25 personality. And, of course, Mr. Commissioner, he

1 couldn't do it. He was adept at producing slogans and
2 policies, but he couldn't turn them into reality. And of
3 the three main hazards in coal mining, the roof, gas and
4 dust, he didn't control any of them.

5 The mine started behind schedule and it never caught
6 up. And although work was suspended for eight months
7 because of financing delays, no attempt was made to
8 reschedule the production commitments with Nova Scotia
9 Power. And this put the operation under pressure from
10 the beginning and it failed to meet any of its production
11 commitments. Adding to the pressure, of course, were the
12 roof problems which were apparently worse than had been
13 anticipated and the frequent roof falls endangered
14 employees, slowed development and filled the conveyors
15 with waste rock.

16 As you know from the evidence, planning was ad hoc,
17 day to day. They never took the time to develop a full
18 mine plan beyond the general intentions described in the
19 feasibility study. And this, Mr. Commissioner, we submit
20 is a condemnation of mine management and the authorities
21 that allowed the mine to begin operation.

22 Looming production commitments led to the decision
23 to change the mine plan in the feasibility study and make
24 an early entry into the Southwest section. The decision
25 to enter the Southwest section appears to have been made

1 hastily without full appreciation of the conditions that
2 would be encountered there.

3 And the inability to control the roof in the
4 Southwest section led to the adoption and abandonment of
5 a series of mine plans and ultimately an attempt to
6 implement an unusual, if not radical, pillar design in
7 the district.

8 And finally, the decision to persist in the
9 Southwest section after the narrow pillars had failed led
10 to the development of the Southwest 2 area.

11 Each of these decisions appears to have been made in
12 haste, under pressure for production.

13 And you see the same factors, Mr. Commissioner,
14 haste and a priority for production over safety, when you
15 review other decisions in the mine. The direction to
16 refuel diesel equipment underground instead of on
17 surface, the routine use of welding and cutting torches
18 underground, the absence of preventative maintenance, the
19 blocking of ventilation tubes, the dangerous efforts to
20 remove equipment from the Southwest 1 panel after it had
21 failed, and the refusal to assign production personnel to
22 stone dusting, and the decision not to remove the gas
23 from the Southwest 1 section.

24 These were all operational decisions made by Westray
25 management that reflected the assignment of a higher

1 priority to production than to safety.

2 We submit you should find that the management of
3 Westray Coal was more concerned with meeting its
4 production commitments than in protecting the safety of
5 its workers.

6 Now the extent of the coal dust problem should have
7 been no surprise to the operators. They were working on
8 a coal floor and the vehicles they selected for use in
9 the mine were bound to add appreciably to the dust
10 levels. Yet, Mr. Commissioner, the evidence is that
11 Westray management did not take stone dusting and the
12 removal of coal dust seriously. And the stone dusting
13 that was done was largely cosmetic and served to hide the
14 dust rather than deal with the problem. Don Dooley was
15 under direct orders from Roger Parry not to take men from
16 production in order to stone dust. And Fraser Agnew
17 believed that he would have been fired if he'd assigned
18 production crews to stone dusting.

19 Even with the Department of Labour issued its orders
20 on April 29, Roger Parry was still determined not to
21 sacrifice production for dust control. Instead of
22 directing miners to stone dust, he had a mechanic put
23 together a sprinkler system, something which was of
24 questionable effectiveness, but which did not take men
25 away from production.

1 And the evidence is, Mr. Commissioner, that the mine
2 management didn't take methane seriously either. They
3 never produced a ventilation plan for the mine, and they
4 never asked for help from the engineering department to
5 solve ventilation problems. The ventilation system came
6 together haphazardly, without any consideration of how
7 the pieces fit together as a whole. Particular problems
8 such as leaking stoppings or cavities that trapped pools
9 of methane in the roof were simply not addressed, and no
10 consideration was given to methane layering or to the
11 impact of changes that barometric pressure would have on
12 the movement of gas in the mine.

13 And we know that the gas in the Southwest section
14 was largely ignored, even though the mine knew that there
15 were large bodies of gas in the section and that it was
16 leaking from the plywood barriers.

17 We submit you should find that in failing to deal
18 with coal dust and in failing to manage and control the
19 methane in the Southwest 1 district, Westray management
20 ignored obvious safety hazards to the safety of people in
21 the mine. These hazards were direct factors in the
22 explosion on May 9. The decisions of Westray management
23 were conditioned by a belief that they would not be
24 interfered with by regulatory authorities.

