

Cape Breton Post
Jan. 6, 1984

Governments 'Dragging Feet' On Compensation Issue: Lawyer

Felix Cacchione, the lawyer representing Donald Marshall Jr. of Membertou who spent 11 years in prison for a murder he did not commit, says he still hasn't been able to obtain another meeting with Provincial Attorney General Ron Giffin to discuss possible compensation from the government for Mr. Marshall's wrongful imprisonment.

Mr. Cacchione met with Mr. Giffin in late 1983 to discuss compensation but received no word compensation might be forthcoming.

Mr. Cacchione told the Post yesterday that both the provincial and federal governments are "dragging their feet" on the issue. He said attempts to meet recently with federal representatives also have been unsuccessful.

Mr. Cacchione said he can't unders-

tand why both authorities are taking so long to act on the matter because, "Quite obviously, it's a fairly clear cut issue."

Mr. Marshall was acquitted of the crime early last year after new evidence obtained by the RCMP pointed to another man, Roy Newman Ebsary. Mr. Ebsary was later convicted of manslaughter in connection with the death of Sandy Seale of Westmount. He was sentenced to five years in penitentiary.

Mr. Cacchione also said the status of Mr. Marshall's lawsuit against the City of Sydney and its police department for allegedly mishandling his case has not moved further. Court documents have been filed in the prothonotary's office but have not been served on parties.

had evidence before appeal — MacLeod

By MERLE MacISAAC
Staff Reporter

Eyewitness evidence which cleared Donald Marshall, Jr., 12 years after his murder conviction should have been disclosed to defence lawyers before his 1972 appeal, says a former Nova Scotia deputy attorney-general.

JAN 17 1984

Innis MacLeod, who served as deputy attorney-general at the time, said in an interview Monday he has "absolutely no recollection" of a November, 1971 RCMP review after James MacNeill, Sydney, came forward and told investigators Marshall did not stab 16-year-old Sandy Seale.

"I would expect that (MacNeill's information) would have been transmitted to defence attorneys," said Mr. MacLeod.

"The department kept a general eye on criminal proceedings but Crown prosecutors pretty well ran their own show in the city where they

prosecuted. But I would expect it would have gone to the defence," said Mr. MacLeod.

MacNeill's testimony, combined with evidence from two witnesses who said they were pressured by investigators into giving false testimony at Mr. Marshall's original trial, led to Marshall's acquittal last year after he had spent 11 years in prison.

Mr. Marshall's lawyer, Felix Cechlone, has called on the attorney-general for a full public inquiry into the initial investigation which gave rise to false statements from three witnesses.

Last week, Provincial Court Judge Lewis Matheson, an assistant Crown prosecutor at Marshall's original trial, said publicly that he remembered contacting N. R. Anderson, the director of criminal prosecutions at the time, when he heard of James MacNeill's information.

"It was quite a dramatic thing in our minds but it may have been routine in his," Judge Matheson said yesterday. The judge said he remembered the occasion because the Crown prosecutor in charge of the case, the late Donald MacNeill, was out of town when James MacNeill came forward 10 days after Marshall's conviction and said another man stabbed Seale.

"I had to call Mr. Anderson at home; I'm quite sure it was through Judge Anderson that I reported," said Judge Matheson. Judge Matheson said he thought defence lawyers were notified of the incident although he did not notify them himself.

Mr. Anderson, now County Court Judge N. R. Anderson, has been quoted as saying, and confirmed last week, that he cannot remember the

MacNeill statement.

In November, 1971, RCMP were dispatched to Sydney to conduct polygraph tests on James MacNeill and the man whom he said did the stabbing, Roy Ebsary.

Ebsary passed the polygraph and the results were inconclusive on MacNeill. The matter was wrapped up by Nov. 30. Last November, a Cape Breton jury convicted Roy Ebsary of manslaughter in Seale's death.

On Jan. 31, 1972, attorney-general department lawyer Milton Venlot appeared before a three-justice appeal court panel and argued the Crown's case against Marshall's lawyer, R. M. Rosenblum.

Mr. Venlot said Monday he did not wish to be quoted on the case in the event that he is called as a witness at any future court proceedings.

Innis MacLeod said Monday that the department format followed in 1971 was for lawyers to gather for coffee at an informal session in the morning when matters of the day were discussed.

Mr. MacLeod said that then-attorney general Leonard Pace "in all probability" would not attend the morning session.

Mr. Pace, a Supreme Court appeal division justice who presided at Marshall's 1982 appeal, said yesterday, he has "no personal recollection" of the 1971 incident and that under department procedures at the time, he would not have had any involvement.

The attorney-general's department's original file on Mr. Marshall's case has been destroyed under routine department procedures, a department official confirmed yesterday.

Full title not on file copy

Cape Breton Post January 19, 1984 p. 4

Marshall's Appeal Lawyer Says He Didn't Receive New Evidence

By JOHN CAMPBELL

Staff Writer

C.M. Rosenblum, the Sydney lawyer who represented Donald Marshall Jr. in his appeal back in 1972, said Wednesday that he went into the appeal unaware that new evidence had come to light in the weeks following Marshall's conviction of murdering Sandy Seale.

Provincial Court Judge D. Lewis Matheson, an Assistant Crown Prosecutor at Marshall's original trial, told the Post earlier that he believed the defence lawyer would have been informed by the late Donald C. MacNeil, the Crown Prosecutor in charge of the case.

But Mr. Rosenblum, who is vacationing in Florida, told the Post in a telephone interview yesterday that he was not told of the new evidence.

Meanwhile, an ex-RCMP officer who took part in the investigation of the new evidence has decided not to talk publicly about the case unless he gets permission from his former superiors.

Gene Smith, now director of security with Irving Oil in Saint John, New Brunswick, informed the Post that he will honor the oath of secrecy taken as a Mountie until he is officially released from it. Smith was one of two Mounties who took part in the investigation which was turned over to the RCMP by Sydney Police, through the Crown Prosecutor's office. The in-



Mr. Rosenblum

quiry included the detectorists.

Judge Matheson recalled that the Crown Prosecutor was away from the city when James MacNeil came forward with his new evidence 10 days after Marshall's conviction. He remembers contacting N.A. Anderson, director of criminal prosecutions with the the Attorney-General's Department in Halifax at the time. Now a County Court Judge, he has been quoted as saying he does not recall the MacNeil statement.

Judge Matheson said the new evidence seemed "dramatic" to him, but may have seemed "routine" to Judge Anderson at that point.

The Attorney General at that time, Leonard Pace, was appointed to the Supreme Court shortly after, and was one of

the three Justices who heard the unsuccessful appeal of the Marshall conviction in January of 1972. Judge Pace was quoted this week as having "no personal recollection" of the 1971 incident and not having been involved, because of departmental procedures at the time.

Not Aware
Judge Matheson was not aware whether the Crown Prosecutor had ever received any formal, official report from the Attorney-General's department as a result of the RCMP investigation ordered into the new evidence. Case files, he said, are normally returned to the police, not filed by the Prosecutor's office.

Sydney Police Chief John MacIntyre testified during the second trial of Roy Newman Ebsary last November that as the officer in charge of the investigation that led to Marshall's conviction, he felt the investigation of the new evidence was best handled by RCMP, to avoid any conflict of interest.

The chief testified that his involvement with the case ended when the new evidence was turned over to the Crown Prosecutor's Department in November of 1971.

However, the Sydney Police Department has preserved its file on the original investigation and the introduction of the new evidence as well.

A Canadian Press report meanwhile quotes

Isaac MacLeod, Nova Scotia's deputy Attorney-General at the time, as saying that Marshall's lawyers should have been notified before his appeal that an eyewitness had come forward with information that could clear Marshall.

MacLeod said he had no recollection of an RCMP review undertaken in 1971 when James MacNeil came forward after the trial. MacNeil had not testified at Marshall's trial.



Judge Matheson

Marshall served more than 11 years in jail for the 1971 stabbing death of his friend Sandy Seale in Westworth Park before it was found last year that another man, Roy Newman Ebsary, was the real killer. Ebsary was later convicted of manslaughter in connection with Seale's death.

MacLeod said he had no recollection of an RCMP

review undertaken in November 1971 when James MacNeil came forward after the trial and told investigators that his friend Ebsary was actually the killer. MacNeil had not testified at Marshall's trial.

RCMP ended the review after Ebsary passed a lie-detector test and results were inconclusive on MacNeil.

The former deputy attorney general said he would expect MacNeil's information would have been transmitted to the defence lawyers. He said his department kept a general eye on criminal proceedings but local crown prosecutors "pretty well ran the show in the city where they prosecuted."

Marshall's current lawyer, Felix Carthoole, has asked for a full public inquiry by the attorney general's department into the handling of the initial investigation, at which three crown witnesses gave false statements. Two of the crown witnesses have said they were pressured by investigators into giving the statements.

Other justice officials involved in the original trial either had no recollection of MacNeil's statement in 1971 or thought Marshall's lawyer had been notified.

An attorney general's department official said Monday the file on Marshall's original case has been destroyed under routine departmental procedures.

Marshall's lawyer denied access to file

By MERLE MacISAAC
Staff Reporter

Access to the Crown's current file on Donald Marshall, Jr., requested under the province's Freedom of Information Act, has been denied to Mr. Marshall's lawyer.

In a Jan. 17 letter, deputy attorney-general Gordon Coles refused defence lawyer Felix Cacchione's request to see the attorney-general's file on Mr. Marshall, who was acquitted of murder a year ago after spending 11 years in prison for the alleged offence.

Mr. Cacchione is seeking compensation for Mr. Marshall, and has called for a full public inquiry into the circumstances surrounding Mr. Marshall's arrest and conviction in the 1971 stabbing death of Sandy Seale in Sydney.

Mr. Cacchione said yesterday he would appeal the deputy minister's decision immediately to the attorney-general, a procedure outlined in the Freedom of Information Act. The act also provides for an appeal to Nova Scotia's House of Assembly if the minister refuses.

Mr. Coles outlines three grounds under the act for his refusal:

The information would be likely to disclose information obtained or prepared during the conduct of an in-

vestigation concerning alleged violations of any enactment or the administration of justice.

The information would be likely to disclose legal opinion or advice provided to a department by a law officer of the Crown, or privileged communication between barrister and client in a matter of department business.

The information would be likely to disclose opinions or recommendations by public servants in matters for decision by a minister or cabinet.

The attorney-general department's original file on Mr. Marshall, including documents pertaining to a 1971 RCMP investigation into an eyewitnesses account that another man stabbed Seale, has been destroyed.

Gordon Gale, director of criminal prosecutions, said the documents were routinely destroyed years ago under procedures outlined under the Public Records Disposal Act.

In his Jan. 12 request, Mr. Cacchione specifically requested access to communications between the attorney-general's department and Correctional Services Canada, the federal department of justice, the National Parole Board, the Sydney Police Department and the department of the Solicitor General.

Chronicle - Herald

Jan 19/84

N.S. studying claim

M. JAMES 1984

Marshall could still be paid

SYDNEY — The Nova Scotia government is taking an objective look at Donald Marshall's claim he should be compensated for spending 11 years in prison, Attorney General Ron Giffin said Wednesday.

Giffin told reporters his department is trying to determine what happened in 1971 when new evidence was given to Crown prosecutors after Marshall was convicted of murdering Sandy Seale.

Marshall was released from prison last year and Roy Newman Ebsary was charged with Seale's murder. Ebsary was convicted on a reduced charge of manslaughter and his case is under appeal.

Giffin said it is difficult to find out what happened after James MacNeill, who witnessed the stabbing, made a statement after Marshall's conviction but prior to his appeal in 1972.

MacNeill testified at Ebsary's trial that the two were victims of a

mugging by Marshall and Seale in a city park. He said Ebsary stabbed Seale with a knife.

He had given the same report to Crown prosecutors in Cape Breton County, but the evidence was never disclosed to Marshall's lawyer.

Giffin said his department has no files on the Marshall case because they were destroyed in 1979. Files are routinely destroyed after a certain number of years.

"Certainly I have no personal knowledge of what went on then. Our government did not take office until 1978."

Donald MacNeill, the Crown prosecutor who was given the new evidence in 1971, died in 1978.

Giffin said the government was looking into the claim for compensation without any preconceived notions about the case and has not ruled out a public inquiry. The federal government has already said it would not compensate Marshall.

Province Hasn't Accepted Or Rejected Claims For Compensation, Says Giffin

By RON STANG
Staff Writer

While the federal government has publicly stated it will not provide compensation to Donald Marshall Jr. over his 11 year imprisonment for a crime he did not commit, his government has neither accepted or rejected claims from Mr. Marshall's lawyer for such compensation. Attorney General Ron Giffin said in Sydney yesterday.

In the first statements he has made about the Donald Marshall affair, Mr. Giffin also told reporters in Sydney yesterday that his department still has not been able "to determine one way or another what happened in 1971" after new evidence was given the Cape Breton County Crown prosecutor's office after Mr. Marshall was convicted but prior to his 1972 appeal.

That new evidence was the statement of James MacNeil who later testified that he and another man were the victims of a mugging by Mr. Marshall and the man Mr. Marshall was convicted of killing Sanford Seale. Mr. MacNeil told police he had seen Roy Newman Ebsary stab Mr. Seale.

Last year Mr. Ebsary was charged with the murder of Mr. Seale and was convicted of a reduced charge of manslaughter. His case is under appeal.

The new evidence was never disclosed to Mr. Marshall's lawyer.

Mr. Giffin was in Sydney as part of a rotation of cabinet ministers who visit Industrial Cape Breton each week to meet the press and delegations who have concerns about local matters.

Prior to yesterday neither Mr. Giffin nor Premier John Buchanan would make any statements about the case, saying such comments would prejudice Mr. Ebsary's appeal.

But, yesterday, Mr. Giffin said that while the government has refused

to say anything that might prejudice the case, this doesn't mean I have taken a vow of silence on the matter. He told reporters to ask questions and he would decide which ones he could answer.



Mr. Giffin

Mr. Giffin said the biggest problem facing his department is the lack of official files on the Marshall case. He said the Marshall file in the Attorney General's Dept. was destroyed in February 1979. The file was destroyed routinely as are other files after a certain period of time as stipulated in the Public Records Disposal Act.

Mr. Giffin also said it is difficult to deal with a matter that occurred as long ago as 1971. He said that certainly I have no personal knowledge of what went on then. Our government did not take office until 1979. He also said that the Crown Prosecutor in Sydney to whom new evidence was turned over, Donald MacNeil died in 1979.

However, Mr. Giffin said he has "come to this matter without any

pre-conceived notions and that the provincial government wants to make a final decision regarding Mr. Marshall's application for compensation of \$250,000.

He also said the matter should not be considered a historical re-orientation. Mr. Marshall died in the province of Nova Scotia. He added that Mr. Marshall has not brought legal proceedings against the pro-

vince but has taken proceedings against the City of Sydney and two of its police officers alleging his case was handled improperly in 1971 and 1972. The province he said has not ruled out the question of a public inquiry of some type.

I have not responded to any of these requests and do not expect to respond to any of them until criminal proceedings against Mr. Ebsary have been concluded," he said.

Attorney-general defends delay in Marshall case

By MERLE MacISAAC
Staff Reporter

Attorney-General Ronald Giffin on Thursday defended his government's delay on deciding whether compensation and a public inquiry are appropriate in the Donald Marshall case, saying he has a responsibility not to prejudice the upcoming appeal of Roy Ebsary.

Ebsary is appealing his November manslaughter conviction in the 1971 stabbing death of Sandy Seale. Donald Marshall Jr. was convicted and spent 11 years in prison before being acquitted last year of murdering Seale.

"I have a particular responsibility as the attorney-general. I must not say or do anything, even inadvertently, which might prejudice or appear to prejudice a criminal proceeding," said Mr. Giffin.

The attorney-general said he did not wish to enter into a public argument with those who say the Ebsary appeal is irrelevant to the circumstances surrounding the initial 1971 investigation which gave rise to false testimony from three witnesses and, ultimately, Mr. Marshall's murder conviction.

Mr. Giffin said a civil suit outstanding against the City of Sydney and two investigators who first handled the case is not his immediate concern in delaying decisions on compensation or an inquiry.

"But even if the civil matter is still pending I have to be careful of what, if anything, I say," Mr. Giffin added.

The attorney-general explained his department is undergoing difficulty in determining why defence lawyers received no information from a 1971 RCMP review of the case triggered when an eyewitness came forward after Mr. Marshall's trial and named

Ebsary as the man who stabbed Seale.

That file was destroyed under routine department procedure.

Referring to the possibility of gaining access to RCMP files concerning the 1971 review, Mr. Giffin said, "I have no reason to believe that I'm going to find out anything more than I know to this point."

While unknowing defence lawyers were preparing Marshall's appeal, James MacNeill of Sydney told police he and Ebsary were in the park on the night of the stabbing. He said Mr. Marshall and Seale attempted to mug them, and that Ebsary stabbed both Seale, who died in hospital, and Mr. Marshall, who was treated for a wound to his left arm after the incident.

When questioned, Ebsary admitted he was in the park with Mr. MacNeill but denied the stabbing and passed the RCMP lie detector. Mr. MacNeill's results were inconclusive.

"My understanding is that the RCMP file doesn't shed any light on where the information was sent in the department," said Mr. Giffin.

"You can appreciate the difficulties when you're dealing with events of 12 years ago. I've noted that some people have been questioned in news reports and they have no recollection of it," said the attorney-general.

He referred to reported comments by the 1971 attorney-general, now Mr. Justice Leonard Pace, former deputy attorney-general Innis MacLeod, now retired, and former director of criminal prosecutions N.R. Anderson, now a County Court judge.

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BYLINE: DUNCAN McMONAGLE
CLASS: News
DATELINE: Halifax NS

WORDS: 417

**** Marshall drops civil suit ****
**** in bid for compensation ****
By DUNCAN McMONAGLE
Globe and Mail Reporter

HALIFAX -*Donald*Marshall*has dropped a lawsuit that the Nova Scotia Government called a roadblock to compensating him for 11 years he spent in jail for a murder he did not commit.

Felix Cacchione, Mr. Marshall's lawyer, said in an interview yesterday that his client told him to let the deadline expire for pursuing the suit against the City of Sydney, N.S., its Police Chief John MacIntyre and retired police inspector William Urquhart.

A notice of suit against the city and the officers, who conducted the investigation into the stabbing death of Sandy Seale in 1971, was filed a year ago.

Mr. Cacchione said the action was allowed to run out on Sunday 'so that the Government wouldn't be able to raise (the court action) as a reason for delaying any action on the matter."

Nova Scotia Attorney-General Ronald Giffin was not available for comment yesterday, but has said there is one more block before the provincial Government can consider compensation. That is the appeal by Roy Newman*Ebsary,*who was convicted last November of manslaughter in Mr. Seale's death, 11 years after Mr. Marshall began a life sentence for the killing. Mr.*Ebsary*was sentenced to five years in jail.

Mr. Cacchione said, however, the end of the Sydney suit should clear the way for compensation. He said Mr.*Ebsary's*appeal 'has nothing to do with the issue of compensating*Donald*Marshall*or of ordering a public inquiry."

Mr. Marshall's search for compensation began last May after a Crown lawyer recommended he be acquitted because of new evidence and the Nova Scotia Court of Appeal set him free. The federal Government has expressed sympathy for him but has refused to provide compensation, saying it is a provincial matter.

The lawsuit against Sydney and the two police officials sought general damages for malicious prosecution, false imprisonment, negligence and defamation, Mr. Cacchione said. He added that allowing the proceedings to die does not mean they cannot be restarted at a later date.

Mr. Cacchione, who took on Mr. Marshall's case last May, said he expects it will be the middle of February before Mr. Giffin rules on his appeal against the denial of access under the Freedom of Information Act to the Government's files on Mr. Marshall. If that appeal is denied, Mr. Cacchione's recourse may be an appeal to the provincial Legislature.

Mr. Cacchione has also called for a full public inquiry into the circumstances of Mr. Marshall's arrest and conviction.
ADDED SEARCH TERMS: crime victims damage suits

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February 14, 1984 THE CHRONICLE-HERALD 3

If Marshall were white, case would be settled — MP

By DON MacDONALD
Ottawa Bureau

OTTAWA — The problems faced by Donald Marshall — the Micmac Indian wrongly imprisoned 11 years for a murder he did not commit — would have been resolved by now "if he had been white with a family behind him," a Nova Scotia Tory MP said Monday.

"I have no hesitation at all (in saying) that if this Donald Marshall had been white with a family behind him, I don't know if the miscarriage would have happened, but if it had happened, it would have been resolved before now," Annapolis Valley-Hants MP Pat Nowlan said in an interview.

Earlier in the Commons, Mr. Nowlan pressed Deputy Prime Minister Allan MacEachen to take the lead and work out some form of compensation to redress the travesty of justice against Mr. Marshall.

Mr. MacEachen remained silent on the issue Monday, turning the question over to Solicitor-General Robert Kaplan in the absence of Justice Minister Mark McGuigan.

Mr. Kaplan quickly responded that "some important aspects" of the issue remain before the Nova Scotia courts.

"I am interested in waiting for the results of that process," the solicitor-general told the House.

This led Newfoundland Tory MP John Crosbie to shout his displeasure across the floor of the Commons.

"He has been in jail for 11 years. Never mind the courts," yelled Mr. Crosbie.

Pursuing the issue further, Mr. Nowlan said the question of compensation for Mr. Marshall is caught between the quibbling between the provincial and federal governments.

"Surely the government can right the wrong," the Tory MP pleaded.

