



## *Marshall suing City of Sydney*

SYDNEY (CP) — Donald Marshall, who served a decade in penitentiary for a murder conviction currently under review by the Nova Scotia Supreme Court, has filed a statement of claim against the City of Sydney and its two members of its police department.

Details of the claim are not available pending further court action. Marshall's suit names as defendants the city, police chief John L. MacIntyre and his chief of detectives, William Urquhart.

Jean Chretien, then the federal justice minister, ordered the review of Marshall's case after new evidence surfaced during an RCMP investigation.

The court heard two days of testimony in December before adjourning further hearings, later scheduled Feb. 16.

Several witnesses who gave testimony that helped convict Marshall of the fatal stabbing of Sanford (Sandy) Seale, 16, in 1971 told the Supreme Court their evidence had been false.

Marshall, 29, has served most of his time behind bars at the federal penitentiary in Dorchester, N.B.

## Marshall Appeal

# Judgment Reserved

By Brian Douglas

HALIFAX—The Nova Scotia Supreme Court Appeals Division has reserved judgment on the 1971 murder conviction of Donald Marshall, Jr., the Micmac Indian who spent more than a decade in prison for a crime he steadfastly maintained he did not commit.

In an extraordinary conclusion to the hearing today (February 16), Crown Prosecutor Frank Edwards joined defense attorney Steve Aronson in urging the court to acquit Marshall of the murder of Sanford (Sandy) Seale who was fatally stabbed in a Sydney park 12 years ago. Both lawyers argued in their summations that new evidence submitted to the Appeals

Court last December is so conclusive that the appeal should be allowed and the murder conviction quashed.

Several witnesses who gave testimony that helped convict Marshall told the Supreme Court in December that they lied and an eyewitness who did not testify at the murder trial revealed that the real killer was not Donald Marshall but Roy Newman Ebsary, a Cape Breton man now serving a prison sentence on an unrelated weapons charge.

But the court is still unclear about the events that precipitated the murder on May 28, 1971, because of dramatically conflicting testimony.

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## Marshall Appeal

(from page 1)

James William MacNeil the key defense witness at the December appeal hearing testified that Ebsary stabbed Seale when he (Seale) and Marshall attempted to rob them. Marshall denied there was an attempted robbery insisting that he and Seale were attacked by Ebsary and MacNeil, neither of whom he could identify at the time of the trial.

Crown Prosecutor Edwards told the court today that although the new evidence nullified some crucial testimony in the 1971 trial, Marshall is the "author of his own misfortune" because he lied.

Had he not done so the odds are that both the police investigation and his defense would have taken a different direction. The likelihood is that he would never have been charged, let

alone convicted. He said Marshall's story bordered on the absurd and he is not surprised it was not accepted by police or the jury.

Defense lawyer Aronson said that despite some conflicting testimony the evidence is clear and conclusive that Marshall did not commit the murder, that the conviction should be set aside and that he should be acquitted. He said the exact details of the events that precipitated the murder may never become clear but the evidence is strong enough for the Appeals Court to dispose of the matter here and now.

The Appeals Court can either uphold the original conviction, quash the conviction, or order a new trial. It is not yet known when the court will hand its decision down.

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# Lawsuit is Premature

By Brian Douglas

SYDNEY—Mayor Manning MacDonald says a lawsuit launched by Donald Marshall against the city of Sydney, police chief John MacFadyre and detective Bill Unruh is premature while his murder conviction is still under review by the Nova Scotia Supreme Court.

The suit issued January 31 by Halifax lawyer Steve Aronson claims unspecified damages as a result of murder proceedings brought against Marshall in 1971.

Mayor MacDonald confirmed the city has been served with the suit but said the Supreme Court decision on Marshall's appeal would have a great bearing on its validity.

Marshall was convicted of the murder of Sanford (Sandy) Seale, 16, in 1971 and spent nearly 11 years in prison until then-Judge Minister Jean Chretien ordered a review of the case after new evidence surfaced during an RCMP investigation.

The court heard two days of testimony in

December in which several witnesses said they fed under police pressure of the 1971 trial and another man stabbed Seale in Sydney's Wentworth Park. Further hearings were adjourned until January 16.

The court could uphold the conviction, order a new trial or acquit Donald Marshall.

"We're sitting back and waiting for the Supreme Court decision. It will have a great bearing on the validity of the suit brought against the city and members of its police department," Mayor MacDonald said after the city was issued with its suit.

The Nova Scotia Police Commission has also adopted a wait and see attitude pending the outcome of the Supreme Court hearing. Commission chairman Harry Porter said no action can be contemplated until the court rules on the appeal and then could only become involved if requested to do so by the city or if it is directed to do so by the provincial Attorney General.

*Micmac News  
February 1983*

# Marshall acquittal 64m urged by Crown

FEB 17 1983

By MICHAEL HARRIS

Globe and Mail Reporter

HALIFAX — Donald Marshall should be acquitted of a murder for which he served 11 years in jail because there is enough evidence to charge someone else, the Crown told the Supreme Court of Nova Scotia yesterday.

Crown prosecutor Frank Edwards said oral evidence taken at a hearing last December into the circumstances surrounding the stabbing death of Sandy Seale in a park in Sydney, N.S., 11 years ago nullified crucial evidence given at Mr. Marshall's original trial.

"Enough (evidence) exists to

charge another individual with Mr. Seale's murder."

The court reserved judgment in the appeal of the 29-year-old Mr. Marshall against his conviction for the 1971 slaying of Sandy Seale, who was 16.

Mr. Marshall, the son of the Grand Chief of the Micmac Nation, is on full parole awaiting the disposition of his appeal.

It took lawyers representing both Mr. Marshall and the Crown just 45 minutes to make their arguments and ask the five Supreme Court judges to allow Mr. Marshall's appeal, quash his conviction and issue an acquittal.

