

June 4, 1984

Mr. Derek A. Hanson
Clarkson, Tetrault
Barristers and Solicitors
630 Dorchester West
Montreal, Quebec
H3B 1V7

Dear Mr. Hanson:

RE: DONALD MARSHALL FUND
YOUR FILE NO. 45086-3

Thank you for your letter of May 31, 1984. Our office is still in the process of establishing a trust fund for Mr. Marshall and there has been some difficulty in obtaining the proper trustees.

Your suggestion of transferring the funds to our trust account is acceptable to us and we will undertake to transfer the monies from our trust account to the trust which will be set up for Mr. Marshall.

Thanking you again for your co-operation, I remain.

Yours very truly,

Felix A. Cacchione

FAC/oh

LAMBERT & CACCHIONE

BARRISTERS & SOLICITORS

A E 201

Michael A. Lambert, LL.B.
Felix A. Cacchione, B.A., LL.B.

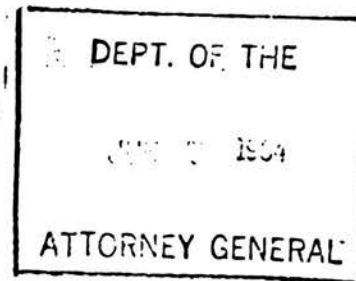
Suite 903
1649 Hollis Street
Post Office Box 547
HALIFAX, NOVA SCOTIA
B3J 2R7

Telephone
(902) 423-9143

June 7, 1984

HAND DELIVERED

Gordon Coles, Q.C.
Department of the Attorney General
1723 Hollis Street
Halifax, Nova Scotia



Dear Mr. Coles:

RE: DONALD MARSHALL, JR.

Further to the recent meeting attended by myself, Mr. Hugh McIntosh and you and Mr. Endres of your Department, I am writing on a without prejudice basis to outline a proposal for settling Donald Marshall's claim for compensation.

In setting out this proposal we have adopted a global approach rather than attempt to allot specific dollar amounts to specific heads of damage and I suggest this is appropriate given the lack of precedent but we have also indicated a number of factors which we have considered in arriving at the overall figure.

In adopting this approach I point out that the one figure which is reasonably capable of accurate assessment is a calculation of loss of income. That figure has received some media attention and it is \$324,333.00. It is included in our overall figure.

. . . /2

Gordon Coles, Q.C.
June 7, 1984
Page 2

AG 261

Following is a list of the factors to which I have referred and obviously some must be given more weight than others but they all serve to focus attention on the many different aspects of Mr. Marshall's claim and constitute an outline of the case which would be presented to the Commission if that should be necessary:-

1. Pain and suffering
2. Loss of enjoyment of life
3. Deprivation of liberty
4. Loss of civil rights
5. Loss of social intercourse
6. Humiliation
7. Discipline measures in prison
8. Psychological assaults in prison for refusing to admit to guilt
9. Ignominy of all matters relating to being in prison
10. Pain and suffering caused to him in the damage to his reputation by media coverage of his conviction and sentence including the knowledge that his family suffered the same public humiliation and suffering
11. Adverse effects on future advancement, employment, marriage, social status and social relations generally

Gordon Coles, Q.C.
June 7, 1984
Page 3

12. Loss of opportunities to acquire assets
13. Loss of the mobility so important to native persons as a part of their cultural heritage
14. Pain and suffering through being unable to obtain parole because of his refusal to admit guilt
15. Loss of income
16. Pre-judgment (or its equivalent) interest
17. Legal costs of establishing his innocence and pursuing his claim for compensation

GLOBAL AWARD \$550,000.00

This figure is over and above the interim payment already made and in arriving at it we have attempted to be reasonable and realistic recognizing that it is probably in the public interest that Mr. Marshall's claim be settled this way thus avoiding the full expense of conducting the commission hearings but as well recognizing that the public outrage which has manifested itself over Mr. Marshall's claim will only be satisfied by an award of this proportion.

We are not adverse to a "structured settlement" being set up if that will afford an income tax advantage to Mr. Marshall and if the same yield to him can be achieved by a less initial outlay by the Province through such a scheme. However, we would appreciate an early reply to our proposal at least in principle; that is, as to whether or not the Government is prepared to pay an award in this amount, leaving the form of payment to be worked out in detail.

Gordon Coles, Q.C.
June 7, 1984
Page 4

Finally, in the event that the Government does decide to pay Mr. Marshall compensation in this amount, we request on his behalf that the actual amount of the payment be kept confidential as we foresee publication could generate a great deal of unwanted attention for Mr. Marshall.

We look forward to hearing from you.

Yours very truly,


Felix A. Cacchione

FAC/oh

LAMBERT & CACCHIONE

BARRISTERS & SOLICITORS

Michael A. Lambert, LL.B.
Felix A. Cacchione, B.A., LL.B.

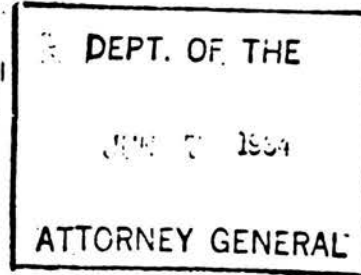
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- (1) - level of schooling /
- (2) - status of ✓ at time of incident /2
- (3) - age .
- (4) - employment opportunities if not incarcerated .
- (5) - bases for determining the amount of 324,333.00. Is this set/gross..?

Gordon Coles, Q.C.
 June 7, 1984
 Page 2

Following is a list of the factors to which I have referred and obviously some must be given more weight than others but they all serve to focus attention on the many different aspects of Mr. Marshall's claim and constitute an outline of the case which would be presented to the Commission if that should be necessary:-

- ✓ 1. Pain and suffering
- ✓ 2. Loss of enjoyment of life
- ✓ 3. Deprivation of liberty
- ? 4. Loss of civil rights
- ✓ 5. Loss of social intercourse
- ✓ 6. Humiliation
- ✓ 7. Discipline measures in prison
- included in (1.) ? 8. Psychological assaults in prison for refusing to admit to guilt
- included in (3) & (5) 9. Ignominy of all matters relating to being in prison
- included in (1) 10. Pain and suffering caused to him in the damage to his reputation by media coverage of his conviction and sentence including the knowledge that his family suffered the same public humiliation and suffering
- ✓ 11. Adverse effects on future advancement, employment, marriage, social status and social relations generally

Gordon Coles, Q.C.
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 Page 3

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included w/ 7

*public
 also outgroup
 Marshall
 activities
 a quarter*

V

X

Gordon Coles, Q.C.
June 7, 1984
Page 4

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Yours very truly,


Felix A. Cacchione

FAC/oh

HUGH D. MACINTOSH, LL.B., LL.M.

BARRISTER AND SOLICITOR
OF THE P.E.I. & N.S. BARS

TELEPHONE (902) 892-9594
P. O. BOX 2257
83 QUEEN STREET
CHARLOTTETOWN, P.E.I.
CANADA C1A 8B9

June 7, 1984

FILE No. 84-100

YOUR FILE No.

F. Cacchione, Esq.
Lambert & Cacchione
Barristers and Solicitors
P. O. Box 547
Halifax, N. S.
B3J 2R7

Dear Mr. Cacchione:

Re: Order-in-Council 84-295
Donald Marshall, Jr.

This letter follows up on my telephone call to your office of May 31, 1984 and our meeting on June 5, 1984 in which I sought to exercise the invitation given in your letter to me of May 23, 1984.

I now understand that there is some material, and psychiatric or psychological material in particular, that you are not prepared to release to me and other material that I may only obtain on a restricted basis. If I have misunderstood please so inform me.

In our meeting of June 5, 1984 you asked me to set out in a letter the nature of the material and information which I desire and this letter is my compliance with that request.

My understanding of the meeting on May 16, 1984 was that you and Mr. Coles would respond to my requests for materials so that preparation for the inquiry could continue during your deliberations. This need was heightened by my understanding of that meeting that you have abandoned the initial approach of bearing chief responsibility for initiating the introduction of evidence and that the Attorney General's representative and yourself will now react to or supplement evidence introduced by counsel for the Commissioner. The Commissioner wants to proceed with dispatch and for that reason it is imperative that I have hard data as soon as possible if the process of the inquiry is to satisfy all concerned. The material that accompanied your letter of May 23, 1984, while interesting, does not complete that requirement.

In my view oral testimony in respect to "historical" and documentary material is time consuming, prone to discrepancies and aggravates the role of the witness. I am proceeding on the basis that this material can be assembled, verified by certificate or affidavit, circulated before the hearing for verification, and submitted as part of the case of counsel for the Commission. Therefore, I seek from you the information and verification set out in the attached list. The list represents my own thoughts as to the nature of the material that might be available and may not be exhaustive. You know your client's background and I do not. If there

is other information that can be handled in the same way then I ask that you draw it to my attention. I seek the information and the means to verify it. Therefore, for example, I do not wish merely to know a date of birth but to have access to a certificate of the Registrar of Vital Statistics in respect to it. If you have such a certificate then I would like a copy. If you do not, then I wish a written consent to enable the Registrar to release information and certify it where he might otherwise refuse. Please indicate that you are prepared to respond in this fashion.

You indicated in our meeting of June 5, 1984 that there existed psychiatric or psychological assessments of Mr. Marshall in your file and that of Corrections Canada that you are not prepared to release to me although you consider they can be shown to command little credit. I urge you to reconsider this position. I suggest that if those assessments are withheld and their contents have to be obtained by other means they may assume a higher profile than you consider warranted. I seek the consent of Mr. Marshall to make himself available to psychiatric or psychological assessment by experts chosen by me. It would be valuable to have the previous assessments available for the information and comment of those experts. In addition, you indicate that Mr. Marshall is currently consulting a psychologist but that no report has been prepared. I seek agreement that his psychologist prepare such a report on my instructions for the use of the inquiry. If that agreement is forthcoming, I am prepared to recommend to the Commissioner that he undertake the cost of its preparation. Finally, I seek confirmation that I have an opportunity to interview Mr. Marshall after I have had a chance to review some of the background data.

I came to Halifax on the strength of your letter of May 23, 1984 and my telephone call to your office on May 31, 1984. I am anxious to obtain as much as possible of the requested material while I am here this week even if other items have to follow at a later date. May I please have a telephone call to 424-5317 or Mrs. Kelly at 424-4432 on this matter.

My understanding of the meeting on May 16, 1984 was that the deliberations would proceed with dispatch and that the Commissioner would be advised of the outcome not later than June 18, 1984. (I would add my hope that nothing would be publicized before notice to the Commissioner so that he would not be confronted by the media unprepared). The Commission is exposed to intense media inquiry which it has borne with considerable fortitude in the hope that the deliberations would be helped. I was, therefore, astonished to learn at our meeting on June 5, 1984 that a proposal to the Attorney General has not gone forward and is still not prepared. The organization of the inquiry involves a lot of people and arrangements during a time when holiday schedules conflict with the Commission's requests. Changes involve disruption. Please be aware that the Commissioner regards June 18, 1984 as the extent of his commitment.

Yours truly,



Hugh D. Macintosh

Enclosure

List of Material or Information
(H. MacIntosh letter to F. Cacchione June 6, 1984)

This list consists of two parts: official sources, private sources. If a suggested source is not known to contain information please so indicate. Consents are sought in respect to all "official" sources and all private sources for which you do not have originals.

A. Official Records and Information Sources.

1. Vital statistics
 - (a) Donald Marshall, Jr. - date of birth
- Social Insurance No.
 - (b) Donald Marshall Jr's parents, siblings
- dates of birth, marriage, death as applicable
 - (c) Donald Marshall Jr's dates and places of residence
2. Educational records
- all including transcripts of grades and record of attendance and deportment (including those while in correctional insitutions if not included in their files).
3. Recreational pursuits
- dates, places and nature of sports, youth, religious, etc. organizations in which membership or participation.
4. Employment record
- all, including
 - (a) Donald Marshall Jr., Donald Marshall Sr. (S.I.N. needed), Canada Pension Plan record of earnings.
 - (b) Donald Marshall Jr., Donald Marshall, Sr. Department of Manpower and Immigration record for unemployment insurance purposes, job application file.
 - (c) Names, addresses, telephone numbers and contact for all employers.
 - (d) Department of National Revenue records in respect to Donald Marshall Jr. Donald Marshall Sr. (or any controlled corporation) include tax dept. file numbers, District Tax office of filing.
 - (e) Workers Compensation Board including file number, dates of claim.
 - (f) Union or like work associations.
 - (g) submissions for funding for business or work ventures. dates, government programs, addresses, file numbers.
 - (h) paid work while in prison.

5. Judicial records - all

(a) record of prosecutions - including court, place, date, court file No. charges, disposition, sentence imposed, sentence served.

(b) record of civil suits including court, place, date, court file No and disposition.

(c) certified copies of murder conviction and acquittal orders, certificates of convictions, etc.

6. Correctional and related records

(a) Corrections Canada (Solicitor General) - all records including medical, names, phone numbers of corrections officer in charge of temporary leaves, record of visitations, education etc.

(b) Parole Board - all records including applications and associated documents, names, phone numbers, parole officers including personnel at half-way house.

(c) R.C.M.P. - names of investigators, rank, dates of contact.

7. Indian Affairs Dept.

- Membertou community profiles.
- all benefit programs available to Donald Marshall Jr.
- all medical, counselling or financial support
- all financial support records in respect to Donald Marshall Sr.

8. Newspaper accounts in respect to Donald Marshall Jr. particularly those around 1971 - name of publication, date publication and contents.

B. Private Records & Information Sources

1. Legal bills and related expense bills - name, address, phone numbers of lawyers etc. - copies of bills and any supporting time etc. records.

2. Medical reports, contacts and costs - Drs., name, addresses, phone numbers, dates of visits, purpose and result.

3. Names, addresses, phone numbers and dates in respect to any other counselling including John Howard Society, penitentiary legal aid, etc.