In reply, Mr. Kaplan said Mr. Nowlan yesterday "has added nothing to a question which has been asked several times in this House before."

Outside the Commons, the Tory MP said Ottawa must take the lead in resolving the issue.

He suggested Mr. MacGuigan should convene a meeting with Nova Scotia Attorney-General Ron Giffin to settle the problem once and for all.

"Someone has got to take the lead and the federal government, looking after the justice of Canada, has more of the onus to take the lead to resolve the matter," Mr. Nowlan said.

Cape Breton Post
Feb. 23, 1984

Province Didn't Forget Marshall, Says Premier

The Nova Scotia government has not forgotten Donald Marshall Jr., a 26-year-old man who spent 11 years in prison for a murder he did not commit, says Premier John Buchanan.

"There is a human being involved here and as I said we have compassion for that human being," Buchanan said in an interview. "That human being, Donald Marshall, has not been forgotten by this government."

Marshall was found guilty of murdering Sandy Seale in Sydney, and sentenced to life imprisonment. He spent 11 years in jail before he was acquitted of the murder last year by the Supreme Court. Subsequently Roy Newman Ebsary, 72, of Sydney was charged and convicted of manslaughter in the stabbing death of Seale.

Since his acquittal Marshall has been seeking an inquiry into his conviction and compensation for the years he spent in a maximum security prison.

The federal government has refused saying the case is a provincial matter. The Nova Scotia government says it can do nothing while Ebsary is appealing his conviction and sentence.

Buchanan refused to say whether his government will compensate Marshall, but suggested the province is working an agreement with Ottawa.

"We have two levels of government involved here. There is going to come a day very soon when the dispute between the federal and provincial governments will have to end."

"We have lines of communication that are open with Ottawa."

NOTICES OF MOTION

MR. SPEAKER: The honourable Leader of the Opposition.

RESOLUTION NO. 3

MR. A.M. CAMERON: Mr. Speaker, I hereby give notice that on a future day I shall move the adoption of the following resolution:

Whereas Donald Marshall of Sydney, in the County of Cape Breton, was tried and found guilty on the 5th day of November, 1971, of the murder of Sandy Seale at Sydney, Cape Breton County; and

Whereas it has since been made to appear that there were grave irregularities surrounding the investigation and prosecution of this case, including false testimony on the part of a certain Crown witness and the entire absence from the trial of James W. MacNeil, a witness subsequently known to the Crown whose testimony could well have resulted in Mr. Marshall's acquittal; and

Whereas Donald Marshall was imprisoned in a federal penitentiary for over eleven years as a result of this conviction; and

Whereas Donald Marshall has been found not guilty of the murder of Sandy Seale by a decision of the Supreme Court of Nova Scotia, Appeal Division on the 10th day of May, 1983; and

Whereas it is in the interest of fairness and justice and conducive to public respect for our judicial system that persons wrongfully convicted and imprisoned be compensated

by the community for the injustice and loss of dignity they have suffered by reason of misapplication of the machinery of the criminal justice system;

Be it resolved by this House that the Attorney General of Nova Scotia shall:

(a) Order a judicial inquiry into all of the circumstances surrounding the investigation, arrest and trial of Donald Marshall which resulted in his imprisonment; and

(b) Place before the House at an early date legislation providing for the payment of compensation to Donald Marshall for the loss of income, legal expenses, loss of enjoyment of life and mental anguish suffered by him as a result of his wrongfully being deprived of his liberty.

MR. PAUL MACEWAN: Waive notice.

MR. A.M. CAMERON: Mr. Speaker, I also would like to point out that due to the fact that they have not been able to get access through the Freedom of Information and Section 13 (1) which allows it to come before the House of Assembly, may well have to be utilized in order to get this information.

MR. SPEAKER: The notice is tabled.

Well, the Leader of the Opposition did not ask for a waiver of notice and I do not know whether there is a request for waiver of notice. It would require unanimous consent. Is there such consent to proceed with the debate immediately?

SOME HON. MEMBERS: No.

MR. SPEAKER: I hear several Noes. There is no unanimous consent.

The notice is tabled.

The honourable member for Cumberland Centre.

RESOLUTION NO. 4

MR. GUY BROWN: Mr. Speaker, I hereby give notice that on a future day I shall move the adoption of the following resolution:

Whereas workers' compensation has always been given to those who have had a major loss of their own health, such as broken limbs, loss of limbs and other major medical problems that are not able to be completely resolved by the health profession today; and

Whereas most of these people have major expenditures for special needs around the home or extra transportation costs because they are unable to operate a motor vehicle, et cetera; and

Whereas the Government of Canada has passed special legislation in the 1981 budget which now calculates workers' compensation as income under the Guaranteed Income Supplement for senior citizens; and

Whereas this will bring about major financial blows to many of these senior citizens who have geared their mortgages, their lifestyle, their rents, et cetera, to this tax free income;

RESOLUTION NO. 6

MS. ALEXA MCDONOUGH: Mr. Speaker, I hereby give notice that on a future day I shall move the adoption of the following resolution:

Whereas in 1971 Donald Marshall Jr. was wrongfully convicted of and imprisoned for murder; and

Whereas now that his wrongful conviction has been overturned by the Appeal Division of the Nova Scotia Supreme Court, Donald Marshall Jr. is seeking to rebuild his life and understand what happened in his situation; and

Whereas Donald Marshall Jr. has applied under the Freedom of Information Act for any and all personal information held by or for the Department of the Attorney General or under the direct or indirect control of the said department; and

Whereas the Attorney General in a letter dated February 8, 1984, refused to provide Donald Marshall Jr. with this information:

Be it resolved that the Attorney General provide Donald Marshall Jr. with any and all personal information held by or for the Department of the Attorney General or under the direct or indirect control of the said Department, in accordance with Section 13(2) of the Freedom of Information Act.

Mr. Speaker, I request the consent of the House to waive notice and proceed with an immediate debate.

MR. SPEAKER: There has been a request for a waiver of notice which requires unanimous consent. Is there unanimous consent?

SOME HON. MEMBERS: No.

MR. SPEAKER: I hear several Noes.

The notice is tabled.

The honourable member for Cape Breton South.

The honourable member for Cape Breton Nova.

MR. PAUL MACEWAN: Mr. Speaker, before you move to Orders of the Day, pursuant to Rule 43 I would wish to propose that the business of the House be set aside to discuss a matter of urgent public importance. This matter has already been mentioned by way of notice of motion given but not listed on the order paper, by two other members. It regards the situation as regards the miscarriage of justice involving Donald Marshall Jr., wrongfully convicted of murder many years ago and whose conviction was more recently annulled but who has been denied any compensation or assistance by this government with a view to being reestablished in life following his ordeal.

Mr. Speaker, I have given you a rather extensive statement of my concerns on this matter but perhaps rather than reading the whole thing into the record it might be sufficient were I to table the statement. My concerns relate to those concerns already expressed by notice of motion from other members, but I do believe that this situation is of sufficient importance that it would merit an emergency debate pursuant to Rule 43. I would therefore make that submission to Your Honour at this time and table my submission and attached evidence.

MR. SPEAKER: Well, I thank the honourable member who gave me notice earlier, and I should add that the honourable member for Halifax Chebucto also gave me notice of her intention to move a motion to a similar effect, that the business of the House be set aside pursuant to Rule 43 to discuss the matter of the Marshall case. I should indicate that the notice came first from the honourable member for Cape Breton Nova, followed very closely by the notice from the honourable member for Halifax Chebucto, so with that in mind it was the honourable member for Cape Breton Nova whom I recognized at the conclusion of the order of business, Notices of Motion.

I have had occasion on numerous previous occasions in the House to deal with a request for an emergency debate pursuant to Rule 43, and honourable members are very well aware of my views on that rule. My view is that it is a very restrictive rule and one which can be invoked only in extreme and unusual circumstances. The rule deals with the urgency, not of the matter itself, but of the urgency of debating the matter in the House, of setting aside the business of the House. The matter, of course, must be one of importance and I am in agreement with the honourable member for Cape Breton Nova and the honourable member for Halifax Chebucto that this is indeed a very important matter. It is one which is occupying the attention of a great number of people in the public and the media are giving this matter a great deal of attention as well. So it is an important matter and one which I am sure will be dealt with during the session.

I want to point out that the rule requires that "the motion must not anticipate a matter which has been previously appointed for consideration by the House or with reference to which a notice of motion has been previously given and not withdrawn".

As the honourable member for Cape Breton Nova himself mentioned, two notices of motion respecting the Marshall case were put on the order paper today and can be called for debate in due course. So there will be opportunity to debate the matter as the session progresses and I find that while the matter is, in fact, a very important one I find that there is not sufficient urgency of debate to satisfy the requirements of the rule and set aside the business for today. I therefore direct that we will proceed with the ordinary course of business.

The honourable member for Antigonish.

ORDERS OF THE DAY

ORAL QUESTIONS PUT BY MEMBERS.

MR. SPEAKER: The honourable Leader of the Opposition.

SYDNEY MURDER CASE [DONALD MARSHALL] - INQUIRY

MR. A.M. CAMERON: Mr. Speaker, I have a question to direct to the Premier, and in light of the fact that there are two resolutions before the House today that were denied by the government side of the House, I would ask the Premier if he would be prepared to indicate to us if they, as a government, or he, as the head of that government, would set up a judicial inquiry into the Donald Marshall case where in this particular situation there was a wrongful conviction?

THE PREMIER: First of all, Mr. Speaker, just going back to his question, the preamble to his question that government members voted against something that he had proposed, I can't recall that, but was there a vote on, I can't recall a vote, Mr. Speaker, can you?

MR. SPEAKER: There was a request for waiver of notice and there was no unanimous consent for that.

THE PREMIER: There were some Noes on that side also . . .

SOME HON. MEMBERS: Oh, oh.

THE PREMIER: No, no, I am just trying to correct the Leader of the Opposition that (Interruption) no, no, he said the government had voted against it and that is just not correct and I think he should make sure that when he makes statements in the House, even statements relating to questions, that they are correct. I just wanted to make that point, Mr. Speaker.

He is asking for a judicial inquiry, is that a judicial inquiry? I think the gentleman should be aware of the fact that I agree with the Minister of Justice of Canada and he made the statement here, just last week, as he had consistently, that a judicial inquiry or a public inquiry on this matter would be most inappropriate at this time. There is another man who is on appeal before the criminal courts and I really feel a bit uneasy, Mr. Speaker, discussing it in this House while the matter is before the criminal courts. I think it is a trespass on the rights of another individual, until that matter of his appeal has been cleared, a public inquiry or a judicial inquiry and I think that Mr. MacGuigan was correct.

MR. A.M. CAMERON: I say to the Premier, what about the rights of a man who spent 11 years in jail, that was found to be not guilty. I wonder if he could have some of that thought put in his mind when he is thinking about those aspects.

THE PREMIER: Well . . .

MR. SPEAKER: Order please, the Leader of the Opposition still has the floor.

THE PREMIER: He asked a question, I was going to respond to it.

MR. A.M. CAMERON: Well you will get your chance to respond to it, Mr. Speaker.

MR. SPEAKER: Order, please.

MR. A.M. CAMERON: Mr. Speaker, again we are faced with the obvious position of the government and the Premier not prepared to answer questions in relation to this. I think that it is very clear in the minds of many people and certainly in my mind and I do not profess to be a lawyer but I can tell you that the courts, the Supreme Court, the Appeal Division of Nova Scotia, on the 10th day of May proved and decided that he was not guilty of this particular crime, and I think there should be some sensitivity on behalf of the Premier on that particular case.

Mr. Speaker, in light of the fact, my next question to the Premier would be because of the government refusing to provide, under the Freedom of Information Act, information to Donald Marshall or his legal counsel, would the Premier indicate to this House if he, as head of this government, is also in agreement with the refusal to provide that information to Donald Marshall or his legal counsel?

THE PREMIER: Mr. Speaker. I think it's important to make one point at this time, and he was allowed quite a preamble there, and I recall his notice of motion and he talked about an alleged miscarriage of justice and Crown witnesses who gave evidence improperly. I think it's important to point out that this government was not the Government of Nova Scotia at the time of this alleged miscarriage of justice the Leader of the Opposition speaks about. In fact, he, the Leader of the Opposition, sat in the government of the day when that alleged miscarriage of justice occurred. I think that's a point that he's quite neatly forgotten about.

As far as the sensitivity of the issue is concerned, I want to tell the Leader of the Opposition that this government has not forgotten Donald Marshall. We will not forget Donald Marshall, and at the appropriate time the matter certainly will be dealt with very seriously. But at the same time, Mr. Speaker, I want to remind the honourable gentleman that he's treading on some very, very soft ground here in the matter of the justice system of this province and this country when he is bringing this matter to the floor and when another Nova Scotian is before the criminal courts on exactly the same matter affecting . . .

SOME HON. MEMBEKS: No! No!

MR. SPEAKER: Order, please.

THE PREMIER: Oh yes, he is asking for a judicial inquiry into the whole matter. And Your Honour, you, you of anyone else in this House, knows that such a judicial inquiry would not only impinge on the original crime itself in which Mr. Marshall was convicted, and then the Supreme Court determined that he should not have been convicted, but you know that the matter that he is now asking for an investigation on, that the Minister of Justice of Canada, the Attorney General of this province have both said, and I think that you will agree that when you become involved in an inquiry which involves the, absolutely involves the matters of 1971, then you are trespassing on the judicial system and you are trespassing on the rights of another individual.

But I want him to remember this, that this government has sensitivity and this government will not forget Donald Marshall.

SOME HON. MEMBERS: Hear! Hear!

MR. A.M. CAMERON: Mr. Speaker, it is good to hear that this government will have sensitivity because they sure as you know what haven't expressed it to date. I would then ask the Premier in his great benevolence that he is putting out here this afternoon, what will he do for Donald Marshall?

SOME HON. MEMBERS: Hear! Hear!

THE PREMIER: Mr. Speaker, I have already said, and I have said publicly, and I'll repeat again now, that this government has not nor will we forget Donald Marshall.

MR. SPEAKER: The honourable member for Cumberland Centre.

LBR.: SYDNEY MURDER CASE [DONALD MARSHALL] - RETRAINING

MR. GUY BROWN: Mr. Speaker, a question through you to the Minister of Labour and Manpower. I would ask the Minister of Labour and Manpower if he has personally contacted Donald Marshall with regard to retraining programs that would be suitable to him? ✓

HON. DAVID NANTES: No.

AN HON. MEMBER: What else did you expect?

MR. BROWN: I would ask the minister if he has directed any of his staff in that department to personally contact Donald Marshall who spent 11 years in the prison system in this nation, with regard to retraining this individual? ✓

MR. NANTES: Mr. Speaker, I think the honourable member has a certain misunderstanding . . .

MR. BROWN: No I don't.

MR. NANTES: . . . of the respective roles here of the various levels of government. I do know that one other minister has been involved somewhat in that. Regretfully, that minister is not in the House today. I do know that the procedures available to retraining are such that it is a requirement of the funds, particularly through the National Training Act that all of these sorts of cases be dealt with by the individuals applying through the Canada Manpower Centres and if that is the case, that is the way it would be handled.

The individual would deal with the Manpower Centre and if it was to relate to provincial programs, we would be approached in that manner.

MR. BROWN: A final supplementary to the minister. I appreciate the comments. When one looks around, the only minister, one of the few that's missing is the Minister of Social Services and we do understand the individual is presently on welfare. Yes, there has been some direct contact.

Mr. Speaker, Mr. Marshall has been out now for approximately a year. I would ask the minister if him, or if he would direct some of his staff to personally contact Mr. Marshall within the next 48 hours to try to arrange an appointment and an interview and try to assist this individual with some appropriate training program that would benefit him today. (Applause) And the Premier doesn't have to answer the question for him, Mr. Speaker. He can answer it himself.

MR. WILLIAM GILLIS: That's right. You have enough Cabinet Ministers.

MR. NANTES: I reiterate to the member, Mr. Speaker, that the procedure we follow is through the Canada Manpower Centres. I think there is a very organized system and if that is the system that he is to follow, then that is the way he would go.

ATT. GEN.: SYDNEY MURDER CASE (DONALD MARSHALL) - RECORDS

MR. VINCENT MACLEAN: A question, Mr. Speaker, through you to the Attorney General. Would the Attorney General inform the House as to how far back his records presently exist with reference to Donald Marshall?

HON. RONALD GIFFIN: Yes, Mr. Speaker. First, with respect to the Marshall case as it was before the courts in 1971 and 1972, as the honourable member knows, under the procedures which existed at that time, which were put in place by the government of which he was a member, there was one file that was destroyed. The only file extant from that time period would be the file material that we have pertaining to the appeal itself which really is not of any great help. It's just the factum and the court's decision and that sort of thing and those records are available through the courts anyway.

All other files pertaining to the reinvestigation of the Marshall matter and so on, which came to us in February of 1982, all of those files are in existence.

MR. VINCENT MACLEAN: Would the minister inform the House as to whether or not he has sought and secured the files of the RCMP which were conducted from 1972 onwards with reference to the Donald Marshall case, obtained copies of those files to be placed within his system in the Attorney General's Office?

MR. GIFFIN: No, Mr. Speaker, I am satisfied that the RCMP files, which are the responsibility of and maintained by the RCMP, are in their hands. I can get copies but I'm satisfied that they have their files.

MR. VINCENT MACLEAN: I would think that perhaps if the minister, through his department, requested those files and assessed them, he may have a considerable amount of information that perhaps at the proper time could be released to Donald Marshall and Donald Marshall's lawyer that may provide a significant amount of information. It is very easy for the Attorney General to say, well, the files under the old procedures were destroyed but why doesn't he request the copies of those files that currently exist within the RCMP so that that information can be made available and to shed additional light on this situation?

MR. GIFFIN: Well, Mr. Speaker, we're getting into an area of considerable importance here, and that is the access to investigative files which the honourable member is referring to. Let me make it very clear to that honourable member, through you, Mr. Speaker, and anybody else that's interested in this matter, that I do not make public investigative files that are held by the RCMP or held by my department. That's never been done and I'm not going to start doing it.

MR. SPEAKER: On a new question, the honourable member for Cape Breton South.

ATT. GEN.: SYDNEY MURDER CASE [DONALD MARSHALL]-JUDICIAL INQUIRY

MR. VINCENT MACLEAN: A new question. I think we have a little different situation here, Mr. Speaker, in that we're dealing with an individual who spent 11 years in prison and was later declared to be innocent by the Supreme Court of this province and a matter of now restitution is in order. Why then, if the minister does not want to release this information to Donald Marshall's lawyer, does he not agree with a full judicial inquiry of this situation so that all facts from 1971 to the present can be brought out and all new testimony can be made available so that we can perhaps shed some light on this situation and find out actually what did happen in 1971 and what actually happened in the last few years as well?

HON. RONALD GIFFIN: Mr. Speaker the appropriate response to that question is that this government has absolutely nothing to hide with respect to the Marshall matter. The fact is that the reinvestigation was begun in February 1982 after the federal Minister of Justice referred the matter to my predecessor Attorney General under the provisions of the Criminal Code. The fact is that this government and the RCMP conducted that reinvestigation. There was no attempt on our part, or on the part of the then Attorney General or the Crown Prosecutor in Cape Breton County, Mr. Frank Edwards, to impede in any way the reinvestigation of this matter.

As a matter of fact, this government cooperated fully in carrying out that reinvestigation and in seeing that all of the facts were placed before the Appeal Division of the Supreme Court of Nova Scotia in connection with it. There was no attempt on our part to hide anything or to place any roadblocks in Mr. Marshall's way. The fact is that the Crown cooperated fully and properly in the reinvestigation and the rehearing of this matter.

MR. VINCENT MACLEAN: If, as the Minister suggests, the Crown totally cooperated, why is the Crown reluctant then to order a full scale investigation of the matter? If there are no facts that the Crown wishes to keep from public view, why then is he not prepared to issue that full scale investigation and expose whatever facts are still hidden in the Attorney General's office?

THE PREMIER: The facts are there from when you fellows were over here.

MR. SPEAKER: Order.

THE PREMIER: The people of this province are smarter than that.

MR. GIFFIN: I recognize that the honourable member would like to pursue this matter on his own terms. However, there are some comments that I have to make in that regard. After the reinvestigation was completed, the matter went before the Appeal Division of the Supreme Court of Nova Scotia. Mr. Marshall's conviction was set aside. However, that did not end the reinvestigation of the matter. It continued and, as a result of that, Mr. Roy Ebsary was charged with manslaughter in connection with the death of Mr. Sandy Seale.

A trial then ensued. Mr. Ebsary was convicted in November of 1983 of manslaughter and sentenced to five years imprisonment. In December of 1983 he appealed both his conviction and his sentence. That matter is now before the Appeal Division of the Supreme Court of Nova Scotia. The Appeal Division of the Supreme Court of Nova Scotia has set May 18, 1984, as the date for the hearing of that appeal. I have stated previously, and I state it again here today, that it is my view as Attorney General that I must say or do nothing which would prejudice, even inadvertently, the status of that criminal proceeding.

Among other things, one of the options open to the Appeal Division, and one of the things requested in the notice of appeal that was filed by Mr. Luke Wintermans, the solicitor representing Mr. Roy Ebsary, is a new trial. If a new trial were to be ordered by the Appeal Division – and I make no comment on the validity of that request or whether or not the court will do it, except to say that it is an option which is open to the court and which has been requested – if a new trial takes place, one of the concerns that we have to have is that nothing be done to prejudice the rights of an accused person, in this case Mr. Roy Ebsary, faced with a very serious criminal charge.

