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**Appendix A:**

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OUR FILE 1830-54-29  
YOUR FILE

July 19, 1988

JUL 29 1988

Messrs. Boyne Clarke  
Barristers & Solicitors  
Suite 700, Belmont House  
33 Alderney Drive  
P.O. Box 875  
Dartmouth, Nova Scotia  
B2Y 3Z5

Attention: Mr. Gordon F. Proudfoot

Dear Sirs:

Thank you for your letter of May 20, 1988 addressed to the Attorney General which has been referred to myself for reply.

Rather than complete the questionnaire as you have requested I will outline the profile of the Criminal Justice Branch and also answer your questions about disclosure in the body of my letter.

I report directly to the Deputy Attorney General and I have four Regional Crown Counsel who report directly to me. Throughout the Province we employ one hundred and seventy full time Crown Counsel, the majority of whom are on contract and some of whom are career civil servants. As well, up to fifteen per cent of all prosecution activity is carried out by "ad hoc" prosecutors who are appointed by the case on an hourly fee basis. Those ad hoc prosecutors prosecute offences under the Criminal Code as well as Provincial Statute and Bylaw matters and they are not political appointments.

With this mix of Crown Counsel we strive to maintain a vital Branch with room for the exceptional to rise to the top, room for junior practitioners to serve the public and for a time to gain experience and then enter the private bar, and room for the private bar to participate. We want to avoid developing a solid

exclusive cadre of prosecutors who see themselves as extensions of the police who, regardless of ongoing contribution enjoy a secure spot in the public service.

We have developed a relatively young dedicated and balanced group of lawyers who generate their security by solid performance on an annual basis and who are absolutely independent of "political influence" and, frankly, undue police influence. The ad hoc lawyer gives us manpower flexibility and helps us to avoid the development of an overly prosecutorial police-like profile. As well, the development of a confrontational atmosphere between the defence bar and the prosecutorial bar is less likely to occur.

Our disclosure policy is in writing and is quite simply that full, fair and frank disclosure of the Crown's total case must be given to defence counsel or the accused. More specifically we require that a copy of any statement given by the accused to a person in authority must be given to defence counsel or the accused. In connection with disclosure, we have a quality control system in which all charges recommended by the police are reviewed by Senior Crown Counsel and the police are required to report in writing on a Report to Crown Counsel form which includes a narrative statement, witness list and an evidence check sheet.

I attached, for your information, a copy of our Disclosure Policy.

Finally, I am not aware of any cases similar to the Donald Marshall case where in British Columbia someone has been convicted of criminal offences and exculpatory statements were not disclosed to defence counsel. We do not appear to have this type of problem in this province.

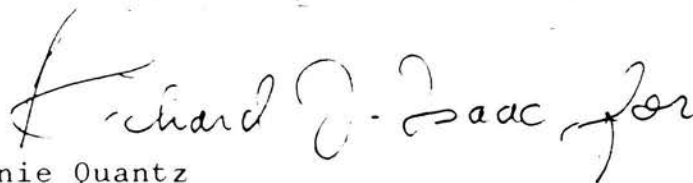
To summarize, I am proud of the fact that British Columbia has been a leader in developing a full disclosure policy. We have not waited for federal legislative initiatives to occur and, while the police were initially reluctant to embrace the policy, it now appears that there is very little concern by law

- 3 -

enforcement agencies. The law enforcement community's specific concerns about confidentiality are met by providing to them a special form for confidential remarks which is not provided to defence counsel or the accused. Thus we are practising a full disclosure policy which allows the parties to resolve non-contentious issues prior to the trial and which results in complete fairness to the accused without detracting from the ability of the Crown to prove its case.

I hope that this information will prove useful for the purposes of your inquiry.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Ernie Quantz for".

Ernie Quantz  
Director of Operations  
Criminal Justice Branch

Enclosure

B. CIRCUMSTANCES FOR DEFENSE

Introduction

The Ministry's policy is to fully disclose the Crown's case to the defence. The most efficient means of doing so is to provide defence with a copy of the narrative section of the RCC in addition to other pertinent documentation.

There are, however, cases where the investigator wishes to provide confidentially his/her comments and opinions concerning the investigation. It is in the Crown's interest to encourage the forwarding of such material. To release these comments and opinions except in extraordinary circumstances would discourage the investigator from providing them to Crown Counsel.

These comments are not released to defence unless counsel decides that the proper administration of justice requires it. They are to be released only after counsel has spoken with a police representative. In so doing, counsel is not seeking the police representative's permission to release such material, rather he/she is:

- Consulting with the police on the issue, and;
- Advising the police which "confidential material" in exercising his/her discretion, he/she has decided must be released.

If the procedures outlined above in paragraph C.4. under "Charge Approval" are followed, it will not be necessary to refer most files to counsel when a request for circumstances is made by



- 23 -

## 2. Secretaries Responsibilities

- (a) Forward the narrative portion of the RCC to the defence excluding any areas deleted by the charge-approval officer.
- (b) Forward other relevant documentation as noted by the charge-approval counsel.
- (c) Note to whom circumstances have been given, the date and your own name in the above-mentioned stamped format.

The portion of the report under "REMARKS" (form PCR 220) is only to be given out by counsel or under the personal direction of counsel.

## C. REMAND COURT

### 1. Preparation

Adoption of the procedures outlined above under "Quality Control of Charges" will significantly reduce the amount of preparation required prior to remand court. There are, however, two areas requiring mention. These are, firstly, the investigator's leave calendar; and secondly, the checklist of steps to be completed by the secretary the day previous to remand court.

Information of this nature should be included in the new form designed for this purpose - Form PCR 220, and should not be disclosed without prior consultation with the police or other investigative agency.

The material outlined above subject to full disclosure may not be exhaustive of the information to be provided to Defence Counsel or the accused. Additional information not identified may be subject to disclosure on a case by case basis.

It is expected that Crown Counsel will keep Defence Counsel or the accused apprised of any new information obtained relevant to the case between the time of initial disclosure and completion of the proceedings.



Province of British Columbia  
Ministry of Attorney General

Criminal Justice Branch

CROWN COUNSEL HANDBOOK

TITLE	DATE	CANCELS	No
P O L I C Y	10-15-86		DIS 1
SUBJECT			REFERENCE
Disclosure - Particulars			CROSS-REFERENCE

Criminal Justice Branch policy confirms the practice of full, fair and frank disclosure of the nature and circumstances of the Crown's case to Defence Counsel or the accused. Accordingly, to facilitate achieving the objective of full disclosure, the following should be provided to Defence Counsel or the accused:

1. A copy of the narrative page (FORM PCR 201) of the Report to Crown Counsel;
2. a copy of any statement given by the accused to a person in authority;
3. a copy of the criminal record of the accused;
4. a copy of any professionally prepared reports (medical, financial, etc.);
5. access to any exhibits, and where applicable, copies of the exhibits;
6. a copy of the Information;
7. a copy of witness' statements subject to the discretion of Crown Counsel not to release witness' statements where exceptional or compelling circumstances exist; and
8. where possible, victim impact information intended to be submitted on sentence to be disclosed to the Defence prior to sentencing.

The police, and other investigative agencies, often provide Crown Counsel with confidential information and material which relate not only to the matter under investigation but also to investigative techniques, other individuals, names of informants and the like.

the defence subsequent to the charge-approval process.

**1. Delivery of Circumstances (Counsel's Responsibilities)**

(a) Determine how much of the circumstances will be released to the defence in accordance with Ministry Policy.

(b) Note the means by which the circumstances are to be released to the defence by using a stamped format such as that set out herewith on the front sheet of the RCC.

Circumstances requested - Date: _____	
By: _____	
<u>Circumstance given:</u>	
Narrative	YES ___ NO ___ NA ___
Accused statements	YES ___ NO ___ NA ___
Accused criminal record	YES ___ NO ___ NA ___
Professionally prepared documents	YES ___ NO ___ NA ___
Witness statements	YES ___ NO ___ NA ___
Other: _____	
_____	
_____	
Circumstances given by: _____	
Date: _____	

AUG 15 1988

Office of the Assistant Deputy Minister  
(Criminal Justice)

9

9833 - 109 Street, Edmonton, Alberta, Canada T5K 2E8 403/427-9616 Telex 037-3019, TWX 610-831-1167

08 August 1988

Mr. Gordon F. Proudfoot  
Boyne Clarke  
Barristers & Solicitors  
Suite 700, Belmont House  
33 Alderney Drive  
P.O. Box 876  
Dartmouth, Nova Scotia  
B2Y 3Z5

Dear Mr. Proudfoot:

RE: Canadian Bar Submission to the Royal Commission of  
Inquiry on the Prosecution of Donald Marshall, Jr.

I have been asked to respond to your letter of 20 May 1988 addressed to the Honourable Attorney General, James D. Horsman, Q.C.

I am attaching the Alberta response to the questionnaire.