4. Letters to and from D. Marshall, Jr. while incarcerated.
5. Photographs before, during and after incarceration of D. Marshall, Jr., his residence, etc.
6. Donald Marshall, Sr. (including any controlled corporate business) business records (tax, payroll, Donald Marshall Jr. references).
7. Records of savings including R.R.S.P. or life insurance.
8. Trust Fund (Rev. Hussey) constituting documents, terms, financial statements, most recent figure - name, address, phone for contact.
9. Union of N. S. Indians - material on D. Marshall Jr.
10. Names, addresses and phone numbers of prison inmates, relatives or others who might supply useful information.

June 12,

B.

Call office of Felix C.
+ arrange for a meeting
between him + S
at a time convenient
to him June 21st (hopefully)

R.

June 21, 84 100
at his office

Nova Scotia



Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

FC 234

Our File No.

June 13, 1984

Felix Cacchione
Nova Scotia Legal Aid
5212 Sackville Street, Suite 401
Halifax, Nova Scotia
B3J 1K6

Dear Mr. Cacchione:

Re: Donald Marshall Jr.

Thank you for your letter of June the 7th.

As I indicated before, I am of the view that it would be very helpful if you could identify particular amounts for the various categories under which you make your claim. To be quite open with you, I have difficulties with your "global" approach.

It would be most constructive if we were to approach this as much as possible in the way the question of damages is dealt with by the courts. Only in this fashion, I feel, can any ultimate arrangement be given credibility.

As you know, the courts recognize general and special damages; the former in the form of pecuniary and non-pecuniary losses.

Your claim for loss of income is a pecuniary loss which, taking into account the proper factors such as education, job training, abilities, age, employment opportunities etc., one should be able to calculate. I don't know how you arrived at the figure of \$324,333.00, and I assume, at any rate, that this figure represents a projection of gross earnings, which would be subject to the appropriate deductions on account of the usual living expenses, expenses your client would normally have incurred over the compensation period. Obviously, even if your client had been gainfully employed over the whole of this period he would not have accumulated all of his earnings. In this sense, this case is somewhat unique.

An alternative approach might be to consider what your client could reasonably be expected to have accumulated in net worth over the period in question. Looking at it in this way, I think we could agree that the figure would be considerably lower.

All of items 1 to 14 in your letter can be brought under the heading of "non-pecuniary" losses. In this respect I think we must remember that the Supreme Court of Canada in the "trilogy" of cases referred to in Lindal v. Lindal, [1982] 1 W.W.R. 433, has set an upper limit of \$100,000.00, for the most serious case (a young adult quadriplegic, for example).

Thus, in respect to these "non-pecuniary" factors, e.g. pain and suffering, loss of amenities, physical inconvenience, social discredit, mental distress etc., and keeping within the parameters of pronouncements of the Supreme Court of Canada, I think the sum of \$40,000.00 appropriate and reasonable.

Legal costs incurred by Mr. Marshall Jr. in achieving his acquittal should be itemized, and ought to be determined in accordance with the Legal Aid scale, particularly since the services of Nova Scotia Legal Aid had been offered to him. There is no authority for the provision of legal aid services, or payment of legal fees, otherwise. Similarly, particulars ought to be provided of any other special damages.

I do not consider "pre-judgment interest" a proper claim in the context of an ex gratia payment, but I would not rule out that the final figure that we might ultimately agree upon might contain a certain amount on that account.

Contrary to your view, I feel that it is entirely appropriate that any amount that we can agree upon should be reduced by the amount of the interim payment that your client has already received.

The format of the payment can be arranged, of course, and I agree that legitimate income tax advantages for your client should be taken into consideration.

Since we informed Mr. Hugh MacIntosh that we would advise him on or about June 16th of our progress in this matter of attempting to negotiate a settlement, I suggest that we ask to extend this time to June 29th to enable us to meet next week to continue our efforts to reach agreement.

Yours very truly,



Reinhold M. Endres
Assistant Director
(Civil)

RME/smo

09-81-0256-01

June 15, 84

306

Just finished speaking
to Hugh McIntosh
from P.E.D.,

told him about our
exchange of letters,

why we are so late,

that we are miles
apart but that we are
talking and have a
meeting scheduled for
Thursday next.

I will get back to him
by the end of the month,
hopefully with results.

They are moving for the
Inquiry to start end of
July, if we fail to negotiate.

AG 228

09-84-0256-01

June 21st.

Meeting: Felix + Mike Lambert:

\$ 400,
350,
275,000. (plus the \$25,000 received)

Bottom line: \$275,000.00

Some room to play
- \$25,000. received earlier.

(2) This includes Felix's bill;

(3) does not include Aronson's,
his can be put through
Legal Aid Plan or
Scaled on legal aid
Scale, or taxed;
it is up to us.

(4) Release for Crown but
not for Chief of
Police and such.

Total cost ca.:

250(?)
60(?)
310
25
\$ 335,000.00

We should offer to pay a further \$200,000.00,
and take care of Aronson's
account in the manner discussed!

()

AG 228

09-84-0256-01

We should offer:

\$ 200,000.	Marshall
30,000.	Aranson
25,000.	Marshall pre payment
<u>\$ 255,000.00</u>	TOTAL

Figure to be all inclusive!

Release — Marshall Jr.
 — Parents
 Crown
 — vicarious liab.
 — subrogated claim

0984-0256-01

June 26, 84

Meeting w/ Hon. R.C. Jiffin + Dept.

figure of 275,000. plus
legal fees of Bronson
is in ballpark;

try and settle;

start offer \$250,000.00 all
inclusive minimum.
the 25,000. already
paid, and leave
options open to return
for more instructions.

* All subject to cabinet approval, of course.

We want Bronson's account
included in settlement.

So we would pay \$225,000.00
in addition to the \$25,000.00.

If necessary go higher up to
325,000.00 but subject to
confirmation.

01-84-0256-01

June 26th

AG 228

Met with Felix
made it clear that any figures
I bring in would be subject
to approval by Cabine -
that I know nothing
about how Cabine was
looking at this -

Said subject to Cab's approval,
we could agree to pay
a further \$225,000.00 +
10,000. (for Felix) for a
total payment of \$235,000.00
which, of the \$25,000.00 paid
in advance - i.e. from
\$260,000.00, call in Aranson's
Aranson's account
of ca. \$25,000.00.

It would like to see
Aranson's agreement
in the settlement of
his account if possible.

Release from Marsh, Jr. +
Family to be a complete
release - but not releasing
police.

June 28, 1984

Mr. Donald Marshall, Jr.
5651 Ogilvie Street
Apartment 113
Halifax, N.S.
B3H 1B9

Dear Junior:

Please contact my office upon receipt of this letter. It is of the utmost importance that I speak to you immediately regarding a proposal which has been put to us by the Attorney General of Nova Scotia.

I look forward to hearing from you at your earliest convenience.

Yours truly,

Felix A. Cacchione

FAC/mjb

AG 228 (109-840256-01)

June 28, 81
2:15meeting @
Min. + Deputy
Min. pleased @
arrangements.

423 9143

Felix

- ① Min. is prepared to recommend
to Cabinet \$235,000.00 in add.
to the \$25,000.00 paid in
advance;
- ② This is in full settlement, including
Abramson's fee;
- ③ Released from Junior + Parents
for Crown, not Police.
They should be quiet about having
anything for next few weeks.
- ④ prepare releases + get everything
ready;
- ⑤ Min. away til ^{JULY} June 16th;
- * ⑥ Min. suggested that a joint
press statement might
be arranged.
Felix wants to think about it!
- ⑦ No statements before that +
terms are to be kept confiden-
tial;
- ⑧ I should prepare outline for press
release stating @ (the imprisonment?)

Friday, June 29th,

09-84-0256-01

Hugh McIntosh
called

I told him that we are making good progress, that Felix has a figure which he will recommend to his client but that he can't reach Marshall before next week.

Also that Min. is away til July 16th and that we therefore cannot finalize anything before then.

He understood + seemed pleased of progress - said I should call him after 16th, he would tell Commissioner to wait.

R.

Commission of Inquiry +
fact that during early meetings
(Commission counsel an
opportunity was presented for
exploring settlement ...

(is there still a problem with
Eysary?)

and the Commission provided
environment for discussion between
(parties) discussions which ~~was~~
due to the cooperation of
all concerned bore fruit....

Susan Scottie - Indian Affairs

FC 46

July 4/54

D.M. Jr.

- SA's legal fees ---
- 25,000 for family
- 260,000 for ed

400,000 from province

Tlc - Doug Fenster - Dept Justice

July 6/54

Donald Marshall

- 100 TIC in Martha Lee - Indian Affairs
- will look into payment of Strosser's fees
 - will get back to us

Holiday Inn
Halifax Centre
1800 Robb Street, Halifax, Nova Scotia B3H 3G8 (802) 423-1
Telex: 019-22819

09-540256-01

Ultra Top Dining Room
Main Lobby
1800 Robb Street, Halifax, Nova Scotia B3H 3G8
Tel: (802) 423-1111

Coffee Shop
Main Lobby
1800 Robb Street, Halifax, Nova Scotia B3H 3G8
Tel: (802) 423-1111

The Garrison Lounge
Main Lobby
1800 Robb Street, Halifax, Nova Scotia B3H 3G8
Tel: (802) 423-1111

Recreation Lounge
Main Lobby
1800 Robb Street, Halifax, Nova Scotia B3H 3G8
Tel: (802) 423-1111

July 11th
Felix

His client wants
HARRIS/CC
plus 300,000. - 325,000.
to Junior,
he might accept that!

AC 228

I was hoping that Citicorp
would pay Garrison's account
but they haven't come through -
wants to know if we could

Holiday Inn
Halifax Centre
1800 Robb Street, Halifax, Nova Scotia B3H 3G8 (802) 423-1
Telex: 019-22819

Ultra Top Dining Room
Main Lobby
1800 Robb Street, Halifax, Nova Scotia B3H 3G8
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Tel: (802) 423-1111

Recreation Lounge
Main Lobby
1800 Robb Street, Halifax, Nova Scotia B3H 3G8
Tel: (802) 423-1111

word on Citicorp.

Asked for me to improve
our offer, get back to him
and he will work on his
client ...

Maybe we should
offer another \$10,000.00

July 11/54

TIC = Chenhold.

- Dawson - 80,000
300-320 to DUTJr.

- when we heard Campbell expected costs to be ~ 200,000 - told him to re-assess

- Dep. A G - not prepared to talk to Ottawa re cost sharing

us - will get offer to minister & get back to us

Martha Keene - ¹³⁵⁻¹⁴⁵ July 11/54
instructed people to re-examine matter again & look into the Comp. Commission.

Shortfall in what's being offered.

- Noel Doucette - bill not to be paid
- will have her people contact province again

July 18th /84

Met Deputy

told him about Felix's
new position + advised that
we should not move
substantially, that
we might settle yet,
but that there was
a risk of failure if
we do not meet
their demand for

\$ 300,000. - 325,000
plus Aronson's
account.

Deputy says add another
15,000. for
total of \$ 275,000.00
minus the \$ 25,000.
paid on account.

Provided we get full release from
Marshall Jr. and his
Parents

July-18/81

Spoke to Felix

told him that we cannot
go that far - that we have
a limit -

that I spoke to my people
+ that subject to approval by
Cabinet I was authorized
to offer an add. \$10,000.00 for
total of \$270,000.00

minus 25,000.

\$245,000.00 to be paid.

July 25th

Felix called spoke to his
diaut again and he wants
one week to think about
~~our~~ offer.

July 25th

I called Hugh and told
him this.

July 15/84

J. Marshall.

10²⁰ T/c L. Endres - spoke w Minister, Dep Minister

- can't keep going on + on
recognizes pot has to be sustained
- out of question 325,000+ SA
 - 270,000 total
- need release from cl + family
- no way they can come close to what cl wants

LAMBERT & CACCHIONE

AG 2

BARRISTERS & SOLICITORS

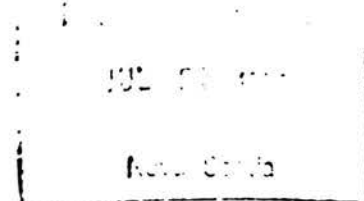
Michael A. Lambert, LL.B.
Felix A. Cacchione, B.A., LL.B.

Suite 903
1649 Hollis Street
Post Office Box 547
HALIFAX, NOVA SCOTIA
B3J 2R7

Telephone
(902) 423-9143

July 25, 1984

Mr. Reinhold M. Endres
Department of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6



Dear Mr. Endres:

RE: DONALD MARSHALL, JR.

Further to our telephone conversation of July 24, 1984, I have set out your proposal to my client. Mr. Marshall has requested a one week period within which to consider this proposal. I will have an answer for you by August 1, 1984.

I realize that this is a delay of another week in this matter however I do feel that this will be time well spent. It will allow Mr. Marshall to assess the proposal and provide us with an answer.

Should you have any questions, please do not hesitate to contact me.

Yours very truly,

Felix A. Cacchione

FAC/oh

*Aug. 3,
called F.
10:15 not in.
- called again
at 1:15 he had
the answer to my question*

July 25,

Felix called, spoke
 to Junior's agent
 this morning, ~~they~~
 she wants a week
 to think about it —
 487
 I called Hugs +
 told him. He said he will
 wait. B.

July 24,

Call Hugs Place.
 I told him that
 we are expecting
 word from Junior's.



ACTION REQUEST

TO	Reinhold	DATE	3-25
LOCATION			
FROM	Hugs + P. + B. + J.		
RE	Al. Texas - 892-9594		
<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	DRAFT REPLY
<input type="checkbox"/>	SIGNATURE	<input type="checkbox"/>	TRANSMISSION
<input type="checkbox"/>	COMMENTS	<input type="checkbox"/>	NOTE & FILE
<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	NOTE & FWD
<input type="checkbox"/>	ATTEND TO	<input type="checkbox"/>	NOTE & RETURN
MESSAGE/COMMENTS			
File, J. + J. + J. + J.			
Hugs + P. + B. + J.			
Reinhold, N.S. + J. + J.			