MR. VINCENT MACLEAN: If the logic as displayed by the Attorney General is followed and another action is launched – as a matter of fact a lawsuit is presently underway, launched by the Chief of Police within the City of Sydney with reference to comments which were made with respect to his conduct during the Donald Marshall case – then what the minister is indicating is that no procedure can follow on either an inquiry or compensation of Donald Marshall until all cases are dealt with, including the case that is launched by the Chief of Police in Sydney, which means that the whole process could drag on for several more years before the matter is dealt with?

MR. GIFFIN: Mr. Speaker, the honourable member is misquoting me. I have never said that we could do nothing at any time as long as there was any, even peripherally related, civil proceeding before the court.

My principal concern throughout, and I have stated this publicly, is with the rights of an individual who is still before the courts on a very serious criminal charge. Now I might add, Mr. Speaker, that I have seen news reports that Mr. Wintermans, the solicitor representing Mr. Ebsary, has already indicated and this is also part and parcel of the appeal, has indicated a serious concern about the effect that all of the publicity that we have had in connection with the Marshall matter could have on his client's position before the courts, particularly in the event of a new trial.

We are not talking about an academic exercise here, I am talking about the rights of an accused person before the courts of this province. As long as I am Attorney General I can guarantee you that I am not going to do anything to prejudice the rights of an accused person before our courts.

Now, to move to the question of a public inquiry. I have had three requests made to me by Mr. Cacchione, the solicitor representing Mr. Marshall. One is for the payment of The second, and these were disclosed to me by Mr. Cacchione at a meeting which I had with him in November of 1983, the second is for compensation. The third is for a public inquiry. This government has neither accepted nor rejected those requests. I have indicated, I have said this publicly and I repeat it here for the benefit of members, particularly those members who are not lawyers and who may not appreciate all of the issues that are at play here. But I am concerned that if, as Attorney General, I get in the position of commenting on this matter while it is still before the courts that I could prejudice Mr. Ebsary's position before the courts. That is a very serious matter to me and I suggest to you, Mr. Speaker, and through you to all members, that it is a very serious matter for every member of this House.

MR. SPEAKER: The honourable member for Halifax Chebucto.

ATT. GEN.: SYDNEY MURDER CASE [DONALD MARSHALL] - COMPENSATION

MS. ALEXA MCDONOUGH: Well, Mr. Speaker, I would also like to direct my question to the honourable Attorney General. I am wondering, in view of the repeated legal opinions given, and to my knowledge, almost universally by any lawyers who commented on the matter, that absolutely no connection exists between the question of compensation for Junior Marshall and the appeal of Roy Ebsary's murder conviction. I wonder if the Attorney General could explain how, in his view, the issue of whether, and how much, Donald Marshall ought to be compensated could possibly affect the outcome of the Ebsary appeal?

HON. RONALD GIFFIN: First, Mr. Speaker, the honourable member is totally incorrect in her statement. There is no universality of legal opinion on that matter. The fact is that it is a matter that could be argued either way. There are those who can argue that the question of compensation for Mr. Marshall has nothing to do with Mr. Ebsary's status before the criminal courts today.

On the other hand, there is the very obvious and tragic fact that all of these criminal proceedings, the criminal proceedings involving Donald Marshall, the criminal proceedings now involving Roy Ebsary, all of those proceedings flow from one tragic event, the death of Mr. Sandy Seale. I have great difficulty in my own mind in saying, when we recognize that all of this flows from that single event, that somehow the two matters can now be separated. I may be wrong in this but I cannot afford to run the risk that I am right.

MS. MCDONOUGH: Well, Mr. Speaker, in view of the fact that it is a legal fact and a moral fact that Donald Marshall has been totally cleared of any responsibility for the murder in question, I would ask the Attorney General if he would explain what prevents him and his government from at least, at an absolute minimum, stating its intention to get on with compensation for Donald Marshall? At least appointing a public inquiry which may, if his view must persist in this, be impossible to initiate and move to the stage of public hearings until after the Ebsary trial has been completed, but at least establish an intent and a commitment by this government to proceed with those two action?

MR. GIFFIN: Mr. Speaker, my difficulty with this matter is simply that first of all we have no precedents to guide us dealing with this. Secondly, that there are arguments both ways on the point that the honourable member has made, but I cannot predict what the outcome of that would be or what effect those actions might have on Mr. Ebsary's status before the courts and that is not my risk to run. I have no right to take a chance with his rights on a serious criminal proceeding. The only prudent and responsible course of action that I can take as Attorney General is to avoid saying or doing anything that might prejudice his position before the courts. That is a fundamental principle that I have to respect.

By the same token, I have not said, the Premier has not said at any time, that we have rejected the requests that have been put forward on Mr. Marshall's behalf. But there is a right time and an appropriate time for us to deal with those requests. But it is my view, I will express it as clearly as I can, that while Mr. Ebsary is still before the criminal courts on the very serious charge of manslaughter, that I must not take any chances with his position before the courts. That is fundamental.

MS. MCDONOUGH: Well Mr. Speaker, if, as the Attorney General has made it very clear, he is not prepared in any way to air the public facts that would result from a public inquiry into the Donald Marshall wrongful conviction. I would still ask the Attorney

General to indicate what it is that prevents his government from at least getting on with some kind of interim compensation payments that would allow Donald Marshall to proceed with trying to reconstruct his life and then make provision for some appropriate adjustment in those compensation payments if, at a later date, the public inquiry should indicate that the appropriate amount is not the amount that has been paid in the interim compensation payments?

MR. GIFFIN: Mr. Speaker, I may get into the problem of repeating myself on some of this but the concern that I still have is that any public statement or action by this government on the claims that have been put forward on Mr. Marshall's behalf could be misinterpreted or could create problems for the courts in dealing with the Ebsary case. I do not have the same concerns about civil proceedings that I have about this particular criminal proceeding.

I also want to make it clear through you, Mr. Speaker, to that honourable member, that this argument has already been put forward by Mr. Ebsary's solicitor, who is taking that case on appeal. One of the arguments, he has indicated this in the public press, one of the arguments that he will be making is that all of the publicity that has surrounded this matter makes it impossible for his client to get a fair trial. So if we add to that publicity on the floor of this House or if I add to it as Attorney General, what effect might that have? I do not think that I have the right to take that chance.

Cape Breton Post
Feb. 29, 1984

GIFFIN HOLDS FIRM ✓

Requests For Emergency Debate On Marshall Case Are Rejected

The government blocked requests on Tuesday for an emergency debate on Donald Marshall, a Miqmaq Indian who turned to welfare after spending 11 years in prison for a murder he didn't commit.

Marshall's case took up most of question period in the first regular day of a new legislative session and was the subject of two notices of motion.

Marshall, 30, was released from prison last year and found not guilty of murdering his friend Sandy Seale in a Sydney park in 1971. Another man, Roy Newman Ebsary, 72, was later convicted of manslaughter.

All three opposition parties called for a judicial inquiry into the way Marshall's case was handled and said compensation to help him get back on his feet cannot be put off.

But Attorney General Ron Giffin insisted that even discussing the case in the legislature could prejudice Ebsary's ap-

peal, which will be heard in May. He stressed the government has not rejected Marshall's requests that the government pay his legal costs, compensate him and set up a judicial inquiry.

My view is that we must not say or do anything publicly or even inadvertently that would appear to prejudice the status of other criminal proceedings," said Giffin.

Doubts Connection

NDP Leader Alexa McDonough said lawyers do not believe that compensation for Marshall and the appeal of Ebsary are connected. Giffin,

however, said legal opinion is not unanimous and the government doesn't want to take any chances.

Premier John Buchanan, whose Progressive Conservative government was out in power when Marshall was first tried, objected to accusations of insensitivity.

"This government has not forgotten Donald Marshall. We will not forget Donald Marshall and at the appropriate time, he will be dealt with."

McDonough and Liberal Leader Sandy Cameron were denied unanimous consent to debate their resolutions dealing with Marshall on

Tuesday, but the motions will be debated later.

Paul McEwan, the leader of the Cape Breton Labour Party, proposed an emergency debate, but speaker Art Donahoe said the Marshall case did not qualify.

The Nova Scotia Supreme Court in finding Marshall not guilty, said some witnesses, including Marshall, did not tell the truth at the first trial. The key witnesses of Ebsary's trial had not testified at the first trial.

Seale was stabbed when he and Marshall were attempting to mug Ebsary and another man in the park.

Marshall case: Giffin steadfast

By ALAN JEFFERS
Provincial Reporter

A unified assault by all three opposition parties in the legislature Tuesday failed to change the government's position on compensation and an inquiry for Donald Marshall Jr.

But that won't stop the opposition from bringing the matter before the House again, since the way has been cleared for the Marshall case to be the topic of debate during opposition day today.

The Marshall case dominated question period during the first working day of the winter session of the House.

Attorney-General Ron Giffin said that because the case is still before the courts, he will not discuss compensation or the formation of an inquiry into the case of Mr. Marshall, the Micmac Indian who spent 11 years in prison for a murder he did not commit.

Roy Ebsary, convicted of manslaughter in connection with the 1971 death of Sydney native Sandy Scale, will have his appeal of that conviction heard May 18.

NDP leader Alexa McDonough asked the attorney-general what prevents him and the government from "at least, at an absolute minimum, stating its intention to get on with compensation for Donald Marshall and at least appoint a public inquiry

It may be impossible to start the

inquiry before the Ebsary trial, she said, "but at least establish an intent and a commitment by this government to proceed with those two actions."

But Mr. Giffin was steadfast in his resolve not to discuss the case. He said he has "no right to take a chance with his (Mr. Ebsary's) rights on a serious criminal proceeding."

He said Mr. Ebsary's lawyer has already "indicated a serious concern about the effect that all of the publicity ... could have on his client's posi-

tion before the courts, particularly in the event of a new trial."

A request for an emergency debate on the matter by Cape Breton Labor Party leader Paul MacEwan was denied by Speaker Art Donahoe. Mr. MacEwan out-manoeuvred Ms. McDonough, who was also going to request the emergency debate.

Because Mr. MacEwan told the Speaker of his intention before Ms. McDonough did, his request was recognized.

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See MARSHALL page 2

(Continued from page one)

Mr. MacEwan said: "If there is any one issue the people expect us to be debating it would be this one. We have a responsibility to appear to be concerned and compassionate and not to seek legalistic reasons to avoid action."

The Speaker said while the issue is "very important" and is occupying much attention in public, he is sure it will be dealt with during the session. Interpreting the rule for emergency debates, he said there is not sufficient "urgency of debate" to warrant an emergency debate.

Liberal leader Sandy Cameron and Ms. McDonough tabled resolutions dealing with the Marshall case.

Ms. McDonough's calls on the government to provide Mr. Marshall with "any and all personal information held by or for the department of the attorney-general ... in accor-

dance ... with the Freedom of Information Act."

Mr. Marshall's lawyer, Felix Caccione, has been unsuccessful under the act to acquire the attorney-general's department's file on Mr. Marshall.

The Liberal resolution, which will be debated when the House sits this afternoon, calls for the attorney-general to "order a judicial inquiry into all circumstances surrounding the investigation, arrest and trial of Donald Marshall which resulted in his imprisonment."

It also says Mr. Giffin should "place before the House at an early date legislation providing for the payment of compensation of Donald Marshall for the loss of income, legal expenses, loss of enjoyment of life and mental anguish suffered by him as a result of his wrongfully being deprived of his liberty."

Marshall

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Dm 65

STATEMENTS BY MINISTERS

MR. SPEAKER: The honourable Premier.

THE PREMIER: Mr. Speaker, I wish to inform the House that the government, over the last number of months, has been actively considering all aspects of the Donald Marshall matter, and all requests made on his behalf. As a result of those deliberations and considerations, the government is preparing a statement on the matter which I will deliver to the House next week. Mr. Speaker, until that time members of the government will not be making statements on the Donald Marshall matter.

MR. SPEAKER: The honourable member for Cape Breton Nova.

RESOLUTION NO. 23

MR. PAUL MACEWAN: Mr. Speaker, I hereby give notice that on a future day I shall move the adoption of the following resolution:

Whereas the case of James Buddy McEachern shows how rapidly this government can move when it wants to help somebody; and

Whereas the contrast between the government's prompt arrangement of employment for Mr. McEachern when he joined the Conservative Party is in telling contrast with its inaction on the Donald Marshall case; and

Whereas what this government did for Buddy McEachern it could equally have done for Donald Marshall, if it wanted to, without any need for a public crusade or campaigning by members of this Legislature:

Resolved that this government be asked to explain why, when it moved with such speed for Buddy McEachern it cannot do the same to help Donald Marshall.

MR. SPEAKER: The notice is tabled.

mw

Marshall

MOTIONS OTHER THAN GOVERNMENT MOTIONS

MR. SPEAKER: The honourable member for Antigonish.

MR. WILLIAM GILLIS: Mr. Speaker, pursuant to an agreement by the three Parties in the House, I ask unanimous consent to call Resolution No. 3. This was done because there was not sufficient time in order to have the required two days' notice, but there is agreement.

MR. SPEAKER: Is it agreed? It is agreed.

Res. No. 3, re Att. Gen.: Sydney Murder Case [Donald Marshall] - Inquiry and Compensation - notice given Feb. 28/84 - (Mr. A.M. Cameron)

MR. SPEAKER: Honourable members will find the resolution in their copies of Hansard for yesterday, where it appears at Page 29. Before I recognize the Leader of the Opposition, in light of the fact that this resolution has been called for debate today, I feel it is incumbent upon me to say a word or two prior to the commencement of the debate relating to a convention which applies in relation to debate in the Legislature regarding matters which are still pending before the criminal courts. While I realize that the matter of the resolution relates to the case of Mr. Donald Marshall, I think all honourable members are aware of the fact that arising out of the circumstances of that case, there is a matter which is still before the Appeal Division of the Supreme Court of Nova Scotia. I wish to refer honourable members, just briefly, to Beauchesne's Parliamentary Rules and Forms, fifth edition, where under the heading "The Sub-Judice Convention", the following appears at Page 118:

"Members are expected to refrain from discussing matters that are before the courts or tribunals which are courts of record. The purpose of this sub-judice convention is to protect the parties in a case awaiting or undergoing trial and persons who stand to be affected by the outcome of a judicial inquiry. It is a voluntary restraint imposed by the House upon itself in the interest of justice and fair play."

And then at Paragraph 336, "The sub-judice convention has been applied consistently in criminal cases." Now some years ago the House of Commons struck a Special Committee on the Rights and Immunities of Members, and that committee, "... recommended that the responsibility of the Speaker during the question period should be minimal as regards the sub-judice convention, and that the responsibility should principally rest upon the Member who asks the question and the Minister to whom it is addressed. However, the Speaker should remain the final arbiter in the matter but should exercise his discretion only in exceptional cases. In doubtful cases he should rule in favour of debate and against the convention."

There is a rule dealing with the convention which has been put in place in the House of Commons at Westminster and of course, that doesn't pertain to us, strictly speaking, but there, there is a bar against "references in debate (as well as in Motions and Questions) to matters awaiting or under adjudication in all courts exercising a criminal jurisdiction".

Now, I am aware of the circumstances here. I am going to permit the debate to but I would ask honourable members to bear in mind that there is a criminal matter arising out of these facts before the courts and when they are making their speeches to keep that in mind and not to trespass beyond the bounds.

This is an unusual case, where we have, well, I'm not going to say anything more about it except that it is an unusual case. I am going to permit the debate to proceed but I would ask honourable members to exercise restraint and refer to the Marshall situation and not get involved in matters which may relate to the case which is still before the courts.

The honourable Leader of the Opposition.

MR. A.M. CAMERON: Mr. Speaker, in rising to speak on Resolution No. 3, I respect your decision in relation to the matter that is now before the court and I certainly feel that we have had a question period on this subject and the subject, as the resolution I believe fairly clearly indicates, is relating to the Marshall case as it relates to Mr. Marshall in particular and my reference, hopefully, will be in that direction.

Mr. Speaker, when calling this resolution I think that we have an opportunity to have a look at what might happen. I am somewhat disappointed that government has made a decision not to debate and opted out of looking at this particular problem. I don't wish today or at this time, particularly at this time, to talk about the history of this particular case. Except to say that Mr. Marshall was found guilty on the 5th day of November, 1971, of murder and then the Supreme Court of Nova Scotia, the Appeal Division acquitted Mr. Marshall on the 10th day of May in 1983.

I want to point out very clearly that we are not here now to talk about anything but basically justice in this particular case. Not who was there and where and when, but particular justice in this case. In our request, in our resolution we have asked for two things. We've requested an inquiry and we also requested compensation. The inquiry that we have calls for an investigation into the circumstances surrounding the entire case, the arrest, the trial from the beginning and I think it is important that it's from the beginning to the present time. And compensation is directed for this particular gentleman for his losses as a result of it.

Mr. Speaker, I think that all of us here have heard enough about the history. I could go into the history of this case and could deal with the history in considerable length. But I don't know that that serves a great deal of purpose. I think our main objective, as I have

indicated is to try and look at two specific areas and why those two specific areas, we believe, are of particular importance to Mr. Marshall.

Donald Marshall fortunately is now at last free and his nightmare of the wrongful conviction and imprisonment is over. I think we are all thankful for that to have happened. Yet this gentleman has lost more than a decade of his life. He was unable to work, to earn a living, to have a home of his own. He has had to prepare himself for the working force and his working life from behind prison bars. His contemporaries have been able to have the opportunity to function in the working world and to gain experience in the job market. He is even now found himself in a situation where he's unable to pay his lawyer who, I might say, Mr. Speaker, has worked very tirelessly on his behalf. In addition to the bill of the lawyer, Mr. Marshall has also been weighted down with a mountain of other debts associated with his circumstances while in prison.

In light, Mr. Speaker, of all that has happened to him and in view of the way the criminal justice system appears to have erred in this particular case, we feel that it is imperative that public confidence of our system of justice be upheld and, in fact, restored. If such a tragedy can happen to one man in this country and in our own society, I think we must be well aware that it also could happen to anyone of us. That is the basis for the first part of our resolution or motion and that is an inquiry to be held into all the circumstances surrounding the investigation and trial of Donald Marshall. I believe that only then can all of the facts be fully discovered and any mistakes corrected so that this type of unfortunate incident does not happen again in the future.

The second part of our resolution or motion deals with compensation for Mr. Marshall. There is no legislation which allows this to happen at the present time. Such tragic events are, thankfully I might add, few and far between, but they cry out for some kind of a solution, some attempt to right the wrongs of which, apparently, has been done. It is an ancient principle of Anglo-Canadian law and I think a principle that we all want to believe strongly in, that not only must justice be done, it must be seen to be done in each and every case. The courts have completed their work and ordered Mr. Marshall's freedom but I think that we, as legislators, must go further and attempt in some way to compensate him for the experience, a rather difficult experience, that he has gone through.

I believe that we all must be compassionate, willing to admit that there may have been an error, willing to right this particular wrong. Our system of justice is to take pride in itself and I think that we want to see that that system of justice is given to every Nova Scotian and every Canadian. I believe in fully compensating an investigation into this matter. We not only give aid and comfort to Mr. Marshall himself but we affirm for all our citizens in this province the essential fairness and humanity of our system. We are given the opportunity in this particular case to act in accordance with the best tradition of our heritage of freedom, to demonstrate society's concerns for those who have been wronged.

I mentioned in my earlier comments the denial of the opportunity to work and to earn an income and, perhaps, to even own his own home. Surely, some fair estimate of the value of this can be made in Mr. Marshall's case. It's certainly not beyond our capabilities today to assess the kind of loss that may have been experienced by Mr. Marshall. He had also had some very significant legal costs which, in fact, are known but to this, I think, must be added some other help to repay, in whatever small way possible, the loneliness which is very, very difficult to measure in terms of dollars, and the loss of enjoyment of life, which I suspect none of us could put a value of dollars on. But there has been a loss of enjoyment of life that has been this man's lot for the 11 years which he spent in the penitentiary.

Mr. Speaker, I have no doubt that members of this House and, for that matter, the public at large will support an effort to provide Mr. Marshall with compensation. We ask that the compensation be generous and that it be given at an early date. The long years since 1977 have passed rather slowly for Mr. Marshall and I would suggest that surely we, as humane people, surely we should look at, the time for waiting for payment should not be too long.

In supporting compensation for Mr. Marshall, we don't set in my opinion, a precedent which will bind our successors in this Legislature or anywhere else. I think it is a matter of simply recognizing and facing up to the extraordinary circumstances that this particular case puts forward.

I would appeal to all honourable members to look carefully and to think carefully about this case. Let us spare Mr. Marshall the further indignity of pleading for help, from a financial point of view. Let us show all fair-minded people of Canada that we are prepared to act justly, for we have in our power perhaps the last real chance that this man has to be truly set free.

Again I ask all members of this House to look carefully and to think carefully about what we are requesting in this resolution. We are requesting two basic things. One is an inquiry and secondly, and perhaps most importantly from a humane point of view, that is compensation for a man who spent 11 years in prison for a crime that he had not committed. There are the two sides to look at, justice and a fair deal, and I appeal to all honourable members of this House to look at both of those factors.

Justice is important and I think we all stand for and mean well when we speak of it and, certainly, a fair deal is something that we all can very truly appreciate as members of this Legislature. I urge all honourable members to think carefully about this resolution and to give it some thought and give it some support, so the Executive Council will have that kind of support when they make their decision, whenever it might be. Thank you. (Applause)

MR. SPEAKER: The honourable member for Cape Breton Nova.