Both lawyers agreed no new trial should be ordered for Mr. Marshall. Mr. Edwards said: "There is virtually no evidence that could be called against Donald Marshall. It would be pointless in the extreme to call a new trial."

Steven Aronson, Mr. Marshall's lawyer, also asked the court to acquit his client on the basis of "the conclusiveness of evidence" presented at the December hearing.

The only point of difference between the Crown and defence was Mr. Aronson's argument that a "miscarriage of justice" has taken place and Mr. Edwards's counterclaim that "Mr. Marshall was the author of his own misfortune to a very large degree."

Mr. Aronson asked the judges to

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## Crown calls for acquittal

● From Page One

limit their judgment to Mr. Marshall's murder conviction and leave the question of how it was obtained and what actually happened in Sydney 11 years ago to another forum. The Halifax lawyer argued that the court was "without jurisdiction to make a legal finding that Marshall and Seale were involved in a robbery," at the time of the murder, as testimony at the December hearing alleged.

Mr. Edwards said there had been no miscarriage of justice. He blamed Mr. Marshall's "lack of candor at the crucial time" during his original trial for his second-degree murder conviction.

During his 1971 trial Mr. Marshall never referred to an attempted robbery preceding Mr. Seale's fatal stabbing. And although he did admit at his December hearing that he went in to the park that night to get money any way he could, he denied that any robbery attempt ever took place.

Mr. Marshall's case first attracted national attention in March,

1982, when he was granted day parole without the customary parole hearing after an RCMP re-investigation cast serious doubt on his murder conviction.

The three key witnesses at Mr. Marshall's original trial in 1971, two of whom said they were witnesses to the murder, acknowledged to the appeal court that they had lied on the stand under pressure from two Sydney police detectives. All three have filed affidavits with the court to that effect.

The RCMP also found a new witness to the slaying and uncovered what is now believed to be the murder weapon — a knife — used to kill Mr. Seale in Sydney's Wentworth Park on May 28, 1971.

As a result of the second RCMP investigation, then justice minister Jean Chretien referred the Marshall case to the appeal division of the Nova Scotia Supreme Court last June. He cited a rarely used part of the Criminal Code, Section 817, that permits a court to handle a case as if it were an appeal by a convicted person.

# Province Bears Responsibility

**SYDNEY--**Sydney Mayor, Manning MacDonald says he would not oppose a public inquiry into the conviction that sent Donal Marshall, Jr. to prison for 11 years, but he didn't think it was necessary or that it will accomplish very much.

Mayor MacDonald said in an interview that Marshall bears a great deal of responsibility for his own conviction by not telling the whole story and informing investigating officers of all the facts surrounding the murder of Sandy Seale in May 1971.

He said the Supreme Court which found Marshall largely the architect of his own fate did not suggest any police irregularities or wrongdoing, therefore, a public inquiry is pointless.

However, if Attorney General Harry How wants an inquiry "we will not be adverse to that; we have nothing to hide", Mayor MacDonald said.

Besides calling for a public inquiry Marshall has already filed a civil action against the city of Sydney and two police officers - Chief John McIntyre and Chief of Detectives William Urquhart -- who carried out the original investigation. But a decision has not yet been made on whether the action will go ahead.

Meanwhile, Mayor MacDonald said the Nova Scotia Government has an obligation to pay Marshall compensation for the 11 years he spent in prison for a murder he did not commit. He said he was pleased to hear the Attorney General admit the province bears some responsibility, if not all, for the system that sent Marshall to prison.

How said in an interview he is anticipating an application for compensation from Marshall and will not determine before then just what the province should do about it.

However, he said any award the province decides to offer could be reduced by the finding that Marshall, while innocent of the 1971 murder of Sandy Seale in a Sydney park, contributed to his conviction through his testimony and was on an "illegal mission" when Seale was stabbed.

# Marshall out of prison but not exonerated

By MICHAEL HARRIS  
Globe and Mail Reporter

HALIFAX — After a year of trying to clear his name, Donald Marshall's murder conviction still stands, he owes \$79,000 in legal fees and his job has disappeared.

His lawyer will leave private practice next month and work for the federal Government because he can't afford to carry that legal bill.

This week, Mr. Marshall received his first welfare cheque — \$2 to buy groceries — and the first cracks are beginning to appear in the stoicism with which the 29-year-old Micmac Indian has endured his protracted fight for freedom.

Twelve months after walking out of Dorchester Penitentiary after serving 11 years for a murder he has always denied committing, Mr. Marshall said: "I don't know how much longer I can take this. Even the prosecutor told the judges there was enough evidence to charge another man with the murder I went to prison for, but they just keep me waiting."

At the conclusion of his court appearance in February, the Crown prosecutor and Stephen Aronson, Mr. Marshall's lawyer, called on the five justices of the Nova Scotia Court of Appeal to quash the conviction and issue an acquittal. In summing up, Frank Edwards, the Crown prosecutor, told the judges: "There is virtually no evidence that could be called against Donald Marshall. It would be pointless

in the extreme to call a new trial."

Under the rarely used Section 617-B of the Criminal Code, the judges have the power to uphold Mr. Marshall's 1971 murder conviction, acquit him, or send the whole matter back for retrial. They have not yet released their decision.

The pressure on Mr. Marshall increased last week when his father, the Grand Chief of the Micmac Nation, was taken to Halifax after his kidneys mysteriously failed while receiving treatment at a Sydney hospital. He now is on a dialysis machine at the Victoria General Hospital in Halifax with no immediate prospects of returning home.

"It's for my family, not me, that I want them to admit they put the wrong man away. My father suffered a lot through this, and I want him to hear the courts set me free. But they keep waiting for something and he almost died last week."

Mr. Marshall got more bad news when he got back from holidays in March to find that his job at the Department of Indian and Northern Affairs had disappeared.

"I worked there for nine months and I was communicating real good with those people; they told me that. Then they told me the contract was up and they'd try to find me something else." Waving his welfare cheque and smiling bitterly, he added, "All they found me was this."