FORM 182A
181 JANUARY 82A

AG228

09-84-0256-01

July 26th

Spoke to Min

he wanted update;

Told him we offered
total of \$ 270,000.Added 10,000. to orig. offer
to give F. something to go
back with.Advised Min. that we
should hold the line that if
they settle they would take
this + if they don't it would
be because of other pressures,
not the adequacy of the
offer.

Min. agreed.

Min. appreciates that we
might go to the Inquiry yet.

LAMBERT & CACCHIONE

BARRISTERS & SOLICITORS

Michael A. Lambert, LL.B.
Felix A. Cacchione, B.A., LL.B.Suite 903
1649 Hollis Street
Post Office Box 547
HALIFAX, NOVA SCOTIA
B3J 2R7Telephone
(902) 423-9143

09-840256-01

AG 2

August 7, 1984

Mr. Reinhold M. Endres
Department of the Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Endres:

RE: DONALD MARSHALL, JR.

Further to our telephone conversations of July 25 and August 1, 1984, I have had an opportunity of speaking with Mr. Marshall concerning the Government's latest proposal.

Mr. Marshall is prepared to accept the Government's offer of settlement in the amount of \$270,000.00. This amount is inclusive of the \$25,000.00 interim payment previously made to Mr. Marshall.

It is Mr. Marshall's wish that this figure not be made public so as to avoid the inevitable onslaught of gold diggers.

Would you please advise this office as to when this matter can be finally concluded and whether the Province is prepared to deal with this settlement outside the public arena.

A reply at your earliest convenience would be greatly appreciated.

Yours very truly,



Felix A. Cacchione

FAC/oh

August 7, 1984

Mr. Donald Marshall, Jr.
5651 Ogilvie Street
Apartment 113
Halifax, Nova Scotia
B3H 1B9

Dear Junior:

Enclosed please find a copy of a letter that I sent to the Attorney General's Department on your behalf accepting their latest proposal for compensation.

I trust this is to your satisfaction. Should you have any questions please do not hesitate to contact me.

Yours very truly,

Felix A. Cacchione

FAC:jeg

Encl.

09-84-0256-01

AG 228.

Aug. 7th

Felix,

If Gov. makes statement
that it is settled
that's O.K.!

Felix will get release
from junior

but says he can't
bind his parents
since he doesn't
represent them.

wants to finish his
up by Aug. 16th (Thursday)

* He wants money
"in trust"

09-84-0256-01

AG 228

Aug. 9th

Hugh McIntosh called
he is out Friday, so he
wants me to call him
Monday.

I said I would.

X He mentioned that during
our original meeting, Deputy.
There was some discussion
about what we would do
if we came to a settlement.

Deputy wants to see me
tomorrow morning. Cabinet
gave green light to Deputy but there
are a couple of things he
wants to discuss with me.

AG 228
07-81-2256-01

Aug. 9th

Met with Min. + Deputy

He will take proposal to Cabinet
today + get back to me.

We should try to get a release from
Marshall's parents
but if we can't we should still
go ahead.

* We cannot undertake that the
figure will not
be disclosed.

Ask Felix of his view re the
windown of the Commission

What we could do is inform Hugh
of the fact + terms of
settlement + invite
the Commissioner to
make his report stating,
intra alia, that both
the Commissioner supported
+ encouraged efforts to
~~make~~ find a mutually
acceptable arrangement etc....
pleased to report that settle-
ment has been reached...

Nova Scotia



Attorney General

Memorandum

From Hon. Ronald C. Giffin, Q.C.
Attorney General

Our File Reference ²⁵⁶ 09-84-0261-01

To Mr. Gordon F. coles, Q.C.
Deputy

Your File Reference


Subject Donald Marshall Case

Date August 9, 1984

Cabinet has given us authorization to settle at the amount indicated. The general feeling is that we should just make the settlement and perhaps issue a press statement confirming it. Nobody appears to want to go very high profile on this.

It was also felt that the settlement should be okayed in some fashion or other by Mr. Justice Campbell. We should discuss these points further.

A handwritten mark, possibly a signature or initials, resembling a stylized 'L' or '4'.

 c.c. Reinhold Endres

Aug. 10/84 Deputy
R. Don Marshall

- ① Can't undertake
not to make terms
of settlement public;
- ② Deputy to draft Report to
Gov. Council from
Commissioner
incorporating settlement

Called Felix
to tell
~~him~~ him that I anticipate
no problem w/ money

but that we cannot undertake not
to disclose terms of settlement

that we want release +
ask who should prepare it

and that we do want release
from his parents.

he was out + I left message

09-84-0256-01

AG 228

Aug. 10/84

Felia called back

I told him I could see
no problem w/ the money

That we should get releases
+ that we would want
a release from parents
as well.

He said I should prepare
releases + send them to him.

I agreed.

I told him again that
we cannot undertake
not to disclose figure
of settlement - that
it would show up in
an O.I.C. at any rate
which would be
accessible by press.

That for now Min.
was thinking in terms
of issuing a straight
forward press release -
+ was not interested
in making a big thing of this.

Aug. 10/84

D. Marshall.

901

T/c R-Eudies. - looks like cabinet will accept proposal.

- gov't wants release from parents -

- minister prepared not to make a big public thing about it unless

- Commission will prepare concluding report

DEPARTMENT OF ATTORNEY GENERAL

AG 226

MISA

MEMORANDUM

Our File No.

09-84-0256-01

FROM: 

Gordon F. Coles, Q. C.

TO: Reinhold Endres

Re; Donald Marshall, Jr.

Further to our discussion this morning, attached is a draft in the form of a suggested report from Commissioner Campbell to the Lieutenant Governor. It may be that it is too summary and the Commissioner may wish to enlarge upon it. However, I think the important position for us to take is that since he agreed to our attempting to negotiate a settlement, now that we have done so procedurally we should be able to report this as a fait accompli and he in effect report and recommend it to his Honour in wrapping up his mandate. This, I suggest, should be presented to Mr. MacIntosh, with the attached also being copied to Mr. Cacchione for their respective consideration, comment, etc.

Obviously, this needs to be kept confidential at this point and if there is general agreement among the three of you on this as a resolution in the matter, then we can proceed accordingly.

August 10, 1984

c.c. Honourable Ronald C. Giffin, Q. C.

Draft for Consideration of Counsel

His Honour the Lieutenant Governor of Nova Scotia

By Order in Council dated the 13th day of March, 1984, bearing #84-295, the undersigned was appointed a Commissioner under the Public Inquiries Act to inquire into and report my findings respecting ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr. as a result of his incarceration in jail for a crime for which he was subsequently found to be not guilty.

The Order in Council further authorized the Commissioner to retain the services of legal counsel, inter alia, pursuant to which I retained Hugh D. MacIntosh as legal counsel to the Commission.

Upon a preliminary consideration of the subject matter of the inquiry, I concluded that it was in the public interest as well as in Donald Marshall, Jr.'s personal interest that an immediate ex gratia payment of \$25,000.00 be advanced to Donald Marshall, Jr. toward final payment and settlement of his compensation and so recommended in an interim report and recommendation submitted to your Honour under date of March 27, 1984. My recommendation was accepted and acted upon and an ex gratia payment in the amount of \$25,000.00 to Donald Marshall, Jr., was made pursuant to an Order in Council dated April 10, 1984, bearing #84-434.

In preparation for my inquiry into the matter so commissioned, preparatory research and other matters were attended upon, including conferences by commission counsel with counsel representing Donald Marshall, Jr., and the Attorney General of the Province. Preliminary meetings with counsel led to counsel representing Donald Marshall, Jr., and the Attorney General requesting a postponement of my commencing formal hearings of interested persons to enable counsel to explore the prospects

of reaching agreement in the matters in respect to which I was commissioned to inquire into and report upon. Having regard to the nature of the commission and that it was intended to deal specifically with ex gratia payments of compensation for Donald Marshall, Jr., it seemed in the best interest of Mr. Marshall and the public that counsel should be given a reasonable time to explore the possibility of reaching a settlement acceptable to Mr. Marshall and the Attorney General. This was done and counsel for the Commission has informed me that counsel for Donald Marshall, Jr., and counsel for the Attorney General have reached agreement acceptable to both Donald Marshall, Jr., and the Attorney General in the matter of ex gratia payments of compensation, including legal costs to be paid to Donald Marshall, Jr.,. The settlement is in the total sum of \$270,000.00, inclusive of the \$25,000.00 interim payment made pursuant to my interim recommendation. The said settlement will be paid by the Province to Donald Marshall, Jr., in consideration of a full release of all or any demands, claims or actions for damages of all kinds including legal fees up to and including the agreed settlement.

Considering the purpose and terms of reference of my appointment as set out in the Order in Council dated March 13, 1984, and the agreement reached to the satisfaction of Donald Marshall, Jr., and the Attorney General, the matters which I was mandated to inquire into, namely the matter of "ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr., as a result of his incarceration in jail for a crime of which he was subsequently found to be not guilty", have been determined by agreement as aforesaid. Accordingly, I recommend acceptance and implementation of the said agreement in concluding this matter.

Yours sincerely

Nova Scotia



Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Our File No. 09-84-0256-01

August 13, 1984

CONFIDENTIAL

Mr. Felix A. Cacchione
Lambert & Cacchione
Barristers and Solicitors
Suite 903
1649 Hollis Street
Halifax, Nova Scotia
B3J 2R7

Dear Mr. Cacchione:

Re: Donald Marshall, Jr.

Last week I mentioned that we must give some thought to the position of the Commissioner if we are to conclude this matter by way of agreement. Ideally, it would seem to me, the Commissioner would recommend the terms of the private settlement to the Governor in Council thus concluding his commission.

I enclose a draft copy of an outline which would accomplish this, and I invite your comments on it.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Reinhold E. Endres".
Reinhold E. Endres

RME/crn
Enc.

LAMBERT & CACCHIONE

AG 207

BARRISTERS & SOLICITORS

Michael A. Lambert, LL.B.
Felix A. Cacchione, B.A., LL.B.

Suite 903
1649 Hollis Street
Post Office Box 547
HALIFAX, NOVA SCOTIA
B3J 2R7

Telephone
(902) 423-9143

August 13, 1984

CONFIDENTIAL

Mr. Reinhold Endres
Department of the Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Endres:

RE: DONALD MARSHALL, JR.

Thank you for yours of August 13, 1984. I have had an opportunity of reviewing the enclosed draft and have noted my only change to it on page two.

I trust this is to your satisfaction.

Yours very truly,



Felix A. Cacchione

FAC/oh
enc.

Draft for Consideration of Counsel

His Honour the Lieutenant Governor of Nova Scotia

By Order in Council dated the 13th day of March, 1984, bearing #84-295, the undersigned was appointed a Commissioner under the Public Inquiries Act to inquire into and report my findings respecting ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr. as a result of his incarceration in jail for a crime for which he was subsequently found to be not guilty.

The Order in Council further authorized the Commissioner to retain the services of legal counsel, inter alia, pursuant to which I retained Hugh D. MacIntosh as legal counsel to the Commission.

Upon a preliminary consideration of the subject matter of the inquiry, I concluded that it was in the public interest as well as in Donald Marshall, Jr.'s personal interest that an immediate ex gratia payment of \$25,000.00 be advanced to Donald Marshall, Jr. toward final payment and settlement of his compensation and so recommended in an interim report and recommendation submitted to your Honour under date of March 27, 1984. My recommendation was accepted and acted upon and an ex gratia payment in the amount of \$25,000.00 to Donald Marshall, Jr., was made pursuant to an Order in Council dated April 10, 1984, bearing #84-434.

In preparation for my inquiry into the matter so commissioned, preparatory research and other matters were attended upon, including conferences by commission counsel with counsel representing Donald Marshall, Jr., and the Attorney General of the Province. Preliminary meetings with counsel led to counsel representing Donald Marshall, Jr., and the Attorney General requesting a postponement of my commencing formal hearings of interested persons to enable counsel to explore the prospects

of reaching agreement in the matters in respect to which I was commissioned to inquire into and report upon. Having regard to the nature of the commission and that it was intended to deal specifically with ex gratia payments of compensation for Donald Marshall, Jr., it seemed in the best interest of Mr. Marshall and the public that counsel should be given a reasonable time to explore the possibility of reaching a settlement acceptable to Mr. Marshall and the Attorney General. This was done and counsel for the Commission has informed me that counsel for Donald Marshall, Jr., and counsel for the Attorney General have reached agreement acceptable to both Donald Marshall, Jr., and the Attorney General in the matter of ex gratia payments of compensation, including legal costs to be paid to Donald Marshall, Jr.,. The settlement is in the total sum of \$270,000.00, inclusive of the \$25,000.00 interim payment made pursuant to my interim recommendation. The said settlement will be paid by the Province to Donald Marshall, Jr., in consideration of a full release of all or any demands, claims or actions for damages of all kinds including legal fees up to and including the agreed settlement. *of the Province*

Considering the purpose and terms of reference of my appointment as set out in the Order in Council dated March 13, 1984, and the agreement reached to the satisfaction of Donald Marshall, Jr., and the Attorney General, the matters which I was mandated to inquire into, namely the matter of "ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr., as a result of his incarceration in jail for a crime of which he was subsequently found to be not guilty", have been determined by agreement as aforesaid. Accordingly, I recommend acceptance and implementation of the said agreement in concluding this matter.

Yours sincerely



FC 242

**Department of
Attorney General**

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Our File No

August 14, 1984

Mr. Felix A. Cacchione
Lambert & Cacchione
Ste. 903, 1649 Hollis St.
Halifax, Nova Scotia
B3J 2R7

Dear Mr. Cacchione:

RE: Donald Marshall, Junior

Further to our various conversations I am now enclosing a Release in favour of the Crown for execution by your client and his parents.

I thought that it would be more economical to have just one Release for execution by all three parties but if that is not satisfactory, or if the Release is not acceptable for any other reason, please advise.

I would like to repeat that, assuming that we can finally agree to settle this matter, I cannot provide you with an undertaking that the figure of the settlement will not be disclosed in one way or another. However, I would not expect that the Government would be interested in much more than a simple written statement for Release to the Press.