25 In the evidence, Mr. Commissioner, there's a

1 sinister side to the management of the mine beyond
2 incompetence and neglect. Experienced coal miners were
3 lured to the mine by the false promise of a solid
4 sandstone roof. And when they learned of the reality, it
5 was too late for most of them to leave.

6 Inexperienced men who sometimes didn't know better
7 were assigned to the dangerous job of bolting the roof.
8 And if they didn't meet performance targets, they were
9 subjected to abuse by the underground manager.

10 If you questioned what was going on, you were
11 reminded of all the people who put applications in the
12 office on surface. And anyone who complained was
13 threatened with dismissal.

14 Operational decisions could only be made at the top,
15 and any supervisor who acted on his own put his job at
16 risk.

17 However, Mr. Commissioner, it would be wrong to
18 suggest that Westray or Curragh were rogue companies that
19 can be set aside as anomalies. They were part of the
20 Canadian mining industry. Their executives were leading
21 lights in that industry. And in a sense, the industry as
22 a whole must bear some responsibility for what happened
23 here. And in this sense, Mr. Commissioner, we regret the
24 fact that the Coal Association of Canada and the Canadian
25 Institute of Mining, Metallurgy and Petroleum refused

1 your invitation to participate in these hearings.

2 You remember the Institute was the body which
3 awarded Westray the John T. Ryan trophy for mine safety a
4 few weeks before the mine blew up. On the basis of the
5 evidence heard here, including evidence of falsification
6 of accident reports by Westray, we submit the Institute
7 should withdraw that award.

8 It's also wrong, Mr. Commissioner, to suggest that
9 Gerald Phillips and Roger Parry were off on their own in
10 Nova Scotia, doing what they were doing without the
11 knowledge and support of the parent company, Curragh
12 Resources. The evidence is that Clifford Frame and
13 Marvin Pelley were very much involved in the critical
14 decisions about the Westray mine. They should also be
15 accountable for what happened here, and we urge you to
16 continue your efforts to bring them to the Inquiry.

17 Now it's clear that the conditions for the explosion
18 were not created by the men who were underground on the
19 morning of May 9. They were not responsible for the
20 excessive coal dust or the excessive gas.

21 And while we will never be able to determine with
22 certainty where the ignition occurred, we submit the
23 evidence suggests the bolting machine next to the
24 continuous miner on the Southwest 2 Road was the most
25 likely cause of a spark that ignited methane in the

1 ceiling. And we'll elaborate on that in our written
2 submissions to you.

3 Further, Mr. Commissioner, there's been no credible
4 evidence that challenges the expert testimony of Reg
5 Brookes or Malcolm McPherson about propagation of the
6 explosion once the methane fire was ignited. The fire
7 travelled along the roof until there was a methane
8 explosion which triggered a coal dust explosion. We
9 submit you should find that conditions were right for the
10 layering of methane gas in the roadways leading to the
11 working faces of the Southwest section in the hours
12 preceding the explosion.

13 The expert evidence of Dr. McPherson and Westray's
14 own ventilation surveys shows that the ventilation at the
15 face of these headings could not prevent the layering of
16 gas produced there. And it's also likely that the gas
17 leaking from the Southwest 1 section was also layering
18 and was being drawn to the headings. This process would
19 have been increased by the steady drop in the barometric
20 pressure that had occurred in the 72 hours preceding the
21 explosion.

22 Mr. Commissioner, the United Steelworkers of America
23 has a deep interest in the recommendations for regulatory
24 reform which will form part of your report. And we
25 intend to make detailed proposals in our written

1 submissions.

2 Today, we want to identify some major principles, we
3 submit, should guide your reform proposals. First, as
4 has already been indicated, the Coal Mines Regulation Act
5 will be replaced and much work has already been done
6 within the Department of Labour on a new Act. There may
7 be parts of those proposals which should be adopted,
8 however, we submit this Commission should draft its own
9 proposals based on the evidence heard here and the
10 recommendations you have received.

11 We urge you in the strongest terms, Mr.
12 Commissioner, to resist the tide of deregulation in your
13 recommendations. Westray is an example of what can
14 happen with the deregulation of Occupational Health and
15 Safety. There was complete deregulation here because the
16 authorities didn't enforce the law. We are concerned
17 that internal responsibility is being used as a cover for
18 deregulation.