It has also been a trying year for Mr. Aronson, who has worked



Donald Marshall

almost exclusively on the Marshall case since Sept. 1, 1981, when new evidence surfaced to back up Mr. Marshall's decade-long protest of innocence.

Now no one wants to pay the \$79,000 legal bill, a fact that has prompted Mr. Aronson to leave his law practice for a post in the federal civil service. As of next month, he will be handing the case over to a new lawyer.

"It has taken a lot of my time away from other clients and as a result has left quite a hole in my pocket book. The major consideration in leaving practice is cutting my losses in this case."

Mr. Aronson, who spent \$4,000 of his own money on the case, said he was promised by both the Union of Nova Scotia Indians and the federal Government that

they would pay the bill. So far, neither party has come through.

"It was first raised last March when (federal Indian Affairs Minister) John Munro told me during a land claims settlement in Baddeck (on Cape Breton Island), that the Department of Indian Affairs would pay my fee. My information since is that he would like to do a lot of things for people but can't because of departmental policy."

Mr. Aronson said Mr. Munro has held several private discussions with Nova Scotia about Mr. Marshall's legal bill but that the province has flatly refused to pay, except under the Legal Aid Program where the maximum contribution is \$3,000.

"I can see Ottawa's point. The administration of justice is a provincial matter and they don't want to set a constitutional precedent. I do think it's the province's responsibility. If there's anything that bugs me in this case, it's the total irresponsibility of the province."

The Dartmouth lawyer said that he has thought about setting up a legal defence fund, largely because he thinks the legal fees are part of the debt society owes Mr. Marshall.

"I don't see it as a guilt trip, it's not time for ashes and sackcloth, but society and the justice system do owe Junior something for what happened to him."

Despite the last year's hardships, Mr. Aronson said he doesn't regret having worked for Mr. Marshall's release.

"I will always look forward to seeing this guy. What he's done,

# Attorney-general under fire in Marshall case

By Alan Story  
Special to The Star

HALIFAX — Provincial New Democratic Party leader Alexa McDonough has demanded the province's attorney-general find out when the Nova Scotia Supreme Court will reach its decision on the long-delayed Donald Marshall case.

In an open letter issued yesterday from her Halifax hospital bed, McDonough said the delay in resolving this "apparent miscarriage of justice" is "interminable to Mr. Marshall and his family."

Marshall, a 29-year-old Micmac Indian from Sydney, N.S., spent 11 years in prison for the 1971 stabbing death of a friend in a Sydney park. He was released in March, 1982, after an RCMP re-investigation of the case concluded someone else murdered Sandy Seale.

Almost three months ago, both Marshall's lawyer and a Crown prosecutor asked that the Nova Scotia Supreme Court appeals division acquit Marshall of the murder, but the five justices haven't given their decision.

One unconfirmed report suggests the justices are deadlocked between granting an acquittal and calling for a retrial.

## Legal costs

McDonough also asked Nova Scotia Attorney-General Harry How what provisions the province was prepared to make to compensate Marshall for the time he spent in prison and to defray his legal costs, which now total \$79,000.

How could not be reached for comment.

McDonough, who has been absent from the Nova Scotia legislature for five weeks with a serious sinus condition, was yesterday transferred to University Hospital in London, Ont., for treatment. Marshall's lawyer, Stephen Aronson, has launched a civil suit for damages and compensation against the city of Sydney and the two police officers — now the chief and head of the detective division of the city's force — who conducted the 1971 murder investigation.

But some legal experts say Marshall may have difficulty collecting any compensation for his or-



Donald Marshall: Micmac Indian is living on welfare while he awaits court decision.

deal because of the old legal maxim, "the king can do no wrong."

Marshall lost his source of income at the end of March when he finished a construction training program with the federal department of Indian affairs without finding a job as a plumbing apprentice. He is living on welfare in Halifax.

Meanwhile, Roy Ebsary, a 71-year-old Sydney man named in court last December as the person who actually killed Seale in 1971, is in a Sydney hospital, reportedly in serious condition.

One visitor who saw Ebsary yesterday said he was unconscious, although his doctor would not confirm this.

In mid-April, Ebsary fell through a rotted hatch in the floor of his Sydney flophouse and landed in the basement, breaking bones in his neck. He was in intensive care for several weeks.

Although court observers had expected the appeals division would reach its verdict in the Marshall case while Ebsary was still locked in prison for a concealed weapons conviction, the lengthy delay meant Ebsary has been walking the streets of Sydney since early March.

He was arrested again March 29 for disturbing the peace.

May 10, 1982

Toronto Star P. A10



# Marshall finally free

By Merle MacIsaac  
Staff Reporter

Donald Marshall Jr., awoke this morning without a murder conviction on his record for the first time in 11-and-a-half years.

In a 64-page decision Tuesday, Nova Scotia's Supreme Court Appeal Division acquitted him of murder in the 1971 stabbing death of 18-year-old Sandy Seale in Sydney, but blamed Mr. Marshall for helping secure his own conviction.

The Supreme Court Appeal Division said new evidence indicating another man stabbed Mr. Seale near Sydney's Wentworth Park made the original verdict against Mr. Marshall unsupportable.

The court heard the case following an RCMP re-investigation last year and a request from then-justice minister, Jean Chretien.

Mutual distrust between Mr. Marshall and the justice system surfaced both in the court's decision and at an impromptu press conference in the Dartmouth office of Marshall's lawyer Stephen Aronson.

Mr. Marshall, now 35, son of the grand chief of the Micmac Nation, told reporters, "I just want to live my own life."

Of his 11 years behind penitentiary walls Marshall said he wants to "put all that behind me ... if they (the courts) want to walk with me, I'll walk with them."

But five justices of the Nova Scotia Supreme Court Appeal Division were far from "walking with" Mr. Marshall in their decision Tuesday.