Yours very truly,

Reinhold M. Endres
Assistant Director (Civil)

enclosure

FINAL RELEASE

THIS FINAL RELEASE made this day of
August, 1984.

BETWEEN:

DONALD MARSHALL, JUNIOR,
DONALD MARSHALL, SENIOR and
CAROLINE MARSHALL

Releasers

- and -

HER MAJESTY THE QUEEN in the right
of the Province of Nova Scotia

Releasee

WHEREAS by Order in Council dated the 13th day of March, 1984, Number 84-295, the Honourable Mr. Justice Alexander B. Campbell was appointed a Commissioner under the Public Inquiries Act to inquire into and report his findings to the Governor in Council respecting *ex gratia* payments of compensation, including legal costs, to Donald Marshall, Junior, for his incarceration for a crime of which he was subsequently acquitted.

AND WHEREAS pursuant to Order in Council dated the 10th day of April, 1984, Number 84-434, the Attorney General made an *ex gratia* payment to Donald Marshall, Junior in the amount of \$25,000.00, which payment

was made pursuant to the Interim Report of the Commissioner.

AND WHEREAS with the concurrence of the Commissioner, counsel for Donald Marshall, Junior and counsel for the Attorney General have met to explore the prospects of reaching an agreement.

AND WHEREAS counsel have reached an agreement which is acceptable to both Donald Marshall, Junior and the Attorney General.

NOW THEREFORE, in consideration of the ex gratia payment of the sum of \$245,000.00, paid in addition to the amount paid previously pursuant to Order in Council Number 84-434 as aforementioned, inclusive of costs, the undersigned hereby for themselves, their heirs, executors, administrators, successors and assigns, fully and finally release and forever discharge Her Majesty the Queen in right of the Province of Nova Scotia, her employees, servants and agents, from any action, cause of action, claim for damages, or demands ever had arising in any way from the arrest and incarceration of Donald Marshall, Junior, for a crime of which he was subsequently acquitted.

Aug 14/64

DM Jr.

T/C from Enders - re. releases.

- had T/C in Campbell. re his report
- prepared to endorse report
- wants letter from C & D re settlement before he ~~writes~~ signs report
- will draft letter & get it to us for signing.



FC 243

Department of
Attorney General

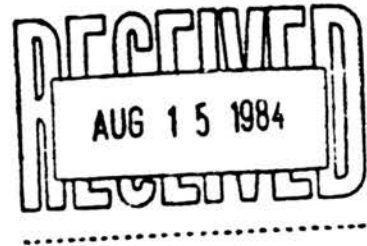
PO Box 7
Halifax, Nova Scotia
B3J 2L6

Our File No. 09-84-0256-01

August 15, 1984

HAND DELIVERED

CONFIDENTIAL



Mr. Felix A. Cacchione
Lambert and Cacchione
Barristers & Solicitors
Suite 903
1649 Hollis Street
Halifax, Nova Scotia
B3J 2R7

Dear Mr. Cacchione:

RE: Donald Marshall, Jr.

I am enclosing a letter addressed to Hugh MacIntosh which I have drafted, in accordance with his request, for our joint signatures.

Please call me if there is anything in it to which you cannot subscribe, otherwise please sign and return it to me.

This letter, of course, will not be sent to MacIntosh until I have in my hands the Release from your client and his parents. Also, we cannot take the next step, I am sure you will agree, until we have in hand the report of the Commissioner.

Yours very truly,

J. B. Crosby
per Reinhold M. Endres

REM/aes

Enclosure

LAMBERT & CACCHIONE

BARRISTERS & SOLICITORS

Michael A. Lambert, LL.B.
Felix A. Cacchione, B.A., LL.B.Suite 903
1649 Hollis Street
Post Office Box 547
HALIFAX, NOVA SCOTIA
B3J 2R7Telephone
(902) 423-9143

August 15, 1984

CONFIDENTIALMr. Reinhold M. Endres
Department of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Endres:

RE: DONALD MARSHALL, JR.As per your request please find enclosed
herewith the letter directed to Hugh MacIntosh which
I have signed.

Yours very truly,



Felix A. Cacchione

FAC/oh
enc.

Nova Scotia



Attorney General

Memorandum

From Reinhold M. Endres
Asst. Director (Civil)

Our File Reference
09-84-0256-01

To FILE

Your File Reference

Subject

Date August 15, 1984

This letter^{*} is not to be released until we are in receipt of the releases from Cacchione.

** letter to Hugh MacIntosh*

O.K. for release Sept. 25th

Rue

Nova Scotia



FL 244

Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Our File No. 09-84-0256-01

August 15, 1984

CONFIDENTIAL

Hugh MacIntosh
Legal Counsel
Commission of Inquiry on Compensation
for Donald Marshall, Jr.
P.O. Box 2256
Charlottetown, P.E.I.
C1A 8B9

Dear Mr. MacIntosh:

RE: Donald Marshall, Jr.

You know, of course, that over the past three months we have met to explore the possibilities of reaching an agreement in the matter in respect of which the Commissioner was to otherwise inquire into.

We are pleased to be able to inform you that our discussions have been successful, and that we were able to agree on a settlement pursuant to which Mr. Donald Marshall, Jr. would be paid the sum \$245,000.00, in addition to the \$25,000.00 paid previously in accordance with Order in Council No. 84-434, in full settlement of any claim against Her Majesty the Queen, in the Right of the Province of Nova Scotia, her employees, servants and agents, arising in any way from the arrest and incarceration of Donald Marshall, Jr. for a crime of which he was subsequently acquitted.

We are both satisfied that with that settlement the purpose of the Inquiry has been accomplished, and we therefore, recommend its acceptance and approval by the Commissioner.


. . . / 2

Mr. Hugh MacIntosh
August 15, 1984
Page 2

09-84-0256-01

Finally, we wish to thank you for your support and forbearance without which there could have been no settlement.

Yours very truly,



Reinhold M. Endres

Felix A. Cacchione

09-84-0256-01

August 15, 1984

CONFIDENTIAL

Hugh MacIntosh
Legal Counsel
Commission of Inquiry on Compensation
for Donald Marshall, Jr.
P.O. Box 2256
Charlottetown, P.E.I.
C1A 8B9

Dear Mr. MacIntosh:

RE: Donald Marshall, Jr.

As per your request I am enclosing a copy of Order in Council No. 84-434 dated April 10, 1984.

I understand your concern with respect to a specific recommendation by the Commissioner of the figure that we have apparently agreed upon, however, we would definitely want the Commissioner to endorse the settlement, and to indicate in his report, along the lines of the draft report which I sent to you earlier, that he is satisfied that the matter into which he was to inquire has been determined, and that he is pleased to accept and recommend implementation of the settlement.

Yours very truly,

Reinhold M. Endres

RME/aes

Enclosure

Certified to be a true copy of an Order of his Honour the

Lieutenant Governor of Nova Scotia in Council made the

10th day of April, A. D. 1984

EXECUTIVE COUNCIL



NOVA SCOTIA

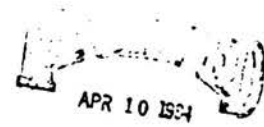
84-434

The Governor in Council on the report and recommendation of the Attorney General dated the 3rd day of April, A.D., 1984, pursuant to all authority in him vested in this behalf, is pleased to authorize the Attorney General to make an ex gratia payment in the amount of \$25,000. to Donald Marshall, Jr., or to his representatives, in such sums and at such times and on such conditions as the Attorney General shall deem appropriate, which payment is to be made pursuant to the interim recommendation of the Commissioner appointed under the Public Inquiries Act by Order in Council 84-295, dated the 13th day of March, A.D., 1984, to inquire into the matter of ex gratia payments to be paid to Donald Marshall, Jr., as the result of his incarceration in jail for a crime of which he was subsequently found to be not guilty.

The Governor in Council is further pleased to direct that sums expended pursuant to this Order are to be charged under the heading "Unclassified and Unforeseen, Department of Finance".

H. F. G. Stevens

H. F. G. STEVENS, Q.C.,
CLERK OF THE EXECUTIVE COUNCIL.



APR 10 1984

ATTORNEY GENERAL

LAMBERT & CACCHIONE

BARRISTERS & SOLICITORS

Michael A. Lambert, LL.B.
Felix A. Cacchione, B.A., LL.B.

Suite 903
1649 Hollis Street
Post Office Box 547
HALIFAX, NOVA SCOTIA
B3J 2R7

Telephone
(902) 423-9143

August 15, 1984

Mr. Donald Marshall
c/o Karen Brown
5651 Ogilvie Street
Apartment 113
Halifax, Nova Scotia
B3H 1B9

Dear Junior:

I am enclosing three Releases in favour of the Crown. These are all copies of the same Release and I would ask that you have them signed by your parents and sign them yourself. The signatures should be signed in the presence of a witness who also signs as witnessing the execution of the Release.

As I indicated to you in my office, the signing of this Release does not prevent you from proceeding with a suit against Chief MacIntyre and Detective Urquhart. The only provision of this is to release the Crown, that is, the Attorney General's Department, from any future liability arising out of your matter. In relation to your parent's claim, I advised you that I felt they would not have a very successful claim, if any, against the Crown.

If you are in agreement with the Release which I have enclosed, I would ask that you have them signed and return them to me as soon as possible so that your monies can be obtained from the Department of the Attorney General.

I will be away from August 16 to August 26. If you have any questions, please contact me after August 26.

Yours very truly,

Felix A. Cacchione
Felix A. Cacchione

FAC/oh
enc.

Aug 15/04.

Donald Marshall

T/C Mr. Justice Campbell - exact amount can't be kept secret

- order in council will specify amount

- if there's some way he can help. - he's willing to do so.

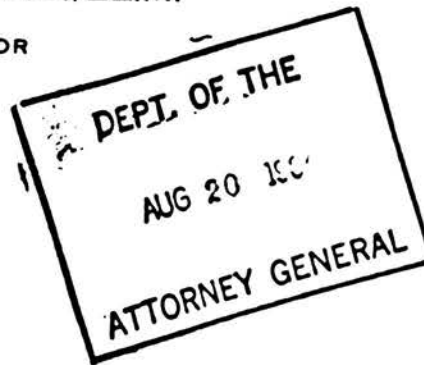
- ~~if~~

- readily accepts suggestion of tying up \$ in CIC or trust fund.

- would like to meet Jr.

HUGH D. MACINTOSH, LL.B., LL.M.

BARRISTER AND SOLICITOR
OF THE P.E.I. & N.S. BARS



AG 273

TELEPHONE (902) 892-9594
P.O. BOX 2257
83 QUEEN STREET
CHARLOTTETOWN, P.E.I.
CANADA C1A 8B9

FILE No. 84-100-HM

YOUR FILE No. 09-84-0256-0

August 17, 1984

CONFIDENTIAL

Mr. Gordon F. Coles, Q.C.
Deputy Provincial Secretary
3rd floor Provincial Building
Hollis Street
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Coles:

Re: Donald Marshall, Jr.
Order in Council 84-295

The report of the Commissioner for submission to the Lieutenant Governor in Council pursuant to Order in Council No. 84-295 accompanies this letter. It is sent in care of yourself in your capacity as Deputy Provincial Secretary and signatory on the commission dated March 13, 1984.

A copy of any Order in Council consequent to the submission of the report for the Commissioner's file in due course would be appreciated.

Yours sincerely,

HUGH D. MACINTOSH

HDM/bac

Enclosure

cc F. Cacchione

cc R. Endres



COMMISSION OF INQUIRY
ON
COMPENSATION FOR
DONALD MARSHALL, JR.

09-84-0256-0

AG 273

JUSTICE ALEXANDER B CAMPBELL
COMMISSIONER

P.O. BOX 1617
HALIFAX, NOVA SCOTIA
B3J 2Y3

August 17, 1984

His Honour the Lieutenant Governor of Nova Scotia in Council
c/o the Deputy Provincial Secretary
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Your Honour:

Re: Donald Marshall, Jr.
Order in Council 84-295

By Order in Council dated the 13th day of March, 1984, bearing #84-295, the undersigned was appointed a Commissioner under the Public Inquiries Act to inquire into and report my findings respecting ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr. as a result of his incarceration in jail for a crime for which he was subsequently found to be not guilty.

The Order in Council further authorized the Commissioner to retain the services of legal counsel, inter alia, pursuant to which I retained Hugh D. MacIntosh as legal counsel to the Commission.

Upon a preliminary consideration of the subject matter of the inquiry, I concluded that it was in the public interest as well as in Donald Marshall, Jr.'s personal interest that an immediate ex gratia payment of \$25,000.00 be advanced to Donald Marshall, Jr. toward final payment and settlement of his compensation and so recommended in an interim report and recommendation submitted to your Honour under date of March 27, 1984. My recommendation was accepted and acted upon and an ex gratia payment in the amount of \$25,000.00 to Donald Marshall, Jr., was made pursuant to an Order in Council dated April 10, 1984, bearing #84-434.

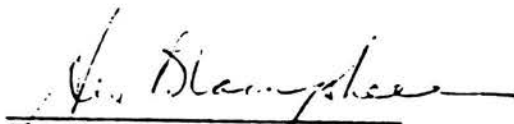
In preparation for my inquiry into the matter so commissioned, preparatory research and other matters were attended upon, including conferences by commission counsel with counsel representing Donald Marshall, Jr., and the Attorney General of the Province. Preliminary meetings with counsel led to counsel representing Donald Marshall, Jr., and the Attorney General requesting a postponement of my commencing formal hearings of interested persons to enable counsel to explore the prospects of reaching agreement in the matters in respect to which I was commissioned to inquire into and report upon. Having regard to the nature of the commission and that it was intended to deal

specifically with ex gratia payments of compensation for Donald Marshall, Jr., it seemed in the best interest of Mr. Marshall and the public that counsel should be given a reasonable time to explore the possibility of reaching a settlement acceptable to Mr. Marshall and the Attorney General. This was done and counsel for the Commission has informed me that counsel for Donald Marshall, Jr., and counsel for the Attorney General have reached agreement acceptable to both Donald Marshall, Jr., and the Attorney General in the matter of ex gratia payments of compensation, including legal costs, to be paid to Donald Marshall, Jr.. The settlement is in the total sum of \$270,000.00, inclusive of the \$25,000.00 interim payment made pursuant to my interim recommendation. The said settlement will be paid by the Province to Donald Marshall, Jr., in consideration of a full release of all or any demands, claims or actions for damages of all kinds including legal fees up to and including the agreed settlement.

