

## SUBMISSION

In its application for standing, the Black United Front listed its reasons why it should be granted standing. It stated that it is important to consider race as a major variable in the Inquiry and to allow the Black United Front to participate in an effort to address the race issue from a minority perspective. Further, it looked forward to being given an opportunity to make the Commission aware of the lack of confidence that Black communities have with regard to the functioning of the legal system. Further, it anticipated an opportunity to identify how racial attitudes prevalent in Nova Scotian society prevent Blacks from being fairly and equitably treated by the legal system. Further, it wanted an opportunity to address matters of sentencing and to demonstrate that even at that level, there was substantial disparity with respect to the treatment of Black people as compared to the treatment of White people. Further, the Black United Front wanted to be granted the opportunity to demonstrate the extent to which race was a determining factor in the outcome for an accused person.

In the context of the Sandy Seale/Donald Marshall, Jr. situation, the Black United Front sought the opportunity to, having developed its positions as stated herein, formulate a policy position for review and consideration by the Inquiry prior

to filing this final report and recommendations.

It was the expectation of the Black United Front to be in a position to direct its own research and be able to present its own funding to the Commission.

Although no argument whatsoever could be made that the Commission prevented the Black United Front from pursuing its own considered best method of presenting the position as outlined in the application for standing, it is notoriously known that the Black United Front did not and does not have the funds necessary to commission full and complete and indepth studies of the type and kind required for an Inquiry of this magnitude. This was noted in the decision on funding.

Even after it had been made clear to the Black United Front that the Commission, through its own research director would address the matters of racism by way of independent studies, it was still the hope of the Black United Front that questioning of witnesses as to racial attitudes and specific occurrences would be encouraged so that the Commissioners themselves could get a first hand appreciation of the problems (real and/or perceived) as experienced by Black people on a day-to-day basis and with

particular emphasis within the administration of criminal justice.

Although it cannot be said that the Commission absolutely excluded examination of witnesses called by Commission counsel on race related matters, it is also just as obvious to those who attended the hearing that the Commission was not receptive to indepth analysis and/or questions in the viva voce phase of the hearings. Clear examples of this attitude can be gleaned from the review of the transcript with respect to the examinations of police officers in Sydney. It was made clear by the Commission that it was not interested in having witnesses examined to any great extent on race related matters, and in fact, the Commission specifically discouraged such examination advising that Sydney Police Officers would be called during the Halifax phase where they could be more fully examined on the questions relating to racism.

During the Halifax phase of the hearings, the first sessions addressed the Department of the Attorney General and the general administration of justice, and even here, indepth questioning on the matters of racism were not encouraged, and were in fact discouraged.

The Black United Front continued to assume that during the session of the hearing dealing with "other cases", that the witnesses identified as appropriate by the Black United Front would be called and certain cases reviewed.

This was not to be the case, and even with the examination of Herbie Desmond who was permitted to be called on the narrow question of his relationship and knowledge of Sandy Seale, there was little interest in allowing Desmond to be examined on his knowledge of Black people and policing in the Witney Pier area of Sydney. It was made very clear by Commission counsel of the limited purpose of calling Herbie Desmond.

The Black United Front still believe that somehow, during the "other cases" phase of the viva voce evidence that the problem and concerns and unfortunate day-to-day experiences of Black people with respect to the administration of justice could be aired in a public forum, but as it turned out, this was not to be the case.

As part of its rights, having been given full standing, the Black United Front attended and participated in the final stages of the taking of testimony in Halifax.

During those last days, the Black United Front made application to call two witnesses to place before the Inquiry the experiences of Black people within the framework of the administration of justice. In its application, the Black United Front expressed the view that esoteric studies done and considered, for all intents and purposes, in a vacuum, would not serve the best interests of the Black United Front and the people of the Nova Scotia unless these studies could be specifically related to matters which were aired in public.

Although the Black United Front is of the view that its application was taken serious by the Commission, the Black United Front is very much dissatisfied with the ruling. It was important to the Black United Front that it be given opportunity to raise in public, and as such, compel the Commission to come to grips with the unfortunate reality or perception of caustic racism which led to family and community dissatisfaction and outrage specifically with respect to the circumstances of the deaths of Nicholas Downey and Benefit Brown and the failure of the investigating teams to properly and professionally investigate and report on the circumstances of these unfortunate incidences recognizing that although the families of these people were poor and without political influence, they were people yet

and entitled to certain minimum standard of dignity, protection and consideration.

As to the circumstances of the deaths of Cathy Wright, Graham Jarvis and Dale Morton, the same could be said, and more. The parents and family members and communities were outraged that the legal systems could be so manipulated that the accused person in all three cases could put the deceased on trial after his death for matters which could not possible constitute criminal activity during his life. The Black United Front hoped to get into and to air the frustrations experienced by the families of these people when attempting to deal with the Department of the Attorney General and to demonstrate that the same indifference exhibited to Oscar Seale was a general experience rather than an isolated event.