I apologize for the delay in responding to this questionnaire, but should you have any questions please do not hesitate to contact me directly.

Yours sincerely,

*Jane Baker*  
for Neil McCrank  
Assistant Deputy Minister  
(Criminal Justice)

/jlb

Attachment

QUESTIONNAIRE

- 1. Province Alberta
- 2. Number of Full Time Prosecutors Approximately 150  
 Number of Part Time Prosecutors Approximately 100 - used sparingly
- 3. Do Part Time Prosecutors prosecute offenses under the Criminal Code of Canada? Yes but Ad Hoc Counsel are used sparingly
- 4. Are part-time Prosecutors political appointments? No
- 5. Are there any written guidelines to guide your prosecutorial staff on disclosure of facts or other information to defence counsel prior to trial? Yes  
 During Trial? No  
 Post-Trial and Pre-Appeal? No
- 6. Is your province in the process of adopting guidelines for disclosure for Crown counsel? We have adopted the guidelines from the 1985 Uniform Law Conference in Halifax.  
 If so, how long has the issue of disclosure guidelines been under consideration?  
 Less than a year? \_\_\_\_\_  
 More than a year? \_\_\_\_\_  
 More than two years? \_\_\_\_\_
- 7. Are there any Statutes in your jurisdiction requiring the disclosure of exculpatory statements to defence counsel or the accused prior to Trial? No
- 8. Is it the practice in your province of the Crown Prosecutors to volunteer the names of witnesses and/or statements to defence counsel prior to trial which are favourable to the accused? Yes
- 9. Do you use a form for collection of crown evidence known as a "Crown Sheet"? The police use a variety of forms as Crown confidential information.
- 10. Can you provide and attach as a schedule to this reply a sample of same? There is no standard form but rather they would be regarded merely as reports from the different
- 11. Have the Uniform Law Conference Guidelines on Disclosure to Defence Counsel been adopted in your province? Yes

pol:  
forc

12. Are you aware of any cases similar to the Donald Marshall, Jr. prosecution where someone has been convicted of criminal offence and exculpatory statements were not disclosed to defence counsel either before the trial, during the trial or any time subsequent? No

If so, please name the case and give appropriate citations.

13. Have individuals ever been charged in your province for failing to disclose exculpatory statements to defence counsel? No

Details \_\_\_\_\_

14. Are you aware of any guidelines or laws in your province compelling the police to advise Crown Prosecutors of exculpatory statements? Nothing formal

Thank you for helping us. If you would like a copy of the brief, please advise.

# Manitoba



The Attorney General

Room 104  
Legislative Building  
Winnipeg, Manitoba, CANADA  
R3C 0V8

June 6, 1988

JUN 13 1988

Gordon F. Proudfoot  
The Canadian Bar Association  
Coyne Clarke  
Suite 700, 33 Alderney Drive  
P.O. Box 876  
Dartmouth, Nova Scotia  
B2Y 3Z5

Dear Mr. Proudfoot:

Thank you for your letter of May 20, 1988.

I agree that the work being conducted by the Nova Scotia Branch will be useful across the country. The questionnaire which accompanied your letter has been sent to Mr. John Guy, Q.C., Assistant Deputy Attorney General, Criminal Justice, and I have asked that he respond to you direct.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Jim McCrae".

Jim McCrae





Attorney General

Criminal Justice Division

5th Floor  
Woodsworth Building  
405 Broadway  
Winnipeg, Manitoba, CANADA  
R3C 3L6

(204) 945-0230

June 9, 1988

JUN 13 1988

Mr. Gordon F. Proudfoot  
The Canadian Bar Association  
Coyne Clarke  
Suite 700, 33 Alderney Drive  
P. O. Box 876  
DARTMOUTH, Nova Scotia  
B2Y 3Z5

Dear Sir:


This is further to your letter dated May 20, 1988, addressed to the Honourable Attorney General.

I enclose herewith the following:

1. Completed Questionnaire.
2. Copy of "Manitoba Policy on Disclosure by the Crown".

I trust this information is satisfactory. However, if you require further information/material, please do not hesitate to contact the writer.

Yours truly,

  
John P. Guy, Q.C.  
Assistant Deputy  
Attorney General

JPG/ljb/encl

cc: The Honourable Jim McCrae, Attorney General

QUESTIONNAIRE

1. Province Manitoba
2. Number of Full Time Prosecutors Fifty  
 Number of Part Time Prosecutors none
3. Do Part Time Prosecutors prosecute offenses under the Criminal Code of Canada? No
4. Are part-time Prosecutors political appointments? No
5. Are there any written guidelines to guide your prosecutorial staff on disclosure of facts or other information to defence counsel prior to trial? See No. 11  
 During Trial? \_\_\_\_\_  
 Post-Trial and Pre-Appeal? \_\_\_\_\_
6. Is your province in the process of adopting guidelines for disclosure for Crown counsel? See no. 11  
 If so, how long has the issue of disclosure guidelines been under consideration?  
 Less than a year? \_\_\_\_\_  
 More than a year? \_\_\_\_\_  
 More than two years? X
7. Are there any Statutes in your jurisdiction requiring the disclosure of exculpatory statements to defence counsel or the accused prior to Trial? No
8. Is it the practice in your province of the Crown Prosecutors to volunteer the names of witnesses and/or statements to defence counsel prior to trial which are favourable to the accused? Discretionary, but if favourable to accused, information concerning evidence should be provided
9. Do you use a form for collection of crown evidence known as a "Crown Sheet"? No - Use entire police report and summary of facts of case.
10. Can you provide and attach as a schedule to this reply a sample of same? -
11. Have the Uniform Law Conference Guidelines on Disclosure to Defence Counsel been adopted in your province? Yes

12. Are you aware of any cases similar to the Donald Marshall, Jr. prosecution where someone has been convicted of criminal offence and exculpatory statements were not disclosed to defence counsel either before the trial, during the trial or any time subsequent? No

If so, please name the case and give appropriate citations.

13. Have individuals ever been charged in your province for failing to disclose exculpatory statements to defence counsel? No

Details \_\_\_\_\_

14. Are you aware of any guidelines or laws in your province compelling the police to advise Crown Prosecutors of exculpatory statements? No

Thank you for helping us. If you would like a copy of the brief, please advise.

Yes. Please forward to me at:

John P. Guy, Q.C.  
Assistant Deputy Minister  
Criminal Justice  
500-405 Broadway  
WINNIPEG, Manitoba  
R3C 3L6  
(204) 945-0230



# GUIDELINE

**SUBJECT: MANITOBA POLICY ON DISCLOSURE BY THE CROWN**

It is recognized that there is a general duty upon Crown counsel to disclose the essence of the prosecution case to counsel for the accused, and to make defence counsel aware of the existence of other relevant evidence which may be helpful to the defence, but which the Crown does not intend to call in support of its case. The purpose of disclosure by the Crown of the case against the accused is three-fold:

- (a) to ensure the defence is aware of the case which must be met, and is not taken by surprise and is able to adequately prepare their defence on behalf of their client;
- (b) to resolve non-contentious and time consuming issues in advance of the trial in an effort to ensure more efficient use of court time;
- (c) to encourage the entrance of guilty pleas at a date early in the proceedings.

The guiding principle should always be full and fair disclosure restricted only by a demonstrable need to protect the integrity of the prosecution against abuse or misuse of information.

Pursuant to this duty, it is the policy of the Attorney General's Department to ensure full disclosure of the case for the Crown, and in this context full disclosure shall mean the provision to counsel for the accused of the following information:

- (a) a summary of the circumstances of the offence.

This summary will usually be taken from the court brief or police summary provided to the Crown by



## GUIDELINE

SUBJECT: **MANITOBA POLICY ON DISCLOSURE BY THE CROWN**

the investigating police agency, but does not include the police investigation report. If the summaries are to be copied from police reports, prior authorization must be obtained from the police agency.

- (b) a copy of any statement made by the accused to persons in authority, which the Crown intends to tender as part of its case, and in the case of verbal statements, a verbatim account of the statement.
- (c) a copy of the accused's criminal record.
- (d) copies of forensic and scientific reports as soon as same become available.
- (e) copies of medical or autopsy reports as soon as same become available.
- (f) access, upon request, to any exhibits, including photographs, films and other documents intended to be entered. Where preparation, resources and the nature of the exhibits permit, it will be reasonable for the Crown to provide copies of such exhibits, but, in other cases, an opportunity to inspect will be sufficient.
- (g) evidence which may assist the defence which the Crown is not intending to call as part of its case should be disclosed to the defence on a timely basis. This would include such matters as the identity of witnesses who fail to make an eye-witness identification or other witnesses whose evidence is generally favourable to the accused.