Citing his untruthfulness "throughout the whole affair," they said, "he contributed in large measure" to his own conviction. Comments which could figure in any future attempt for compensation by Mr. Marshall.

In 64 pages, mostly a review of past evidence, the court makes no comment on the conduct of Sydney police who investigated the stabbing and obtained statements from two supposed eye-witnesses who have since changed their stories.

Key evidence relied upon in Tuesday's decision came from Sydney man James MacNeil who accompanied an elderly man named Roy Ehsary in the park. Mr. MacNeil said he and Mr. Ehsary were attacked by Mr. Marshall and Mr. Seale leading to Mr. Seale's stabbing by Mr. Ehsary.

Mr. MacNeil went to police with that information shortly after Mr. Marshall's conviction but the matter was dropped after inconclusive lie-detector tests.

In his testimony at the original trial, Mr. Marshall said nothing of a robbery attempt.

In December, he told the appeal court he was in the park "to get money" perhaps by "rolling someone" but again denied an actual attempt.

He testified Mr. MacNeil was drunk, started to fall and when Mr. Marshall moved to catch him, the stabbing took place.

"Any miscarriage of justice is more apparent than real," writes Chief Justice Ian MacKeigan for the appeal court panel.

"By lying he helped secure his own conviction. He misled his lawyers and presented to the jury a version of the facts that was so far-fetched as to be incapable of belief."

The appeal court goes on to say Mr. Mar-



**PONDERS QUESTION** — Donald Marshall pauses a moment to answer reporters' questions during a press conference in his lawyer's office in Dartmouth Tuesday after he was acquitted of a murder conviction after 11 years in prison.

Marshall, by hiding facts, effectively prevented development of the only defence available to him, namely that during a robbery Mr. Seale was stabbed by one of the intended victims.

At trial in 1971, jurors heard evidence from

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# Marshall finally free

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two witnesses who said they saw Mr. Marshall stab Mr. Seale.

In a telephone interview last night, Mr. Marshall's original lawyer C.M. Rosenblum, recalled being "shocked" by the jury's verdict in 1971.

"There was prejudice in the air," Mr. Rosenblum said. "There was a lot of talk and a feeling that war was on between blacks and Indians."

Against this background, in Mr. Rosenblum's view, Mr. Marshall was arrested, tried and convicted on the evidence of the two "eye-witnesses."

One man, John Pratico, 16 years of age in 1971, was treated as early as 1970 for a mental illness which made him prone to fantasizing. Defence lawyers knew nothing of the illness.

Outside the courtroom during the original trial, Mr. Pratico said Mr. Marshall did not stab Mr. Seale but maintained his original testimony when cross-examined on the inconsistency.

Maynard Chant, aged 15, in 1971, said he saw Mr. Marshall stab Mr. Seale. In December Mr. Chant testified he did not see the murder and said he "felt pressured" by police into giving the false testimony.

The appeal court did not bear fresh evidence from Mr. Pratico, now acknowledged by Crown and defence as a "completely unreliable" witness.

Statements that Mr. Chant and Mr. Pratico gave investigators in 1971 which conflicted with their testimony, were never disclosed to defence lawyers by either police or the Crown prosecutor, the now-deceased Donald MacNeil.

"We heard not a word, nothing, not a whimper," about the contradictory statements or Pratico's mental treatment, said Mr. Rosenblum.

He said even after he launched Marshall's first and unsuccessful appeal, the defence was not made aware of James MacNeil's version given to police after the trial.

The question of compensation is on many lips.

Although Crown prosecutor in the current appeal, Frank Edwards, requested Mr. Marshall's acquittal back in February, Attorney-General Harry How told reporters his department would now begin to look into the issue.

"Any action taken would be "totally rev. a fresh start, legally, so to speak."

Mr. How said precedents in other jurisdictions would be examined; the federal jurisdiction over natives would be a consideration while the department would also weigh Mr. Marshall's conduct in determining compensation.

The attorney-general said his department would also look at whether further criminal charges will be laid in the Seale death.

Mr. Marshall's lawyer Stephen Aronson told yesterday's press conference he was leaving his Dartmouth law practice. He thanked a number of people including the RCMP for their assistance and commended his client for "courage and inner strength in these bizarre circumstances."

"I don't know what I missed," Mr. Marshall said of his 11 years in prison, but whatever I missed, I got it back today.

Chronicle - Herald  
May 11, 1983

# Compensation for Marshall interesting legal question

By JIM VIBERT  
Staff Reporter

The acquittal of Donald Marshall Tuesday on a murder charge for which he served 11 years in prison presents some interesting and new legal considerations for the provincial attorney general's department.

Attorney-General Harry How said in an interview Tuesday, the question of compensation being paid to Mr. Marshall for the 11-year loss of freedom will be a totally new experience for the Nova Scotia justice community.

Mr. How said in order for compensation to be considered an application for compensation would have to be made by the complainant.

And from that point on, Mr. How said, any action taken would be "totally new; a fresh start, legally so to speak, in Nova Scotia."

There has never been a case in Nova Scotia where a person incorrectly imprisoned has applied for compensation.

The attorney general said his department will have to examine precedents in other jurisdictions, both in Canada and the United States, to see how the question of such compensation has been handled there.

He said another question that will arise is who

should be responsible to pay compensation, Ottawa or the province.

Mr. How said that Ottawa has a degree of responsibility because of its jurisdiction in areas concerning native people — Mr. Marshall is a Micmac Indian.

MAY 11 1983

The province on the other hand has the prime responsibility for the administration of justice.

Mr. How also said his department will now consider whether criminal charges or other action should be taken respecting any individual or group of individuals who may have been involved in the death of Sandy Seale, for which Mr. Marshall was originally convicted 11 years ago.

The attorney general said that during the net trial before the provincial Supreme Court there was new evidence given that indicated another person was responsible for Mr. Seale's death.