Was it not for exposure to the public, Donald Marshall might yet be negotiating with and subject to the nickel and diming of the Department of the Attorney General, and it is along these same very lines that the Black United Front saw this as an opportunity to put before the public of Nova Scotia and Canada the facts as seen by Black people. The Black United Front hoped that the good people of this Country would react with the same

outrage on behalf of the Black people of Nova Scotia as they did with respect to Donald Marshall and Sandy Seale which was to a very large degree, to demand public exposure of all of these concerns.

Further yet, the Black United Front stated unequivocally that recognizing the way the Inquiry was structured and the decision of the Commission, albeit with the concurrence of the Black United Front to address the matter of racism through commissioned studies, that the Black United Front would not be in position to properly advance a serious position paper by way of submission unless the Black United Front was given opportunity to develop the basis for such submissions.

Unfortunately, this was not to be. The problems as seen by the Black people of the Province of Nova Scotia was to be put on "hold" whilst studies are being undertaken.

In its decision on the application of the Black United Front to call witnesses, the Commission very correctly pointed out that certain workshops had been held and that members of the Black community as well as counsel to the Black United Front had been invited, and in fact, were all full participants. However, it

must be recognized that these workshops were not only held in private, but that the reports which had been reviewed and studied at that time of the workshop were draft reports subject to substantial amendment, correction and re-writing, and even at this stage, with second drafts are now in the hands of the counsel of the Black United Front, these were given on the specific understanding that they were confidential, not for citation and/or attribution.

This leaves the Black United Front in a position where it cannot make a meaningful decision with respect to its own concern, and as such, the Black United Front must of necessity be critical of this aspect of the Inquiry.

Commission counsel in its submission stated that "After all appeals had been exhausted on behalf of Roy Ebsary, the Province of Nova Scotia commissioned this Inquiry specifically to determine why Donald Marshall, Jr. had been wrongfully convicted and to make recommendations, if possible, for changes which may be required in the administration of justice to prevent a recurrence of this tragedy."

It is the position of the Black United Front that an Inquiry

of this nature was not timely, but long overdue. The Black United Front does not think that it is necessary for society to wait until there is a trial and appeal followed by three more trials including all levels of appeals before our society recognizes that something is wrong. The Black United Front is aware of many situations in which, if injustice is not set in motion as a result of active racism, that members of minority groups are denied equal opportunity because, for nothing else, they are members of minority groups.

The Black United Front takes to task any impression which is to be left by the statement of Commission counsel with respect to the reoccurrence of this tragedy if it is intended or does leave an impression that the Marshall case was an isolated incident.

In this regard, the Black United Front is puzzled as to why in the first instance, the Commission interprets its terms of reference sufficiently broad as to give standing to the Black United Front as a public interest group and then, when it comes to the central question of "How does the administration of justice work?", a hard look is taken at Donald Marshall and his most unfortunate circumstances and a comparative analysis with situations of people in high places and good politics rather than

examining the frequency of occurrence of the Donald Marshall, Jr. type problem.

It was the hope of the Black United Front that a comprehensive review of the administration of justice would have been made and this compared with the standards which have been touted over the years and symbolized by the blind lady and her scales of justice and codified from time to time, including in the Bill of Rights, and in more recent times, the Charter.

It is the submission of the Black United Front that left on its own accord, the administration of justice will continue to create Donald Marshalls from people without power and/or influence. The Black United Front does not for a minute suggest that Black people have a monopoly on being victims of this kind of injustice, but at the same time the Black United Front advances the proposition that this type of injustice is power based and systemic, and because of stereotyping and negative attitudes employed by certain sectors of society which tend to restrict the ability of Black people to be seen as being able to properly compete, Black people are quite susceptible to this type of injustice.

The record must not indicate that Black people are seeking special treatment, but on the contrary, it must state that Black people are demanding only to be treated properly and with dignity, to no less a degree than if they were not stereotyped as being poor and powerless. They expect no less respect from the police and the justice system as society in general demands.

Without having access to the final reports which are yet to be filed with this Inquiry, the Black United Front can only anticipate that some safeguards will be recommended to ensure that there is proper treatment and application of the law when proceedings are set in motion, regardless of race.

The Union of Nova Scotia Indians which had standing, the same as the Black United Front, had an opportunity to call Indian witnesses to set a proper stage against which the testimony of other witnesses could be assessed, and further, to provide a base against which the studies currently being conducted could be compared. This was not to be the case for the Black United Front, and as such, the Black United Front hereby seeks the permission of this Commission to file its final report after it has had access to the studies currently being undertaken, particularly those on Policing, the Department of the Attorney

General and Discrimination against Blacks in the Justice System.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of  
October, 1988.



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