MR. PAUL MACEWAN: Mr. Speaker, I would like to make it clear in beginning my remarks on this resolution that the Labor Party has for some time supported the cause of justice for Donald Marshall, Junior. I have a personal interest in this matter, Mr. Speaker. I knew the late Sandy Seale, in fact I was his teacher in school at the time that he lost his life. I remember we had all the students down to attend along the roadside as the cortege drew past and I felt a distinct loss. I know Mr. Seale's parents, Oscar and Leatha Seale. They are not living in Whitney Pier now but they lived there for many years. I have known the Marshall family.

I also know the young man, John Pratico, who was the key witness at the time that Marshall was convicted. Mr. Pratico, while a fine young man and often a visitor in my home, unfortunately suffers from mental illness and has since he was a small boy. That he was the star witness at the time of the original conviction has always made me feel that a wrong was done at that time, because I know that if I was ever to be accused of a serious crime I would certainly want the witnesses that testified to at least be people of sound mind. That however, was not done in this case.

I personally have known the principals then that are involved in this unhappy history. They are from my part of the world and I must say that when the full facts of the Marshall

situation became known, the wrongful conviction. I know the Attorney General will know that he received correspondence from me and I know that his predecessor will know that he too, I saw him in the gallery, received correspondence from me in that regard. I didn't make all of that material public, in fact the last plea that I sent the Attorney General before this session of the House began, begged him to make an interim compensation payment to Mr. Marshall that would be sufficient to pay his legal bills and get him reestablished in society without it coming to the floor of this House. To act before the session of the Legislature began so that it would not be necessary that there be any discussion of this matter here in the House. There are certain things, Mr. Speaker, that you would think that a government would simply do without being prodded.

We heard the Premier's announcement this afternoon that the government will make an announcement on this subject next week. In the meantime will not discuss the matter. Well, as with their new business plan for Sydney Steel that means that they will make decisions behind closed doors and then will inform us after, and since we apparently will not be in on the inner decisions or the inner discussions that will lead to the decision, I would hope, through the means of an appeal to reason at this time, to perhaps influence the government in whatever decision they will see fit to make.

I want to say this, sir, that I make the point that we have supported this because I had a call on the telephone this morning from a lady who was rather upset because she had seen on the cable television screen, the Broadcast News account of yesterday's proceedings in the Legislature which said only that the Liberals and the NDP supported the cause of justice for Donald Marshall and the Labor Party had not been mentioned. I told that lady that it was very unfair of Broadcast News not to mention the name of this party also as supporting that matter because the Chronicle-Herald, the Cape Breton Post, the News Radio and ATV all recognize that there had been a unified unanimous stand on this matter on the part of the three Opposition parties represented in this House, and that was a matter of public record. So I hope that whoever is looking after the interests of Broadcast News will please be fair in their future proceedings of this Legislature.

Now, sir, there are many aspects of this matter that cause me much concern. Because other members wish to participate in the debate I am not going to launch into a lengthy treatise. I am sorry about the attitude that the government has assumed in this matter. I feel that it could have been settled quietly and without controversy. I know that it could have been settled quietly without controversy.

In an earlier notice of resolution today I made the comparison between the way in which this government acted in one instance, where it was deemed politically expedient, where they were able to rope in a convert from another party and hopefully get themselves a candidate in the constituency where Tories are about as scarce as dodo birds. They roped in Mr. McEachern, they made him a big man in a big office and gave him a big job all at once. Acted with tremendous speed. One might almost say they acted decisively, promptly.

Now why that couldn't have been done in this larger matter, which to me, certainly would seem of far more broad consequence, of far more real significance, and of far more historical significance in the judgment that history will make of the John Buchanan Government. I don't know. You'd think that if they had any smarts at all, they would have realized that this was the thing they should have moved quickly on. Not getting Buddy McEachern a job so that he could run in Cape Breton Nova. They could have done that this summer, they could even have done that this fall, unless they're intending an election earlier than I thought they were going to call one. That could have waited. But this matter, this Marshall

situation, should have been addressed by now, and I think the government should be chastized and will be chastized, not by me so much, as by public opinion which is the court to which all politicians and all elected political institutions ultimately stand answerable. That, I suggest, is where they are going to find themselves losing by their failure to address this matter with reasonable dispatch.

I have made some specific recommendations to the Attorney General. I have said, for one thing, that I think that an interim compensation payment could be made now, without jeopardizing any future, subsequent decisions that may be made. I would suggest that the amount of an interim compensation payment that should be made should certainly be that this man's legal bills should be paid. His legal bills should be paid in full. Also, that he should be given a sufficient sum of money and rehabilitation and help.

As was mentioned yesterday, the Minister of Labour, or somebody over there, if they can provide government jobs to as undeserving candidates as Buddy McEachern, surely, they could have provided a job to this man. They certainly could have, because they have many jobs at their disposal. That type of rehabilitation effort should have been made and if it hasn't been made then they could decide right now to do it. No further discussion or debate would be required. Pay the legal bills, get the man a job, give him some money to get him started back on his feet, and then later on after the other matters before the courts have been disposed of, then a final decision could be made as to what compensation could be paid for the loss of 11 years of his life by way of wrongful imprisonment. That, sir, is the essence of what I wanted to say.

I also wanted to say that in my view this case will not be cleared, the total situation, until some compensation has been made to the family of the late Sandy Seale whose trauma and having to re-live their ordeal of 14 years ago has been very great indeed, every time that this case has been mentioned publicly, as it has so much. I have applied to the office of the Compensation for the Victims of Crime for compensation payment to the Seale family and have been told that they cannot be compensated because that Statute came into effect in 1971 or 1978, rather, was it 1979? Some time after the death of their son and, therefore, it cannot be applied retrospectively. In my view the ordeal they are undergoing today as this case continues to be publicized, is a very contemporary and current event. I think that if amendments were brought in today to amend the Act to compensate victims of crime that that Act ought to be amended to compensate people who suffer current trauma as a result of crimes which may have transpired prior to the passage of that Act. That could be done very simply, again, were there a will to do so.

That's basically the meat of all this, the bottom line as they say. Where there's a will, there's a way. When you want to do something, you don't think about it, you don't talk about it, you just go and do it. They wanted to help Buddy McEachern and they helped him. No legislative debate was required. No resolution imploring the government to get Mr. McEachern a job. They just went ahead and they did it. Because they thought it was in their political interest to do so. I think it would be in their political interest to settle this matter and not to see it dangling and dragged on and on. Because I believe that, sir, I don't want to make a long speech on this matter. I think I've said quite enough. The message is there. It's up to the government to act. If they don't do so they will certainly be held responsible.

MR. SPEAKER: The honourable member for Halifax Chebucto.

MS. ALEXA MCDONOUGH: Well, Mr. Speaker, I rise to speak on this issue because I, like all other Opposition members, continue to be appalled and sickened and regretful at the government's response to the continuing appeals to address the Donald Marshall case.

I think, Mr. Speaker, you'll be aware, and I know members of the government are aware, that I have repeatedly pleaded with the Attorney General and with this government to not allow the spectacle that has already gone on here and that is very likely to continue to go on here in the House in debating the Donald Marshall situation to be forced into existence and it seems to me, Mr. Speaker, very clear that this is a government with a mandate and all the means necessary and available to it to get on with addressing the Donald Marshall case, both in terms of compensation and the appointment of a public inquiry that can look into all of the circumstances surrounding the wrongful conviction and imprisonment of Donald Marshall.

You know, Mr. Speaker, yesterday, when I raised questions in this House and other members raised questions in this House about the government's inaction, I for one, allowed myself, in the short term anyway, to be once again intimidated and somewhat baffled by the legalistic talk of the Premier and the Attorney General. I think again today, Mr. Speaker, because of the Premier's statement in which he made it clear that no members of the government side would speak on this issue, and even in terms of the Speaker's reminder to us, and I know that that was done in good faith, and I know it was done because of long-standing tradition and convention in terms of the Rules of the House when it comes to a matter that is before the court.

Nevertheless, I think the point I'm trying to make is that the legal baffle that has surrounded the government's refusal to act on this situation has confused but has not fooled a concerned and responsive public into believing that the government is unable to act on this situation because of the Ebsary appeal that lies ahead. This is not a court of law, Mr. Speaker. I don't need to remind you of that, and it is not the job of those of us elected by the ordinary citizens of this province to come to legal conclusions about the guilt or innocence of any of our citizens.

What we have before us, Mr. Speaker, is a fact in law that Donald Marshall has been cleared of the conviction. He has been acquitted of the crime for which he served 11 years, wrongfully, in prison, and nothing that comes out of the Ebsary appeal will alter that fact. I'm not a lawyer but I do understand enough about the fundamental concepts of justice to know that a grave injustice has been done to this human being and it is the responsibility of those of us elected to office to ensure that compensation is made for that injustice to Donald Marshall, Junior and also to take every possible step to ensure that a similar injustice will not occur in the future to some other innocent citizen.

It seems to me, Mr. Speaker, that it is necessary for us to face up to the fact that Donald Marshall, Junior is not yet a free man. He is not free economically because he spent 11 years in prison when he would otherwise have been pursuing some further education, hopefully obtaining a trade and getting on with living a normal life.

He is not free socially. He continues to be a captive to the public concern about him. It is a supreme irony that because Donald Marshall's situation has not been settled, then he is a prisoner and a hostage to public concern. The media continue to try in good faith to keep the story before the public and keep the pressure on the government to take its responsibility, and although I know he has been dogged by the media and it has made it extremely difficult for him to get on with reconstructing his life, that they have continued to pursue the story in good faith because they, too, want to see that justice is done.

Donald Marshall Junior is not free emotionally. He has all of the scars and the wounds that go with 11 years spent in a penal institution. I would remind all members of this

House, Mr. Speaker, that he doesn't even have the benefit of the support system that normally accompanies a prisoner when he gets back on the street in the form of a parole officer and services from the parole department because he is an innocent man, and in setting him free he has been cut loose from the normal sources of support that he needs to get on with reconstructing his life.

I think, Mr. Speaker, the main point that I want to make here is a very basic concept in our justice system and that is that justice delayed is justice denied, and it seems to me, Mr. Speaker, that this government can no longer delay in addressing the desperate miscarriage of justice that has been allowed to happen to Donald Marshall Jr., because the longer that that is delayed the less likely that this man can get on with trying to reconstruct his life.

I think, Mr. Speaker, for me, one of the greatest injustices is that we find ourselves here in the Legislature yet again dragging this matter before the public, and every time we are forced to address it because this government has left us with no alternative, and Donald Marshall Jr. has no other alternatives available to him, then we add yet another wound and another blight to the record of this government and to the performance of the justice system of this province.

I think it is very important, Mr. Speaker, that we recognize that the justice system is not perfect, that it is human, that it is fallible and all people can understand that errors can be made. People do not expect the justice system to be perfect but what they do expect, Mr. Speaker, is that when the justice system falters as it so clearly has done in the instance of Donald Marshall Jr., then the government will face up to that fact, will take its responsibility to compensate the victim of it, and will get on with ensuring, through a public inquiry, that no such repetition will occur in the future because we failed to understand how things went so very much astray in this instance.

Mr. Speaker, I know that all members of this House are aware that I was very, very unhappy not to enter this third session for me since my election to this Assembly without the benefit of a seatmate in the person of Robert Levy, who ran in Kings South in the recent by-election.

I want to conclude, Mr. Speaker, by making brief reference to a statement made by Bob Levy in a public address the other evening and I would like to table that reference in which Mr. Levy has said, "Every day that goes by without compensation for Donald Marshall Jr. is a fresh, and unpardonable wound to justice. I say with respect to the Premier, and to the Attorney General that if Nova Scotia shall survive a thousand years this monumental callousness shall be its least impressive hour. When you withhold compensation after all this time you cheapen any but the most perverse concept of elementary human decency. When you deny him access to his file, and do so citing the Freedom of Information Act the travesty is complete, and when you implausibly play the game of federal-provincial buck passing, the traditional last refuge of scoundrels, you are beneath contempt. That this can happen, that you still will not act is almost beyond the capacity to forgive. In the name of what may be said to be left of the concept of justice in this province, admit your error, stop your stalling, and compensate this man fully, and immediately."

I conclude my comments, Mr. Speaker, by associating myself with those words and adding once again my plea that this government admit its error, stop its stalling, and get on with full, and appropriate, and adequate compensation to Donald Marshall Jr.

Thank you, Mr. Speaker.

Accuses province of 'stonewalling'

MacGuigan shocked at treatment of Marshall

By Bill Power

Sackville Bureau

Federal Justice Minister Mark MacGuigan made a personal contribution to the Donald Marshall fund Thursday and said he was shocked with the way the province has handled the case. He condemned the Buchanan government for persistent stonewalling regarding the matter of compensation for Marshall, who spent 11 years in prison for a crime he did not commit, and he urged a small group of Sackville party faithful to keep up the pressure until justice is done.

"My contribution to the Marshall fund is a small way to express my personal concern with the situation. In the meantime, the federal government will keep pressuring the province to take ac-

tion and see that justice comes to Donald Marshall," he told an informal gathering of the Sackville Liberal Association.

In Nova Scotia for a provincial Liberal party convention this weekend, the Justice minister suggested the provincial government's stand on the Marshall case is out of line with the type of judicial system desired, and required, by most Canadians.

In the past year, he said, the Trudeau government has examined the effectiveness and efficiency of the Canadian judicial system from the point of view of the people. It was designed to serve.

"We are doing the things people asked for," he said.

Amendments to divorce legislation will not make the process easier, but will

protect the rights of the individuals involved — especially the children, he said.

To meet concerns of Canadians, he said, modifications are being introduced to legislation affecting impaired driving convictions, pornography, compensation for victims of crimes, and sentencing of violent criminals.

Changes to the Youth Offenders Act, due July 1, will make for a more humane judicial system, by raising the juvenile age from 16 to 18, and by increasing the emphasis on rehabilitation of non-violent offenders in this category, he said.

He added the federal government has made a "fair offer" to the provinces to cover the cost of increasing the capacity of institutions designed for juvenile offenders.

The honourable member for Halifax Chebucto.

RESOLUTION NO. 35

MS. ALEXA MCDONOUGH: Mr. Speaker, I hereby give notice that on a future day I shall move adoption of the following resolution:

Whereas justice delayed is justice denied and each passing day prolongs the agony and uncertainty of Donald Marshall, Junior's economic circumstances, not to mention his social and emotional situation; and

Whereas Donald Marshall, Junior continues to be a captive to the public concern about him which condemns him to constant public exposure, making it extremely difficult for him to get on with reconstructing his life; and

Whereas the Premier has now stated that this government has been actively considering all aspects of the Donald Marshall, Junior case and is preparing to make a statement on the matter next week;

Therefore be it resolved that this government be urged to bring this statement forward with a clear proposal for action and compensation to redress the grave injustices to Donald Marshall, Junior and not just more words to further prolong the delay.

MR. SPEAKER: The notice is tabled.

MacGuigan backs Marshall's claims

By BILL POWER and
The Canadian Press

The Nova Scotia government, already under pressure for its handling of the Donald Marshall case, was slammed again Friday — this time by Justice Minister Mark MacGuigan.

MacGuigan told law students at Dalhousie University the public must force Premier John Buchanan to compensate Marshall for the 11 years he spent in prison for a murder he did not commit.

"We are all going to have to bring pressure on the Nova Scotia government," he said. "We owe something to Donald Marshall; there is an obligation there."

Protesting his innocence, a 17-year-old Marshall was sent to prison

for the 1971 murder of his friend, Sandy Seale. After Marshall's acquittal last year, Roy Newman Ebsary, 72, of Sydney, N.S., was charged and convicted of manslaughter.

The question of compensation has been raised in the House of Commons and letters to the editor in Maritime newspapers have demanded compensation for Marshall.

Opposition members raised the compensation issue in the legislature this week — its first week of sittings in the new session — and a committee of Nova Scotians set up a trust account to raise money for Marshall. The money will be used to lobby for compensation and a public inquiry into Marshall's conviction.

See MacGUGAN page 2



Mark MacGulgan

MacGuigan backs

(Continued from page one)

The Union of Nova Scotia Indians has also been championing the cause of Marshall, son of the chief of the Membertou Indian reserve in Sydney.

MacGuigan said he has been applying behind-the-scenes pressure on the Buchanan government for months and will continue to do so. He told a reporter he has also made a personal contribution to the Donald Marshall fund.

But MacGuigan made no mention of federal assistance for Marshall, 30, who owes more than \$30,000 in legal fees and is unemployed. Ottawa has insisted the case is a provincial responsibility even though Marshall spent years in a federal prison.

MacGuigan said he was encouraged this week when Premier Buchanan announced he will make a statement on the matter next week.

Up to now, the Progressive Conservative government has said it can do nothing until an appeal by Ebsary, now crippled and unable to take care of himself, is heard.

MacGuigan said the argument doesn't stand up.

"Compensation doesn't need to await the completion of the Ebsary appeal," he said. "The judicial inquiry cannot go ahead but let's concentrate on the issue of compensation and get a response from the Nova Scotia government."

Meanwhile, MacGuigan told students at Charles P. Allen High School in Bedford that youth offenders should not carry criminal records for the rest of their lives because of minor convictions.

He said he would like to see the Criminal Code amended so youths convicted of minor offenses, drug-related convictions for example, could have their record cleared completely after two-years good behavior.

"There will come a day when these offenders may be applying for a job and they will be asked if they have a criminal record. Even if these people have received a pardon they cannot legally deny their previous conviction," he said.

He said he prefers a system that allows youths who have minor skirmishes with the law to put the problems of growing up behind them and start fresh.

However, he offered little encouragement to those students with questions about the possible decriminalization of drug use, cannabis in particular.

"Canada's judicial system is not unmindful of the social circumstances in which offences of this type occur, but with public opinion the way it is I cannot foresee any major changes to existing legislation," he said.

The justice minister spent most of his time with about 200 students explaining ramifications of amendments to the Criminal Code affecting drunk-driving convictions.

"Drinking and driving has been involved in over 2,000 deaths and over 10,000 serious injuries on Canadian highways in the past year. It is a serious social problem and the Canadian people have demanded that the federal government take action," he said.

Much of the new legislation is aimed at so-called problem drinkers, the people who are addicts and do not realize it, and people not in this category should make sure they do not find themselves in an unfortunate situation.

MAR 3 1984

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STATEMENTS BY MINISTERS

MR. SPEAKER: The honourable Premier.

HON. JOHN M. BUCHANAN, Q.C. (The Premier): Mr. Speaker, I said in the House last Wednesday that I would make a statement on behalf of the government this week regarding Donald Marshall. Throughout this matter, Mr. Speaker, the Government of Nova Scotia has been careful not to say or do anything, even inadvertently, that would either prejudice or appear to prejudice the status of the Ebsary criminal proceedings now before the courts.

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At the same time, the government has been considering the question of compensation and legal costs for Donald Marshall, while recognizing that this matter requires the greatest care to avoid any trespass upon those criminal proceedings. For some time, the government has examined a number of procedures to determine the most appropriate way of dealing with this case. These procedures included discussions with the Government of Canada regarding its responsibility in the Marshall case, which is unprecedented in Canada.

Tonight, Mr. Speaker, I am announcing that Mr. Justice Alex Campbell, of the Supreme Court of Prince Edward Island, has agreed to accept a commission to carry out an assessment of compensation and legal costs for Mr. Marshall and advise the government of his findings. Mr. Justice Campbell's mandate will provide him with complete authority to carry out this assessment as he sees fit.

Mr. Justice Campbell is well-known in Atlantic Canada and nationally, both as a distinguished jurist and a former Premier of Prince Edward Island. (Applause)

MR. SPEAKER: The honourable Leader of the Opposition.

MR. A.M. CAMERON: Mr. Speaker, I, first of all, would like to say to the Premier congratulations for taking this positive step forward and I think that, perhaps, the debates here in the House, I hope, have not been detrimental in seeing that this has been brought forward. As a matter of fact, I think it has probably been a positive thing to help bring it forward.

I want to say that I believe it's a step in the right direction and one that I hope the compensation, when looked at by Justice Campbell, will be one that will have historic precedence, obviously, in this country and on this particular issue. I do hope that it's a speedy decision that comes forward, and I would hope that government would encourage that side of it to happen because I think it's important that he does not suffer too much longer the inconvenience that he has suffered over the past 11 years that he was in prison. Again, I would compliment the government and thank them for taking some of the direction of the Opposition. (Applause)

MR. SPEAKER: Anything further under Statements by Ministers?

Ottawa to give Marshall a job

By DON MacDONALD
Ottawa Correspondent

Thanks to the personal intervention of Indian Affairs Minister John Munro, Donald Marshall Jr. will get a job while the federal and provincial governments try to resolve the issue of compensation for the 11 years the young Micmac Indian spent falsely imprisoned.

Mr. Munro met quietly Saturday in his Halifax hotel room with Mr. Marshall in the company of Noel Doucette, president of the

Union of Nova Scotian Indians (UNSI). **MAR 5 1984**

The federal minister said later in an interview that his department will provide funds to permit the union to hire Mr. Marshall as a counsellor to young Indians.

"While we try to sort it out, the union has a role for him (Mr. Marshall) through this period," the minister said. "So that is what we are going to do as we attempt to solve the problem."

See OTTAWA page 2



Donald Marshall Jr.

Chronicle Herald

March 5, 1984

Ottawa to give

(Continued from page one)

Mr. Munro recalled that his department had been indirectly involved before in hiring Mr. Marshall for a nine-month period.

The minister said he thinks the young Micmac understands that his (Mr. Munro's) hands were tied with respect "to making any payment even if the political will was there."

"But we were able to work out instead employment opportunities with Noel Doucette," he said.