In handing down its decision, the Supreme Court suggested that Mr. Marshall may have contributed to his own problems by not being truthful during the first trial.

Mr. How said that matter could also come into play when the issue of compensation is considered "if you are partially the author of your own mistake, that is a factor."

# Marshall compensation 'up to N.S.'

OTTAWA (CP) — Any compensation to Donald Marshall, a Sydney man who spent 11 years in prison for a murder he did not commit, should be paid by the provincial government, Justice Minister Mark MacGuigan said Friday.

"The question of compensation is a question for the province," MacGuigan told reporters.

Nova Scotia Attorney General Harry How has refused to say whether his government will compensate Marshall for his time in prison or for the legal fees amassed in trying to prove his innocence.

"It's a common habit in Canada to ask the federal govern-

ment to make up for the deficiencies of provincial governments," MacGuigan said.

"But when they (the provinces) are in their own jurisdiction, then that isn't our role. The role is for the people of the province to deal with that situation."

The decision to prosecute Marshall was made by provincial officials — a normal practice in most criminal cases — although Marshall was convicted under federal legislation and sent to a federal prison.

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## Marshall

(Continued from page one)

Marshall, now 29, was convicted in 1971 of the murder of 16-year-old Sandy Seale in Sydney.

He always maintained his innocence, and after former federal justice minister Jean Chretien reopened the case, Marshall was acquitted Tuesday by the Supreme Court of Nova Scotia.

Two days later, Roy Newman Ebsary, 71, of Sydney, was charged with Seale's murder.

In a statement released Thursday, the Canadian Bar Association said the courts should be given discretionary power to order reimbursement by the Crown of legal expenses incurred by people who have been discharged or acquitted of an indictable offence.

MAY 14 1983.

Cape Breton Post, May 17, 1983

### **Bears Some Responsibility**

HALIFAX (CP) — There is little question the Nova Scotia Government bears some responsibility, perhaps all, for the system that sent Donald Marshall to prison for 11 years for a murder he did not commit, Attorney General Harry How said Monday.

How said in an interview he is anticipating an application for compensation from Marshall and will not determine before then just what the province should do about it.

However, he said any award the province decides to offer could be reduced by the finding that Marshall, while innocent of the 1971 murder of Sandy Seale in a Sydney, N.S. Park, contributed to his conviction through his testimony and was on an "illegal mission" when Seale was stabbed.

INSIGHT

# Wrong man' trial gets second hearing

By Alan Noy

**Social to The Star**  
**JULIFAX** — For the second time in 12 years, a jury in Sydney, N.S., will divide this week who killed 16-year-old Sandy Seale in a park on May 28, 1971, after a Friday night teen dance.  
 The first time, in November, 1971, another jury in the Cape Breton Island steel city convicted the wrong man.

As a result, Donald Marshall, a Miqmaq Indian from the nearby Miqmaq reserve who was then 17 years old, spent 10 years and 10 months in prison for a murder he didn't commit.  
 This time, with Marshall, now 28, and the long-known "fourth man in the park" as the chief witness, 73-year-old Roy Ebary, who is blind, will be tried for manslaughter in Seale's death. The original charge of murder was reduced after a preliminary hearing last month.

### Nation-wide publicity

In one sense, the evidence and the trial, which began Friday with jury selection, will be slightly anti-climactic. Most of the evidence about Seale's stabbing was given nation-wide publicity last December during Marshall's successful re-appeal of his November, 1971, Supreme Court.

Jimmy MacNeil, "the fourth man" who was never called as a witness during the original trial, told the Supreme Court that he went to Sydney police two weeks after Marshall was found guilty and told them that he had seen Ebary, and not Marshall, stab Seale.  
 Ebary was briefly called in for questioning, but lie-detector tests of MacNeil and Ebary proved inconclusive and MacNeil never

had another chance — nor took the opportunity — to tell his story until last year.

In another sense, the verdict in Ebary's trial will provide more answers and be another twist in the unprecedented Marshall story, the first case in which a Canadian has officially been found not guilty of murder after serving a lengthy prison term.

### 'Live own life'

Released from Dorchester Penitentiary in New Brunswick in March, 1962, after the Royal Canadian Mounted Police re-investigated Seale's death, Marshall has been working as a plumber on several Nova Scotia Indian reserves for the past few months. He learned the trade in prison.  
 Marshall vows that "now I want to live my own life." But his family and friends say he has not fully recovered from his 11-year prison ordeal and probably never will.

Marshall still owes more than \$70,000 in legal fees from the fight to clear his name, and his father, Donald Marshall Sr., the Grand Chief of the Miqmaq people, says aid pledged by Indian Affairs Minister John Munro has never arrived.  
 "Munro promised us 1 1/2 years ago that the federal government would take care of the legal expenses, but we have got nothing," Marshall Sr. said this week.  
 And not surprisingly, Marshall Jr. and his family continue to want to know what will happen to those responsible for his wrongful conviction. Some of their questions are still being answered — but others may never be.

Last week, Nova Scotia Attorney-General Harry How announced that the three witnesses whose incriminating testimony led to Marshall's conviction will

not be charged with perjury. Their testimony during Marshall's 1982 re-appeal was often "diametrically opposed" to the evidence they gave during the 1971 trial, how said.

However, he said, "because of the length of time involved since, the ages of the witnesses, and the suggestion of possibly police pressure on the witnesses, no criminal charges will now be laid."

In 1971, when Marshall was 14, 15 and 17.

The star witness, John Pratico, now 29, testified in 1971 that he saw Marshall stab Seale, but told the RCMP in 1982 that he was not even in Sydney's Wentworth Park on the night of the killing. As well, only the police and the Crown prosecutor knew in 1971 that Pratico was then a patient in a mental hospital and had recently suffered a nervous breakdown.