Additional disclosure beyond what is outlined above, is to be at the discretion of the Crown Attorney responsible for the prosecution. Such matters would include the following:

- (a) copies of criminal records of witnesses - criminal records of witnesses are not to be routinely provided as part of the Crown's obligation to make disclosure,



# GUIDELINE

SUBJECT: **MANITOBA POLICY ON DISCLOSURE BY THE CROWN**

but may be provided upon request providing the record is such as to make it relevant to an issue in the case.

- (b) witness statements, names and addresses - the production of this information is to be encouraged, but the final decision must remain with the Crown Attorney, who will be guided by the necessity of protection of witnesses from intimidation or harassment.

In cases where disclosure of witness statements or identities is refused, the Crown shall make available a summary of the expected testimony.

It is recognized that the precise mechanics or procedures for providing disclosure will vary from jurisdiction to jurisdiction throughout the province and will be, in large, determined by the local Crown Attorney in accordance with available resources and with the needs of the local defence bar.

The disclosure of evidence to an unrepresented accused shall remain in the discretion of Crown counsel.

## Appendix A - 2

Saskatchewan  
Attorney General

Public Prosecutions

No. 2.A.1

Date:

JANUARY 1982

## POLICY DIRECTIVE

SUBJECT: DISCLOSURE

## A. Policy:

a) It is the Department's policy to make full disclosure of the Crown's case in all criminal and quasi-criminal prosecutions.

b) Full disclosure includes, at the prosecutors' discretion, either inspection and perusal of statements of all prospective Crown witnesses, or a summary of the contents of same, particulars of the criminal record of the accused, examination of the exhibits when possible and the disclosure of all relevant information gathered in any ongoing investigation.

c) Police reports and memoranda and informants' names cannot be divulged.

## B. Rationale:

a) The object is to make full disclosure to expedite the prosecution process. The Crown counsel should initiate disclosure and this may result in admissions of fact, or guilty pleas.

b) Tendering copies of witness statements or names and addresses of potential witnesses is discretionary. Such discretion will take into consideration, inter alia potential abuse by defence, harm to the witness (i.e., from intimidation) or improper influence.

NOTE:

See: Attached letter from The Honourable Roy J. Romanow, Q.C.

# Saskatchewan



Attorney General  
of Saskatchewan

Legislative Building  
Regina, Canada  
S4S 0B3

December 17, 1980.

TO ALL MEMBERS OF THE LAW SOCIETY OF SASKATCHEWAN.

Re: The Administration of Justice in Criminal Matters  
Resolution #3, 1980 Law Society Annual Meeting

You may recall that at the Annual Meeting in Saskatoon last May a resolution, emanating from the Regina Bar Association, containing a number of complaints about policies and practices of prosecution counsel in this Province, was put to the general membership. There was some discussion on the resolution, including a presentation by Mr. Del Perras, Q.C., the Director of Public Prosecutions, of the Department's position. While the resolution itself was ruled out of order, the matters referred to in it are important to the administration of justice and deserve comment.

As Attorney General, I consider it of vital importance that the administration of justice have the full confidence of the public and the legal profession. I am writing you as I believe it will be of value to set out in some detail what are our policies and practices with respect to the matters at which the resolution was directed. I would hope that this will be of benefit not only to those who were not present at the annual meeting, but to those who participated in or listened to the discussion that took place.

If you have any criticisms to make of Crown prosecution policies and practices, I would like to hear what you have to say and I can assure you that your views will be given careful consideration. In the event that you believe a particular prosecutor is not conducting himself in accordance with our policies and practices, I would ask you to draw the matter to the attention of the Director of Public Prosecutions, Mr. Perras, my Deputy, Dr. Richard Gosse, Q.C., or, if necessary, myself.

There were seven matters dealt with in the resolution. My comments on each are set out below.



- 2 -

## 1. Multiple Counts

One of the matters raised was the laying of multiple counts against an accused arising out of a single incident or series of incidents. Our general practice is to lay the single most suitable charge, in the sense of the most descriptive of the incident that occurred, even though there may be others that are available. However, not every incident can be adequately dealt with by the laying of a single charge. But our practice is not to create the illusion of several offences when in actuality only one incident is involved. For example, a person who commits armed robbery almost inevitably commits a number of offences ranging from the armed robbery, through possession of a weapon, theft, wearing a disguise with intent, down to common assault. We would, in that situation, merely charge armed robbery, with the knowledge, of course, that there may be included offences of which the accused could be convicted in the event of an acquittal on the main charge. There are, however, many situations where it is desirable that more than one charge be laid. If the incident involves two distinct transactions, each involving distinct offences, it is in the interest of the public and of the victim that the accused be tried for both offences. For example, if the accused attempts to rob a bank and takes a hostage we would in all likelihood lay charges relating to the robbery and to the hostage-taking. This is not creating the illusion of two offences arising out of one incident, but the recognition that there are two distinct chapters to the single episode, each involving quite separate offences. They are, however, related in time and circumstance and thus would be properly included in a single indictment. With respect to the hostage-taking, it may well be that separate counts of kidnapping and assault causing grievous bodily harm may be appropriate if the hostage has been harmed. In addition, of course, the Code now provides that where a firearm is used in the commission of an offence, an additional charge is warranted in order to attract the additional consecutive sentence now made mandatory.

You will appreciate that it is not this Department's policy to harass an accused. Multiple charges are generally laid only where the facts disclose two or more distinct transactions arising out of the one episode, or where firearms are involved, or where alternative counts are indicated in order to resolve an issue once and for all in a single trial thus preventing the necessity of putting the accused on trial twice for one incident or forcing the victim to repeat his or her testimony. In my opinion, these are all cases where this practice best serves the interest of the accused, the victim and the public.

## 2. Disclosure

On the matter of disclosure, while, subject to certain

- 3 -

statutory exceptions, disclosure is in principle in the discretion of the Crown, it is the Department's general policy to make full disclosure of the Crown's case in all criminal and quasi-criminal cases over which the Department has control. Section 531 of the Code gives the accused rights of inspection after an indictment is found in respect of a number of matters, including any statements that the accused had made to the police, whether or not the prosecution will seek to introduce them in evidence. Over and above those matters which the accused may see as of right, the prosecutor will afford the accused or his counsel access (i) either to examination of the statements of all prospective Crown witnesses (even if not produced in evidence at the preliminary), or to a summary of their contents; (ii) to particulars of the criminal record of the accused; (iii) to an examination of the exhibits, over and above section 533, whenever this is possible and practicable, and (iv) any other additional relevant information. Internal police reports themselves or the names of police informers are not, as a matter of public policy and privilege, disclosed. I would remind defence counsel that they always have the right to ask the court at trial to order the production of the statements of any witness that for some reason have not been disclosed and that the court, in its discretion, may order such production.

### 3. Stay of Proceedings

Another matter that was raised was that of the use of the "stay of proceedings". It is necessary to distinguish between "withdraw" and "stay". Legally, it is clear that the Crown has the unfettered right to order the entry of a stay both of an indictment (section 508) and of an information (section 732.1).

Neither a withdrawal nor a stay legally prevents a re-activation of the prosecution and it is recognized that some potential for abuse does arise. It is the policy of this Department that neither procedure should be used to harrass an accused by, for examples, delaying the trial in the hope of finding more evidence to bolster a weak prosecution case, or in order to circumvent what is perceived to be an unfavourable ruling. Such procedures are to be used only when the interest of the public indicates that the option of the Crown to continue or reactivate at a later stage should be preserved. It is not possible to delineate all the factual circumstances in which this might arise, but factors that will influence the prosecutor will include,

- (i) the gravity of the offence,
- (ii) the strength of the Crown's case,
- (iii) the date of the commission of the offence

- 4 -

in relation to the proceedings, and

- (iv) any unfair prejudice to the accused, such as detention in custody pending trial or the like.

A situation that arises from time to time is that of the witness who cannot be located or is unavailable at the time of the trial. Prosecutors are asked to weigh carefully the factors set out above. If they are satisfied that the interest of the public in the proper administration of justice, given these factors, would justify a withdrawal or the entry of a stay, then such a step would be proper, instead of asking for an adjournment. Cases involving particular difficulties should be referred by Crown prosecutors to the Director of Public Prosecutions for his consideration.

#### 4. Overzealous Prosecutors

It is my view that the prosecutor is obligated to be objective in reviewing evidence and to be fair in the conduct of the proceedings. Where the prosecutor has assumed the responsibility of proceeding with a prosecution, he is under an obligation to the public to prepare, present and argue that case as well as he can.

