

Attack on evidence continues

By PHIL McNICHOL
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David Mark Sutton's constitutional rights and the way they were handled by Owen Sound city police investigators continued to be an issue as the Clarenville fire trial ended its sixth day in Owen Sound provincial court Monday.

Sutton, 23, of no fixed address, is charged with setting fire to the former Clarenville floating seafood restaurant in Owen Sound harbor last August 7.

Sutton was also charged with setting five garbage fires behind downtown buildings on Aug. 8, but Judge J.F. Laing has already ruled Sutton's rights were violated by a faulty investigation and stayed those charges.

Defence attorney David Midanik of Toronto continued his attack on police evidence Monday, suggesting they took unfair advantage of someone who suffers from a serious mental illness to extract the statements that form the basis of the Crown's case.

Const. Barry Moyle interviewed Sutton for more than two hours at Owen Sound police headquarters Aug. 29.

Midanik noted Moyle's block-lettered recommendation in his own report was that someone should "seek psychiatric care" for Sutton.

He also questioned why the officer didn't suggest Sutton reconsider talking to a lawyer when Sutton asked "a legal question" about how much time in jail he could get for arson.

Midanik suggested Moyle didn't want Sutton to talk to a lawyer.

Moyle denied that, saying he had fulfilled his obligation to advise Sutton of his right to counsel.

"I suggest you had a further obligation," Midanik replied.

Crown Attorney Ken Rae objected, saying if the officer had such a further legal obligation, he wasn't aware of it.

Detective Ron Ross testified Sutton asked if he was going to be his lawyer when Ross first showed up at the Owen Sound Jail at 9 p.m. Sept. 3 to talk to him.

Ross said he told Sutton he wanted "to talk more about the fires you set," and suggested he could have a lawyer present if he wanted.

"No, you won't get one here at night," Ross said Sutton replied.

Under cross-examination Ross agreed he knew there were criminal lawyers in Owen Sound who answer calls at night.

"Why didn't you suggest he try to call a lawyer," Midanik asked, suggesting it sounded like Sutton wanted legal advice.

"I didn't think it was necessary. I

didn't expect to charge him," Ross said, adding he felt he had already fulfilled his obligations.

He said he told Sutton early in the interview Det.-Sgt. Mickey Kay would lay a charge later. Sutton had already been charged with setting the garbage fires.

Ross said he formally advised Sutton of his rights when he started making incriminating statements about the Clarenville fire. Ross also then began taking a formal statement.

Midanik suggested Ross had a "greater obligation" to make sure Sutton got outside help before incriminating himself, especially because Ross already had concerns about Sutton's mental state and had offered to take him to hospital.

Ross also admitted his notes did not include all the conversations he had with Sutton. He didn't record portions of his conversation with Sutton, he said, "because I couldn't make anything out of it."

"Do you think it was a fair contest between you and a mental patient?" Midanik asked Ross, suggesting he should have stopped his interrogation at that point.

Ross said better qualified people

seemed to think Sutton was mentally fit.

The Crown's case depends on statements in which Sutton said he set the fires, including the Clarenville blaze.

A long voir dire hearing to determine the admissibility of those statements continues to take up most of the court's time.

Court has heard evidence from two psychiatrists that Sutton is seriously schizophrenic, and may not be able to think clearly or understand what he's saying, especially when he's off his anti-psychotic medication.

But the Crown's key witness, Penetanguishene Mental Health Centre consulting psychiatrist Dr. Angus McDonald, testified last week it sounded like Sutton knew what he was saying in his statements to police.

Midanik said Monday he plans to ask Judge Laing to exclude all McDonald's evidence. He's expected to argue the doctor's opinion is invalid because it was based on the apparent coherence of statements that don't include everything Sutton said to police.

The trial continues.