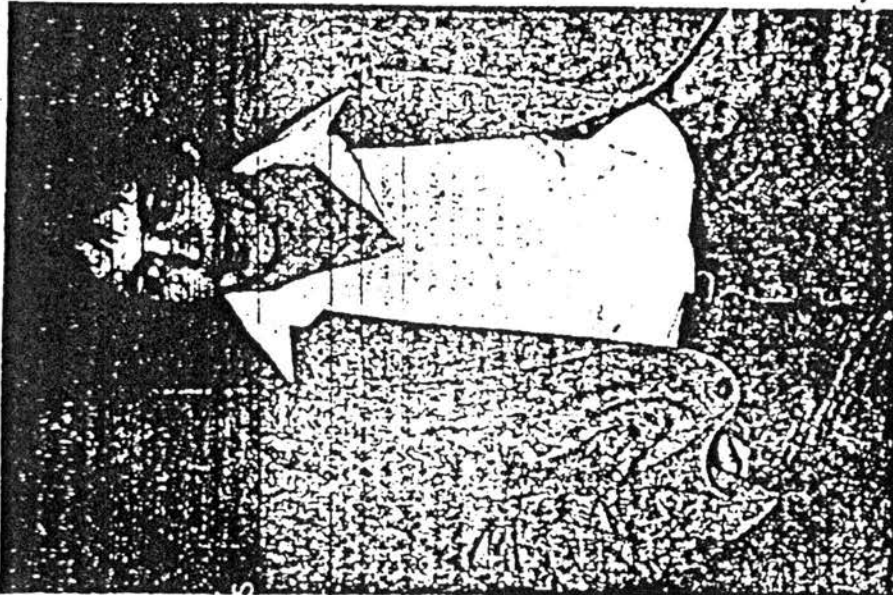
### 'Charged with perjury'

Another of the 1971 witnesses, Patricia Harris, now 26, testified during Marshall's 1982 re-appeal that "I was told what to say in court (in 1971) and, if I didn't, the police said I would be charged with perjury."

In June, 1971, Harris was repeatedly grilled by Sydney police officers until the early hours of the morning. The scared young girl was not allowed to contact her parents.

Despite these revelations last December, How still refuses to comment publicly on the role of the Sydney police in the 1971 investigation. He will also not say whether he will act on the request of Marshall's former lawyer for a full public inquiry into his original conviction.

Most surviving members of the



Donald Marshall, spent 11 years in jail for a murder he didn't commit. There has been an outcry for a full investigation into possible handing of witnesses during the original case 12 years ago.

1971 jury that tried Marshall also want answers.  
 "I feel betrayed — we didn't get all the facts 12 years ago — and now everyone involved in the Marshall case should be investigated," says juror Lloyd Tucker of Glace Bay, N.S.

But Sydney Mayor Manning liam Urquhart, retired last May as chief of the force's detective division.  
 "There is a growing feeling in Nova Scotia that both How and Macdonald hope to delay any investigation until both Sydney officers are retired and public concern over the miscarriage of justice dies down.  
 However, How will soon have to respond to Marshall's request for financial compensation from his Nova Scotia government for his almost 4,000 days of imprisonment as an unjustly convicted man.  
 Marshall's new lawyer, Peflix Cacchione of Halifax, is in the final stages of preparing detailed documentation — including psychiatric evidence — of the short- and long-term effects of Marshall's prison ordeal."



Roy Ebary: On trial this week in death of teenager Sandy Seale in May 1971.



Jimmy MacNeil: Told police after first trial that Marshall was not the killer.

There is a growing feeling in Nova Scotia that both How and Macdonald hope to delay any investigation until both Sydney officers are retired and public concern over the miscarriage of justice dies down.  
 However, How will soon have to respond to Marshall's request for financial compensation from his Nova Scotia government for his almost 4,000 days of imprisonment as an unjustly convicted man.  
 Marshall's new lawyer, Peflix Cacchione of Halifax, is in the final stages of preparing detailed documentation — including psychiatric evidence — of the short- and long-term effects of Marshall's prison ordeal."

# Munro didn't guarantee payment of Marshall's legal bill, aide says

NOV. 10, 1983 Toronto Star

By Joe O'Donnell Toronto Star

OTTAWA — Indian Affairs Minister John Munro never guaranteed he could pay all legal costs for Micmac Indian Donald Marshall, a spokesman for Munro says.

Ron Dennis, Munro's press secretary, said the minister simply promised Marshall last year that he would "do as much as he could" to secure federal money from the justice department to cover the \$82,000 bill.

"He does not recall making any guarantee," Dennis said.

After serving 11 years in jail for the murder of a Cape Breton youth in Sydney, N.S., in 1971, Marshall was released when his conviction was questioned in March, 1982.

He was declared innocent 14 months later. And this week, Roy Ebsary, 72, was convicted of manslaughter in the case.

Dennis said Munro did promise to help Marshall in March, 1982.

But Munro has served many years in cabinet, Dennis said, "and he would obviously know better than to make any steadfast, absolute guarantees. His recollection (of the exchange with Marshall) is quite clear."

Dennis said that, after repeated attempts, Munro's bid for justice department money was rejected because Marshall's case was not unique and would not affect other Indians.

"He was tried as a resident of Nova Scotia and not as an Indian," Dennis said.

The matter, he said, is under Nova Scotia's jurisdiction, "and it would be improper for the federal government to legally intervene."

Munro has, however, asked provincial justice officials to pay Marshall's legal costs. So far, they have refused.

Chronicle Herald

Nov. 16, 1983

# Ottawa says N.S. should help pay Donald Marshall's bills

OTTAWA (Staff) — Two federal cabinet ministers told the Commons Tuesday that the province of Nova Scotia should help pay the legal bills of Donald Marshall, the Micmac Indian who served 11 years in prison for a murder he didn't commit.

Indian Affairs Minister John Munro called the Marshall case a "rather atrocious occurrence."

But he added he has no authority to help Mr. Marshall pay legal bills of more than \$80,000.