#### 5. Basis for Appeals

Another matter that was raised in the resolution was that of appealing from convictions where no important point of law is in issue. It is possible that this was directed to appeals to the District Court by the "de novo" procedure, and particularly so in the area of the drinking and driving offences. It is not necessary to have an important point of law to appeal to the District Court on a de novo matter. Throughout the Province there are, from time to time, defences that arise in drinking/driving prosecutions that we consider are not well founded in law (either as question of pure law or as a question of mixed law and fact). We attempt to appeal those to the District Court as quickly as possible. In view of the number of cases in this area, the Department has developed this practice in order to ensure that the evolving law is consistent. While the points of law in each case may not be in themselves of great importance, it is my view that the public interest in the area of drinking/driving offences requires that the relevant body of law be coherent and consistent. This should be an advantage to defence counsel who will be able to advise their clients as to what the law is. Insofar as appeals to the Saskatchewan Court of Appeal are concerned, the Crown must have a point of law. Those cases that are appealed to the District Court or to the Court of

Queen's Bench by stated case are checked in head office of the Director of Public Prosecutions, to ensure that an appeal is appropriate.

6. Review of Charges Laid by the Police

With respect to the prosecutor reviewing charges laid by the police, it is the Department's practice, and it is a public duty, that the Crown will proceed, of course, only if there is a prima facie case. The Public Prosecutions Branch reviews all charges laid by the police in cases referred to the Branch for prosecution. Those that are not prima facie are withdrawn or stayed. There will be occasions when the Crown considers it has a prima facie case and that the defence considers it has a valid defence. This is an area that is most difficult. The disagreement may be over law or fact, and include questions of credibility. Certain issues obviously have to be left to the court. Nevertheless there are occasions when it becomes apparent to the Crown before trial that the defence is sound, and in those situations it is our general practice to give effect to that defence by staying or withdrawing the charge, or in appropriate cases substituting a lesser charge.

7. Use of Unreported Cases

If a prosecutor intends to refer to an unreported case, we would expect him to make available a copy of the decision to the court and to defence counsel, in the interests of fairness and efficiency, as well as a matter of etiquette.

In conclusion, I would point out that some 8,000 cases a year are referred to the Public Prosecutions Branch, and we have thirty full-time prosecutors on staff and utilize as well some fifty prosecutors on a fee-for-service basis. These numbers will increase as the Department assumes responsibility in the next year for prosecutions (of Criminal Code and provincial statute offences) from those municipalities, such as Regina and Saskatoon, which are still conducting prosecutions. I am anxious that the Department have adequate policies and practices, and that all prosecutors should comply with them. As I indicated earlier in this letter if you have any complaints, or if you have any views you would care to express on this subject, I or my officials would be pleased to hear from you.

Yours truly,





JUL 13 1988

June 29, 1988

Mr. Gordon F. Proudfoot  
Boyne Clarke  
Barristers and Solicitors  
Suite 700, Belmont House  
33 Alderney Drive  
P.O. Box 876  
Dartmouth, Nova Scotia  
B2Y 3Z5

Dear Mr. Proudfoot:

Re: Canadian Bar Submission to the Royal Commission  
of Inquiry on the Prosecution of  
Donald Marshall, Jr.

Your brief being prepared on "Role of the Crown Prosecutor",  
is certainly of interest to the Department of Justice  
in this province.

The questionnaire which you forwarded to me has been  
completed and is enclosed for your consideration. I  
trust this will be of some assistance.

Yours truly,

A handwritten signature in cursive script, appearing to read "Bob Andrew".

Bob Andrew  
Minister of Justice and  
Attorney General

✓Enclosure

QUESTIONNAIRE

- 1. Province                   Saskatchewan
- 2. Number of Full Time Prosecutors           44            
 Number of Part Time Prosecutors           40
- 3. Do Part Time Prosecutors prosecute offenses under the  
Criminal Code of Canada?           yes
- 4. Are part-time Prosecutors political appointments?
- 5. Are there any written guidelines to guide your prosecutorial  
 staff on disclosure of facts or other information to defence  
 counsel prior to trial?           Yes            
 During Trial?           No            
 Post-Trial and Pre-Appeal?           No
- 6. Is your province in the process of adopting guidelines for  
 disclosure for Crown counsel?           No            
  
 If so, how long has the issue of disclosure guidelines been  
 under consideration?  
 Less than a year?                     
 More than a year?                     
 More than two years?
- 7. Are there any Statutes in your jurisdiction requiring the  
 disclosure of exculpatory statements to defence counsel or  
 the accused prior to Trial?           No
- 8. Is it the practice in your province of the Crown Prosecutors  
 to volunteer the names of witnesses and/or statements to  
 defence counsel prior to trial which are favourable to the  
 accused?           Yes
- 9. Do you use a form for collection of crown evidence known as  
 a "Crown Sheet"?           No
- 10. Can you provide and attach as a schedule to this reply a  
 sample of same?
- 11. Have the Uniform Law Conference Guidelines on Disclosure to  
 Defence Counsel been adopted in your province?           Basically

12. Are you aware of any cases similar to the Donald Marshall, Jr. prosecution where someone has been convicted of criminal offence and exculpatory statements were not disclosed to defence counsel either before the trial, during the trial or any time subsequent? No

If so, please name the case and give appropriate citations.

13. Have individuals ever been charged in your province for failing to disclose exculpatory statements to defence counsel? No

Details \_\_\_\_\_

14. Are you aware of any guidelines or laws in your province compelling the police to advise Crown Prosecutors of exculpatory statements? No

Thank you for helping us. If you would like a copy of the brief, please advise.

8



JUN 21 1988

Ministry of  
the Attorney  
General  
  
Ministère  
du Procureur  
général

Office of the  
Director of  
Crown Attorneys  
  
Bureau du Directeur  
des Procureurs  
de la Couronne

2nd Floor  
18 King Street East  
Toronto, Ontario  
M5C 1C5  
  
2<sup>e</sup> étage  
18, rue King, est  
Toronto, Ontario  
M5C 1C5  
  
416/965-3912

June 13, 1988

Mr. Gordon F. Proudfoot  
P.O. Box 876  
Dartmouth, Nova Scotia  
B2Y 3Z5

Dear Mr. Proudfoot:

Further to your letter of May 11, 1988 addressed to the Honourable Ian Scott, Attorney General, please find enclosed a copy of the current guidelines for Ontario Crown Attorneys in regard to disclosure of the Crown's case. I am not aware of any research papers which may have been prepared prior to the guidelines being reduced to writing. The present guidelines are in essentially the same form as they appeared in 1981.

Please do not hesitate to contact me if you feel there is further information which might be of assistance to you in regard to the Marshall Inquiry.

Yours truly,

Alasdair McDonald  
Counsel

/11





Ministry of the  
Attorney  
General

## DISCLOSURE

### Introduction

1. It is recognized that generally there is a duty on the Crown Attorney:
  - a) to disclose the Crown's case;and
  - b) to make defence aware of the existence of any other evidence relevant to the main issues which may be helpful to the defence and which is worthy of consideration by the Court but which the Crown may not intend to call as part of its case.
2. These guidelines are intended to provide a method of making such disclosure.
3. It is recognized that the precise mechanics or procedures adopted in carrying out these guidelines will vary from jurisdiction to jurisdiction throughout the Province and will be determined by the local Crown Attorney in accordance with local Crown and Police resources and with the needs of the local Defence Bar.
4. Generally, disclosure with respect to summary conviction and hybrid offences need not be as formalized as with other indictable offences.

### First Appearance Disclosure

5. a) Where resources and personnel permit, the accused should be provided at the time of his or her first appearance with a document

similar in nature to Appendix "A" to these guidelines.

- b) Where resources and/or personnel are insufficient to provide such a document, the Crown should take every reasonable step necessary to ensure that any accused or his or her counsel or counsel's agent who seeks such information at or near the time of the first appearance is given such information orally.

Disclosure Sufficient to Enable Counsel to Set a Date to Proceed

- 6. As soon as possible after the first appearance and in any event before the date set for the purpose of setting a date [which in some jurisdictions is referred to as an assignment court date], the Crown, at the request in writing of counsel for the accused or counsel's agent, should provide the following:
  - a) a copy of any written statement by the accused to a person in authority and disclosure of any oral statement made by the accused to a person in authority of which the Crown is aware and which the Crown, at the time of disclosure, intends to tender as part of the Crown's case-in-chief at trial, or an undertaking to provide when available;
  - b) a copy of relevant laboratory and/or scientific reports if available or an undertaking to produce when available;
  - c) disclosure of the accused's criminal record and, where in the Crown counsel's view relevant, the criminal record of any witness;
  - d) a copy of any medical report which relates to the accused or the victim and which is directly relevant to the charge[s] or an undertaking to produce when available;

- e) photos, films and other documents intended to be entered: where preparation and resources permit and the nature of the exhibits suggest it is reasonable for the Crown to provide copies they should be provided; in other cases, an opportunity to inspect will be sufficient; even in those cases where it is appropriate to provide copies, it is recognized that it will often not be possible to provide such copies at this early date in which event an undertaking to produce prior to the preliminary hearing or trial will be sufficient;
- f) an outline or synopsis of the evidence of the witnesses whom the Crown, at the time of disclosure, intends to call as part of the Crown's case-in-chief at trial; an oral outline or synopsis, with a reasonable opportunity to take notes shall be sufficient for the purpose of providing counsel with sufficient information to set a date to proceed with a trial or preliminary hearing as the case may be; if a written outline or synopsis is available at this early stage, it may be provided in lieu of an oral outline or synopsis;
- g) any further information Crown counsel considers appropriate including, where circumstances warrant, the names and addresses of witnesses whom the Crown at the time of disclosure proposes to call as part of the Crown's case-in-chief at trial; in any case where names and addresses of witnesses are provided, the police should be asked to contact the witness to advise the witness of the fact that he or she may be contacted by the defence and that it is up to the witness to decide, if he or she wishes to be interviewed.