Mr. Munro's personal intervention comes as the latest development in a controversy that occupied the legislature session last week and public attention for months.

After spending 11 years in prison, Mr. Marshall was acquitted of the 1971 murder of his friend, Sandy Seale. Roy Newman Ebsary was charged and convicted of manslaughter and is currently appealing that conviction.

While Ottawa will provide financial support to give Mr. Marshall a job, Mr. Munro said pressure will be re-applied on the provincial government to compensate him.

The Indian affairs minister agreed with remarks made late last

weekend by federal Justice Minister Mark McGulgan. Addressing Dalhousie law students, Mr. MacGulgan said the public must force Premier John Buchanan to compensate Mr. Marshall for the 11 years he spent in prison for a crime he did not commit. **MAR 5 1984**

Prior to Mr. Munro's weekend intervention, Mr. Marshall was jobless and saddled with more than \$80,000 in legal fees.

Mr. Doucette said Saturday that the union will hire Mr. Marshall to work with young Indians in the field of drug and alcohol education.

"Our hopes have already been to have Junior (Mr. Marshall) because of the unfortunate experience that he has gone through... he would be a very good leader for the youth on all the reserves in Nova Scotia."

Mr. Marshall can very well articulate to youth what it is like to be in prison, that it is "not a bed of roses to be in Dorchester or any prison," Mr. Doucette said.

The UNSI president said he and Mr. Marshall will meet today in Ottawa with the federal minister.

Marshall inquiry launched

DM 2

MAR 6 1984

By ALAN JEFFERS
and ESTELLE SMALL

The Nova Scotia government has appointed a one-man commission to assess compensation and legal costs for Donald Marshall Jr., the Micmac Indian who spent 11 years in prison after being wrongfully convicted of murder.

Premier John Buchanan told the legislature Monday the inquiry, to be carried out by Prince Edward Island Supreme Court Justice Alex Campbell, will consider only the question of compensation and legal costs for Mr. Marshall and not the events surrounding his wrongful conviction of the murder of Sandy Seale in 1971.

Outside the Legislature, Mr. Buchanan said the inquiry will not deal with the events in 1971 so as not to interfere with the May 18 appeal of Roy Ebsary, who was found guilty of manslaughter in connection with the death of Mr. Seale.

Mr. Justice Campbell will begin the inquiry immediately, but no deadline has been set for him to turn over his report to government.

Nor will the government be bound by the findings of that report, the premier said. "We'll have to wait and see what his findings are ... In a commission of this type, it would be not only premature but ... wrong for me

to say what we will do with whatever he comes up with."

Asked whether Mr. Justice Campbell's report would be made public, the premier said that also will depend on what is in the report.

Mr. Buchanan said the former Prince Edward Island premier will have "complete co-operation from the attorney-general's department and anyone else that he deems necessary to carry out a proper assessment."

The attorney-general department's current file on Mr. Marshall, to which his lawyer Felix Cacchione has been denied access under the Freedom of Information Act, could be turned over if Mr. Justice Campbell so desires.

"That's entirely a matter for the judge, not for us."

Both Liberal leader Sandy Cameron and NDP leader Alexa McDonough welcomed the news that the issue of compensation for Mr. Marshall would be addressed at last.

Mr. Cameron said he hopes the compensation issue will be settled quickly and stressed the need for a public inquiry into events surrounding Mr. Marshall's wrongful conviction.

Ms. McDonough was much firmer in her demand for an inquiry into the

See MARSHALL page 2

Marshall inquiry launched by N.S.

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(Continued from page one)

events surrounding the death of Mr. Seale in Sydney's Wentworth Park. "I would be very concerned if I thought that this move in the direction of compensation was in part designed to bury once and for all any cry for a public investigation."

She said she is "deeply relieved" the government has finally taken a "first step in the direction of dispensing justice" in the Marshall case.

Ms. McDonough called the government "callous" for not acting on the case earlier because nothing has happened with the Ebsary appeal, yet the government has initiated a inquiry into compensation.

"I think in the early stages they simply didn't care. I think in the later stage they probably began to worry a little but didn't think there would be a groundswell of public opinion."

Mr. Marshall was in Ottawa meeting with government officials Monday and could not be reached for comment, but his lawyer, Felix Cacchione, said the commission may not be any "real step forward."

"Justice delayed is justice denied," Mr. Cacchione said in an inter-

view after Premier Buchanan made the announcement.

"We're glad to see the government has taken a step," he said. But Mr. Justice Campbell, head of the inquiry, is not left with any time period to work with and no clear mandate, he said.

"We'll have to see whether Mr. Justice Campbell is given access to the same files we were denied," he said.

Meanwhile, Mr. Justice Campbell said in an interview from Summerside, P.E.I., that he is awaiting the terms of reference on his inquiry from the Nova Scotia government.

Mr. Justice Campbell said his initial work in the next few months will include legal research, fact-finding, and a "familiarization with the past, present and future circumstances of Donald Marshall."

Mr. Justice Campbell said he spoke with Mr. Cacchione on Monday evening and hopes to be meeting with him and Mr. Marshall sometime this month.

He expects his report will b

mitted to the province by this September.

"There's not really very much I can say at this point ... I don't have my feet wet yet," he said. "I can begin by confirming I have accepted this challenging assignment."

Mr. Marshall, of Memberton, is in Ottawa this week. The department of Indian affairs has given him a job as a counsellor in drug and alcohol education with young Indians, throughout the Union of Nova Scotia Indians.

The honourable member for Cape Breton Nova.

RESOLUTION NO. 72

MR. PAUL MACEWAN: Mr. Speaker, I hereby give notice that on a future day I shall move the adoption of the following resolution:

Whereas delay is the deadliest form of denial; and

Whereas this government has announced the appointment of Mr. Justice Alex Campbell, former Premier of Prince Edward Island, as a one-man Commission of Inquiry into the Donald Marshall case, with no commitment whatever that Mr. Campbell's recommendations will be followed; and

Whereas we all know that Royal Commissions, select committees and commissioners of inquiry are one of the favourite dodges of this government, to use delaying tactics to procrastinate and to put off action on urgent problems; and

Whereas it will only prolong the agony of Donald Marshall to have offices opened, staff appointed, stationery printed and so forth, so that Mr. Campbell can commence time-consuming study so that in the end an impressive bound volume can be filed with this government, to then gather dust on the shelf;

Resolved that it is no solution for Donald Marshall, to do as this government has done and that the appointment of Mr. Justice Campbell is simply a delaying tactic to put off the granting of compensation to Donald Marshall.

MR. SPEAKER: The notice is tabled.

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RESOLUTION NO. 73

MS. ALEXA MCDONOUGH: Mr. Speaker, I hereby give notice that on a future day I shall move the adoption of the following resolution:

Whereas yesterday's appointment of an inquiry into the question of compensation for Donald Marshall, Jr. is long overdue; and

Whereas it demonstrates that this government's stated reason for not acting sooner was merely a hollow excuse and a delaying tactic as yet unexplained by the Premier; and

Whereas the terms of reference announced for the inquiry are far too narrow; and

Whereas the very serious issues raised by Mr. Marshall's wrongful conviction and imprisonment will not be addressed by the announced inquiry; and

Whereas public opinion will not be satisfied until we can all be assured that such a miscarriage of justice will not happen again;

Therefore be it resolved that the Premier act immediately, either to broaden the terms of reference of the Campbell Inquiry to include an investigation into Donald Marshall, Jr.'s wrongful conviction and imprisonment, or to appoint a separate public inquiry with the express mandate of determining what went wrong and what steps can be taken to ensure it never happens again in Nova Scotia.

MR. SPEAKER: The notice is tabled.

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Marshall

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ADJOURNMENT

MOTION UNDER RULE 5(5)

MR. SPEAKER: The honourable member for Cape Breton Nova.

*SYDNEY MURDER CASE [DONALD MARSHALL]:
GOV'T. RESPONSE - INADEQUATE*

MR. PAUL MACEWAN: Thank you, Mr. Speaker. Earlier this afternoon, Mr. Speaker, I read into the record Resolution No. 72 which states that "delay is the deadliest form of denial;", and states further that "this government has announced the appointment of Mr. Justice Alex Campbell, former Premier of Prince Edward Island, as a one-man Commission of Inquiry into the Donald Marshall case, with no commitment whatever that Mr. Campbell's recommendations will be followed;", and states further that "we all know that Royal Commissions, select committees, and commissioners of inquiry are one of the favourite dodges of this government," or for that matter, Mr. Speaker, of any government, "to use delaying tactics to procrastinate and to put off action on urgent problems:".

And further, "Whereas it will only prolong the agony of Donald Marshall to have offices opened, staff appointed, stationery printed, etc. so that Mr. Campbell can commence time consuming study so that in the end an impressive bound volume can be filed with this government to then gather dust", or whatever use the government sees fit to make of that volume.

I stated at that time that it was no solution at all for Donald Marshall to do as the government has done, and that the appointment of Mr. Justice Alex Campbell is a delaying tactic to put off the granting of compensation to Mr. Marshall.

I read carefully the press accounts today, the front page headline news stories about this matter. I read in the Mail-Star at Page 2, today, Tuesday, March 6, 1984, the following, "Nor will the government be bound by the findings of that report," that is the report of Mr. Justice Alex Campbell. The Premier stated, the government will not be bound by the findings of the report, "We'll have to wait and see what his findings are . . . In a commission of this type, it would be not only premature but . . . wrong for me to say that we will do with whatever he comes up with. Asked whether Mr. Justice Campbell's report would be made public, the Premier said that also will depend on what is in the report."

Now you see, Mr. Speaker, what they are up to. I would like to make a further reference to this newspaper article before I table the paper. It quotes Mr. Marshall's lawyer and states that the lawyer stated that he did not feel that perhaps any "real step forward," had been taken and that "Justice delayed is justice denied," and so forth. That is today's Mail-Star.

Now, Mr. Speaker, you will have to forgive me if I have a shred of doubt and perhaps even of cynicism as to what has happened here in the last 24 hours. We all know that when this session of the House began the government's position, the Attorney General's position, was that they would not take any action on this matter until other cases now before the courts, not dealing with Donald Marshall but until those other cases had been dispensed with, they would not take any action at all.

We know too, that there was a united tri-Party effort from the combined Opposition to flush the government out, to make them face the issue square on instead of procrastinating and delaying and then, finally, to take the heat off the government in the wake of a tremendous tidal wave, I believe, of public opinion right across Canada - we had a United Church Minister in Montreal setting up a foundation to collect money, we had letters to the editor in the Globe and Mail and in western Canadian newspapers, television and radio commentaries. There was a tremendous tidal wave of public opinion against the procrastination and the delays of this government, and the government met, down in the Cabinet Room no doubt, and they decided that they had to do something to take the heat off the government. What did they do? They said, we'll appoint a commission to study the matter. The classic dodge of this government. The only thing that was lacking was that they didn't set up a full-fledged select committee to study the matter. This time they chose just the one man commission of inquiry.

Mr. Speaker, I have no objections to the gentleman who has been chosen. I know Mr. Alex Campbell personally. I have every confidence in him as an individual. He is a man of ability and a man of integrity who, in my view, is one of the best Premiers that the Province of Prince Edward Island ever had. But that notwithstanding, the fact is that his terms of reference are such as to be meaningless. The man can investigate, the man can make the finest recommendations that he wants, but the government is not bound to follow them. We have no idea how long this exercise may take. We know however, that with past Royal Commissions of Inquiry such as the commission of Mr. Justice McCleave to explore uranium mining in this province, that the man, upon receiving his commission, had to open an office, had to appoint staff, had to have stationery printed, had to have all the accoutrements necessary to get such an exercise underway in the first place.

Then when it began, there were extensive hearings, it went on and on and on. I don't know what the final outcome of that inquiry was, but if that is any idea of how these types of inquiries go we can well imagine that this will not result even in a recommendation being made to the government in short order. Rather, it will take a great deal of time. We don't

know whether the results of that commission of inquiry will be made available to members of this House. The Premier has stated that they very well may not be. Depending on whether he likes what they have to say or not.

So, sir, I say that the people, and we as members of the Legislature, have been taken in by this government once again, by some sleight of hand, by some smooth-talking deception designed not to address the problem, not to grant justice to Donald Marshall, but rather to take the heat off the government, to get them off the hook. We are not going to let them off the hook, Mr. Speaker. We are not going to let them off the hook because I am sure that by this dodge that they have taken, they will in no way escape public opinion so long as we do not let the people believe that something meaningful is going to be done.

Now, sir, I have very little time to speak on this matter. Ten minutes I believe is the limit and then I invite other honourable members to participate in the debate. But I want to say sir, that my position on this matter is as follows, and this is not a new invention for today. It is something I have said consistently long before this session of the House began, as anyone who follows me closely will know. I have stated that first of all, in view of the miscarriage of justice that has taken place, the government has a moral duty, in my view, to make an immediate interim compensation payment to Mr. Donald Marshall, Junior. To address his problem on the same urgent and immediate basis that they addressed the employment problems of Mr. James "Buddy" McEachern or, for that matter, to address it on the same urgent and immediate basis that the federal government addressed Mr. Marshall's employment problems, which this government could have done.

I asked them to long before whatever took place this past weekend, but they did not respond. So, another level of government moved in to act where they had not acted. But I still say that the only proper and just course of action for this government to take is not to appoint a commission of inquiry to sit on the matter, but rather to grant an immediate interim compensation payment sufficient to pay Mr. Marshall's legal bills and sufficient to make a reasonable payment to re-establish him in life. I would suggest up to \$100,000 as a ballpark figure for consideration in that matter. When that has been done, then would be the appropriate time to appoint Mr. Justice Alex Campbell, or whomever they may wish, as a commission of inquiry to look into all aspects of this matter, including not only a final compensation payment to Mr. Marshall for the 11 years that he lost off his life, but such other aspects as the commissioner of inquiry may deem just, including the question of how this whole thing happened in the first place, and all such related matters.

I think, sir, that, in a nutshell, the difference between what the government is proposing to do and what I'm proposing to do is the concept of immediate action. Immediate action rather than procrastination. It's true that what they have done may have a certain effect, it may get them off the hook to a certain extent because they have given the appearance of doing something but, in actuality, sir, I suggest that they have done very little. In fact, for Donald Marshall himself, I suggest that tonight will not be much different from last night or the night before, that the Premier's statement really has made no practical difference in his day to day life, which remains as it has before.

Now, there are many other aspects of this case that I would like to deal with, Mr. Speaker, because I'm not satisfied with its general handling. I'm not satisfied with the failure of almost anyone else other than myself, that has addressed this, to look at the problem of the family of the late Sandy Seale, who are people that I am determined shall not be overlooked in the final resolution of this whole miscarriage of justice. However, sir, because I believe I have 10 minutes on the clock, and I believe those 10 minutes are now pretty well coming to an end, and because I hope and trust that other honourable members

may wish to participate in this debate, I will at this point take my seat and invite other honourable members to comment as they see fit on this matter.

In summary, sir, I say that I have no apologies for having stated today to the media that I was not satisfied with the government's action on this matter and I think that if other honourable members look closely at what the government has done that they, too, ought not to be satisfied with the action that the government has taken in appointing this commission of inquiry, whose terms of reference are not binding on the government and whose findings may not, for that matter, ever be published or even be made known to the members of the Legislature, let alone to those who have suffered as the result of a long-standing miscarriage of justice.

MR. SPEAKER: The honourable member for Halifax Chebucto.

MS. ALEXA MCDONOUGH: Well, Mr. Speaker, I rise to participate in this debate with very mixed feelings because it saddens me and shocks me — and I guess I would have to say even more strongly, disgusts me — to realize that we find ourselves still, or perhaps more accurately, find ourselves yet again pleading with the government to take some concrete action, as the previous member has also stated, rather than to engage in measures to further prolong the delay.

And, Mr. Speaker, on Friday of last week, I introduced a resolution in this House, following the honourable Premier's indication that he intended to make a statement this week, that hopefully would be substantive in nature on the Donald Marshall, Junior case, and I introduced that resolution, Mr. Speaker, because as much as I hoped this would not be the case, I very much feared that the effect of any statement issued by the Premier this week would be to further prolong the delay.

I will just repeat, Mr. Speaker, that resolution, without its preamble, that I introduced in the House on Friday, namely, "... that this government be urged to bring this statement forward with a clear proposal for action and compensation to redress the grave injustices to Donald Marshall, Junior and not just more words to further prolong the delay."

And it is with very great regret, Mr. Speaker, that I find we are left, in this Chamber, to still plead with the government to take some action that will have significant impact on the life of Donald Marshall, Junior and not just represent yet another means of delaying concrete action.

You know, Mr. Speaker, of all of the statements made in connection with that formal statement introduced last night by the Premier, in setting up this commission, the one that I find to be the most disgusting and the most difficult to justify and, frankly, the most crass, was the Premier's statement to the press last night that one of the reasons why he had finally resorted to taking some action was that he felt it was necessary to remove it from the political arena.

I'm sure every member on the Opposition side would be unanimous in their belief that Donald Marshall, Junior and his family ought to have been spared the spectacle that went on in this Chamber last week, necessitated by the complete inaction and continuing action of the government to take the steps that have been urged upon them, not only by these members of the Legislature, but by significant numbers of the public.

The only reason why this issue was forced into the political arena in the opening week of this Legislature's session was because the government refused to do what they clearly

could have done before the House ever was called into session. And nothing could have made that more clear than what was done last night. After having stated again and again and again that it was impossible to address the matter of compensation until the Ebsary appeal had been settled, what did we see last night? The government prepared finally to admit, and I think in having set up the commission last night, they have in fact admitted that it was complete nonsense, that it was a red herring, that it was irrelevant, and that it was simply a shabby excuse for not having taken earlier action on the matter of compensation.

So, Mr. Speaker, it is with considerable regret that I find yet again, we're forced to address the Donald Marshall, Junior problem because it has not been redressed adequately by the measure introduced last night. It seems to me, Mr. Speaker, that the shabbiness and the crassness of what this government has done with respect to Donald Marshall, Junior was matched by the similar shabbiness and crassness displayed by ministers of the federal Liberal Government over the past weekend.

I'm sure there are those that will say, well, at least the Honourable Mr. Munro took some concrete step in making available to Donald Marshall, Junior a job that he so desperately needs. And I think that all of us would recognize the importance of that concrete gesture. But surely, Mr. Speaker, surely to have done it in the political arena in the way that it was done, to have done it in the context of the Liberal Convention and the scrambling around the up-coming Liberal leadership race, and to have done it basically in that same fishbowl, in that same public arena that has exposed the past and the present and held Donald Marshall, Junior's future very much in abeyance over these many, many months since his acquittal was nothing short of political opportunism. I regret the fact that the federal Liberal Government saw fit to move into a vacuum that was clearly created because of the provincial government's continuing refusal to take its responsibility.

I am prepared to acknowledge that perhaps some of that added pressure that they brought to bear may have had some effect on getting the Premier to take some step, but I think it has to be recognized that the Premier had, in fact, recognized that he was going to be forced to make some kind of gesture well before this past weekend indicated that he would be making a statement in this House.

I'm not sure that one can even say that the federal Liberal antics and actions over the weekend in that regard, really had very much effect in influencing this government to face up to its responsibilities. Because the fact remains, Mr. Speaker, that this government has not yet faced up to its responsibilities.

I think in conclusion, Mr. Speaker, the point that I want to make is that until this government indeed ensures adequate compensation to Donald Marshall, Junior, not just indicates its intention to look at the possibility of compensating, but rather ensures the appropriate and adequate compensation for the agony and considerable hardship that this young man has endured, that it cannot possibly feel that it has taken its responsibility. Beyond that, Mr. Speaker, I think that there is a wide-spread cry on the part of the public, that is not going to dissipate just because of this partial measure introduced by the government, for a full scale public investigation into how the wrongful conviction and imprisonment of Donald Marshall, Junior took place in the first instance so that the public's shaken confidence in the judiciary in this province and in the judicial system can be restored, as is so necessary in a democratic society. Thank you, Mr. Speaker.

MR. SPEAKER: The honourable Leader of the Opposition.

MR. A.M. CAMERON: Mr. Speaker, thank you very much. I enjoy rising in debate on this particular resolution brought forward by the honourable member for Cape Breton

Nova. I am somewhat surprised that the honourable member for Halifax Chebucto seems to want to find any other possible reason to blame things on, and talk about things. I would suggest that perhaps that honourable member should talk with some members, the honourable member for Cumberland Centre, for a fact, to determine just what happens in relation to efforts being made by people. You know sometimes you should check the facts and check to know who is voting on what before you jump. You look at how deep the pool is before you jump into it, because sometimes they are very deep. Sometimes they are shallow and if they are too shallow you can do a lot of damage, as well as jumping into a deep pool even if you can't swim.

Mr. Speaker, I want to speak on this resolution because I believe that we are dealing with a case of a government doing its utmost to shirk its responsibility. I just can't imagine any government going to such great lengths to shirk its responsibility. You know, the Premier of this province says one day, there is nothing we can do about it. Then a little bit of pressure comes on. We introduced a resolution. The honourable member for Halifax Chebucto introduced a resolution. The honourable member for Cape Breton Nova introduced a resolution, and all of a sudden the Premier starts to clamber around and see what is going on. He then says so in a great effort to try and prevent any kind of discussion on this subject where it was dealing with the rights of an individual, a concern that I believe not only members here in the Opposition have, I suspect there are a good many members on the other side of the House or to my extreme right, that have concerns about this but have been forced not to say anything.