Considering the purpose and terms of reference of my appointment as set out in the Order in Council dated March 13, 1984, and the agreement reached to the satisfaction of Donald Marshall, Jr., and the Attorney General, the matters which I was mandated to inquire into, namely the matter of "ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr., as a result of his incarceration in jail for a crime of which he was subsequently found to be not guilty", have been determined by agreement as aforesaid. Accordingly, I recommend acceptance and implementation of the said agreement in concluding this matter.

I shall await the result of your further deliberations and your instructions if the inquiry must continue in the circumstances. If my recommendation is accepted and unless otherwise instructed, I shall conclude my commission by the submission of my accounts to the Director of Administration of the office of the Speaker and of papers and commentary to the Attorney General related to legal and organizational aspects of the inquiry.

Yours sincerely,



The Honourable Mr. Justice
Alexander Bradshaw Campbell,
Commissioner

HUGH D. MACINTOSH, LL.B., LL.M.

**BARRISTER AND SOLICITOR
OF THE P.E.I. & N.S. BARS**

**TELEPHONE (902) 892-9594
P. O. BOX 2257
83 QUEEN STREET
CHARLOTTETOWN, P.E.I.
CANADA C1A 8B9**

August 17, 1984

FILE No. 84-100-HM

YOUR FILE No. 09-84-0256-01

CONFIDENTIAL

Mr. Reinhold M. Endres
Barrister and Solicitor
Department of the Attorney General
3rd floor, Provincial Building
Hollis Street
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Reinhold:

Re: Donald Marshall, Jr.

This will acknowledge your letter and enclosure of August 13, 1984. As I indicated in our telephone call of August 14, 1984, I did not feel free to comment on the enclosure without instructions.

A copy of my transmittal letter in respect to the report of the Commissioner is enclosed.

I congratulate you on the conclusion of what must have been a difficult and protracted task.

Thank you for notifying me on each of the several occasions when extensions of time for continuation of the negotiations were required. If the document jointly signed by yourself and Mr. Cacchione now exists it would be a comfort to me to receive it. A certified copy of Order in Council 84-434 and such order as may follow the submission of the latest report would be appreciated.

Yours sincerely,


HUGH D. MACINTOSH

HDM/bac
Enclosure

523

10000
09-84-0256-01

Am 00

AG 220

Aug. 20 /82

Called Mike Lambert
to tell him that I had the
Report of the Commissioner + was
holding it until I received
their release.

He told me he would check +
see what holding was.

Aug. 24th

Called Hugh McIntosh
he is in Hx.
425-3107

0984-0256-01

Aug. 24/84

Spoke to Hugh Mc. + explained that I am holding the Commissioner's report until I receive the releases from Felix.

Until I have the releases I can't be sure that the matter is settled.

Similarly, I can't send him the letter signed by Felix + myself because advising that we settled - until I have the releases.

He was not too keen on this but I think he saw that that was the only thing to do.

So, once we get the releases back (fr. + parents) we can send letter to Hugh + forward Commissioner's Report to Gov. in C.

R.

Aug. 31/74

D Marshall

Cor Ser. Can - loss of wages - prev. sumi + 5 hrs.
+ 5 days

\$20/day moral injury

5/day while on mandatory

- set off earnings from Shulie habe.

- \$48-50/day comp

Fergus O'Connor - out.

600
5
80,000

SEPTEMBER 4, 1984

Donald Marshall Jr.
c/o Karen Brown
5651 Ogilvie Street
Apartment 113
Halifax, Nova Scotia
B3H 1B9

Dear Junior:

On August 15, 1984 I sent to you the Releases which were sent to our office by the Attorney General's Department. In conversation with you after this date, you inquired as to when you could receive your monies. Your monies will be forthcoming once the Releases have been signed and have been delivered to my office for transmittal to the Attorney General's Department. Would you therefore please advise me as to whether or not your parents are going to sign the Releases and if so when. As you know it will be just a matter of days when the Releases are signed for the Attorney General's Department to present us with the cheque.

I look forward to hearing from you at your earliest opportunity.

Yours very truly,

Felix A. Cacchione

FAC/oh

Sept. 9th

- called Felix
- asked for releases
- he said Marshall's parents have been on vacation F-L today + he expects to see them this week.

Nova Scotia

**Department of
Attorney General**

Deputy Attorney General

Gordon F. Coles, Q.C.

PO Box 7
Halifax Nova Scotia
B3J 2L6

902-424-4223

File Number

09-84-0256-01

September 4, 1984

His Honour Alan R. Abraham, C.D.,
Lieutenant Governor of Nova Scotia
Government House
Halifax, Nova Scotia

Dear Sir:


Re: Commission of Inquiry on Compensation
for Donald Marshall, Jr.

Enclosed is a Report of the Honourable Mr. Justice Alexander B. Campbell, Commissioner appointed by Order in Council dated March 13, 1984, to inquire into and report respecting ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr., as a result of his incarceration in jail for a crime for which he was subsequently found to be not guilty.

Counsel to the Commissioner forwarded the said Report in care of the undersigned since the Deputy Provincial Secretary was the signatory on the Commission of Appointment.

The delay in forwarding this report to you was occasioned by the undersigned being out of the Province when the report was received.

Yours very truly


Gordon F. Coles

encl. (1)



COMMISSION OF INQUIRY
ON
COMPENSATION FOR
DONALD MARSHALL, JR.

09-84-0256-01

AG 273

CE ALEXANDER B. CAMPBELL
COMMISSIONER

P.O. BOX 1617
HALIFAX, NOVA SCOTIA
B3J 2Y3

August 17, 1984

His Honour the Lieutenant Governor of Nova Scotia in Council
c/o the Deputy Provincial Secretary
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Your Honour:

Re: Donald Marshall, Jr.
Order in Council 84-295

By Order in Council dated the 13th day of March, 1984, bearing #84-295, the undersigned was appointed a Commissioner under the Public Inquiries Act to inquire into and report my findings respecting ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr. as a result of his incarceration in jail for a crime for which he was subsequently found to be not guilty.

The Order in Council further authorized the Commissioner to retain the services of legal counsel, inter alia, pursuant to which I retained Hugh D. MacIntosh as legal counsel to the Commission.

Upon a preliminary consideration of the subject matter of the inquiry, I concluded that it was in the public interest as well as in Donald Marshall, Jr.'s personal interest that an immediate ex gratia payment of \$25,000.00 be advanced to Donald Marshall, Jr. toward final payment and settlement of his compensation and so recommended in an interim report and recommendation submitted to your Honour under date of March 27, 1984. My recommendation was accepted and acted upon and an ex gratia payment in the amount of \$25,000.00 to Donald Marshall, Jr., was made pursuant to an Order in Council dated April 10, 1984, bearing #84-434.

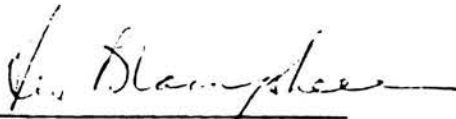
In preparation for my inquiry into the matter so commissioned, preparatory research and other matters were attended upon, including conferences by commission counsel with counsel representing Donald Marshall, Jr., and the Attorney General of the Province. Preliminary meetings with counsel led to counsel representing Donald Marshall, Jr., and the Attorney General requesting a postponement of my commencing formal hearings of interested persons to enable counsel to explore the prospects of reaching agreement in the matters in respect to which I was commissioned to inquire into and report upon. Having regard to the nature of the commission and that it was intended to deal

specifically with ex gratia payments of compensation for Donald Marshall, Jr., it seemed in the best interest of Mr. Marshall and the public that counsel should be given a reasonable time to explore the possibility of reaching a settlement acceptable to Mr. Marshall and the Attorney General. This was done and counsel for the Commission has informed me that counsel for Donald Marshall, Jr., and counsel for the Attorney General have reached agreement acceptable to both Donald Marshall, Jr., and the Attorney General in the matter of ex gratia payments of compensation, including legal costs, to be paid to Donald Marshall, Jr.. The settlement is in the total sum of \$270,000.00, inclusive of the \$25,000.00 interim payment made pursuant to my interim recommendation. The said settlement will be paid by the Province to Donald Marshall, Jr., in consideration of a full release of all or any demands, claims or actions for damages of all kinds including legal fees up to and including the agreed settlement.

Considering the purpose and terms of reference of my appointment as set out in the Order in Council dated March 13, 1984, and the agreement reached to the satisfaction of Donald Marshall, Jr., and the Attorney General, the matters which I was mandated to inquire into, namely the matter of "ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr., as a result of his incarceration in jail for a crime of which he was subsequently found to be not guilty", have been determined by agreement as aforesaid. Accordingly, I recommend acceptance and implementation of the said agreement in concluding this matter.

I shall await the result of your further deliberations and your instructions if the inquiry must continue in the circumstances. If my recommendation is accepted and unless otherwise instructed, I shall conclude my commission by the submission of my accounts to the Director of Administration of the office of the Speaker and of papers and commentary to the Attorney General related to legal and organizational aspects of the inquiry.

Yours sincerely,



The Honourable Mr Justice
Alexander Bradshaw Campbell,
Commissioner

LAMBERT & CACCHIONE AG 277

BARRISTERS & SOLICITORS

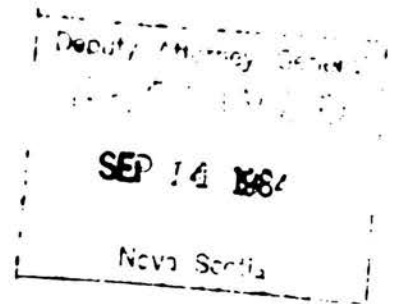
Michael A. Lambert, LL.B.
Felix A. Cacchione, B.A., LL.B.

Suite 903
1649 Hollis Street
Post Office Box 547
HALIFAX, NOVA SCOTIA
B3J 2R7

Telephone
(902) 423-9143

September 14, 1984

Mr. Reinhold M. Endres
Department of the Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6



Dear Mr. Endres:

RE: DONALD MARSHALL, JR.

Enclosed please find the original and one copy of a Release in favour of Her Majesty the Queen, in the Right of the Province of Nova Scotia, her employees, servants and agents, signed by our client, Donald Marshall, Jr.

As you will note the Release has not been signed by Mr. Marshall's parents. We represent only Mr. Marshall, Jr. It is on behalf of his interests alone that the Release is signed and the offer of compensation accepted.

We trust that this concludes the matter and that Mr. Marshall's settlement reached him without delay. The cheque should be sent to our office and we will forward it to our client.

Yours very truly,

Felix A. Cacchione

FAC/oh
enc.

FINAL RELEASE

THIS FINAL RELEASE made this 13th day of
~~August~~ ^{September}, 1984.

BETWEEN:

DONALD MARSHALL, JUNIOR,
DONALD MARSHALL, SENIOR and
CAROLINE MARSHALL

Releasors

- and -

HER MAJESTY THE QUEEN in the right
of the Province of Nova Scotia

Releasee

WHEREAS by Order in Council dated the 13th day of March, 1984, Number 84-295, the Honourable Mr. Justice Alexander B. Campbell was appointed a Commissioner under the Public Inquiries Act to inquire into and report his findings to the Governor in Council respecting ex gratia payments of compensation, including legal costs, to Donald Marshall, Junior, for his incarceration for a crime of which he was subsequently acquitted.

AND WHEREAS pursuant to Order in Council dated the 10th day of April, 1984, Number 84-434, the Attorney General made an ex gratia payment to Donald Marshall, Junior in the amount of \$25,000.00, which payment

was made pursuant to the Interim Report of the Commissioner.

AND WHEREAS with the concurrence of the Commissioner, counsel for Donald Marshall, Junior and counsel for the Attorney General have met to explore the prospects of reaching an agreement.

AND WHEREAS counsel have reached an agreement which is acceptable to both Donald Marshall, Junior and the Attorney General.

NOW THEREFORE, in consideration of the ex gratia payment of the sum of \$245,000.00, paid in addition to the amount paid previously pursuant to Order in Council Number 84-434 as aforementioned, inclusive of costs, the undersigned hereby for themselves, their heirs, executors, administrators, successors and assigns, fully and finally release and forever discharge Her Majesty the Queen in right of the Province of Nova Scotia, her employees, servants and agents, from any action, cause of action, claim for damages, or demands ever had arising in any way from the arrest and incarceration of Donald Marshall, Junior, for a crime of which he was subsequently acquitted.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 13th day of ~~August~~^{September}, 1984.

SIGNED, SEALED AND DELIVERED
in the presence of:

W. J. Adelman

Witness

Witness

Witness

Donald Marshall Jr.
DONALD MARSHALL, JUNIOR

DONALD MARSHALL, SENIOR

CAROLINE MARSHALL

AG 201
AG 268

DATED: August , 1984

BETWEEN:

DONALD MARSHALL, JUNIOR,
DONALD MARSHALL, SENIOR and
CAROLINE MARSHALL

Releasors

- and -

HER MAJESTY THE QUEEN in
the right of the Province
of Nova Scotia

Releasee

FINAL RELEASE

Nova Scotia



Attorney General

Memorandum

From Reinhold M. Endres
Assistant Director (Civil)

Our File Reference

To Gordon F. Coles. Q.C.
Deputy Minister

Your File Reference

Subject Donald Marshall, Jr.

Date September 21, 1984

As soon as convenient, I would like to bring you up to date on this file. I now have in my possession a satisfactory release executed by Donald Marshall, Jr., although his parents did not sign. We will have to determine whether we should be content with this, and then deal with whatever matters may be raised by his family if and when they arise.