Further Disclosure Prior to the Date Set to Proceed with a Preliminary Hearing or Trial

- 7. a) Fulfill any undertakings made pursuant to paragraphs 6[a], [b], [d] and [e] above.

- b) In summary conviction and hybrid matters the oral outline or synopsis of the evidence of witnesses provided in the manner described in paragraph 6[f] above together with the disclosure provided pursuant to paragraph 5 shall, as a general rule, be sufficient if defence counsel has been sufficiently informed in that manner prior to the setting of the date to proceed.
- c) In indictable [non-hybrid] matters, Crown counsel should, at the request in writing of counsel for the accused or counsel's agent, provide a written outline or synopsis of the evidence of the witnesses whom the Crown, at the time of disclosure, intends to call as part of the Crown's case at trial, unless in the opinion of the Crown there are extraordinary circumstances which make such disclosure inappropriate. Such a written outline or synopsis may take the form of a document prepared for the purpose of disclosure, copies of "Will Says", or where considered appropriate by Crown counsel, copies of statements of the witnesses which have been reduced to writing.
8. Crown counsel, in his or her discretion, shall determine how disclosure prior to the preliminary hearing or trial can be made to an unrepresented accused.
9. It is expected that although defence counsel will use discretion as to what portion of the content of written disclosure will be communicated to the client, it is expected that he or she will refrain from providing such written disclosure or copies thereof to the client.
10. It is expected that when the written disclosure is in the form of a "Will Say" or synopsis:
- a) defence counsel will refrain from any attempt to treat such written disclosure as a statement made in writing or reduced to writing for purposes of s.10 of the Canada Evidence Act, or, for the purpose of similar cross-examination at a preliminary inquiry;

and

- b) if counsel chooses to cross-examine on the content of the document, he or she will refrain from doing so without first applying to the Court to have the jury excluded for the purpose of determining whether the "Will Say" statement is a notation of a prior oral statement relative to the subject matter of the case and inconsistent with the witness's present testimony so as to permit cross-examination pursuant to s.11 of the Canada Evidence Act.
11. In indictable [non-hybrid] matters it is expected that after receiving the disclosure referred to above, defence counsel will advise the Court and the Crown, prior to the date set to proceed, the forum in which his or her client elects to be tried.

CRIMINAL LAW DIVISION GUIDELINE #D2

JANUARY 1, 1988

NOTICE OF ALLEGED OFFENCE(S)

TELEPHONE		GIVEN NAME(S)	
PRESENT ADDRESS		TEL. NO.	PREVIOUS ADDRESS

TAKE NOTICE THAT you are hereby provided with a brief summary of the facts disclosed at this time by the police investigation without prejudice to the Crown subsequently in these proceedings. This summary is prepared by the police and shall not be considered as particulars or disclosure of the Crown's case.

LOCATION OF OFFENCE		INVESTIGATED BY		UNIT	UNIT ADDRESS
CHARACTER OF OFFENCE IF WARRANT - S.W. / W.C.	DAY - DATE - TIME OF OFFENCE	LOCATION			

SUMMARY OF ALLEGED FACTS

AND FURTHER TAKE NOTICE THAT disclosure of the Crown's case be obtained by your counsel, if any, upon his attendance by appointment with the DUTY CROWN COUNSEL during normal office hours at 1911 Eglinton Avenue East, Scarborough. (Telephone 757-2886)

You are advised to deliver this notice forthwith to your counsel.

Crown Attorney's Office



Ministry of  
the Attorney  
General

Office of the  
Minister

18 King Street East  
Toronto, Ontario  
M5C 1C5

Ministère  
du Procureur  
général

Bureau  
du Ministre

JUN 22 1988

18 rue King, est  
Toronto, Ontario  
M5C 1C5

416/965-1664

Ref. #25244

June 17, 1988

Mr. Gordon F. Proudfoot  
P.O. Box 876  
Dartmouth, Nova Scotia  
B2Y 3Z5

Dear Mr. Proudfoot:

Thank you for your letter of May 11, 1988 in regard to disclosure in criminal cases.

I have referred your request for a copy of the "1981 Guidelines for Disclosure by Crown Counsel to Defence" to the Director of Crown Attorneys who will be contacting you directly.

If I may be of further assistance, please do not hesitate to contact me.

Yours very truly,

IAN SCOTT  
Attorney General



July 7, 1988

Gordon F. Proudfoot  
Boyne Clarke  
Barristers and Solicitors  
Suite 700, Belmont House  
33 Alderney Drive  
P.O. Box 876  
Dartmouth, Nova Scotia B2Y 3Z5

JUL 15 1988

Dear Mr. Proudfoot:

I acknowledge receipt of your letter dated May 20, 1988, regarding the Canadian Bar Submission brief on the "Role of the Crown Prosecutor" to be submitted to the Donald Marshall Inquiry.

Enclosed for your information is the Attorney General's policy on pre-trial disclosure which is contained in the Public Prosecutions Branch Operations Manual. We view this Manual as a living document which requires policy changes over time as dictated by experience. In fact, the policy on pre-trial disclosure was the subject of discussion at a recent Crown Prosecutors Meeting. As a result, we intend revising and updating our policy, particularly with regard to witness statements. Until now the policy has been to provide defence with copies of witness' statements only when ordered to do so by the trial Judge or where the witness had given contradictory statements. The reasons for this policy were:

- (i) to encourage complete candour by witnesses;
- (ii) to recognize the fact that often the statement was not written by the witness, but rather by the police and therefore not a precisely accurate account of events;
- (iii) to prevent defence counsel from using these statements to confront the witness during cross-examination with any discrepancy no matter how slight.

We now believe this policy is in need of refinement, and I have requested the Director of Public Prosecutions to prepare a revised policy for my consideration after consulting with senior Crown Prosecutors.



I trust this information is sufficient for your purposes, and I accept your offer to provide me with a copy of the Canadian Bar Submission to the Royal Commission.

Yours truly,



James E. Lockyer, Q.C.  
ATTORNEY GENERAL

/dp

Enc.

QUESTIONNAIRE

- 1. Province New Brunswick
- 2. Number of Full Time Prosecutors 40  
 Number of Part Time Prosecutors varies 6-12/month
- 3. Do Part Time Prosecutors prosecute offenses under the Criminal Code of Canada? Yes, mainly in Provincial Court
- 4. Are part-time Prosecutors political appointments? There is a list which is revised periodically.
- 5. Are there any written guidelines to guide your prosecutorial staff on disclosure of facts or other information to defence counsel prior to trial? Yes  
 During Trial? Yes  
 Post-Trial and Pre-Appeal? \_\_\_\_\_
- 6. Is your province in the process of adopting guidelines for disclosure for Crown counsel? Policy and guidelines have existed for several years re Disclosure  
 If so, how long has the issue of disclosure guidelines been under consideration?  
 Less than a year? \_\_\_\_\_  
 More than a year? \_\_\_\_\_  
 More than two years? \_\_\_\_\_
- 7. Are there any Statutes in your jurisdiction requiring the disclosure of exculpatory statements to defence counsel or the accused prior to Trial? No, only s.531 Criminal Code
- 8. Is it the practice in your province of the Crown Prosecutors to volunteer the names of witnesses and/or statements to defence counsel prior to trial which are favourable to the accused? See policy attached
- 9. Do you use a form for collection of crown evidence known as a "Crown Sheet"? Yes
- 10. Can you provide and attach as a schedule to this reply a sample of same? See attached schedule
- 11. Have the Uniform Law Conference Guidelines on Disclosure to Defence Counsel been adopted in your province? \_\_\_\_\_  
 Our policy was in place before these guidelines were developed.

12. Are you aware of any cases similar to the Donald Marshall, Jr. prosecution where someone has been convicted of criminal offence and exculpatory statements were not disclosed to defence counsel either before the trial, during the trial or any time subsequent? NO

If so, please name the case and give appropriate citations.

13. Have individuals ever been charged in your province for failing to disclose exculpatory statements to defence counsel? NO

Details \_\_\_\_\_

14. Are you aware of any guidelines or laws in your province compelling the police to advise Crown Prosecutors of exculpatory statements? NO

Thank you for helping us. If you would like a copy of the brief, please advise.