So he decided that he would try and keep it all quiet and keep the Opposition Parties from making any noise about this by making a big suggestion that he is going to make an announcement next week, hoping and praying that would have prevented us in the Liberal Party from calling our resolution that we put forward, but that did not work. We believe and we are concerned about what this government is doing and little wonder, when we see what happened last evening, when the Premier came in here and made his announcement about a study or a commission that is going to look into it under Justice Campbell.

Well on the surface, Mr. Speaker, I responded, as did other members of this Legislature in a positive way. At least it is something going in the right direction but then, when you look at what is said by the Premier in this House and then you go outside, and I refer an article that was referred to by a previous speaker, the honourable member for Cape Breton Nova. When the Premier says, when asked whether Mr. Justice Campbell's report would be made public, the Premier said that also would "depend on what is in the report." I just am appalled, I can hardly believe that he would expect, the Premier would expect the people of this province to believe for one moment that he is sincere in what he is doing. I sure hope that Justice Campbell is aware of who he is dealing with when he brings this forward.

Mr. Speaker, the other thing that bothers me is that they are not obligated to what happens. There is no time limit on when this thing will take place, and I believe, as the honourable member for Halifax Chebucto and others have brought out, that there has been enough humiliation already. I know that over a month prior to the sitting of this Legislature I mentioned in a radio interview that there is some need to do precisely what the Premier did last night, with a little bit more to it than make a statement and then qualify it afterwards, but to put it into the hands of someone to make a decision on it so that it would not become a public issue. I firmly believe that we in Opposition have an obligation to bring it before the public if the government cannot handle it themselves.

So therefore, by their neglect they have forced Donald Marshall to some degree into some more humiliation, to be dragged into public debate here in this Legislature when, in fact, that may have, if it had gone a step or two further, prevented this from happening. I said in debate on my resolution that I believe that there should be compensation made and made quickly and generously. I think that this kind of a tactic, put forward by the government is not going to solve that problem. It certainly is not going to necessarily be quickly, because there are no limits on what's happening. Even if it is, just supposing Justice Campbell decided to act tomorrow in making his decision and he shipped it over to the Premier of this province, what would happen? He would probably sit it down there on his desk, or wherever he might keep those kind of reports, and not deal with it.

I think that credit should be given to members of the Opposition, the honourable member for Cumberland Centre, the honourable member for Cape Breton Nova and the honourable member for Halifax Chebucto for continuing to put pressure on the government, because without that pressure on government, nothing would have happened with it and we all know that. We all know that the pressure has continued to be put on.

The honourable member for Cumberland Centre has spoken on a number of occasions in interviews, on radio, and in newspapers, and in this very Legislature, to try and bring it forward. We are convinced, without any doubt, that without that kind of pressure, then I am sure that little or no action would be taken by this present administration.

Now, Mr. Speaker, in my final few comments on this particular resolution brought forward, I think that I'm prepared to say here in the House this evening that myself and members of my caucus are not going to be hoodwinked and pushed into the background by a statement and by a news release that's been read in this Legislature by the Premier of this province which, obviously and quite apparently, means virtually nothing in relation to solving the problem that Mr. Marshall has in this particular case. He came in with an announcement hoping that we would bow down to the whims of the Premier. Even if he had gone one step further, or held back one step by not making this release in the newspaper, very little is said in this particular announcement. I would like to read one small paragraph.

"Mr. Justice Campbell's mandate will provide him with complete authority to carry out this assignment as he sees fit."

Then, Mr. Speaker, relate that statement, that paragraph, and then you judge whether you think the Premier of this province is serious. His credibility is completely gone when you read that paragraph and then pick up the newspaper the very next day and read statements like this that I quoted earlier. May I read it again. "Asked whether Mr. Justice Campbell's report would be made public, the Premier said that also will depend on what is in the report."

Now, how can anybody seriously take statements made in this House by the Premier? How could we in Opposition for one moment expect to sit down and say what a great government this is, what great things they're doing? Not only in this case, Mr. Speaker, this carries through in so many other statements made by the Premier of this province but I think that this is a true example of total, and the honourable member for Dartmouth North was making the point about misleading statements and credibility. I hope that honourable member takes the time to read the newspaper and read the press release, and I would want to call his attention specifically to the second-last paragraph of the news release and the second paragraph on the second page of the Halifax Mail-Star under the, continued from page one, "To begin at once, Marshall inquiry launched."

Yes, Mr. Speaker, it is to begin at once. But by the looks of things it may never end. Even if Justice Campbell brings forward a report, there is no guarantee, there is no assurance that anything will happen to it other than perhaps set up another study, or perhaps he might even do a task force on it, or perhaps he might have a pilot project like he has done with so many of his other promises to the people of this province.

Mr. Speaker, if the Premier of this province and this government thinks for one moment that I, as Leader of the Opposition, will simply lie down because he makes statements like that, he can think for a long time because there is not only justice to be done here but it almost also has to be carried out in a way in which there is some sincerity about what is going on. We can't continue to accept anything that is coming out of this government if we are prepared to sit back and live with this. There is an injustice carried out in this case. There is a man that has been acquitted of a charge of murder after spending ten years in prison. Eleven years, I stand corrected. Eleven years in prison in this province. He has been acquitted by the Appeal Division of the Supreme Court of Nova Scotia and yet the Premier says one day there's nothing he can do about it and with a little bit of pressure, with a little bit of effort on behalf of the Opposition Parties, we see him make a statement. I'll be making one next week. Then he makes a statement that means absolutely nothing.

I can assure you, Mr. Speaker, I guess my time is expired, but I can assure you unless there is more direct action taken by this government in relation to compensation and an inquiry into this case, then we are not going to lay down and die.

MR. SPEAKER: Order, please. The time allotted for the debate on the Adjournment motion has expired.

We stand adjourned until 3:00 o'clock tomorrow afternoon.

[The House rose at 6:32 p.m.]

Department worked quietly behind the scenes

Marshall rejected job offers

By Hugh Townsend
Provincial Reporter

The provincial government, during the last several weeks, had found a number of job opportunities for Donald Marshall Jr., but the offers were turned down. Social Services Minister Edmund Morris revealed Tuesday.

He said his department had worked quietly behind the scenes to find employment for the 30-year-old Abenac, who had spent 11 years in prison for a crime he did not commit.

"We didn't want to take advantage of Donald Marshall Jr. and make a public issue out of what we were trying to do for him," the minister said in an interview with this newspaper. "Our intention was to find him a job," without standing on a stage and taking a bow.

Mr. Morris said he was more than upset when Federal Indian Affairs Minister John Munro came to Halifax last weekend "and made one of the most self-serving statements I have ever seen a minister make" in what was "nothing but a grandstand by a potential candidate for the leadership of the Liberal party."

But "when I read reports such as 'thanks to the personal intervention of Indian Affairs Minister John Munro' in finding Donald Marshall Jr. a job, I am compelled to tell you the facts," said Mr. Morris.

He was referring to the weekend announcement by Mr. Munro that the federal government would provide funds to permit the Union of Nova Scotia Indians to hire Mr. Marshall as a counsellor to young Indians.

"As minister of social services I did try to help Donald Marshall Jr., but never tried to use him for

political gain. I never said a word about it.

"Our Sydney office tried to contact Donald Marshall months ago, and they learned he was working at the Shubenacadie reserve. So they referred it back to our Halifax office. The Halifax office followed it up and made contact with Mr. Marshall and offered to help in any way they could.

"He thanked us, but said he was employed as a plumber's helper on the reserve. In other words, he said he had a job. We said we would continue to be of assistance at any time if he didn't have a job."

The minister said that more recently — two weeks or more ago, when Mr. Marshall was unemployed — the department's Halifax office, at the minister's urging, contacted the City of Halifax's director of social planning, Harold Crowell, who said he could provide "an immediate employment opportunity for Donald Marshall on a cost-sharing program (between the provincial and municipal levels of government).

"Our head office man then called Donald Marshall and said they had a job for him — a domestic appliance repair job. That was a Wednesday and he was told he could start at 9 o'clock Friday morning.

"Donald Marshall said he would show up at 10 o'clock to talk about it with the Human Resources Development Association.

"I called at 10 o'clock and found out he wasn't there. We called and found him still in bed. He said he had decided not to take the employment. He said he was receiving unemployment insurance and that the difference between unemployment insurance and the job was not attractive, and that he had been encouraged a job would shortly open up for him in plumbing."

The minister said Labor and Manpower Minister David Nantes also attempted to help Mr. Marshall, telling him he was prepared to offer a program of additional training in his trade as a plumber. It would have extended over a six-month period at the Nova Scotia Institute of Technology in Halifax.



Donald Marshall Jr.

Vancouver Sun March 8, 1984 P. A9

NOVA SCOTIA MULLS LEGAL COSTS

YARMOUTH, N.S. (CP) — George Henley, senior adviser in the Nova Scotia cabinet, says the provincial government will probably pay some of the legal bills of Donald Marshall, a Micmac Indian convicted of a murder he did not commit.

Henley, a former cabinet minister, said Premier John Buchanan's Conservative government feels it owes Marshall something for the 11 years he spent in prison after his conviction

for a 1971 stabbing in Sydney, N.S.

He said the government may also provide compensation, something Marshall and supporters have sought from the provincial and federal governments.

Roy Newman Ebsary of Sydney was convicted last year of stabbing Sandy Seale, the crime for which Marshall was imprisoned and later acquitted. Ebsary now is appealing his sentence and conviction.

Globe & mail

** The gloves come off **
** over compensation **
** for Marshall **
BY PARKER BARSS DONHAM

BOULARDARIE, N. S.

THE BUCHANAN Government's appointment of former Prince Edward Island premier Alex Campbell to study the question of compensation for Donald Marshall has done little to soften criticism of the Government's handling of the case.

Mr. Marshall is the 29-year-old Micmac Indian who spent 11 years in prison for a murder he did not commit. After re-hearing the case in December, 1982, the Nova Scotia Supreme Court overturned Mr. Marshall's conviction. Another man, 72-year-old Roy Newman Ebsary, was subsequently convicted of manslaughter in the same case. He is appealing that verdict.

Until last week, Premier John Buchanan and Justice Minister Ronald Giffin had insisted that they would not consider compensating Mr. Marshall for his wrongful imprisonment, paying his legal bills or ordering an inquiry into allegations of official mishandling of the case until Mr. Ebsary exhausts his appeals.

On Monday, however, after a week of relentless hammering on the issue by opposition MLAs, Mr. Buchanan told the House of Assembly that Mr. Campbell, now a justice of the PEI Supreme Court, would examine the issue of compensation. Outside the House, Mr. Buchanan told reporters that the inquiry report would not necessarily be made public, nor would the Government be bound by it. The Premier also refused to commit the Government to an inquiry into the original police investigation, saying that decision would have to await Mr. Ebsary's appeal, which is set for May 18.

Judge Campbell said no deadline has been set for his report, but added that he hopes to complete it by September, 21 months after Mr. Marshall's re-trial.

The Government announcement met immediate criticism. The province's normally quiescent daily newspaper, the Halifax Chronicle-Herald, carried a column by its Legislature correspondent wondering why the Government had waited so long to act. Opposition parties called the gesture too little, too late. "For Donald Marshall, tonight will be no different than before the Premier made his announcement," Cape Breton Labor Party Leader Paul MacEwan told the Legislature.

He said the Government should offer Mr. Marshall about \$100,000 in immediate, interim compensation to pay his legal bills and get his life re-started, with the final compensation figure to await the inquiry report. Mr. MacEwan, New Democratic Party Leader Alexa McDonough and Liberal Leader Sandy Cameron all criticized the Government for not

instituting an inquiry into the events that led to Mr. Marshall's wrongful imprisonment.

Felix Cacchione, Mr. Marshall's lawyer, called Judge Campbell's appointment "just another delay . . . a way to get the pressure off the Government." He added that he hoped Judge Campbell would be given "complete access to the facts," a reference to Mr. Giffin's refusal, under the Nova Scotia Freedom of Information Act, to provide Mr. Cacchione with department files on the Marshall case.

Meanwhile, Government ministers reacted angrily to federal Justice Minister Mark MacGuigan's assertion that the public should press the Nova Scotia Government to assist Mr. Marshall, and to Indian Affairs Minister John Munro's statement that his department had found Mr. Marshall a job.

Provincial Social Services Minister Edmund Morris told reporters that his department had earlier offered Mr. Marshall a job repairing small appliances, but it had been turned down. Mr. Morris went on to say that when officials called Mr. Marshall with the job offer one morning at 10 a.m., he was still in bed.

"That's gross," Mr. Cacchione snapped, when asked about the minister's remark. "The gloves are off at this point." He said Mr. Morris's comment implied that his client was "just another lazy Indian who's asleep in the middle of the day and would rather collect unemployment insurance than take a job."

Mr. Cacchione said Mr. Marshall had rejected the provincial job offer because he had been hoping to find a job in plumbing, the trade for which he is trained.

The lawyer said he had written to Mr. Morris, asking that any further communications between the department and his client be channeled through his office.

ADDED SEARCH TERMS: crime victims

MAR 21 1984

Campbell sticks to target

By MERLE MacISAAC
Staff Reporter --

Mr. Justice Alex Campbell says he may have been "rather naive" when he set a Sept. 1 deadline for completion of his inquiry into compensation for Donald Marshall Jr., but the date remains a target.

The Prince Edward Island justice was reacting to rumors that his inquiry may take one or even two years.

Mr. Justice Campbell said in a telephone interview: "I did rather naively suggest Sept. 1 as a target date and I still hold to that today, although decisions on the format and procedures will be major factors in determining whether it will be a short or extended period."

The justice reported his work is

under way and said he completed a full day of meetings in Halifax last week and further meetings again Tuesday with the commission's legal counsel in Prince Edward Island.

A March 13 order-in-council passed by cabinet sets out Mr. Justice Campbell's basic terms of reference in one sentence: ". . . to inquire into and report his findings to the Governor-in-Council (cabinet) 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 of which he was subsequently found not guilty."

The order-in-council goes on to put technical, clerical, actuarial and legal counsel at Mr. Justice Campbell's disposal if required and author-

izes travel and living expenses for the commissioner and other personnel.

Mr. Justice Campbell said whether he will look at the circumstances surrounding Mr. Marshall's conviction is "an open question."

Reacting to reported comments from senior cabinet adviser George Henley, who last week said the government would probably not pay Mr. Marshall's entire legal bill but rather one established by the taxing master, Mr. Giffin said that issue "would be left entirely up to Mr. Justice Campbell."

A taxing master essentially audits a lawyer's billing and approves part or all of it based on factors such as the complexity of the work, necessity of services rendered, the barrister's experience and other criteria.

Chronicle-Herald

March 21, 1984

The honourable member for Cape Breton Nova.

HOUSE ORDER NO. 87

MR. PAUL MACEWAN: Mr. Speaker, I hereby give notice that on a future day I shall move that an order of the House do issue for a return showing with respect to the appointment of Mr. Justice Alex Campbell as a Commissioner of Inquiry to make recommendations as regards the miscarriage of justice towards Donald Marshall, Junior:

- (a) What amount of money has been budgeted to support Mr. Justice Campbell's commission;
- (b) What amount of money has been budgeted as a fee to Mr. Campbell for his services;
- (c) What amount of money has been budgeted for offices to accommodate Mr. Campbell and his commission;
- (d) What amount of money has been budgeted for stenographic services for Mr. Campbell and his commission;
- (e) What amount of money has been budgeted for office supplies to Mr. Campbell and his commission;
- (f) What amount of money has been budgeted for travel for Mr. Campbell and his commission;
- (g) What will be the daily fee payable to Mr. Campbell for his services;
- (h) What scale of reimbursement will apply to the payment of expenses for Mr. Campbell, for air and surface travel, for hotel accommodations, for meals, and for out-of-pocket incidental expenses;
- (i) What fees will be payable for expenses for technical, clerical, actuarial, and legal counsel persons employed by Mr. Campbell's commission, for air and surface travel, for hotel accommodations, for meals, and for out-of-pocket expenses;
- (j) What technical employees will be hired on by the Campbell Commission, and what will be their rates of payment;
- (k) What clerical employees will be hired on by the Campbell Commission, and what will be their rate of payment;

(l) What actuarial employees will be hired by the Campbell Commission, and what will be their rate of payment;

(m) Who is the legal counsel to the Campbell Commission, and how many lawyers are involved, and what is their individual per diem daily fee;

(n) What scale of reimbursement will apply to the retinue of lawyers to be taken on by the Campbell Commission to provide the already-learned judge with additional legal counsel, for their air and surface travel, for hotel accommodations, for meals and for other incidental expenses;

(o) Would it not make more sense for the government to disband the Campbell Commission and simply pay all the money represented by items (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n) now to Donald Marshall, Junior, so that he could get on immediately at attempting to re-establish himself;

(p) What justice is there in the notion that judges, lawyers, actuaries and others should draw hefty per diems, fees, expenses and the best of hotels and the finest of cuisine at taxpayers' expense, while in the interim nothing at all is done for Donald Marshall? Does not this obvious injustice only aggravate the miscarriage of justice that has already taken place; and

(q) How can the government justify the enormous expenditure the Campbell Commission will inevitably involve, when it is already stated publicly by the Premier that the government is not bound to follow the Commission's findings and, indeed, that they may not even be made public.

MR. SPEAKER: I thought the honourable member might make it to (z).

The notice is tabled.

*SYDNEY MURDER CASE (DONALD MARSHALL):
CAMPBELL COMM'N. - EXPENDITURE*

MR. PAUL MACEWAN: Well, Mr. Speaker, having only 10 minutes to deal with this important matter, I must proceed to address the question directly. We all recall that prior to this session of the House, the government would not face up to the matter of compensation for Donald Marshall, Junior, at all. When the House session began, the Opposition raised the subject and it thereby became a political issue, being raised daily on the floors of this Legislature.

A short time after, the Premier announced that the government would appoint Mr. Justice Alex Campbell of Prince Edward Island as a Commissioner of Inquiry to look into the matter of the Donald Marshall situation and recommend an appropriate course of action to the government. That was announced in the House. Outside the House, the Premier added two very important riders or qualifications to that. He stated first that the government would not necessarily be bound by the findings of the Campbell Commission and secondly, he stated that the report and recommendations would not even necessarily be published. Those were the statements the Premier made outside the House.

Those statements notwithstanding, the Cabinet on March 13th passed an Order in Council establishing Mr. Justice Alex Campbell as a Commissioner of Inquiry "... to inquire into and report his findings to the Governor in Council respecting ex gratia payments of compensation, including legal costs, which should be paid to Donald Marshall, Junior, as a result of his incarceration in jail for a crime of which he was subsequently found not guilty.", for eleven years, I might add.

Now, Mr. Speaker, we did not know at the time of the Premier's announcement, nor at the time of his disclaimers outside the House saying that the report would not necessarily be published or the recommendations would not necessarily be binding, we did not know at that time just what the government had in mind with respect to Mr. Justice Alex Campbell. But the text of the Order in Council establishes that technical, clerical, actuarial and legal counsel shall be put at Mr. Justice Campbell's disposal if required. It authorizes travel and living expenses for the Commissioner and all personnel involved in the Commission. We find also from the press, and I refer to an item here which I shall table, Mr. Speaker, that Mr. Justice Campbell himself feels that he may be "rather naive" to suggest that this exercise may be concluded by September 1st, which is two-thirds of the way through the year and four months hence. This is the clipping I wish to table.

Now, Mr. Speaker, this becomes a very serious situation, perhaps much more so than any of us had realized. I have separately tabled a House Order asking a number of questions with respect to this. I am wondering, for example, what amount of money has been budgeted to support Mr. Campbell and his Commission. I am wondering what amount of money Mr. Campbell is going to be paid as a fee on a daily basis, or is it to be a lump sum payment. If it is a per diem, there is an actual tendency for any daily paid employee to perpetuate the period of employment. I do not suggest that to Mr. Alex Campbell but I do suggest, sir, that an exercise of that type has an inherent momentum, which we might call inertia, that perhaps tends to keep it rolling along rather than bringing matters quickly to a head, as when people are paid a specific fee to do a thing and to do it quickly. So I want to know about the method of payment to Mr. Campbell. Will it be a daily fee basis or will it be a lump sum commission that would encourage him to come to his conclusions quickly?

I have asked what amount of money has been budgeted for offices to accommodate Mr. Campbell and his Commission because it is obvious that if he is going to hire legal,

technical, actuarial and secretarial help that that will have to be housed in offices. We know the high price of office rental space, especially in downtown Halifax, and we know that the amount of money for an exercise of that type involving a large staff over a considerable period of time would be very substantial.

I have asked what amount of money has been budgeted for stenographic services, for office supplies and for travel for Mr. Campbell and his Commission. We know that Mr. Campbell is a permanent resident of Charlottetown, P.E.I. The Commission will not conduct its investigations in Charlottetown. Mr. Campbell will have to be lodged here and you do not put up a judge overnight in some flop house. He will unquestionably be lodged in the best suite at the best hotel in town, because that is what you do when you are entertaining a Judge of the Supreme Court of another province, a former Premier, as a guest of this province. They will certainly be lodged and lodged well.

I have also asked what amount of money has been budgeted for travel to bring Mr. Campbell here and pay him his travelling expenses. What will be the scale of reimbursement to pay the expenses for air and surface travel and so forth? Meals? I am sure it will be more than \$35 a day, or the \$33 a day that CBC employees are paid when they are out on the road, away from home. I am sure it will be more than that.