As a matter of interest, I attach a clipping from today's Daily News indicating that Junior was arrested recently for an alleged assault of a police officer.

RME/smo
Enclosure

Donald Marshall arrested

by PAUL WITHERS

DONALD MARSHALL, the Nova Scotian Mic Mac who has become a national symbol as a victim of injustice, was arrested last week following a late night scuffle with Halifax police.

Marshall, who may get as much as \$275,000 from the province in compensation for wrongful imprisonment, was arrested for allegedly obstructing and assaulting a Halifax policeman on Thursday, Sept. 13.

If charged and convicted, Marshall could face a maximum of seven years imprisonment in a federal penitentiary.

The arrest happened in downtown Halifax, just hours after his father, Donald Marshall Sr., and other Mic Mac chiefs greeted Pope John Paul II on his arrival at CFB Shearwater.

The police arrest sheet shows that Marshall was taken to the police station for allegedly obstructing and assaulting a policeman and released on a promise to appear in court (if charged).

But it is not certain if charges will be laid. He has not been arraigned

and senior Halifax Police Department officers were not willing to comment on the matter yesterday.

Nor was Crown prosecutor Bernadette Macdonald, who is believed to be handling the case. Macdonald offered a terse "no comment" when asked if the Crown would proceed against Marshall.

At the time of the alleged incident, the officers were apparently unaware of who they were arresting.

Marshall attained national notoriety after he spent 11 years in federal prison for a crime he did not commit.

At the age of 17 he was convicted of murdering Sandy Seal in a Sydney, Cape Breton, park. Marshall maintained his innocence throughout his long incarceration.

Mounting public pressure prompted a judicial inquiry into the murder, which ultimately led to his release.

Roy Ebearly subsequently convicted of manslaughter in the Seal stabbing death, was granted a new trial by the appeal division of the Nova Scotia Supreme Court earlier this month.

Marshall, now living in Ogilvie Towers off Posh Young Avenue, is awaiting what is expected to be a huge compensation settlement from the

Assault on cop alleged

DONALD MARSHALL

aged 1

jailed

help send Chief Constance Joseph, to appeal will be heard in her or January.

Province of Nova Scotia.

Marshall, who could not be reached for comment yesterday, has since his release become nationally known and his life story will become a book to be released soon by Glebe and Mail reporter Michael Harris.

The Mic Mac who spent his young manhood behind prison bars eventually found happiness with Janet Brown, daughter of former Liberal cabinet minister A. Garnet Brown.

Marshall could not be reached Thursday because he and Janet were returning to Halifax by car from Maine yesterday. The pair, who have been dating for over two years, were visiting friends there, this week.

WEATHER



Sept. 24/84

I spoke to Felix by phone
+ told him of Min's intention
to hold press meeting
Wed. at 10:00

that he could be there if he
wanted to.

Felix says he has a trial
scheduled + may not be able to.

Felix said also that he has no
difficulty to Min. doing this
(I explained why it was the Min.
wanted to do this).

Sept 24/84

D. Marshall

T/C from Indies. - Cheque will be issued to us this week.

- press conference to be held on Wed. Sept 24/84
Coffin to announce settlement

- we can't appear because of et appearance

Nova Scotia



Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Fc 254

Our File No 09-84-0256-01

August 15, 1984

CONFIDENTIAL

Hugh MacIntosh
Legal Counsel
Commission of Inquiry on Compensation
for Donald Marshall, Jr.
P.O. Box 2256
Charlottetown, P.E.I.
C1A 8B9

Dear Mr. MacIntosh:

RE: Donald Marshall, Jr.

You know, of course, that over the past three months we have met to explore the possibilities of reaching an agreement in the matter in respect of which the Commissioner was to otherwise inquire into.

We are pleased to be able to inform you that our discussions have been successful, and that we were able to agree on a settlement pursuant to which Mr. Donald Marshall, Jr. would be paid the sum \$245,000.00, in addition to the \$25,000.00 paid previously in accordance with Order in Council No. 84-434, in full settlement of any claim against Her Majesty the Queen, in the Right of the Province of Nova Scotia, her employees, servants and agents, arising in any way from the arrest and incarceration of Donald Marshall, Jr. for a crime of which he was subsequently acquitted.

We are both satisfied that with that settlement the purpose of the Inquiry has been accomplished, and we therefore, recommend its acceptance and approval by the Commissioner.

. . . / 2

Mr. Hugh MacIntosh
August 15, 1984
Page 2

09-84-0256-01

FC 254

Finally, we wish to thank you for your support and forbearance without which there could have been no settlement.

Yours very truly,



Reinhold M. Endres

Felix A. Cacchione

Attorney General Ronald Giffin announced today that the Government of Nova Scotia has approved a settlement of compensation and legal costs for Mr. Donald Marshall Jr.

This settlement, which includes the interim payment of \$25,000.00 made in April 1984 on the recommendation of Mr. Justice Alexander B. Campbell who was appointed in March of 1984 by the Government of Nova Scotia to conduct an Inquiry into the payment of compensation and legal costs for Mr. Marshall, is in the total amount of \$270,000.00.

"The Government's approval of Mr. Justice Campbell's final recommendation completes the work of the Commission", Mr. Giffin said, "and on behalf of the Government of Nova Scotia, I wish to express sincere thanks to him for his untiring efforts in dealing with this matter".

- 30 -

FOR RELEASE AT 12:15
Halifax, Nova Scotia
September 26, 1984

P R E S S R E L E A S E

Donald Marshall Jr. would like to thank all those people who have supported him publicly and privately, emotionally and financially in his long campaign to establish his innocence and to obtain compensation for the injustice done to him as a result of his eleven years of incarceration. The compensation can be viewed as an acknowledgement by the Province of Nova Scotia that an innocent man was wrongfully incarcerated.

Without the public pressure which was brought to bear by the Committee of Concerned Citizens, by the fund raising efforts of Reverend Hussey of Montreal and by those individual citizens who wrote to their newspapers, their M.P.'s and their M.L.A.'s, we must wonder whether or not a Commission would have been established to inquire into the question of compensation for Donald Marshall, Jr.

Once the Commission of Inquiry was established and its terms of reference known, it became clear that its mandate was to be restricted solely to a calculation of the amount of compensation he was entitled to for his incarceration. The Commission's mandate did not extend to an inquiry into the events surrounding the conviction. Any such inquiry would have been beyond its jurisdiction.

In light of the restricted mandate of the Commission of Inquiry, it was felt that the question of compensation might be fairly addressed by way of attempting to negotiate a mutually acceptable settlement rather than expending public funds on a full scale inquiry where the Government of Nova Scotia was not bound by any recommendation that the Commission might make nor was it obliged to publish the findings of the Commission. It was therefore felt that the terms of quantum could be achieved by a mutually acceptable settlement.

To that end Donald instructed me to enter into negotiations with the Province of Nova Scotia on the question of the quantum of compensation.

It was recognized at the outset that no amount of money could ever provide adequate compensation for the eleven years spent in prison as an innocent man. It was with a view to arriving at a figure that would afford some recognition of the injustice done, would provide some degree of security and would go some way towards establishing Donald Marshall, Jr. where he might have been but for those eleven years, that the negotiations were embarked upon. Once an agreement as to quantum was reached, this was forwarded to Mr. Justice Campbell for his approval and recommendation to the Provincial Government.

One measure of society is the quality of its justice and regrettably this society failed Donald Marshall, Jr. in that very important respect.

Even more regrettably the public still does not know the cause of this miscarriage of justice and if some real attempt is to be made to redress the injustice suffered by Donald Marshall, Jr. as opposed to compensating him for it, then a full scale inquiry into the investigation and circumstances surrounding the conviction is required.

The strain and pressure on Donald since he was acquitted by the Appeal Division of the Supreme Court of Nova Scotia has been incalculable and at times intolerable. It is with a view to putting behind him the nightmare of the last thirteen years that Donald has chosen to accept the offer of compensation.

At this time what Donald needs most of all is to retire from the public view and get on with living the private life which was denied him for so long. Donald is hopeful that he can establish himself as a useful and productive citizen. His goal is to assist native youth in attaining their full potential.

The case of Donald Marshall, Jr. shows us very clearly how long it can take to correct a mistake made in the criminal justice system. This case is also a most compelling reason for the continued abolition of capital punishment.

From this date forward it will be up to the citizens of Nova Scotia and Canada to decide whether there should be an accounting to them for the failure of our system of justice.

Nova Scotia



Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L8

Our File No.

09-84-0256-01

October 1, 1984

Mr. Hugh MacIntosh
Legal Counsel
Commission of Inquiry on Compensation
for Donald Marshall, Jr.
P.O. Box 2256
Charlottetown, P.E.I.
C1A 8B9

Dear Mr. MacIntosh:

RE: Donald Marshall, Jr.

I am pleased to enclose herewith a copy of Order in Council No. 84-1149, dated September 28, 1984. With the acceptance by the Governor in Council of the Commissioner's Report and Recommendation this matter is now concluded, subject to submission of your final accounts.

I want to thank you again for your patience and co-operation without which there could have been no agreement.

Yours very truly,

Reinhold M. Endres
Assistant Director (Civil)

RME/aes
Enclosure



28 283

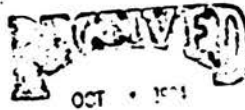
84-1149

The Governor in Council on the report and recommendation of the Attorney General dated the 26th day of September, A.D., 1984, pursuant to all authority in him vested in this behalf, is pleased to:

(a) accept the report of the Honourable Mr. Justice Alexander Bradshaw Campbell, containing his recommendation for acceptance and implementation of the terms of the agreement satisfactory to Donald Marshall, Jr., in conclusion of the matters which he was mandated to inquire into, namely the matter of "ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr., as a result of his incarceration in jail for a crime of which he was subsequently found to be not guilty";

(b) authorize the Attorney General to make a final ex gratia payment in the amount of \$245,000.00 to Donald Marshall, Jr., or to his representatives, thus concluding the purpose of the Commission of Inquiry set up under Order in Council 84-295 dated the 13th day of March, A.D., 1984; and

(c) direct that sums expended pursuant to this Order are to be charged to "Law Administration, Department of the Attorney General".



ATTORNEY GENERAL

H. F. G. Stevens
H. F. G. STEVENS, Q.C.,
CLERK OF THE EXECUTIVE COUNCIL.

Nova Scotia



Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

FC 250

Our File No. 09-84-0256-01

October 1, 1984

HAND DELIVEREDCONFIDENTIAL

Mr. Felix A. Cacchione
Lambert and Cacchione
Barristers & Solicitors
Suite 902, 1649 Hollis Street
Halifax, Nova Scotia
B3J 2R7

Dear Mr. Cacchione:

RE: Donald Marshall, Jr.

I am pleased to enclose herewith our cheque in the amount of \$245,000.00, made payable to you, in trust, representing the final ex gratia payment, following acceptance by the Governor in Council of the Report of the Honourable Mr. Justice Alexander Bradshaw Campbell, recommending acceptance and implementation of our Agreement, in conclusion of the matters into which the Commissioner was to inquire into, namely the matter of "ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Jr., as a result of his incarceration in jail for a crime of which he was subsequently found to be not guilty".

Yours very truly,

Reinhold M. Endres
Assistant Director (Civil)

RME/aes
Enclosure

VENDOR CODE CAC 64752		CHEQUE NO E 080290		PROVINCE OF NOVA SCOTIA Department of Finance, P.O. Box 187, Halifax, N.S. B3J	
PAYEE REFERENCE		OUR REFERENCE		DESCRIPTION	
SEPT. 26/84		007133 160578		RE DONALD MARSHALL JR.	
				245,000.00	

PLEASE QUOTE OUR REFERENCE ON ALL INQUIRIES

245,000.00

DATE Oct 1 1984 1535L

RECEIVED FROM Province of Nova Scotia

Two Hundred & forty five Thousand DOLLARS (\$245,000)

FOR Donald Marshall, Jr.

FROM _____ TO Felix Cacchione

HOW PAID		ACCOUNT	
CASH		AMT. OF ACCT.	
CHEQUE	-	AMT. PAID	
MONEY ORDER		BALANCE DUE	

BY Lambert Cacchione

BY Hayes

BLUELINE D 78

AG 284



PROVINCE OF NOVA SCOTIA

DEPARTMENT
HALIFAX



OF FINANCE
NOVA SCOTIA

E 080290

TO THE BANK OF NOVA SCOTIA
MAIN BRANCH
HALIFAX, N.S.

VENDOR CODE
CAC 64752

CHEQUE NUMBER
E 080290

DAY MON YR
01/10/84

AMOUNT
*****\$245,000.00****

PAY TO THE ORDER OF:

FELIX A. CACCHIONE IN TRUST
1649 HOLLIS ST. SUITE 903
HALIFAX, N.S. B3J 1V8

Doug Kern
MINISTER OF FINANCE

B. ...
DEPUTY MINISTER OF FINANCE

⑈0080290⑈ ⑆70003⑈002⑆ 011014⑈14⑈



553

09-84-0256-01

AG 284



VENDOR CODE CAC 64752	CHEQUE NO E 080290	PROVINCE OF NOVA SCOTIA Department of Finance, P.O. Box 187, Halifax, N.S. B3J 2N3	
PAYEE REFERENCE	OUR REFERENCE	DESCRIPTION	AMOUNT
SEPT. 26/84	007133 160578	RE DONALD MARSHALL JR.	245,000.00

PLEASE QUOTE OUR
REFERENCE ON ALL INQUIRIES

245,000.00



October 1, 1984

Mr. Stephen Aronson
623 Trelawny
Ottawa, Ontario
K2C 3M9

Dear Stephen:

RE: DONALD MARSHALL, JR.

Please find enclosed herewith my firm cheque in the amount of \$30,000.00 with respect to Donald's account.

This will also confirm that I am holding another \$40,000.00 in my trust account and look forward to receiving your instructions about this amount.

Yours very truly,

Felix A. Cacchione

/oh
enc.

DATE	10/11 STEPHEN ARONSON	RE: NASHALL
------	-----------------------	-------------

DETACH AND RETAIN FOR YOUR RECORDS.