TOPIC 240RUBRIQUE 240PRE-TRIAL DISCLOSURECOMMUNICATION DE LA PREUVE AVANT LE PROCÈS(1) Policy(1) Principes

1. It is recognized that there is a general duty upon the Crown to disclose the prosecution's case to counsel for the accused, and to make defence counsel aware of the existence of all relevant evidence. The Crown, in giving disclosure, must be cognizant of the importance of reviewing information received, prior to disclosure. Matters of opinion expressed or information which on public policy grounds could jeopardize a state or individual interest, should be the subject of careful scrutiny.

1. Il est accepté que la Couronne a une obligation générale de communiquer son dossier à l'avocat de l'accusé et de l'informer de tous les éléments de preuve pertinents. Il est donc important pour le procureur de la Couronne d'examiner les éléments d'information reçus avant de les communiquer à la défense. Les opinions exprimées ou renseignements qui pourraient léser les intérêts de l'État ou d'un particulier pour des motifs d'ordre public devraient être examinés très attentivement.

2. The purpose of disclosure by the Crown of the case against the accused is three-fold:

2. La communication de la preuve à l'accusé a un triple objet:

a) to ensure the defence is aware of the case which must be met, and is not taken by surprise;

a) faire en sorte que la défense connaisse les allégations auxquelles elle doit répondre et ne soit pas surprise;

b) to resolve non-contentious and time consuming issues in advance of the trial in an effort to ensure more efficient use of court time;

b) résoudre avant le procès les questions non-contentieuses qui prennent du temps afin d'assurer une meilleure utilisation du temps des tribunaux;

c) to allow for the entering of guilty pleas at a date early in the proceedings.

c) permettre l'enregistrement de plaidoyers de culpabilité au début de la procédure.

The guiding principle should always be full and fair disclosure restricted only by a demonstrable need to protect the integrity of the prosecution.

Le principe de base devrait toujours être la communication complète et loyale de la preuve à l'accusé, avec comme seule limitation le besoin manifeste de protéger l'intégrité de la poursuite.

3. Pursuant to this duty upon request, the accused is entitled to full disclosure of the prosecution's case and in this context full disclosure shall mean the provision to counsel for the accused, as soon as reasonably practical, but in any event prior to trial of the following information:

3. En conséquence, l'accusé a donc le droit, sur simple demande, d'obtenir la communication complète du dossier de la poursuite. Par communication complète, il faut entendre la communication à l'avocat de l'accusé, dès que cela est raisonnablement possible mais avant le début du procès en tout cas, des éléments d'information qui suivent:

a) The circumstances of the offence. The method of providing the circumstances may include the provision of the contents of the court brief, the provision of a summary prepared by the investigating police agency of the case as a whole, the provision of a summary of witnesses' statements or the contents of witnesses' statements. The Crown may provide either a resumé of lay witness' statements to the defence or allow defence counsel to read such statements in Crown counsel's presence, but not to copy. The general rule is that copies of the court brief and witness statements are not to be given to the defence in the interest of encouraging complete candour with the Crown by both police and private citizens.

b) When a court brief, contains "confidential information" the report should not be made available for defence counsel to read. Under no conditions should copies be made for anybody.

c) "Confidential Information" includes:  
(i) any opinion expressed by an investigator.

(ii) any reference to other ongoing investigations.

(iii) any reference to a criminal record of a witness. (See paragraph no. 4)

(iv) any information that could lead to the identity of an informant.

(v) any reference to an authorization for the interception of a private communication. Where the report does contain confidential information a verbal précis outlining the Crown's case including all relevant credible evidence will be given to the defence upon request.

d) a copy of any statement made by the accused to persons in authority and in the case of verbal statements, a verbatim account of the statement.

a) Les circonstances de l'infraction. La communication de ces renseignements peut inclure la communication du contenu du dossier d'audience, d'un résumé de l'ensemble de la cause établi par le service d'enquête policier, un résumé ou le contenu des dépositions des témoins. Le procureur peut fournir un résumé des dépositions des témoins profanes à l'avocat de la défense ou lui permettre de les lire en sa présence, sans pouvoir en prendre copie. La règle de base est de ne pas remettre à la défense une copie du dossier d'audience et des dépositions des témoins afin d'encourager un climat de franchise totale entre les procureurs de la Couronne et la police et les citoyens.

b) Le dossier d'audience qui contient des "renseignements confidentiels" ne devrait pas être communiqué à l'avocat de la défense pour qu'il puisse le lire. Il ne devrait jamais en être fait de photocopie pour personne.

c) L'expression "renseignements confidentiels" vise notamment:

(i) Les avis exprimés par un enquêteur.

(ii) Les observations relatives à d'autres enquêtes en cours.

(iii) La mention du casier criminel d'un témoin (voir le paragraphe 4).

(iv) Tous renseignements qui permettraient d'identifier un informateur.

(v) La mention d'une autorisation d'interception de communications privées. Lorsque le rapport contient des renseignements confidentiels, on donnera verbalement à la défense, sur demande, un résumé du dossier du ministère public avec indication de tous les éléments de preuve pertinents dignes de foi.

d) une photocopie des déclarations faites le cas échéant par l'accusé à des personnes en situation d'autorité et, dans le cas de déclarations verbales, un compte rendu in extenso de celles-ci.

e) a copy of the accused's criminal record.

f) copies of medical and laboratory reports.

g) access to any exhibits intended to be introduced and where applicable, copies of such exhibits.

h) a copy of the information.

e) une photocopie du casier criminel de l'accusé.

f) des photocopies des rapports médicaux ou de laboratoire.

g) la possibilité d'examiner les pièces à conviction qui seront utilisées et, le cas échéant, la remise d'une photocopie de ces pièces.

h) Une photocopie de la dénonciation.

4. Additional disclosure beyond what is outlined above is to be at the discretion of the Crown Prosecutor responsible for the prosecution balancing the principle of full and fair disclosure with the need to prevent endangering the life or safety of witnesses or interference with the administration of justice. Such additional disclosure may include the following:

a) copies of the criminal records of witnesses

b) names and addresses of any potential witnesses keeping in mind possible need for protection from intimidation or harassment.

5. Where an accused is not represented by counsel it is recognized that in order to maintain a proper arms-length relationship with an accused, the method of disclosure of evidence must remain in the discretion of the Crown Prosecutor responsible for the prosecution.

6. It is understood that there is a continuing obligation on the prosecution to disclose any new relevant evidence that becomes known to the prosecution without need for a further request for disclosure.

4. La communication d'autres éléments d'information que ceux qui sont énumérés ci-dessus est laissée à la discrétion du procureur de la Couronne chargé de la poursuite qui devra concilier le principe d'une communication complète et loyale de la preuve avec l'impératif de protéger la vie et la sécurité des témoins ou d'empêcher toute entrave à la bonne administration de la justice. Ces renseignements complémentaires pourraient inclure:

a) une copie des casiers criminels des témoins

b) les noms et adresses des témoins éventuels tout en tenant compte du besoin possible de les protéger contre les actes d'intimidation ou de harcèlement.

5. Si l'accusé n'est pas représenté par un avocat, il est entendu que les modalités de communication de la preuve seront laissées à la discrétion du procureur responsable de la poursuite afin de permettre à celui-ci de garder ses distances à l'égard de l'accusé.

6. Il est également entendu que le ministère public a l'obligation de divulguer tout nouvel élément de preuve pertinent qui parvient à sa connaissance sans qu'il soit nécessaire de faire une nouvelle demande de communication.

PRE-TRIAL DISCLOSURE(1) Guidelines

1. There is a duty on prosecuting counsel to advise the defence in a timely manner of the existence of witnesses whose evidence is deemed to be adverse to the prosecution or supportive of the defence. The Prosecutor has a duty to see that all available legal proof is fairly presented. (See Cunliffe v Law Soc. of B.C., (1984) 40 C.R.(3d) 67 B.C.C.A.)

2. There is no absolute duty on prosecuting counsel to give the defence statements of witnesses whose evidence is deemed to be adverse to the prosecution or supportive of the defence. Crown counsel must have some discretion. (See Cunliffe v Law Soc. of B.C., (1984) 40 C.R.(3d) 67 B.C.C.A.)

3. There is no duty on prosecuting counsel to call witnesses whose evidence is deemed to be adverse to the prosecution or supportive of the defence. The prosecution has a discretion as to which witnesses it will call, and the court will not interfere with the exercise of its discretion unless it can be shown that the prosecution has been influenced by some oblique motive. (See Cunliffe v Law Soc. of B.C., (1984) 40 C.R.(3d) 67 B.C.C.A.)

COMMUNICATION DE LA PREUVE AVANT LE PROCÈS(1) Lignes directrices

1. Le procureur de la Couronne est tenu d'aviser la défense en temps utile de l'existence de témoignages qui sont jugés contraires à la position de la poursuite ou favorables à la thèse de la défense. Il a l'obligation de veiller à ce que tous les éléments de preuve disponibles et juridiquement admissibles soient présentés de façon loyale (Voir Cunliffe v Law Soc. of B.C.(1984), 40 C.R.(3d) 67 (C.A.C.-B.))