19 We submit you should look at the MSHA regime in the
20 United States and recommend a system of mandatory duties
21 for mine inspectors, a kind of checklist. There should
22 be a mandatory investigation process following a safety
23 complaint from a miner or miner's representative.

24 Also borrowing from MSHA, new regulations or
25 regulations that have been challenged should be subject

1 to public review.

2 Unlike MSHA, Mr. Commissioner, we submit your
3 recommendations should retain a general duty for the
4 operator to do what is necessary to maintain a safe work
5 environment and a general discretion for the inspector to
6 enforce that duty.

7 As well, there should be training and certification
8 of mine inspectors.

9 The United Steelworkers of America supports the
10 adoption of a detailed, enforceable code of practice,
11 such as is in place in British Columbia. The code should
12 be subject to periodic review by employers and employee
13 representatives and variations from the code should be
14 allowed only if they further the cause of health and
15 safety. Penalties for violations should be severe and
16 should extend past senior management to the directors of
17 the company.

18 As in British Columbia, the planning and permitting
19 process in mine development should be opened to public
20 scrutiny. And the safety of employees must be considered
21 in improving mine plans and changes to mine plans.

22 Provisions should be made for the Department of
23 Resources to order independent review of a company's mine
24 plan on the initial permit application and at any time
25 during the operation of the mine. And this review, Mr.

1 Commissioner, would be made at the expense of the
2 operator.

3 We submit your recommendations should take account
4 of the abuse to which the concept of internal
5 responsibility has been subjected in this affair.
6 Internal responsibility was never intended to promote the
7 abdication of responsibility by statutory agencies. Only
8 a regulatory authority is able to ensure the elements of
9 the system are functioning as intended.

10 Internal responsibility assumes an equality of
11 employee and employer in the work place, but in practice,
12 that equality is often a myth, especially in an
13 unorganized environment such as Westray. Only the
14 regulator has the power to ensure that public laws are
15 respected and enforced. Workers must be able to rely on
16 someone, Mr. Commissioner.

17 There is another interest that must be represented
18 here beyond that of the employers and employees, and that
19 is the public interest. The community, Mr. Commissioner,
20 has an interest in seeing that its men and women are not
21 killed or injured trying to earn a living. It has an
22 interest in seeing that people are not forced to choose
23 between working dangerously and being unemployed. And it
24 has an interest in ensuring its citizens do not suffer
25 the way the people of this community have suffered as a

1 result of this tragedy. This public interest must be
2 protected by a responsible public authority supported by
3 the law.

4 I began my remarks, Mr. Commissioner, by describing
5 the four principles we say should be embodied in your
6 recommendations. Stop deregulation. Train inspectors.
7 Make the regulators accountable, and make the system
8 transparent. However, if you produce the kind of report
9 we're confident you will, it will be of no value unless
10 it's put into action. And today we put the government on
11 notice that we will not let your report gather dust. We
12 will insist on having your recommendations implemented,
13 and we will not rest until they are.

14 If you produce the kind of report we expect you
15 will, we will take it to the government of every province
16 and territory in this country and work hard to have your
17 reforms adopted. And in that sense, Mr. Commissioner,
18 this is just a first step in righting the wrongs of
19 Westray.

20 In conclusion, I want to thank Commission counsel,
21 Mr. Merrick and Ms. Campbell for their assistance during
22 these hearings, Commission staff, Ms. Isenor, Ms.
23 MacDonald, Ms. Yazbek, and thank yourself, Mr.
24 Commissioner, for the careful and considerate way you've
25 conducted these hearings.

FINAL COMMENTS

1 COMMISSIONER Thank you, Mr. Roberts. I have nothing
2 further to add at this time except to say that in a
3 rather brief fashion that if there's any necessity or any
4 requirement to reconvene these hearings, you will all
5 receive ample notice of same and be given the right to
6 respond to any evidence that comes out, either through
7 our successful applications before the courts of Nova
8 Scotia and Ontario or through a change in the goodwill of
9 the people who are holding out from coming down to give
10 their evidence before this Inquiry. So we are adjourned
11 until such eventuality. Thank you very much.
12 INQUIRY ADJOURNED [TIME: 3:27 p.m.]

REPORTER'S CERTIFICATE

I, Margaret E. Graham, Court Reporter, certify that the foregoing is a true and accurate transcript of the evidence taken by way of recording and reduced to typewritten copy.

Margaret E. Graham

DATED this 25th day of July, 1996, at Dartmouth, Nova Scotia.