LAMBERT & CACCHIONE

TRUST CHEQUE AMOUNT	30000-
------------------------	--------

©1972 - CK-TA4 TM



October 2, 1984

Donald Marshall, Jr.
c/o Karen Brown
5651 Ogilvie Street
Apartment 113
Halifax, Nova Scotia
B3H 1B9

Dear Donald:

RE: COMPENSATION

I have finally received the Government's cheque in the amount of \$245,000 being the balance of the \$270,000 awarded to you as compensation. I have deducted \$70,000 from this amount for Stephen Aronson's fees together with \$27,000 covering our fees and disbursements.

This letter will also acknowledge that the agreement we had for legal representation dated May 31, 1983 where you agreed to pay me 25 percent of whatever compensation you received has been declared null and void. This is according to our agreement reached in my office where I indicated to you that I would only take 10 percent of the compensation as the figure was lower than anticipated.

After subtracting the fees owed to both Stephen and myself, there remains \$148,000 in our trust account. According to your instructions of September 13, 1984, I have taken \$130,000 of this and invested it in short term notes at the Royal Bank of Canada pending your final determination of what you wish to do with this money. It appears to me that the best alternative at this time would be to invest the entire amount of \$130,000 together with the \$45,000 from Reverend Hussey's fund into a long term investment certificate so that you may benefit from the interest on this amount.

Donald Marshall, Jr.
October 2, 1984
Page 2

I still have \$18,000 in my trust account which I am leaving there until you determine whether or not you wish to send this money to your parents or what exactly you wish to do with it.

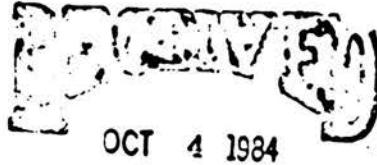
I would ask that you contact me at some point in the near future so that we may discuss what kind of investment you wish made with your money.

I trust this is to your satisfaction. Should you have any questions, please do not hesitate to contact me.

Yours very truly,

Felix A. Cacchione

FAC/oh

**Attorney General****ATTORNEY GENERAL Memorandum**

From Reinhold M. Endres
Assistant Director (Civil)

Our File Reference 09-84-0256-01

To Honourable Ronald C. Giffin, Q.C.
Attorney General

Your File Reference

Subject Donald Marshall, Jr.

Date October 3, 1984

With the payment of \$245,000.00 on Monday last pursuant to Order In Council 84-1149, dated September 28, 1984, the matter is now concluded, subject to the rendering of the final accounts of the Commissioner, and his Counsel, Hugh MacIntosh.

cc: Gordon F. Coles, Q.C.
Deputy Attorney General

RME/smo

October 17, 1984

Mr. Stephen Arceneo
623 Trelawny
Ottawa, Ontario
K2C 3M9

Dear Stephen:

RE: DONALD MARSHALL, JR.

Further to our telephone conversation today, please find enclosed herewith my firm cheque in the amount of \$40,000 with respect to Donald's account.

Yours very truly,

Melix A. Cacchione

FAC/oh
enc.

10/17	Stephen Aronson	RE: Marshall
DATE	TO THE ORDER OF	RE:

LAMBERT & CACCHIONE

DETACH AND RETAIN FOR YOUR RECORDS.

40600-
TRUST CHEQUE AMOUNT

©1972 - CK - TA4 TW



8/17	Royal Bank - independent	RE: Marshall
DATE	TO THE ORDER OF	RE:

LAMBERT & CACCHIONE

DETACH AND RETAIN FOR YOUR RECORDS.

43869/45
TRUST CHEQUE AMOUNT

©1972 - CK - TA4 TW



09-84-0256

October 22, 1984

The Honourable Edward N. Hughes, Q.C.
Deputy Minister
Ministry of the Attorney General
Parliament Buildings
609 Broughton Street
Victoria, British Columbia
V8V 1X4

Dear Mr. Hughes:

Re: DONALD MARSHALL, Jr.

As per your request, I am enclosing several documents, chiefly the Crewe Report from New Zealand, and a summary of the British Inquiry into the death of Rachel Ross on the point of ex gratia payment.

For us it was not necessary to make an exhaustive search for other precedents because the Marshall claim was determined by a negotiated settlement; with the settlement the public inquiry of Mr. Justice Campbell came to an end before any hearings were conducted.

In respect of the Ross inquiry in the U.K., we have the complete four volume Report entitled: "Report of Inquiry by Hon. Lord Hunter, V.R.C. into the whole circumstances of the murder of Mrs. Rachell Ross at Ayr in July 1969, and the action taken by the police, the Crown Office and the Scottish Home and Health Department relating to that case before and after the trial of Mr. Patrick Meehan", which I did not include herewith due to its size, but which you certainly can have upon request.

If we can assist you further please call me at 902-424-4024.

Sincerely yours,

Reinhold M. Endres
Assistant Director (Civil)

RME/smo
Enclosures

October 25, 1984

Mr. Donald Marshall, Jr.
c/o Karen Brown
5651 Ogilvie Street
Apartment 113
Halifax, Nova Scotia
B3H 1B9

Dear Donald:

Please contact me upon receipt of this letter so that we may finalize arrangements regarding the funds I presently hold in trust for you. As well, there are other matters I would like to discuss concerning your partnership with Michael Harris and Stephen Aronson as well as matters relating to Chief MacIntyre. I will be in my office the entire week of October 29 except for the morning of October 31. Perhaps we could get together at some point during that time. I await your phone call.

Yours very truly,

Felix A. Cacchione

FAC/oh

A F F I D A V I T

I, Donald Marshall, Jr., of Halifax, in the County of Halifax, Province of Nova Scotia, make oath and say as follows:-

1. THAT I have personal knowledge of matters herein deposed to except where otherwise stated.
2. THAT on October 2, 1984 I was advised by my solicitor, Felix A. Cacchione, and did verily believe, that he had received a cheque payable to me in the amount of \$245,000.00 from the Province of Nova Scotia.
3. THAT I instructed my solicitor, Felix A. Cacchione, to pay out from this amount \$70,000.00 to my former solicitor, Stephen Aronson, for his fees and as well to pay Felix A. Cacchione the sum of \$27,000.00 for his fees and disbursements.
4. THAT by way of letter dated October 2, 1984 my solicitor, Felix A. Cacchione, advised me, and I did verily believe, that he was holding the balance being \$148,000 pending my determination of what I would do with this money.
5. THAT I was advised by my solicitor, Felix A. Cacchione, and I did verily believe, that he also had in trust \$45,000.00 being monies received from the fund established by Reverend R. Hussey of Montreal.
6. THAT I have been advised by my solicitor, Felix A. Cacchione, and I do verily believe, that the monies held in trust by him should be placed in a trust fund for my benefit.

70-2-1

7. THAT I do not wish the monies held in trust by my solicitor, Felix A. Cacchione, to be placed in such a trust.

8. THAT I now wish the return of all monies held by my solicitor, Felix A. Cacchione, in trust for me.

9. THAT I intend to turn over the approximate amount of \$193,000.00 held in trust by my solicitor, Felix A. Cacchione, to Mr. Dave Salmon of Investors Syndicate to invest on my behalf.

10. THAT I am taking this action, having been advised by my solicitor, Felix A. Cacchione, that it is his opinion that the monies would be better invested elsewhere.

11. THAT I am releasing my solicitor, Felix A. Cacchione, from any responsibility regarding the monies formerly held in trust by him for me.

12. THAT I am asking for the return of these monies from my own free will and contrary to the opinion expressed by my solicitor, Felix A. Cacchione.

SWORN TO at Halifax, in the)
County of Halifax, Province)
of Nova Scotia, this 7th)
day of November, A.D., 1984,)
before me,)
)
)

Michael A. Lambert)
A BARRISTER OF THE SUPREME)
COURT OF NOVA SCOTIA)

MICHAEL A. LAMBERT
A Barrister of the Supreme

Donald Marshall Jr.
DONALD MARSHALL, JR.

APR 17 1985

Ottawa paying half of Marshall compensation

OTTAWA (Staff) — The federal government has agreed to pay a half of the \$270,000 compensation granted Donald Marshall Jr. by the provincial government last fall, federal Justice Minister John Crosbie announced Tuesday.

Mr. Crosbie said in a statement issued here that the federal cabinet has authorized "an ex gratia payment of \$135,000" to the provincial government.

The minister said the federal contribution comes "as part of the federal involvement vis-a-vis financial compensation of Donald Marshall Jr."

Mr. Marshall was wrongfully convicted in 1971 of the murder of Sandy Seale and had subsequently served 11 years of a life sentence when he was retried and acquitted in 1983.

The Buchanan government announced the \$270,000 compensation to Mr. Marshall last fall two days before the provincial election call.

C-14

May 31, 1985

Mr. R. S. Brookfield
Deputy Minister
Department of Finance
Province of Nova Scotia
HALIFAX, Nova Scotia

Attention: Mr. A. G. Manuel

Dear Sir:

Re: Donald Marshall, Jr.

Enclosed is the Federal Government's cheque in the amount of One Hundred Thirty-five Thousand Dollars (\$135,000.) representing their contribution to the ex gratia settlement made by the Province of Nova Scotia to the abovenoted as compensation for his being incarcerated for a crime for which he was subsequently found to have been wrongfully convicted.

Yours truly,

Gordon F. Coles

Encl.

Nova Scotia

**Department of
Attorney General**Office of
Crown Prosecutor**COPY**77 Kings Road
Sydney, Nova Scotia
B1S 1A2

25 September 1985.

Nova Scotia Legal Aid
P. O. Box 1373
Sydney, Nova Scotia
B1P 6K3Attention: Allan Nicholson, Esq.

Dear Mr. Nicholson:

Re: Roy Newman Ebsary

This will confirm our telephone conversation of September 24, 1985 re the above. I would confirm that at that time I advised you that the Crown is not contemplating a prosecution against Donald Marshall, Jr. on a charge of perjury.

I trust this is satisfactory.

Very truly yours,

A handwritten signature in black ink, appearing to read 'F. C. Edwards'.

F. C. Edwards
Crown Prosecutor

sm

AG54

567

Now Scotts
**Action
Memo**

Time

Date

Oct

2

To Gordon S. Gale, Q. C.

From (Name and City)

Ronald C. Giffin

Area Code

Telephone No.

Ext.

Message Taken By

Phoned
 On
 Hold

Please Call
 Returned
 Your Call

Will Call Back
 Wishes Appointment

Writing
 in Person
 Was Here

File

Draft Reply For
 My Signature

Provide
 More Details

For Your
 Information

Type Draft

For Your Approval
 and Signature

Keep Me
 info. med.

Per Discuss

Type Final

Circulate, Initial
 and Return

Take
 Appropriate Action

Per Your Rec

Make
 Copies

Return
 With Comments

Note and
 See Me

Returned
 With Thanks

Please Answer

Investigate
 and Report

Note and
 Return

Note and Des

Comments:

For your consideration



NOVA SCOTIA LEGAL AID

189 TOWNSEND ST.

P.O. BOX 1373

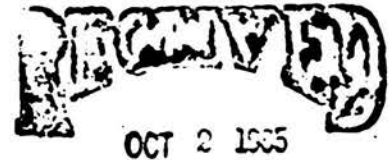
SYDNEY, N.S.

B1P 6K3

PHONE 539-2400

September 27, 1985

The Hon. Ronald C. Giffin, Q.C.
 Attorney General
 Department of the Attorney General
 Provincial Building
 Box 7
 Halifax, Nova Scotia
 B3J 2L6



ATTORNEY GENERAL

Dear Mr. Giffin:

This is to request that charges of perjury be laid by your Department, against Donald Marshall, Junior.

An examination of the testimony of Marshall in the most recent trial of R. v. Ebsary, before the Supreme Court in Sydney, in January, 1985, particularly the cross-examination, contains all the admissions you would need. He is referred to his previous testimony in the earlier Ebsary trials, preliminary hearing, and also his own testimony before the Appeal Court, all of which your department should have on file. He admits many times that previous testimony he gave in court, under oath, was false.

I have discussed this with Frank Edwards, Chief Crown Prosecutor for Cape Breton County as recently as September 24, 1985. He indicated that he has no intention of prosecuting Marshall because, in his words, "Donald Marshall has suffered enough".

However, because of Mr. Edwards' close association with Donald Marshall over the past few years, and his statement in court that he believes Donald Marshall, we would suggest in the best interests of justice, that you refer this matter to someone not so closely associated with the case.

-2-

The reason for this letter is not because we want Donald Marshall punished, but rather because of the position in which Roy Ebsary now finds himself. Roy Ebsary's conviction is on appeal and scheduled to be heard in early December, 1985. We believe that if Marshall is convicted for perjury, then Roy Ebsary will have a better chance of getting a new trial, and possibly an acquittal.

The transcripts of the January, 1985 trial have only recently been typed and made available. Time is of the essence. I understand Dana Giovannetti of your Department, is working on the Ebsary appeal.

If the prosecution of Marshall takes longer to complete, we will be requesting an adjournment of the Ebsary appeal until after the Marshall perjury case is finished.

If we can be of further assistance, please contact Luke Wintermans or myself, anytime.

Yours truly,

NOVA SCOTIA LEGAL AID



Allan F. Nicholson
Barrister and Solicitor

AFN/dl

Nova Scotia



Attorney General

Memorandum

From Dana W. Giovannetti
Senior Solicitor

Our File Reference 09-84-0261-01

To Gordon S. Gale, Q.C.
Director (Criminal)

Your File Reference

Subject Donald Marshall

Date October 3, 1985

I refer to Mr. Nicholson's September 27th correspondence to the Attorney General and to our conversation.

Mr. Nicholson has recommended that we lay perjury charges against Marshall based on the inconsistencies in the sworn evidence that he has given at various times. Those times are the original trial in 1971, the reference to the Appeal Division which resulted in his release from penitentiary, and the three Ebsary trials. I have read the evidence for the second and third Ebsary trials in connection with the Appeal Court cases. I have not read the other transcripts. My knowledge of Marshall's performances under oath, as incomplete as it may be, clearly indicates to me that there may well be merit in Mr. Nicholson's suggestion, and I think that it ought to be given serious and careful consideration.