2. Le procureur n'est pas tenu d'une obligation absolue de donner à la défense les déclarations des témoins dont le témoignage est jugé contraire à la position de la poursuite ou favorable à la thèse de la défense. Il doit nécessairement disposer d'une certaine discrétion (Voir Cunliffe v Law Soc. of B.C.(1984), 40 C.R.(3d) 67 (C.A.C.-B.)).

3. Le procureur de la Couronne n'est pas tenu d'appeler les témoins dont les déclarations sont jugées contraires à la position de la poursuite ou favorables à la thèse de la défense. La Couronne est libre de choisir les témoins qu'elle fera entendre. Le tribunal n'interviendra pas dans l'exercice de cette discrétion à moins qu'il ne soit démontré que ce choix était dicté par des motifs malhonnêtes. (Voir Cunliffe v. Law Soc. of B.C.(1984), 40 C.R.(3d) 67 (C.A.C.-B.)).

PROSECUTOR'S INFORMATION SHEET  
DEPARTMENT OF JUSTICE



FICHE DE RENSEIGNEMENTS À L'USAGE DU PROCUREUR  
MINISTÈRE DE LA JUSTICE

99-3881 (11/87)

1. OFFENCE(S) / DÉLIT(S)

Occurrence No. / N° d'incident:	M	D	Y	A	Place / Lieu	Time / Heure
Offence / Délit	1	Section and Art. / Article et loi	2	Section and Art. / Article et loi	3	Section and Art. / Article et loi

2. POLICE OFFICER / AGENT DE POLICE

Det. Office No. / Det. Bureau n°	Investigating Member(s) / Enquêteur(s)	I.D.N. / N.D.I.
----------------------------------	--	-----------------

3. DEFENDANT

Surname / Nom de famille		GI / PI	GP / PI	Alias
Sex / Sexe	D.O.B. / Date de naissance	Age / Âge	P.O.B. / L.D.N.	Parent's Name and Phone No. / Nom des parents et n° de téléphone
Address / Adresse	Parent's Same Address / Même adresse des parents		Different Address / Adresse différente	

4. LICENSE / LICENCE

Driver's License No. / Permis de conduire n°	Prov.	Vehicle Owner / Prop. véhicule (Surname / Nom de famille)	GI / PI	GP / PI
Address / Adresse			V.I.N. / N.I.V.	

5. COMPLETE THE FOLLOWING FOR ALL CRIMINAL CODE OFFENCES / RÉPONDRE AUX QUESTIONS SUIVANTES POUR TOUTE INFRACTION AU CODE CRIMINEL

Is there a victim? / Est-ce qu'il y a eu victime?  Yes / Oui  No / Non. If yes indicate one of the following / Si oui, cochez l'encadré approprié

<input type="checkbox"/> F1: Wife of accused (include common law) / L'épouse de l'accusé (y compris l'épouse de fait)	<input type="checkbox"/> F5: Any child under 18 not child of accused / Tout enfant de moins de 18 ans qui n'est pas celui de l'accusé
<input type="checkbox"/> F2: Husband of accused (include common law) / L'époux de l'accusée (y compris l'époux de fait)	<input type="checkbox"/> F6: Other relation (not living in same household) / Un membre de la parenté (ne vivant pas sous le même toit que l'accusé)
<input type="checkbox"/> F3: Child of accused (include adopted) under 19 / L'enfant de l'accusé (y compris un enfant adopté de moins de 19 ans)	<input type="checkbox"/> F7: No relation to accused / Une personne sans lien de parenté avec l'accusé
<input type="checkbox"/> F4: Other family member living in same household / Un autre membre de la famille (vivant sous le même toit que l'accusé)	

ICC 745 Peace Bond requested: indicate one of the following / Si il y a eu demande d'engagement de ne pas troubler l'ordre public/formule ICC 745 indiquez par quel:  F1 by wife / l'épouse  F2 by husband / l'époux  F3 by other complainant / autre autre plaignant

PARTICULARS OF OFFENCE(S) (INCLUDE ANY "ETALS", ADDITIONAL CHARGES) / DÉTAILS DE (DES) DÉLIT(S) (INCLURE TOUT COMPLICE ET AUTRES ACCUSATIONS)

Diverses Recommended / Déjudiciarisation recommandée  Yes / Oui  No / Non

Victim - Witnesses (including Police) / Victime - Témoins (y compris les agents de la paix)

Name / Nom	Address / Adresse	Member's Signature / Signature du membre	Date

Court Information / Renseignements judiciaires

Traffic and Weather Conditions / État des routes et conditions météorologiques	C.P.I.C. Check / Vérification auprès du C.I.P.C.	Value of Property Involved / Valeur des biens en cause
Drinking Driving Offences / Driver Record Check / Infractions de conduite avec facultés affaiblies / Vérification de dossier du conducteur	Prior Record / Dossier antérieur	No Prior Record / Aucun dossier antérieur
Crown Recommendation / Recommandation de la couronne	Name of Prosecutor / Nom du procureur	

Adjudication / Jugement

Remand / Révois	Member Witnessing Conviction / Témoins de la condamnation	
Prosecutor / Procureur	Defence Counsel / Avocat de la défense	
Date of Trial / Date du procès	Place of Trial / Lieu du procès	
Fine / Amende	Costs / Frais	In Default / Non-comparution
Time to Pay / Délai de paiement	License Suspended / Permis de conduire suspendu	Conditions

Wife - Crown Prosecutor / Épouse - Procureur de la couronne      Wife - Court / Épouse - Cour      Wife - Police      Casary - Diverses / Casari - Déjudiciarisation





Nova Scotia

45

**Department of  
Attorney General**

Office of the Minister

AUG 10 1988

PO Box 7  
Halifax, Nova Scotia  
B3J 2L6

902 424-4044  
902 424-4020

File Number 02-88-0036-15

August 8, 1988

Mr. Gordon F. Proudfoot  
Boyne Clarke  
P. O. Box 876  
DARTMOUTH, Nova Scotia  
B2Y 3Z5

Dear Mr. Proudfoot:

This will acknowledge receipt of your letter, of August 2, 1988, respecting the brief being prepared by the Canadian Bar, Nova Scotia Branch.

In reply to your request, enclosed please find a copy of the "Disclosure Guidelines" directive together with a copy of my July 22nd news release respecting up-coming changes in the Department of the Attorney General.

I trust this will be of assistance to you.

Yours very truly,

  
Terence R. B. Donahoe, Q.C.

Enclosure



Attorney General

## Memorandum

From: Hon. Terence R.B. Donahoe, Q.C.  
Attorney General

Our File Reference

To: Prosecuting Officers and  
Assistant Prosecuting Officers

Your File Reference

Subject: DISCLOSURE GUIDELINES

Date: July 18, 1988

It is recognized that there is a general duty upon the Crown to disclose the case in chief for the prosecution to counsel for the accused, and to make defence counsel aware of the existence of all relevant evidence. The Crown, in giving disclosure, must be cognizant of the importance of reviewing information received, prior to disclosure. Matters of opinion expressed or information which on public policy grounds could jeopardize a state or individual interest, should be the subject of careful scrutiny.

The purpose of disclosure by the Crown of the case against the accused is threefold:

- (a) to ensure the defence is aware of the case which must be met, and is not taken by surprise and is able to adequately prepare their defence on behalf of their client;
- (b) to resolve non-contentious and time-consuming issues in advance of the trial in an effort to ensure more efficient use of court time;
- (c) to allow for the entering of guilty pleas at a date early in the proceedings.

The guiding principle should always be full and fair disclosure restricted only by a demonstrable need to protect the integrity of the prosecution.

Pursuant to this duty, and bearing in mind the above principles, upon request, the accused is entitled to full disclosure of the case in chief for the Crown and in this context full disclosure shall mean the provision to counsel for the accused, as soon as reasonably practical, but in any event prior to the preliminary inquiry or trial, as the case may be, of the following information:

- (a) The circumstances of the offence. This will usually be disclosed by means of the provision of a summary prepared by the investigating police agency of the case as a whole.
- (b) Copies of all written statements made by witnesses.
- (c) A copy of any statement made by the accused to persons in authority and in the case of verbal statements, a verbatim account of the statement.
- (d) A copy of the accused's criminal record.
- (e) Copies of medical and laboratory reports.
- (f) Access to any exhibits intended to be introduced and where applicable, copies of such exhibits.
- (g) A copy of the wording of the charge.

Additional disclosure beyond what is outlined above is to be at the discretion of the prosecutor balancing the principle of full and fair disclosure with the need to prevent endangering the life or safety of witnesses or interference with the administration of justice. Such additional disclosure may include names and addresses of any potential witnesses keeping in mind possible need for protection from intimidation or harassment.