"There is absolutely no authority in my department for payment," Mr. Munro said under questioning from NDP member Jim Manly.

"I regard this very much as an obligation on the part of the provincial government."

Tory Justice Critic Allan Lawrence was next to press the case for Mr. Marshall.

Mr. Lawrence said the federal government owes an obligation to the Marshall family, which is under the impression it had been promised federal aid by Mr. Munro.

"The people of this country believe that the minister of justice (Mark MacGuigan) is merely buck-passing something to the provincial government."

Mr. MacGuigan replied that the matter is a provincial responsibility.

The justice department did prepare a report that led to Mr. Marshall's release a year ago, but it is

"astonishing" to suggest that Ottawa should go a step further and pay legal fees.

NOV 16 1983

# Ottawa Says No, But Marshall, Family To Continue Fight For Compensation

Donald Marshall Jr. and his family will continue to seek compensation from the federal government despite arguments against it by Justice Minister Mark MacGuigan, says the head of the Union of Nova Scotia Indians.

Marshall, a Micmac from the Membertou Indian Reserve in Sydney, spent 11 years in prison for a slaying committed by Roy Ebsary. After wracking up \$82,000 in legal bills, Marshall, now 30, was acquitted in May.

Noel Doucette said the union, which is helping in the compensation fight, is unimpressed by MacGuigan's contention that Ottawa cannot help Marshall because the case is a provincial responsibility.

"This is the royal runaround that the government always gives Indians if there is money involved," Doucette said. "We're a political football."

MacGuigan told the House of Commons on Tuesday that he is disturbed by what Marshall went through but "it would not be very good federalism" for Ottawa to step in and pay his legal fees.

Marshall was convicted in 1971 of murdering his friend, Sandy Seale, 16, in a Sydney park. Last week, a jury convicted Ebsary, 72, of manslaughter in the death.

Doucette and other Indian leaders met Marshall and his father Wednesday to discuss seeking money from both levels of government for Marshall and his family.

## \$4 MILLION

Doucette said there is no firm figure being sought, but it could be as high as \$4 million.

He said the family has endured severe financial and emotional hardship for the last 12 years. Marshall's father, as grand chief of the Micmac Indian nation, is the spiritual leader of Micmacs in the Maritimes.

"The family knows the whole Indian movement is behind them," Doucette said. "They are prepared to go all out."

He said the family is hiring its own lawyers and will treat its claim separately from Marshall's because two issues are really involved. The lawyers are trying to set up meetings with MacGuigan and the Nova Scotia's attorney general.

The union president said he also believes Indian Affairs Minister John Munro has a responsibility.

Marshall was "convicted because he was an Indian," he said. "The fact that Junior Marshall is an Indian and Mr. Munro is responsible... Indians means he is a key figure."

Doucette said the union office has been bombarded with phone calls from citizens telling them to continue the fight.

"They don't even know us but they tell us you've got something there. They want us to press the issue."

Marshall is employed on the Shubenacadie Indian reserve outside Halifax as a plumber.

Cape Breton Post

Nov. 17, 1983



# 'N.S. is responsible for Marshall's compensation'

By DON MACDONALD

Ottawa Bureau

OTTAWA — Justice Minister Mark MacGuigan dug in his heels again Thursday in the Commons to renewed requests Ottawa pay \$30,000 in legal fees for Donald Marshall, the Micmac Indian who spent 11 years in prison after being wrongly convicted of murder.

Mr. MacGuigan said he has discussed the issue with newly-appointed Nova Scotia Attorney-General Ron Giffin to persuade the province to assume its responsibilities and pay the legal costs.

While Mr. Marshall was wrongly convicted under a federal law, the federal minister said the law is enforced by provincial and municipal police.

"They (police) fall under the jurisdiction of the province and the case was prosecuted by a provincial prosecutor," he told the Commons.

In raising the issue again Thursday, Tory justice critic Ray Hnatyshyn accused Mr. MacGuigan of being "heartless and mean-spirited" with respect to the case.

Mr. Hnatyshyn reminded the minister that Canada is a signatory

to an international covenant on civil and political rights which states in part that a person whose conviction of a criminal offence has been reversed is entitled to compensation.

There is "a federal responsibility in this matter and the minister cannot weasel out by attempting to place it on the shoulders of provincial jurisdiction since he funds provincial legal aid," the Tory critic said.

Mr. MacGuigan said international agreements, whatever their validity or application, "do not change the constitutional and legal

situation in our country."

"We have many examples where the provinces have given us authority to agree to certain things internationally and the federal government takes its international obligations, yet within Canada the obligation rests on the provinces," the minister said.

Outside the Commons, Mr. MacGuigan insisted Ottawa has no legal or constitutional responsibility to provide funds for the legal fees.

And he suggested the government has exercised any moral obligation in the case by attempting to

have the province look after the problem.

The minister said it would be bad for federalism for Ottawa to step into provincial jurisdiction and provide funds in the case.

Mr. Hnatyshyn told reporters he knows of no case where there has been "a clearer and unequivocal wrongdoing to a person convicted of murder."

It is "a very unusual, compassionate case where an extra-gratia payment should be given serious

consideration," the Tory critic said.

Mr. Hnatyshyn accused the federal minister of obviously putting the issue "on the backburner" without doing one solid thing to help Mr. Marshall.

"They don't think it politically important enough to compensate Mr. Marshall," the Tory MP said.

While pressing Ottawa to provide funding in the case, Mr. Hnatyshyn said there is a very good case to be made for cost-sharing between the federal and Nova Scotia governments.

MICMAC NEWS

Vol. 12, No. 11, P. 2 November 1913

Conscience:

# It must be heeded in Marshall case

Now that the manslaughter conviction of Roy Norman Ebsary has put a punctuation mark to the case of the Sandy Seal's death, there no longer exists a reason for the provincial government to be dragging its heels about providing some rectification of the wrong done to Donald Marshall Jr. a dozen years ago. How this is handled will help give us a measure of the perceptions of the new attorney-general, Ron Ginn. His predecessor, Harry How, so far as the public knows, simply put the case at the back of the closet shelf for the last seven months.