There is no question that Marshall has contradicted himself under oath on numerous occasions. On direct examination at the most recent Ebsary trial he gave the following evidence (pp.287-288, Case on Appeal):

A. . . . I was down there [Wentworth Park] to see if I could find my Indian friends down there and I told him [Seale] I was going to try to scrape up some money for later on and . . .

Q. And what did you want the money for?

A. Probably head out to the bootleggers or something when we got home on the Reserve.

Q. And how did you intend to get the money?

A. Like I usually do. I bum it down there. Like I bum it off people.

Q. You're saying you usually bum the money off somebody in the park.

The significance of this direct evidence is that ~~Ebsary~~ ^{Marshall} is not testifying that he was in the park to rob or roll anybody. This is consistent with his evidence at the second Ebsary trial. However, before the Court of Appeal he adopted as true a statement which he had made to the R.C.M.P. in 1982. The statement contains the following:

I asked Sandy if he wanted to make some money. He asked how and I explained to him that we would roll someone. I had done this before myself a few times. I don't know if Sandy had ever rolled anyone before. We agreed to roll someone so we started to look for someone to roll. The first time I saw the two fellows we later decided to rob was on George Street side of the park. The short old guy I now know as Ebsary.

Luke Wintermans cross-examined Marshall on the inconsistency between his evidence on direct and the statement to the R.C.M.P., which statement was adopted under oath before the Court of Appeal. I have only excerpted one portion of the statement, but as to the entire statement Marshall's most recent evidence is "most of it is not true".

Again, at the first Ebsary trial the following examination of Marshall occurred:

Q. Do you recall having given any statement to the R.C.M.P. in Dorchester Penitentiary back in 1982, March 3, 1982? Do you recall that?

A. Yes.

Q. That statement is true, is it not?

A. Yes.

There is therefore again an adoption under oath of the 1982 statement, which statement is substantially different from his evidence on direct examination at the most recent trial.

At the hearing before the Appeal Division Marshall testified under oath as follows:

Q. Could you give an example of how you might have considered making money?

A. Bumming it, breaking in a store probably, taking it off somebody.

Under cross-examination he now testifies that that statement is not true (p.377).

Several other examples of inconsistent statements under oath can be found in the cross-examination at the most recent

trial. Indeed, at the second Ebsary trial the Crown obtained leave to cross-examine Marshall (s.9(2), Canada Evidence Act). We did not do so at the third trial. There are many inconsistencies in unimportant details, but the inconsistent statements under oath with regard to whether Marshall was engaged in a robbery have been of great importance in the Ebsary trials. Ebsary's only defence is that he was acting in self-defence. It is crucial for the jury to know whether he was a robbery victim. If there was a robbery or attempted robbery, Ebsary may have acted in self-defence; if not, he could not have been acting in self-defence. Therefore, perjury on this issue is obviously a very serious matter.

It has not been necessary for me to read all of the transcripts to argue the Ebsary appeals. Frank Edwards has undoubtedly read all of the evidence that Marshall has given under oath since 1971. I think he is the person who could give a solid opinion as to whether there is sufficient evidence to warrant a charge for perjury. I do not know whether there is any truth to Mr. Nicholson's allegation that Frank has said "Donald Marshall has suffered enough". It would undoubtedly be preferable for the final decision on perjury charges to be made at the highest level, but I think that first a detailed opinion ought to be obtained from Frank.

Mr. Nicholson recommends a perjury charge, and this is s.120 of the Code. I think we ought to be considering s.124, i.e., giving contradictory evidence with intent to mislead.

I do not see the relationship between perjury (or another charge) against Marshall and the timing of the appeal in Ebsary. The fact that Marshall has given contradictory evidence under oath was certainly brought home to the jury and was the subject of comment in Mr. Justice Nunn's directions to the jury. I do not think that anyone will ever know which of Marshall's stories is true. It seems to me that the jury at this trial had a clear view on Marshall's credibility, and credibility is clearly a question for the jury. I think that Mr. Nicholson must be assuming that a conviction for perjury would clearly establish that Marshall's evidence at the most recent trial was untruthful, and therefore the verdict was perverse. However, the results of a prosecution of Marshall could establish no more than the fact that he gave conflicting evidence under oath, possibly with intent to mislead the Court.

In summary, I think that we should definitely give serious consideration to laying a charge against Marshall under s.124. I think that Frank Edwards' opinion ought to be sought because he has an intimate knowledge of Marshall's story on each of the five occasions that he has testified under oath. I would strongly recommend that the final decision not rest with Frank, who is in what may appear to be a difficult position because Marshall has been our key witness against

Ebsary.

One final factor: a possible, and possibly likely outcome of the current appeal is an order for a new trial. My research is at a preliminary stage, but I am not optimistic because of Mr. Justice Nunn's poor directions and the apparent attitude of the Court of Appeal. The Court's attitude is apparent from the final remarks in the Marshall reference and the tone of oral argument in the first Ebsary appeal. Whether or not we decide to lay a charge against Marshall, I think that we must seriously consider the propriety of a fourth trial where the Crown's case is so dependent on a witness of dubious veracity.

DWG/cdc

Jana

09-84-0261-01

October 9, 1985

Mr. Allan F. Nicholson
Barrister and Solicitor
Nova Scotia Legal Aid
189 Townsend Street
P. O. Box 1373
Sydney, Nova Scotia B1P 6K3

Dear Mr. Nicholson:

I wish to acknowledge your letter of September 27th to the Attorney General which has been referred to me.

I have examined the evidence given by Mr. Marshall in the trial which is now under appeal and it appears that the evidence which he gave in the past and the evidence which he is now giving were all before the jury to be considered by them in arriving at their verdict. I see no point raised in the grounds of appeal which deals with this matter. It is our view that the appeal should proceed and after the Appeal Court renders its decision then the whole matter can be examined to determine what action the Crown deems it necessary to take.

Yours very truly,

Gordon S. Gale
Director (Criminal)

GSG:jd

PLEASE DO A REPLY
FOR MY SIGNATURE
R

575 38 Mimosa Crescent
Sydney, N.S. AG 3
Dec 17, 1985

09-84-0261-01

Dear Sir;

I am Mrs Donald Marshall from Sydney Indian Reserve, Cape Breton N.S. I called your office early this spring. I asked if I could talk to you on the telephone. You refused. I also asked for an appointment to visit you. You refused again. You wanted me to write a letter to you instead.

I want to tell you something. My son Donald Jr. served eleven years behind bars in prison for something that he didn't do. We suffered day and night. It just seems to me that no one cares about what we lost. This is so, just because we are Indians. I do not know how many times we went to the prison for visits, not just my husband and I, but also all our children and their husbands and wives.

What makes me so upset, even today, is that we can not walk on the streets of Sydney knowing that old man is still free. He gets more comfort and freedom than we do. He was found guilty of the charges. How many times more will he given the chance.

to appeal? My son did not get a chance to appeal until he had served eleven years. Have any of you people ever stop and think about how different the two people are treated? My son served eleven years in prison, Ebbery did not even spend one month in jail. That shows how different an Indian is treated from the white man in the white man's law.

Just think what may have happened to my son if capital punishment was in effect. He could have been executed. He could have lost his mind, or else he could have been shot when he tried to escape. He was only seventeen years old when he went to prison. He was forgotten by the people outside. He asked me many times to get him a lawyer. No one wanted to help. They told me that there was no money and that they could not help me to get a lawyer for my son.

Today Mr. Ebbery gets help, they treat him like a King. We are not comfortable in the streets, we can not even shop in comfort. He walks around the streets with about half dozen men around him. No.

are afraid of what he might do to someone in our family if he recognized us.

You are the boss Mr. Griffin you should be able to do something.

Mr. Cherry should be given the same chance and justice that was given to my son after he was found guilty for the crime that he did not commit.

Yours truly

Mrs Leonard Marshall

P.S. I pray to God, my son does not go on the stand again for any other appeal court for Cherry. I feel he has gone through enough. He deserves some peace, and a chance to go on with what is left of his young life. He doesn't need the added stress of being called a liar by Cherry's lawyer again.

Dear sir
Please dont put this letter
in wast Can read it & answer it

Yrs Donald Marshall

579

Nova Scotia



AG 36

Action Request

Message

To Gordon Gale File No. _____

Date Dec 18/85

From Ron Giffin

Please Call Tel. No. _____ Ext. _____

Returned your call Will call again Wants to see you

Date _____ Time _____ Message received by _____

- Action Approval Note & return
- Comments Draft reply Note & forward
- As requested Signature Note & file

09-84-0261-01

December 19, 1985

Mrs. Donald Marshall
38 Micmac Crescent
Sydney, Nova Scotia

Dear Mrs. Marshall:

I wish to acknowledge your letter of December 17th.

I cannot comment on the merits of the case as the Ebsary matter is still before the Courts. However, I would point out that your son was represented by able counsel at his original trial and the jury's verdict was confirmed by the Appeal Division of the Supreme Court. Subsequently, the matter came to be reinvestigated and when it was referred to the Court he was acquitted. I think that the fact that this occurred refutes your allegation that he was treated differently because he is an Indian.

You have indicated that I should do something about the Ebsary matter but I must point out to you that there is a fundamental principle of the independence of the judiciary and I cannot tell the Courts what they should do nor can I interfere with the legal rights that Mr. Ebsary wishes to exercise. Mr. Ebsary's current appeal is scheduled to be heard sometime in January and whether the matter will continue beyond that depends entirely upon the comments and disposition of the case that the Appeal Division of the Supreme Court makes at that time.

Yours very truly,

ORIGINAL SIGNED BY
HOWARD J. GIFFIN

Ronald C. Giffin

Nova Scotia

**Department of
Attorney General**PO Box 7
Halifax, Nova Scotia
B3J 2L6

Our File No.

April 4, 1986

Mr. Frank C. Edwards
Prosecuting Officer
77 Kings Road
Sydney, Nova Scotia
B1S 1A2

Dear Mr. Edwards:

**Re: John F. MacIntyre v.
Canadian Broadcasting Corporation
S. H. No. 51493**

I enclose correspondence from Robert Murrant,
Counsel for the Canadian Broadcasting Corporation in the
above-noted proceedings.

My recollection is that the file referred to in
Mr. Murrant's letter no longer exists. If it were to be
in existence, its contents would be subject to a claim of
privilege.

I would appreciate your advice as to whether the
file referred to in Mr. Murrant's letter is still in
existence. This will assist me in preparing a response
for the Attorney General to Mr. Murrant.

Yours very truly,

A handwritten signature in cursive script, appearing to read 'M. Herschorn'.

Martin E. Herschorn
Director (Prosecutions)

MEH:if



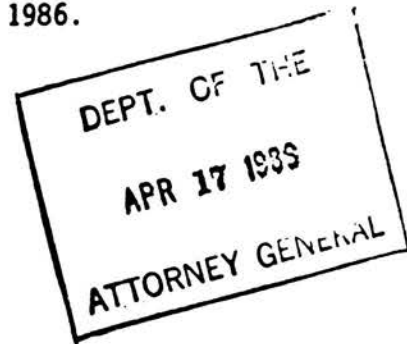
**Department of
Attorney General**

Office of
Crown Prosecutor

77 Kings Road
Sydney, Nova Scotia
B1S 1A2

Our File No.
15 April 1986.

Mr. Martin Herschorn
Asst. Director (Criminal)
Department of Attorney General
P. O. Box 7
Halifax, Nova Scotia
B3J 2L6



Dear Mr. Herschorn:

**Re: John F. MacIntyre v.
Canadian Broadcasting Corporation
S. H. No. 51493**

This will acknowledge your letter of April 4, 1986 with the attached copy of Mr. Murrant's letter dated April 2, 1986.

I regret to advise that, in my opinion, no file was ever kept by the late Donald MacNeil in relation to this matter. Until 1982, the Crown Office here did not maintain a filing system. The practice was that the prosecutor would use the police file which was kept at the police station and brought to court only as it was required from time to time.

When I saw the Sydney City Police file on the Marshall case (on several occasions between 1982-84), I observed that it contained a few notes which appeared to have been written by Mr. MacNeil. The notes were very brief and, as I recall, consisted mainly of points for emphasis in Mr. MacNeil's jury address or brief quotes of what had been said on the witness stand. My guess is that in this instance the police file and the prosecutor's file were one in the same.

I trust this is the information you require. If you have further questions, please do not hesitate to get in touch.

Very truly yours,

F. C. Edwards
Crown Prosecutor

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AG 174

09-84-0261-

May 14, 1986

C. O. "H" Division
R.C.M.P.
3139 Oxford Street
P.O. Box 2286
Halifax, N.S. B3J 3E1

This will confirm my instructions of May 14th to Superintendent Vaughan that the Sydney Police Department files on the Donald Marshall, Jr. case which were turned over to your force be delivered to Ronald N. Pugsley, Q.C. of Stewart, MacKeen and Covert located at Purdy's Wharf, Tower One in Halifax.

Gordon S. Gale
Director (Criminal)

GSG:jd

Nova Scotia



MAY 13 1986

Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

BY PUROLATOR

Our File No 09-85-0188-09

May 12, 1986

Mr. Frank C. Edwards
Prosecuting Officer
77 Kings Road
Sydney, N. S.
B1S 1A2

Dear Frank:

Re: Roy Newman Ebsary v. The Queen - S.C.C. No. 01205

I enclose a copy of the Decision and Reasons for Judgment of the Supreme Court, Appeal Division in the above-noted matter. I will have a new Warrant of Committal prepared in the next day or two.

I presume that the Court reduced the sentence to one year to discourage an appeal to Ottawa, and I find it difficult to criticize that rationale.

Yours truly,

A handwritten signature in black ink, appearing to read 'Dana', with a horizontal line underneath.

Dana W. Giovannetti
Senior Solicitor

Encl.

DWG/cdc