What fees will be paid for expenses for the technical, clerical, actuarial and legal counsel persons employed by Mr. Campbell's Commission for their travel, accommodations, meals and expenses? What technical employees will be hired and what will be their rates of payment? What clerical employees will be hired and what will be their rates of payment? What actuarial employees will be hired and what will be their rate of payment? What legal counsel will be hired? How many lawyers will be involved and what will be their scale of payment? What scale of reimbursement will apply to this retinue of lawyers to be taken on to provide the already learned judge with additional legal counsel, for their air and surface travel, for their hotel accommodations, for their meals and for their incidental expenses?

Well, we don't have that information, Mr. Speaker, but it is obvious to anybody that contemplates the scope of the exercise that is referred to in the Order in Council, that this is going to be a very expensive operation. This isn't going to be a matter of Mr. Justice Alex Campbell sitting in his office over at the Law Courts on Water Street in Charlottetown and thinking the matter over, and sending a written opinion by mail to the Attorney General. This is going to be a matter of a grand-scale travelling road show on the line, perhaps, of the select committees of this Legislature or of these Royal Commissions that are appointed like the committee to investigate occupational health and safety. This is going to be a large exercise and I'm just wondering, Mr. Speaker, in the name of common sense and justice, if it wouldn't make more sense to disband this commission now, avoid all this expense, avoid all these bills, avoid all these costs and give a rough ball park figure of what all this is going to cost, \$100,000, \$200,000, \$300,000, \$400,000, whatever it will be, because we know that you don't do this kind of thing cheap nowadays with the costs.

Instead of all that, simply give Donald Marshall, now, a payment sufficient to re-establish him in life, which I have suggested many times as being in the realm of \$100,000 as an interim compensation payment so that Donald Marshall can get something and get it now. Because what justice can there be, Mr. Speaker, in a situation where judges and lawyers and actuaries and technicians and stenographers and clerks and so on and so forth, are being paid well on a daily basis, lodged in the best of accommodations and fed the finest cuisine, while the poor man about whom this whole issue has developed, continues to receive not one red cent. And to perpetuate that situation by the thing going on and on and on, as Mr.

Justice Campbell himself admits to the press. He doesn't even think he can conclude his deliberations by the first day of September next.

Surely, Mr. Speaker, this situation has just gone beyond. I don't want to use all kinds of excessive language in describing this situation but it is wrong, the way in which this man has been treated from the beginning is wrong and now they are adding more wrong to wrongs already committed, another layer of injustice on top of the injustices already committed. I think, Mr. Speaker, that considering the Premier's statements outside the House, which have just pulled the rug from under the feet of the Campbell Commission, has completely destroyed its credibility, because we know from the Premier of this province that the report will not be binding and the recommendations may not be published.

Now then, those being the facts, what sense does it make? What justice is there in sending this road show out on the road to, as I say in my notice of motion, to draw hefty fees and expenses and enjoy the best of hotels and the finest of cuisine at the expense, one might say, of Donald Marshall. Hasn't this thing been kicked around enough? Isn't it time that the government did the right thing and looked after this poor man now? Not on a basis of Judge Campbell and all his retinue, living as they will for four or five months while they kick the matter around and study it to death. I know this, Mr. Speaker, that I have no ambitions to be the Premier of Nova Scotia, none whatsoever, but I am sure . . .

HON. RONALD GIFFIN: Just of Cape Breton.

MR. MACEWAN: If that province existed that would be a different thing. But that province they haven't made for me yet. So, I have to say this Mr. Speaker, . . .

MR. GUY BROWN: Would you keep Mr. Kelly on as a judge?

MR. MACEWAN: I think Mr. Kelly might do all right. I don't think Mr. Kelly, Mr. Speaker, would associate himself with this kind of an exercise. I think Mr. Kelly would want to see justice done because I know Mr. Kelly and I know that he is a just man. So I'm sure, sir, that all concerned would want to see justice done for Donald Marshall, and I think that the way to do it is to pay him something right now and disband this Campbell Commission. I know Mr. Justice Alex Campbell, I know his wife, I know his family, and I have the utmost respect for him as an individual. I'm just saying that the whole way in which the thing has been done is not justice for Donald Marshall, which is what the exercise is supposed to be about.

So for that reason I say, sir, as the resolution states, that it would be better to disband the Campbell Commission, let Mr. Justice Alex Campbell return to his very busy duties with the Supreme Court of Prince Edward Island, and let this money that will be paid to all these people, instead be paid now to Donald Marshall.

MR. SPEAKER: The honourable Attorney General.

HON. RONALD GIFFIN: Thank you, Mr. Speaker. I appreciate the opportunity to rise to respond to the remarks of the honourable member and also perhaps in a sense to respond to the House Order that he put in yesterday. As I have indicated on other occasions in this House, Mr. Speaker, and on occasions outside this House, I have to exercise very great care in anything that I say about this matter because, as I have indicated before, the criminal proceedings involving Mr. Roy Ebsary are still before the courts, presently before the Appeal Division. We don't know how long those proceedings will continue to be before the courts. As I've indicated on other occasions, I have to ensure that as Attorney General I neither say nor do anything that might even inadvertently either prejudice or appear to prejudice the status of those proceedings.

So, I don't mind saying to you, Mr. Speaker, and to members of the House, that dealing with this entire matter and having that matter still before the courts, has caused me a great deal of concern and a great deal of difficulty. However, there are certain things that I feel I can say here this evening that may be of assistance to the honourable member in understanding the inquiry that is to be carried out by Judge Campbell, and perhaps to respond to some of the concerns that he has raised.

First, I should point out that in a situation like this, the usual practice has been, and it is going to be the practice in this case, that payment for the expenses of the conduct of this inquiry will, indeed, be done through the Office of the Speaker. If, for example, payment were made through my department's budget, there might be a suggestion that there was some prejudice in some way. The normal procedure has been, in order to respect the independence of the inquiry and the independence of the person conducting the inquiry, that whatever funding is required be made available through the Office of the Speaker rather than through the office of a minister or aligned department.

Now, the honourable member has referred to this as a grand-scale road show and I think that I had better correct that. Obviously, there will be expenses. I have had discussions with Judge Campbell on this and certainly there will be some expenses, as there would be in connection with any inquiry. However, I am satisfied from my conversations with Judge Campbell that it is his intention to keep those expenses to the absolute minimum. I should also point out, and I would particularly ask the press to make note of this because of the wording of the House Order introduced by the honourable member yesterday, that Judge Campbell will not be receiving any fees whatsoever in connection with this inquiry. He will not receive any salary. He will not receive any per diem fees. He will not receive any fees or salary of any type.

MR. MACEWAN: An honorarium?

MR. GIFFIN: No honorarium. Nothing. All that he will get . . .

MR. MACEWAN: Ex gratia payment?

MR. GIFFIN: No ex gratia payment. I will try to make this as clear as I can to the honourable member and, surely, I've made it clear enough already for any reasonable person.

MR. MACEWAN: What about their staff? Are they free, too?

MR. GIFFIN: I will attend to that in a moment. Let me make it perfectly clear that Judge Campbell will not receive any salary, any fees, any ex gratia payment, any honorarium, anything of that nature. All that he will get, all that he wants, is his legitimate out of pocket expenses.

MR. MACEWAN: Well, that's good for Alex. He's a good man.

MR. GIFFIN: I might point out to the honourable member because, again, he may not be aware of this but there are certain legal questions surrounding that in any event, but let me for the record make it abundantly clear that that is the situation with respect to Judge Campbell in the conduct of this inquiry.

Now, as far as other expenses go and I can't detail these because the inquiry is not underway, we do not expect that Judge Campbell will require a full time office here in the City of Halifax. He will have access to government office space. I have also indicated to him

that the resources of my department, with solicitors presently on staff, are available to him whenever he asks for information that may not otherwise be available to him. For example, there may be research that has been done in other departments or justice departments or Attorneys General departments across the country, where my people who have contacts in those various departments could contact people in those departments and get the benefit of their research. That type of approach is what we will take.

Now, I would surmise, and I cannot speak directly for Judge Campbell on this, but I would surmise that at some point he will need legal counsel in connection with this. I also want to make it clear that when I mention this role of my department, that would be purely information supplying upon request. I don't want to suggest in any way that people in my department would be telling Judge Campbell what to do or what his findings ought to be, but anything that we can make available to him, any resources we have at our disposal, we certainly will make those available to him.

We would also, he may require minimal secretarial help, but I want to emphasize that it's my very clear understanding, based on discussions which I have had with Judge Campbell, that this is not going to be a grand-scale road show. Essentially what Judge Campbell is being asked to do is to review and to report to the Government of Nova Scotia on two matters. One, the request for payment of costs on behalf of Mr. Marshall, and the other the request for compensation for Mr. Marshall.

Now, the honourable member has suggested that it might be simpler just to strike a figure and pay it. Nothing I guess in this life is that easy and certainly this matter has not been that easy.

MR. MACEWAN: As an interim measure.

MR. GIFFIN: As an interim measure?

MR. MACEWAN: Yes.

MR. GIFFIN: Well, I don't want to trespass on the work that Judge Campbell will be doing and I don't want to comment on that proposal at the present time. However, I will say this, and I base this on my own experience in the practice of law, that when you are talking about compensation you are talking about what lawyers would refer to as an assessment of damages, and to conduct properly an assessment of damages to determine with real precision insofar as one can be precise about this type of thing, an amount, a proper amount to be paid in compensation in a particular case is not an easy matter, particularly when you are dealing with this type of situation.

Let me turn to a different example and perhaps clarify my remarks on that. If you have somebody that's seriously injured in an automobile accident, we'll say an income earner with dependents, you may very well have to employ actuaries to look at, for example, life expectancy to project incomes. You have to look at the person's abilities, their background, their qualifications, and you become involved in what is not an easy exercise, if you want to reach a figure which is at least reasonably accurate and fair. Quite frankly, Mr. Speaker, I don't feel competent to just strike a figure and say I think that is an appropriate figure in a matter as complex and unprecedented as this. What I am saying is that the government decided after a great deal of concern . . .

MR. MACEWAN: Can you see that?

MR. GIFFIN: No, I am afraid I can't.

MR. MACEWAN: Well, since some compensation is . . .

MR. GIFFIN: Myopia has set in.

MR. SPEAKER: Would the honourable minister permit a question?

MR. GIFFIN: Yes, Mr. Speaker. I will permit a question.

MR. MACEWAN: My question is this, that since some compensation is obviously going to be paid, why not make an interim advance payment to the man now. What would be wrong with that?

MR. GIFFIN: Yes, Mr. Speaker, I thought I had responded to that before and perhaps I will respond in this way. That may very well be, for all I know, a recommendation that Judge Campbell may make to the government. But the point that I want to make is that we have placed these matters in his hands and I have complete confidence in his ability to conduct this matter in a proper and fair way, and to make reasonable and appropriate recommendations to the Government of Nova Scotia. And I may say too, I mentioned earlier as I have on many other occasions, my very genuine concern about the status of the criminal proceedings involving Mr. Ebsary which are still before the courts. Certainly, I have complete confidence in the ability of Judge Campbell and if I did not have this confidence this inquiry would not be underway. I have complete confidence in his ability to conduct these inquiries, to bring his recommendations to the Government of Nova Scotia and to carry out that responsibility, that very serious responsibility, without committing any trespass on the status of the Ebsary case, because that is still very much on my mind.

MR. MACEWAN: Is Judge Campbell open to submissions now?

MR. SPEAKER: Order, please.

MR. GIFFIN: Yes, I heard that question, Mr. Speaker. He has not yet indicated that publicly. What he is doing at the present time, and again I hesitate to say too much because really the conduct of this inquiry is entirely in his hands, but what he is doing at the present time is familiarizing himself with all of the material in connection with this matter, and I can assure that honourable member that I have already placed in Judge Campbell's hands, my staff and I have, all of the material that we have at our disposal in the Attorney General's Department and as well I have indicated to Judge Campbell that, if necessary, we can provide him with access to files that I would not be prepared to make public. That too, I think, again I have that confidence in Judge Campbell that he would respect that type of confidence, if necessary.

I think what I am really saying here, Mr. Speaker, and I realize that my time must be just about out, is that I think that all of us here, despite the very heated exchanges that have occurred in connection with this matter, that all of us share the same goal of finding a fair and just and appropriate resolution of this matter. I would be delighted if I could resolve this matter tomorrow. But I know that I cannot do that. I know that I cannot resolve this matter tomorrow. I simply suggest to you, Mr. Speaker, and through you to honourable members, that I think that this inquiry is an appropriate and reasonable way to attempt to address these very serious questions. Thank you, Mr. Speaker.

MR. SPEAKER: The honourable Leader of the Opposition.

MR. A.M. CAMERON: Mr. Speaker, in rising to enter debate on this resolution brought in by the honourable member for Cape Breton Nova, I want to make a couple of general remarks. One of the concerns that I think has been expressed by me and others in

the past was how long it would take for this particular action or decision to be made and brought forward so that we could put the circumstance to rest, whatever the decision may be.

I have expressed some concern about the fact that the decision in relation to Mr. Marshall at least has already been made by the Supreme Court of Nova Scotia. I think that was, if I remember correctly, on the 10th of May, 1983, or thereabouts. Now we have Justice Campbell who is going to further look into the matter as it relates to compensation, and compensation only. I think that there is another area that we have to also be somewhat concerned about and that is the total question of justice generally speaking, and not only the area of compensation and the appointment of Justice Campbell only does that.

I might go on to say to the Attorney General and to compliment him and I guess you as well, Mr. Speaker, in relation to the cost, whatever it will be, in this case coming from the Speaker's Office, and I certainly want to compliment whoever again, yourself or the Attorney General, for the selection of Justice Campbell. It does not surprise me to know and to hear that he is prepared to do this particular case and do it at no cost other than, as I understand from the Attorney General, out of pocket costs that he himself incurs. I think, and I assume that the other costs will be picked up as well, of course.

I think that the good choice of Justice Campbell is evident in that kind of a gesture on his behalf in this particular case. My concern is and my hope would be that an early decision will be rendered if we must wait for his decision to come down. The little concern that I had, and I have expressed before, was in the area of whether or not his decision meant anything.

I think the Premier indicated that they were not necessarily tied to that, nor I assume are the Speaker or the Attorney General tied to that, based on the facts of the statements made by the Premier. But nevertheless, presumably Justice Campbell's decision and his report on compensation in the Marshall case will likely be accepted, and I would hope that that is the case. I hope for goodness sake, that we are not going through another exercise of simply postponing and putting off. I think that we would all agree very heartily that Mr. Marshall has gone through some pretty difficult, I was going to say months, but years in relation to the whole subject anyway, and any further delay is of importance, I think, to the individual.

As I mentioned, this decision that will be made by Justice Campbell is relating specifically to compensation in the Marshall case and, again emphasizing, that the speed with which that decision will be made I think is important to the individual. There is, I still believe, a question somewhat larger than simply the question of compensation, and that is the whole possibility of the injustice or the thought that injustice may have occurred in the past in this particular case. I think it is important that we know what did take place and if there wasn't any, and perhaps not. Perhaps it was a very, and I think it was a sincere effort on behalf of all involved in this case to do the best, and there was some evidence that didn't quite get to the right place at the right time. Perhaps that should be investigated and looked to the point, so that at least we can have some assurance that all things have been done and will be done in this case and in any other case that may appear to have any kind of injustice associated with it.

I think that all of the courts of this province and this country and all of the members of this Legislature and Legislatures across the country and House of Commons do have the compassion to see that justice is carried out in all cases. I think this is one particular area in which we have expressed some concern over.

If I may make one other general comment in relation to the haste or speed with which this could be done. The Attorney General makes some reference to the fact that there is an appeal before the courts at the present time and that he doesn't want to, and I think you, Mr. Speaker, yourself, in a ruling before said that it was important that we did not try to have an association between the two cases. I hope I don't and I am certainly prepared to backtrack if you suggest that I am getting into that area, and I would respect your decision to suggest that I am if I do. I think that the concern that we have and the very fact that we are now looking at the compensation for it, if that can happen quickly I think that it should be done as quickly as possible.

If there is any advice that I would suggest the Attorney General or you, Mr. Speaker, yourself, might make to Justice Campbell, is to make a request for a quick and immediate kind of decision. If we are, in fact, faced with waiting for this decision to be made, while the honourable member for Cape Breton Nova has suggested an interim payment, that's one suggestion. I would suggest that perhaps the best thing would be to encourage Justice Campbell to make his decision as quickly as possible.

I believe it is quite evident that the decision of the Supreme Court on May 10th. of the Appeal Division, sets the case at least as it relates to Mr. Marshall and has nothing to do with the appeal of the other case.

So, I don't think we're really dealing with a problem as it relates to the case. The decision that's being made here is a matter of compensation, and compensation, I think, should be as quick as it is possible to be done because there has been a pretty long delay period already. Mind you, many of those years of delay is not the fault of the courts at this stage, or the fault of Justice Campbell, or the fault of you, Mr. Speaker, or the Attorney General, or of anyone for that matter at this stage, but that delay has been there and there has been something happening.

I recognize what the Attorney General has also said in relation to making that assessment. It's not easy perhaps to do, but I think we have taken it to that step. I would only say - and I guess my time has expired - that I would urge anyone that can have an influence on speeding this up as quickly as they possibly can, I would ask them to do so because I think it is important that this question of compensation is dealt with and dealt with quickly and put out of the way. I can only say that like the honourable member for Cape Breton Nova, I am pleased to hear that the cost of carrying out this investigation on compensation is not going to be a great burden to the taxpayers. Thank you very much.

MR. SPEAKER: Order, please.

The time allotted for the debate on the Adjournment motion has expired.

We stand adjourned until noon tomorrow.

[The House rose at 6:36 p.m.]

Chronicle Herald
April 4, 1980

C-H

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Marshall to receive \$25,000

By PETER MOREIRA
and ESTELLE SMALL

Donald Marshall will receive a \$25,000 advance as part of compensation for serving 11 years in jail for a murder he did not commit, Attorney General Ron Giffin announced Tuesday.

The advance will be paid "in the next few days" to hold Mr. Marshall over until a one-man inquiry into the compensation issue reports in the fall.

Mr. Justice Alex Campbell, head of the inquiry, privately recommended last week the province pay \$25,000 toward a final settlement.

Premier John Buchanan appointed Mr. Justice Campbell, a former P.E.I. premier, to the inquiry last month after intense political and public pressure.

Mr. Marshall, 30-year-old Cape Breton Micmac, served the time for the 1971 slaying of Sandy Seale in Sydney's Wentworth Park, but the Nova Scotia Supreme Court appeal division ruled last year he was innocent.

His lawyer, Felix Cacchione, said last night he is happy the government is acting "for the first time in positive fashion" since last May's ruling. He added the compensation should not divert attention from the need to know how Mr. Marshall was wrongly convicted.

"It was a politically astute move to ease public pressure on the government to act," said Mr. Cacchione of the \$25,000. "It will alleviate a heavy financial burden, but that should not detract from the fact an innocent man was convicted of murder."

The government had been reluctant to say anything about the Marshall case early in the session because any statements would prejudice the appeal of Roy Ebsary, who was later convicted in Seale's death.

Mr. Giffin said Mr. Justice Campbell made his preliminary recommendation without any prompting from the province and the government accepted it.

Mr. Giffin had said the province would not be bound by the commission's findings. He said yesterday the final report won't be binding just because an interim recommendation has been accepted.

See MARSHALL page 3

Marshall to receive

(Continued from page one)

Premier Buchanan yesterday refused to speculate on what would happen if the final report recommended a compensation package of less than \$25,000. "That's an assumption that I'm not going to work on. And I'm not going to prejudge the judge."

Mr. Cacchione said Mr. Justice Campbell is not looking into the circumstances that led to wrongful conviction.

"It doesn't say anything about how Donald Marshall came to be convicted in the first instance, how he came to lose his first appeal because evidence was withheld," he said. "These are questions Nova Scotians and Canadians ask themselves and

need to have answered."

Opposition leader Sandy Cameron said he is pleased with the recommendation, which was made initially by a number of opposition members.

Cape Breton Labor Party leader Paul MacEwan said last month the province should pay Mr. Marshall part of his compensation while the inquiry was being carried out.

Having originally called for the commission to be dismantled, he wrote Mr. Justice Campbell and proposed an initial payment of \$100,000.

"This is what I had in mind," Mr. MacEwan said yesterday. "I know I had mentioned a ballpark figure of \$100,000 but I'm not going to quibble over figures."

DM 30

NOTICES OF MOTION

MR. SPEAKER: The honourable Leader of the Opposition.

RESOLUTION NO. 192

MR. A.M. CAMERON: Mr. Speaker, I hereby give notice that on a future day I shall move the adoption of the following resolution:

Whereas the Province of Nova Scotia has made an interim payment to Mr. Donald Marshall in the amount of \$25,000; and

Whereas the local media reports that National Revenue may decide this interim payment is taxable;

Therefore be it resolved that in the opinion of the members of this House, the provincial Department of Finance and the Department of National Revenue should ensure the Donald Marshall payment is not taxable.

Mr. Speaker, I seek waiver of notice of this motion.

MR. SPEAKER: Is it agreed? Waiver of notice requires unanimous consent.

It is agreed, without debate.

Is the House ready for the question? Those in favour of the motion please say Aye. Contrary minded, Nay.

The motion is carried.

The honourable Leader of the Opposition.

Munro applauds N.S. decision

OTTAWA (CP) — Indian Affairs Minister John Munro lauded the Nova Scotia government's decision to pay Donald Marshall \$25,000 in interim compensation for a wrongful murder conviction that kept him in prison for 11 years, but added that more money must follow.

"It certainly in no way compensates, I would suggest, for 10 years of incarceration," Munro said Wednesday outside the Commons. "But at least it is a step in the right direction."