That is the time that has elapsed since the Appeal Court of Nova Scotia ruled Mr. Marshall had served 11 years in penitentiary while innocent of the crime for which he was convicted. The jury's decision at the Ebsary trial in Sydney recently removed any last vestige of doubt that may have remained in anyone's mind. It also removed any possible claim that action to compensate Mr. Marshall might in some way be considered subjudice in the light of ongoing court proceedings.

Mr. Marshall has hanging over him legal costs of \$82,000 arising from his efforts to establish his innocence. These are costs which a government of conscience, once it became clear early in the long proceedings that Mr. Marshall was not guilty of murder, should never have allowed to pile up. They should be wiped out forthwith.

Nor does the question of compensating Mr. Marshall for the lost years of his youth call for any more study. Mr. How coasted along for seven months on the supposition that precedents had to be studied. How long does it take a legal department to look up the few precedents involved in such cases?

*They must be available in the law library in Halifax.*

Nor can the government any longer continue to lean on the suggestion of the Appeal Court, as it has seemed to be doing, that Mr. Marshall was in some way the author of his own fate through trying at his original trial. This is no mere technicality at this stage than would be re-examinations against the very evidence was collected and

presented in obtaining the conviction. The single dominant fact is that the justice system failed Mr. Marshall and that it owes him a heavy debt. No amount of money will make good what he has lost but, for what it is worth, compensation should be made without further niggling or quibble.

Cape Breton Post  
Dec. 1, 1983

## Marshall Reply In Little Time

From The Ottawa Bureau  
Of The C.B. Post

Nova Scotia's new Attorney General might not be ready to make a decision on compensation for Donald Marshall Jr. "for some little time yet," federal Justice Minister Mark MacGuigan said Tuesday.

But MacGuigan still believes the province will live up to its constitutional obligations under the criminal justice system.

"You have to understand there is a new Attorney General in Nova Scotia," he told reporters in Ottawa. "And he has reports on this issue coming to him, and he's having some meetings in connection with it."

But I think he won't be in a position for some little time yet really to respond."

MacGuigan has said on several occasions that the responsibility for compensation for Marshall who spent 11 years in prison for a murder he did not commit, lies with Nova Scotia. The Sydney police force, and ultimately the provincial legal system initiated the criminal proceedings against the former Sydney resident, and MacGuigan wants Nova Scotia to recognize its responsibilities and obligations.

"I can't believe that a province like Nova Scotia will not meet its obligations under the Constitution under its own laws and under equity," MacGuigan said.

The man who was premier at the time of Marshall's original trial in 1971 was Gerald Regan, now federal Minister of State for International Trade.

In an interview with the Post earlier this week Regan said he believes the province would appear to have "a considerable responsibility," as a direct consequence of the wrongful conviction against Marshall.

"The fact that a person would not have been wrongfully committed but for the decision on the part of the provincial authorities who examined the evidence and decided to go ahead would lead me to the conclusion that they must carry some responsibility in that regard," Regan said.

"But I'm not sure that I would conclude that they should carry 100 percent of the responsibility or not, but the law does give them the responsibility at the present time for the administration of justice."

It is a miscarriage of that administration that resulted in this wrongful conviction," Regan said.

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\*\* Court cases delay decision \*\*  
 \*\* on Marshall aid, N.S. says \*\*

HALIFAX (CP) - A decision by the Nova Scotia Government whether to compensate Donald Marshall may have to await the outcome of two court cases, Premier John Buchanan said yesterday.

Mr. Marshall is seeking compensation for the 11 years he spent in prison for a slaying committed by someone else and for the more than \$82,000 in legal fees he spent to prove his innocence. "It would be improper for the Government to comment while matters closely linked to the Marshall case are before the courts," Mr. Buchanan said.

He was referring to a civil suit launched by Mr. Marshall against the city of Sydney, N.S., and its police, and a plan by Roy Ebsary to appeal a manslaughter conviction in the 1971 slaying of 16-year-old Sandy Seale. Mr. Ebsary, 71, was found guilty last month in the stabbing death of the Seale youth and sentenced to five years in prison. Mr. Marshall, 30, was convicted in 1971 of second-degree murder in the death but was cleared by the Nova Scotia Supreme Court this year.

In the ruling which freed Mr. Marshall, the court said he had contributed to his conviction by lying at the original trial. Mr. Buchanan said the Ebsary trial and the civil suit will address questions that must be answered before compensation can be properly considered.

The federal Government said that because Mr. Marshall was arrested by police under provincial jurisdiction and prosecuted by the province, any compensation would be Nova Scotia's responsibility.

ADDED SEARCH TERMS: Canada justice crime victims legal fees

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# Kaplan reiterates stand

Ch-Herald Dec 3, 1983

Solicitor General Robert Kaplan reiterated Friday it is the province's responsibility to assume any financial compensation to Donald Marshall Jr., a Sydney resident who spent 11 years in a federal penitentiary for a crime he did not commit.

Mr. Kaplan said since the initial error was made at the provincial level, it is appropriate that any compensation be paid by the province.

The minister made the comment following presentation in Halifax yesterday of Solicitor General Crime Prevention Awards to six individuals and organizations in Nova Scotia and Prince Edward Island who have made a significant contribution in developing and

managing innovative crime prevention activities.

The awards are among 31 which have or will be presented to individuals and groups across the country in conjunction with this week's National Crime Prevention Week.

The minister also announced his ministry will fund a \$23,800 project to establish about 20 community crime prevention committees in Atlantic Canada.

The creation of these committees, he said, will serve to broaden the base for the ministry's crime prevention efforts by providing local focus for community-based programs and providing essential data to assist in the formulation of new crime prevention programs.

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