Where an accused is not represented by counsel it is recognized that in order to maintain a proper arms-length relationship with an accused, the method of disclosure of evidence must remain in the discretion of the prosecutor responsible for the prosecution.

It is understood that there is a continuing obligation on the prosecution to disclose any new relevant evidence that becomes known to the prosecution without need for a further request for disclosure.

*Terence R. B. Donahoe*

July 22, 1988

HALIFAX - Attorney General Terry Donahoe today announced changes in the process by which Crown Prosecutors in the Province are to be appointed and the establishment of a Victims of Crime Services Division of the Department of the Attorney General.

#### **Appointment of Crown Prosecutors**

Crown Prosecutor positions from now on will be advertised through the Province's Civil Service Commission, fully opening the process to all prospective candidates who will make application for selection, and be processed according the Civil Service guidelines", Mr. Donahoe said.

"The changes in the process by which Crown Prosecutors will be appointed will ensure the broadest access possible to all candidates of merit who may wish to serve the Province as Crown Prosecutors", added Mr. Donahoe.

#### **Victims of Crime Services Division**

In announcing the establishment of the Victims of Crime Services Division, the Attorney General stated "we have become a more humane and sensitive

society, but more has yet to be accomplished. Appearing in court can be a very traumatic experience for many and greater attention must be given to the needs of victims of crime and those who are called upon to be witnesses in our courts".

"Among the immediate needs to be addressed by this new division of the department are:

- . Familiarization of victims and witnesses with court procedures they might experience;
- . Better and more timely advice to victims and witnesses regarding the progress of cases through the courts;
- . Assistance in the preparation of victim impact statements whereby the courts are made aware of the effect of the offence upon victims of crime;
- . Assistance in the preparation of applications to the Criminal Injuries Compensation Board; and
- . Assistance to victims to secure restitution from offenders in appropriate cases."

Mr. Donahoe said "the Victims of Crime Services

Division will have immediate responsibility for the development of a fine surcharge program. The proceeds of this fine surcharge will be used to enable the Attorney General's Department to provide additional programs to assist victims and witnesses".

#### **Disclosure Directive to Prosecutors**

To ensure consistency and fairness in the prosecution process, Mr. Donahoe also announced the issuance of a new disclosure directive to the prosecutors of the Province.

That directive, containing a statement of principles to be issued to all prosecutors and assistant prosecuting officers this week, will broaden the scope and guidelines issued to prosecutors of the Province in 1986.

Mr. Donahoe said "the administration of justice in Nova Scotia must evolve just as the community and its dynamics and needs are changing - our law, its system and its administration must stay abreast of change".

Under the changes prosecutors will provide, prior to a preliminary inquiry or trial, the following

information:

- . Circumstances of the offence. This would usually be disclosed by means of the provision of a summary prepared by the investigating police agency of the case as a whole.
- . Copies of all written statements made by witnesses.
- . A copy of any statement made by the accused to persons in authority and in the case of verbal statements, a verbatim account of the statements.
- . A copy of the accused's criminal record.
- . Copies of medical and laboratory reports.
- . Access to any exhibits intended to be introduced, and where applicable, copies of such exhibits.
- . A copy of the wording of the charge.

Prosecutors are further being told by the Attorney General "it is understood there is a continuing obligation on the prosecutor to disclose new and additional evidence that may become known to the prosecutor".

A directive has also been sent to prosecutors in



the Province regarding summaries to Supreme Court Trial Judges.

It is customary that prosecutors provide summaries to facilitate conduct of trials in the Supreme Court. Such summaries contain a general review of the facts to be provided or proved, and may include an indication of legal issues to be discussed, thus allowing the Court to better prepare for the trial. The new directive from the Attorney General will ensure uniform practise whereby these summaries are to be provided to defence counsel.

**Policy and Planning Division**

The Attorney General also indicated that in order to keep abreast of further change, he is establishing a Policy and Planning Division within the Department of the Attorney General "to look at current legislation to determine what changes are required and to determine future program and legislative needs in an ever changing society".

"I just want ..."

# AG unveils justice system changes

July 23/88

By Tim Arsenault  
STAFF REPORTER

A new method of selecting Crown prosecutors was one of four changes in the administration of justice in Nova Scotia announced Friday by the Attorney General's Department.

Attorney General Terry Donahoe announced that Crown prosecutor positions will be advertised through the province's Civil Service Commission so candidates can apply for selection according to civil service guidelines.

"The changes in the process by which Crown prosecutors will be appointed will ensure the broadest access possible to all candidates of merit who may wish to serve the province as Crown prosecutors," Mr. Donahoe said in a news release.

A former Crown prosecutor

■ See AG page 2

was ...

# AG unveils

■ continued from page 1

who did not want to be named, said criticism of prosecutors being appointed in the past by order-in-council with inflated salaries may have contributed to the change in policy.

"It creates an appearance of fairness. Whether or not there will be any greater fairness in the process remains to be seen," he said.

A disclosure directive will also be issued to prosecutors in the province. The release said the directive would be issued this week and will expand on guidelines issued in 1986.

The announcement said prosecutors will provide to defence lawyers a summary of the case prepared by the investigating police agency, verbatim accounts of verbal statements, and copies of exhibits.

"It is understood there is a continuing obligation on the prosecutor to disclose new and additional evidence that may become known to the prosecutor," Mr. Donahoe said.

Evidence presented at the Marshall inquiry into the province's justice system showed a witness came forward who could have cleared Donald Marshall, Jr. of murder in 1971, but his lawyers were never told of the new evidence.

Felix Cacchione, now a county court judge, also told the inquiry that the evidence prosecutors disclosed to defence lawyers varied from case to case depending on personal rapport.

But Mr. Donahoe said in a telephone interview that none of the new policies could be directly attributed to the Marshall inquiry.

The department also announced the establishment of a victims of crime services division. It is to have responsibility for the development of a fine surcharge program that would help fund assistance to crime victims and witnesses.



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PO Box 1030, Iqaluit  
Northwest Territories  
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Our file YK

Your file

June 9, 1988

Mr. Gordon F. Proudfoot,  
Boyne Clarke,  
Barristers & Solicitors,  
Suite 700, Belmont House,  
33 Alderney Drive,  
P.O. Box 876,  
Dartmouth, Nova Scotia.  
B2Y-3Z5.

JUN 20 1988

Dear Mr Proudfoot:

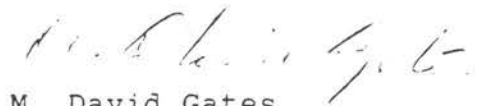
Re: Canadian Bar Submission to the Royal Commission of the  
Prosecution of Donald Marshall, Jr.

Your letter of May 20, 1988 addressed to Mr. G. Bickert, Deputy Minister of Justice, Government of the Northwest Territories, has been forwarded to me for response. The administration of justice continues to be a federal responsibility in the Northwest Territories. As such, the prosecution of all criminal offences is conducted by counsel employed at the Yellowknife Regional Office of the Department of Justice.

It is the policy of this office to provide disclosure of all materials in our possession with the exception of witness statements. While witness statements are not generally provided to defence counsel, we often permit defence counsel to review such statements in our possession. Indeed, in appropriate cases, a copy of a witness statement will be provided to the defence. A summary or "can-say" statement relating to all Crown witnesses is disclosed in all cases. All statements made by accused persons, whether inculpatory or exculpatory, are always provided to counsel.

I am enclosing a completed copy of your questionnaire.

Yours very truly,



M. David Gates  
Regional Director



QUESTIONNAIRE

1. Province Alberta
2. Number of Full Time Prosecutors 9  
Number of Part Time Prosecutors 1
3. Do Part Time Prosecutors prosecute offenses under the Criminal Code of Canada?
4. Are part-time Prosecutors political appointments? Yes
5. Are there any written guidelines to guide your prosecutorial staff on disclosure of facts or other information to defence counsel prior to trial?  
During Trial? Yes  
Post-Trial and Pre-Appeal? Yes
6. Is your province in the process of adopting guidelines for disclosure for Crown counsel? Yes  
If so, how long has the issue of disclosure guidelines been under consideration?  
Less than a year? \_\_\_\_\_  
More than a year? \_\_\_\_\_  
More than two years? Yes
7. Are there any Statutes in your jurisdiction requiring the disclosure of exculpatory statements to defence counsel or the accused prior to Trial? \_\_\_\_\_
8. Is it the practice in your province of the Crown Prosecutors to volunteer the names of witnesses and/or statements to defence counsel prior to trial which are favourable to the accused? Yes
9. Do you use a form for collection of crown evidence known as a "Crown Sheet"? Yes
10. Can you provide and attach as a schedule to this reply a sample of same? \_\_\_\_\_
11. Have the Uniform Law Conference Guidelines on Disclosure to Defence Counsel been adopted in your province? Yes