The federal and provincial governments were locked in a protracted dispute over which of them had the responsibility to compensate the 30-year-old Micmac, who was acquitted last year after being convicted in 1971 of the stabbing death of a teenage friend in a Sydney park.

"Finally, they are prepared to face into their

responsibility," Munro said. APR - 5 1984

The interim payment was recommended by Mr. Justice Alex Campbell, who was appointed last month to investigate possible compensation and payment of Marshall's \$80,000 legal bill.

Campbell, a member of the Prince Edward Island Supreme Court, isn't expected to make his final recommendation on compensation before September.

Nova Scotia Premier John Buchanan said the government is committed only to the first payment.

Ottawa asked not to tax Marshall

By ALAN JEFFERS
Provincial Reporter

The Nova Scotia legislature doesn't want the \$25,000 awarded earlier this week to Donald Marshall Jr. to be taxed by Revenue Canada.

A resolution to ensure the interim payment would not be taxed by either the provincial finance department or the federal government was passed without debate Thursday in the House.

Introduced by Liberal leader Sandy Cameron, the resolution said the provincial finance department and department of national revenue "should ensure the Donald Marshall payment is not taxable."

Earlier this week, Attorney General Ron Giffin told the House that Prince Edward Island Supreme Court Justice Alex Campbell recommended the province make an interim payment of \$25,000 to Mr. Marshall who spent 11 years in

prison after being wrongfully convicted of murder.

Revenue Canada spokesman Francis Whyte said in Halifax yesterday it has not yet been determined if the payment awarded to Mr. Marshall is taxable.

He said the department must wait until Mr. Justice Campbell has finished his deliberations and compensation is complete before making a ruling on whether the money is taxable.

"It's our understanding that Justice Campbell's ruling is of an interim nature, therefore we would not be able to provide Mr. Marshall with an interpretation on the taxability of any payments received from the province until Justice Campbell's final judgement is made."

He said the department does not have a general rule to follow and will have to research the question of taxability of compensation payments. That is why the depart-

The honourable member for Cape Breton Nova.

MR. PAUL MACEWAN: Mr. Speaker, House Order No. 87.

H.O. No. 87, re Sydney Murder Case [Donald Marshall, Jr.] Inquiry Details – notice given Mar. 21/84 – (Mr. P. MacEwan)

MR. SPEAKER: The honourable member for Cape Breton Nova.

MR. PAUL MACEWAN: I would like to move this with the understanding and proviso that only that information which is actually available be provided. There is no attempt here to send anybody looking for figures that do not exist. (Interruption)

MR. SPEAKER: There has been a request for a reading.

MR. PAUL MACEWAN: It is a very long one. It is basically for the costs of the Campbell Commission, that is all.

[The House Order was read by the Clerk.]

MR. SPEAKER: The honourable Attorney General.

HON. RONALD GIFFIN: If I may speak to that, Mr. Speaker, there are a number of problems presented by it. One is that payment of the expenses of the inquiry will be made through the Office of the Speaker and not through my department as I indicated on other occasions. That was done to maintain the independence of that inquiry from my department.

The second point is that the honourable member is really asking there questions which cannot, at this stage, be answered because Mr. Justice Campbell has a completely free hand, within reason, to conduct the inquiry, to retain whatever help he needs, whether it is actuarial, legal, secretarial, what have you. So, as it stands now, we could not provide answers. Yes, I think that is an excellent suggestion from the honourable member, Mr. Speaker, if we could just stand that one. We would be able to deal with it sometime, but not yet.

MR. SPEAKER: Shall House Order No. 87 stand.

House Order No. 87 stands.

The honourable member for Cape Breton Nova.

MR. PAUL MACEWAN: Mr. Speaker, would you please call House Order No. 91.

H.O. No. 91, Gov't Serv.: Brampton Brick Co. – Details – notice given Mar. 22/84 – (Mr. P. MacEwan)

[The House Order was read by the Clerk.]

MR. SPEAKER: The motion is carried.

Toronto Star Sept. 27, 1984

Marshall gets \$43.79 a day for 11 years he spent in jail

Alan Story Toronto Star

HALIFAX — Donald Marshall will receive \$43.79 a day for the 3,950 days he spent in prison for a killing he didn't commit.

That's the amount offered by the Nova Scotia government — and reluctantly accepted by Marshall — as compensation for his 10 years and 10 months of false imprisonment.

Marshall is the first Canadian to be found not guilty of murder after serving a long prison term.

The Cape Breton Island Micmac Indian, now 31, was convicted in the 1971 stabbing of his 16-year-old black friend, Sandy Seale, in a Sydney, N.S., park. Marshall and Seale had been trying to mug two men when the slaying occurred, according to later testimony.

The precedent-setting compensation deal, reached here after three months of

negotiations and announced yesterday, totals \$270,000.

But after paying the fees and expenses of the two lawyers who won his freedom and negotiated the settlement, Marshall will end up with \$173,000 — \$43.79 a day — for his ordeal.

Government estimates of Marshall's potential lost income were the main factors in determining compensation. "The figure is based strictly on what he would have earned over those years at his unskilled trade," said Marshall's Halifax lawyer, Felix Cacchione.

During his teenage years, Marshall worked as a construction laborer for his father, who is grand chief of the Micmac nation.

Cacchione said the settlement includes "no punitive damages" — meaning that Marshall's pain, suffering, and lost opportunities were not taken into account in the government offer.

And, significantly, the two parties agreed on the compensation pact without determining who or what agency, if any, was responsible for the miscarriage of justice.

This aspect of the deal is expected to keep the Marshall case a hot issue in Nova Scotia for some months. Premier John Buchanan and two provincial attorneys-general have repeatedly refused calls for a public judicial inquiry into the circumstances of Marshall's arrest and the Sydney police department's original investigation.

Marshall, then 17, was arrested on June 5, 1971, in Sydney. On May 28, Sandy Seale had been stabbed to death in

See DONALD/page A5



Marshall

Donald Marshall gets \$43.79 a day for time behind bars

Continued from page A1

a park after a Friday night church dance. Marshall maintained his innocence at his November, 1971, trial and throughout his years behind bars.

Prison officials at New Brunswick's Dorchester prison and Nova Scotia's Springhill prison regularly offered to parole him if he would admit to slaying Seale. Marshall refused.

After a 1982 RCMP probe of the Seale case, Marshall was freed on March 30 of that year.

Another man, Roy Ebsary, now 72 — identified as one of the victims of the attempted mugging — was found guilty in November, 1983, of stabbing the teenager. But the appeal division of the Nova Scotia Supreme Court this month ordered a new trial for Ebsary, convicted of manslaughter.

Broad study

Last March, Mr. Justice Alex Campbell of the Prince Edward Island Supreme Court was appointed as a one-man commission to inquire into the amount of compensation Marshall should receive from the Nova Scotia government.

At the time, Campbell promised to conduct a North American-wide study of precedents and principles guiding the payment of compensation for people falsely imprisoned. No Canadian case law existed for such uncommon compensation cases, he admitted.

The best-known recent United States case involved a 66-year-old New York state man who was awarded \$1 million in May, 1983, for 24 years of wrongful imprisonment.

But, because his mandate was limited, Campbell accomplished little. The Nova Scotia government did not allow him to look at what generally is the first legal question decided in any liability or negligence case: Who or what was responsible for the damages suffered?

The province asserts that Marshall was "the architect of his own misfortune" because he didn't tell the entire story of what happened — the night Ebsary stabbed Seale.

This version overlooks the fact that, at a criminal trial, it's the crown's responsibility to prove the guilt of an accused, not an accused's responsibility to prove his or her innocence.

Another view of the case sees Marshall as the victim of a frame-up by racist policemen and a bungled investigation.

Documents prepared by Mounties during their 1982 inquiry catalogued numerous errors committed by Sydney police investigators in probing the death, including an absence of photographs. And no autopsy was ordered on Seale, nor was a crown brief prepared on the Marshall case, the RCMP said.

As well, during a December, 1982, hearing by the appeal division of the Nova Scotia Supreme Court, two teenagers who had testified against Marshall alleged that Sydney police officers told them what to say in court.

"I didn't," one of the two, Patricia Harriss, testified, "the police said I would be charged

Cont'd. Next Page

Toronto Star
Sept. 27, 1984

with perjury."

And, in an incident that adds to the shock of this story, Sydney police were told a week after Marshall was convicted that they had charged the wrong man.

They questioned Ebsary — but let him go. Roger Caron has an opinion. He is the author of the award-winning book, *Go-Boy*, which recounts the horrors of his many years behind bars.

Canada's best-known ex-prisoner, Caron told *The Star* earlier this year that Marshall deserved at least \$1 million, though "really no amount of money can ever retrieve his lost formative years."

No comment

With Campbell making little apparent progress, Cacchione and the Nova Scotia attorney-general's department began bargaining over compensation for Marshall. As a formality, the settlement — once agreed upon by the two sides — was then approved by Campbell and recommended to the provincial government.

Attorney-General Ron Giffen continues to refuse to discuss details or implications of the negotiations or the final settlement.

Cacchione said Marshall agreed to the offer because he wants to begin living his life away from the glare of publicity and away from courts, judges and politicians.

Today, Marshall works with native youths in a wilderness survival program and is trying, according to Cacchione, "to work it all out of his system."

He has received no apology from any government. He and his family may never recover from their pain, sorrow and bitterness.

But he does have his life.
"This case is a most compelling reason for the abolition of capital punishment," Cacchione said.

Probe of Marshall case not ruled out

By ALAN JEFFERS
Provincial Reporter

An inquiry into events surrounding the wrongful conviction and subsequent imprisonment of Donald Marshall Jr. in 1971 has not been ruled out by the provincial government.

Premier John Buchanan said Thursday his government has not yet decided whether to launch a full-scale inquiry into the case.

He said questions about the issue should be addressed to Attorney-General Ron Giffin. But Mr. Giffin's secretary said she has been instructed to tell anyone asking about the case that the minister has no further comment.

Mr. Giffin announced earlier this week that Mr. Marshall will receive \$270,000 in compensation. The announcement was in the form of a three-paragraph statement on the government news wire after Mr. Giffin had cancelled a press conference on the matter. **SEP 20 1984**

Pressure to establish an inquiry into the wrongful conviction of Mr. Marshall escalated last spring when the legislature was sitting.

Government responded by appointing Prince Edward Island Supreme Court Justice Alex Campbell to examine only the question of com-

See PROBE page 2

Probe of Marshall

(Continued from page 1)

ensation for Mr. Marshall, and not events surrounding the conviction.

In a telephone interview from his Summerside home Thursday, Mr. Justice Campbell would not say whether he thinks an inquiry should be established nor whether he would head such an inquiry. **SEP 28 1984**

But contrary to information in the government's statement, Mr. Justice Campbell said he merely approved the amount of compensation agreed to by the parties in the dispute, namely the provincial government, through the attorney-general's office, and Mr. Marshall.

The statement said the compensation was the result of "Mr. Justice Campbell's final recommendation."

He said the "spectre of public hearings" with witnesses and cross-examinations probably prompted both sides to start negotiations with a view to reaching a settlement.

Facilities had been rented to hold the hearings, scheduled for July and September, he said, and support equipment like Hansard recording had been arranged.

"When the government of Nova Scotia authorized the attorney-general

to enter into negotiations, it put my operation on hold."

The initiative to stop the hearings and start negotiations came from Mr. Marshall's lawyer, Felix Cacchione, and deputy attorney-general Gordon Coles, said Mr. Justice Campbell.

Mr. Cacchione told reporters Wednesday he was concerned that during public hearings the focus would be "misguided" from why Mr. Marshall was wrongly imprisoned to what he was really doing in the Sydney park on the night his companion, Sandy Scale, was murdered.

Mr. Justice Campbell said he "was aware of an expressed concern that the commission of inquiry would chew up public dollars."

Had the commission gone forward with public hearings, the minimum budget would have been \$100,000, which would have been "easily exceeded if the mandate was given a liberal interpretation."

Mr. Justice Campbell is "winding up" the commission and will hand over the results of his investigation to the attorney-general's department within a matter of weeks.

** Marshall inquiry blocked, report says **

Oct. 19, 1984

By DEBORAH JONES

Special to The Globe and Mail

Globe & Mail

HALIFAX - The intervention of the Nova Scotia Attorney-General's Department prompted the RCMP to stop an investigation into conduct by the Sydney Police Department in the *Donald*Marshall* case, a confidential 1982 RCMP report shows.

The document, released at a Halifax press conference yesterday by lawyer and Liberal Party candidate Kirby Grant, says the RCMP wanted to investigate allegations that Sydney police officers had forced three witnesses at the 1971 Marshall trial to lie during court testimony.

However, even though the RCMP believed that two of the witnesses lied during the trial, the Mounties were advised by officials within the Attorney-General's Department not to proceed with their investigation.

Mr. Marshall was convicted in 1971 of the second-degree murder of Sandy Seale and spent 11 years in prison for the crime before being acquitted after a new trial in May, 1983.

The RCMP report, covering the force's investigation of the Marshall case between Feb. 25 and Apr. 5, 1982, also says there was pressure on Crown witnesses during Mr. Marshall's trial to change their original statements to police.

On Mar. 29, 1982, while the special RCMP squad was investigating the circumstances surrounding the 1971 murder, Mr. Marshall was released on day parole. In June, 1982, the federal Government ordered the Nova Scotia Court of Appeal to review Mr. Marshall's conviction.

Miss Grant, who is running against Attorney-General Ronald Giffin for the riding of Truro-Bible Hill in next month's provincial election, added her voice yesterday to widespread calls for a public inquiry into why Mr. Marshall was convicted and into the conduct of the Sydney police force.

While the Nova Scotia Government has not ruled out a public inquiry, Mr. Giffin has repeatedly said he will not discuss the issue until criminal proceedings against Roy*Ebsary,* who is facing his second trial for the Seale murder, have been dealt with by the courts.

In an interview with The Globe and Mail last night, Mr. Giffin said: "There was no attempt at any time to tell the RCMP to stop an

investigation. . . . That's just political nonsense.

"The immediate concern of the (Attorney-General's) Department at that point in time (May, 1982) was not to pursue side issues, but to deal with main issues."

Mr. Giffin said his department was seeking a new trial for Mr. Marshall at the time of the RCMP investigation of the Sydney police, and said the "side issues" included "people committing perjury, questions about the police conduct."

The photocopied report distributed by Miss Grant, signed by Inspector D. B. Scott of the Sydney subdivision of the RCMP, says in part: "It would appear from this investigation that our two eyewitnesses to the murder lied on the stand, and that the other main witness, (Patricia) Harris, lied as well, under pressure from the Sydney city police."

Another part of the RCMP report, signed by Staff Sergeant H. F. Wheaton, notes: "Discussions were held with Crown prosecutor Frank C. Edwards in regards to interviewing Chief (J. F.) McIntyre and Inspector W. A. Urquhart in regards to the allegations (of three witnesses) that they were induced to fabricate evidence in the original trial in this matter."

"Mr. Edwards has advised me that he further discussed the matter with Gordon Gale of the Attorney-General's Department and it was felt that these interviews should be held in abeyance for the present. The file will be held open pending further instructions."

Miss Grant said the RCMP report was "given to me, and I can't say where I got it," adding that she released the report to the media "because I'm a lawyer as well as a candidate . . . and to me, there's been wrongdoing in the administration of justice."

She told reporters that "what happened to *Donald*Marshall* is the result of the mishandling of the administration of justice in this province. Surely it is the duty of the Attorney-General's Department to take action when they are apprised of a situation inundated with serious allegations and apparent omissions."

"The crux of this issue is that this Government has not been prepared to look farther into this matter and, worse, they have instructed the RCMP investigators not to delve further into what occurred in the original police investigation."

Mr. Marshall's lawyer, Felix Cacchione, said in an interview yesterday that he had previously seen the report released by Miss Grant, but is still waiting to see a further RCMP report. Mr. Cacchione said the other report makes recommendations to the Attorney-General's Department.

ADDED SEARCH TERMS: crime victims Sydney Police Department professional misconduct

OCT 19 1984

Friday, October 19, 1984 THE CHRONICLE-HERALD 3

Marshall report 'implicates' department

By BILL POWER
Staff Reporter

Liberal candidate Kirby Grant released details of a confidential RCMP report on the Donald Marshall case Thursday and called for a complete investigation of the judicial "bungling" which led to the Micmac Indian's 11-year imprisonment for a murder he did not commit.

The 30-year-old Truro lawyer, a political newcomer endeavoring to shake Attorney-General Ron Giffin's firm grip on the Truro-Bible Hill constituency, said contents of the 1982 RCMP report into the Marshall case clearly implicate the attorney-general's department in what constitutes "a serious miscarriage" of justice.

"I am concerned about the proper administration of justice in Nova Scotia and I believe that this case is one example of how the administration of justice is not being properly handled (here)," she said.

Among other things, the report indicates investigating RCMP officers discovered Crown witnesses were pressured by police to change original statements and that files from the original 1971 murder investigation are incomplete.

Ms. Grant claimed the attorney-general's department deliberately stifled the RCMP probe by requesting the investigating officers to discontinue interviews with witnesses who testified at the original trial.

"The crux of this issue is that this government has not been prepared to look further into this matter, and worse, they have instructed the RCMP investigators not to delve further into what occurred in the original police investigation," she said.

However, Mr. Giffin has suggested his Liberal opponent in Truro-Bible Hill has only the Nov. 6 provincial election in mind by releasing the officially "uncompleted" finding of the RCMP probe in the midst of the campaign.

Contacted late Thursday, he said his department never at any time endeavored to impede the RCMP probe. "In fact, it was just the opposite. We encouraged it and co-operated fully."

Moreover, he said the possibility of a complete public inquiry into the case has not been ruled out by his department, "but any decision in this regard has been delayed until the related court proceedings wrap up."

Ms. Grant contended the department should have demonstrated greater concern when investigating RCMP heard allegations that 14-year-old witnesses were pressured by police to change their statements.

"Surely it is the duty of the attorney-general's department to take action when they are apprised of a situation (that is)

inundated with serious allegations and apparent omissions."

She asked why the department had not demonstrated greater concern about the apparent incompleteness of the original police report.

Irregularities with the case extend right back to 1971 and should have been reviewed at the time, she said.

Quoting a memorandum prepared by the investigating RCMP, she noted the 1982 probe was hampered due to a general lack of information and procedural irregularities in the original murder investigation headed up by Sydney Police Department.

The memorandum indicates some standard police reports were not prepared, that there was no autopsy performed on the deceased, and that there were no photographs taken during the investigation.

The investigators determined the standard police "lineup" was arranged, but were unable to determine who was in the lineup or who viewed it.

The Truro lawyer suggested "political expedience" prompted the attorney-general's department to stop the investigation when the RCMP heard allegations by some Crown witnesses that they had been pressured to change their testimony, testimony that led to the conviction and subsequent imprisonment of Marshall.

Cape Breton Post October 19, 1984 p.1

Leaked Report Doesn't Change Giffin's Stand

HALIFAX (CP) — Attorney General Russ Giffin of Nova Scotia said Thursday that disclosure of a leaked RCMP report by his Liberal opponent in the Nov. 6 provincial election doesn't change his stand on calling an inquiry into the Donald Marshall affair.

Giffin said he won't decide on an inquiry into how the Marshall case was handled by police until all related court matters are settled.

Kirby Grant, a Truro lawyer and Giffin's Liberal opponent in the riding of Truro-Bible Hill, told a news conference that a 1982 report indicated that the Attorney General's Department told RCMP not to interview Sydney city policemen about allegations that witnesses at Marshall's second-degree murder trial lied.

Meanwhile, Marshall said in Ottawa Thursday he wouldn't know which side to march with in demonstrations on Parliament Hill on November 5th for and against bringing back the noose.

Marshall, now 30, was convicted in the 1971 stabbing death of Sandy Seale, 16, in a Sydney park. After the Nova Scotia Supreme Court heard new evidence in 1982, Marshall's conviction was quashed.

Several witnesses, who were teenagers at the original trial, told the Supreme Court review that, at the time, they felt pressured by police into testifying against Marshall. The witness whose testimony exonerated Marshall by saying he was with the man who did the stabbing never appeared at the original trial and



GIFFIN: No Comment

trial was later found to be mentally unreliable.

Marshall accepted \$270,000 from the Nova Scotia government last month as compensation for 11 years he spent in prison.

"The RCMP had obviously been having discussions with the Crown prosecutor and they wanted to interview the original investigating officers and question them about the allegations, and that's as far as it went," Grant said.

She did not say how she came

another key witness at the first into possession about a week ago of a copy of the RCMP report which resulted in a decision to have the Supreme Court review the case and either uphold or quash the conviction or order a new trial.

"The issue in this matter is wrongdoing in the administration of justice ... Donald Marshall was the victim this time but it could have been any Nova Scotian."

Grant demanded an inquiry into how the Attorney General's Department handled the case originally in 1971, when the Liberals held office, and his actions under the Conservatives since the new evidence came to light.

Giffin emerged from a weekly provincial cabinet meeting to tell reporters he would not comment on the leaked report or on Grant's demands for an inquiry.

Roy Newman Ebsary, 72, of Sydney, was identified at the Supreme Court review as the man who stabbed Seale because the youth and Marshall were trying to rob him. Ebsary claimed self defence but was convicted of manslaughter. The conviction was overturned and he is awaiting a new trial.

"Until such time as the Ebsary case is concluded, I feel it is only proper for me as attorney general to refrain from commenting on the various aspects of the case," Giffin said.

The decision to call an inquiry into the handling of the Marshall case would await the final disposition of the Ebsary case, he added.