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# How Donald Marshall case unfolded

## Was Marshall framed or was he the victim of a belief honestly held by police that he was the murderer?

By Alan Storey Toronto Star  
HALIFAX — In mid-June 1971, John MacIntyre, staff sergeant of detectives of the police department in Sydney, N.S., was trying to solve the loose ends of a murder case.

It was a case that would make national headlines for the next 15 years.  
The sergeant had arrested Donald Marshall Jr., a 17-year-old Mi'kmaq Indian who lived up on 118 Marlborough Rowers at the edge of town. It was the first murder since 1868 in Sydney, the small and usually pretty quiet Cape Breton steel city of 20,000 people.

MacIntyre had no reason to believe the case against Marshall would not produce a conviction.  
Two young fellows had told him they had been in Westworth Park near midnight on May 26 and saw Marshall stab Sandy Seal.

Another local girl could also put Marshall and Seal, and no one else, in that section of the park after the Friday night dance across the street in St. Joseph's church hall.

Still, MacIntyre decided he should have evidence. He thought he needed a sample of Marshall's blood to link him more directly to the murder.

MacIntyre believed that Marshall had stabbed Seal and had then turned the knife on his own arm and made a long gash.

Marshall's self-inflicted wound, MacIntyre thought, was intended to cover up his involvement and had put the blame on an older, white-haired man in a long coat whose left saying was a reprob.

All the time, MacIntyre had in his possession the infamously punctured police Seal and Marshall had had, at that night, but while there was sufficient blood on Seal's jacket to get a blood sample, there wasn't enough on Marshall's.

**Right elbow case**  
Getting Marshall's blood might clinch Detective MacIntyre's case.

Upon talking to a Sydney doctor, MacIntyre learned that the doctor would soon be removing the stitches from Marshall's arm wound at the Sydney hospital.

Could the doctor surreptitiously get a sample of Marshall's blood while he was taking out the stitches? MacIntyre asked. The doctor said he would try.

But Marshall never kept his appointment at the hospital. Instead, he stayed inside the Cape Breton County Jail where he remained the 16 or 17 stitches himself with a pocket knife.

As it turned out, MacIntyre did not really need a sample of Marshall's blood to convict him five months later in November, 1971, on evidence that later was shown to be prepared.

Marshall ended up spending 18 years and 18 months in prison for a murder he did not commit.

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This re-creation attempt at getting Marshall's blood as part of the new evidence in the intricate, 15-year Marshall case that is yet to end.

The incident and other startling evidence was provided to be used here in Halifax during a session not launched by news and Sydney police chief Man-



Antagonistic Donald Marshall, above, spent 10 years and 10 months in prison for a murder he didn't commit. Sydney, N.S., police officer John MacIntyre, right, helped to put him behind bars.



MacIntyre against the Canadian Broadcasting Corp.

The 17-year-old was charged from rumours made in November, 1968, on the CBC Radio program Sunday Morning about why Marshall had spent 10 years and 18 months in prison for a murder he did not commit.

On the program, several journalists said the young Indian was the victim of racism, fabricated evidence and perjured testimony at his 1971 trial.

MacIntyre's defamation suit was expected to last three weeks and was in lower evidence from more than 30 witnesses, and would, in effect, have become an inquiry into the controversial Marshall case.

Over the past four years, ethnic groups, native organizations and opposition politicians in Nova Scotia and across the nation have been demanding more than \$100,000 in legal costs to prepare for the trial and bring up many witnesses. The CBC was in effect, denied a chance to present its case for the defence.

More importantly, "the real issues in this case from top to bottom that need to be exposed," as Cape Breton journalist Parter Burns Downham put it, will again stay locked up in RCMP files and witnesses' memories.

However, the defamation suit does provide a new opportunity to

re-examine the case. In preparing for R. lawyers for both sides discovered, under oath, numerous witnesses and interviewed, in depth, many people who were about to give evidence.

The Toronto Star has examined that discovery evidence. The incident about the blood, for example, is detailed in one section of the 200 pages of discovery evidence MacIntyre gave under cross-examination to CBC lawyers in Halifax on Sept. 4 and 5, 1984.

It is already well-documented that Donald Marshall did not murder Sandy Seal.

But, as we examine this new evidence and the late views, even then arise, the forecast of which is: Was Marshall framed? Or did he become a victim of an honestly held belief by police that he really was the murderer? \*



Ray Ebbury: This man was convicted of Sandy Seal's murder 12 years later.

of her that her daughter "was hanging around with the wrong crowd, and particularly Donald Marshall."  
And in a parting shot, MacIntyre said, "If I can't get him on (the liquor charge), I'll get him on something else," Emily Clemens recalled.

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A year later, on Saturday afternoon May 28, 1971, MacIntyre found himself dealing with a case involving Marshall.

He is in charge of the investigation into the stabbing of Sandy Seal the night before.

MacIntyre believed the circumstances of the murder pointed to Marshall as the chief suspect, according to a 1982 RCMP re-investigation of the case.

The Mountie probe followed a report by Marshall's lawyer saying there was new evidence that Marshall had been wrongly jailed. The inquiry was conducted by Staff Sgt. Harry Whelan and Cpl. James Carroll under the supervision of Inspector Don Scott, commanding officer of the Sydney detachment.

**Talk to RCMP**  
MacIntyre's almost instant suspicion of Marshall was reinforced in a police interview with Sydney at 5:11 a.m. on Sunday May 30 in the RCMP headquarters in Halifax.

It read:  
"Alexander Seale (Negro) age 17 yrs of Westmountal Cape Breton County died approx 8pm 26/5/71 at Sydney Hospital as result of abdominal stab wounds. Seale located at Westworth Park Sydney 12:15pm 26-5-71 in an unconscious state and admitted in critical condition."

"Donald Marshall Jr Indian age 17 yrs Gallagher Street, Ardenberton, Sydney also located in hospital with severe laceration to right arm. Condition satisfactory. Circumstances presently being investigated by Sydney PD in conjunction to date results Marshall possible (the person) responsible."

"However Marshall states he and deceased were assaulted by an unknown male approx 1:30 to 2:00 girl hair approx 50 years who stated he did not like Negroes and assaulted both persons with a long knife."

"MacIntyre had believed that Marshall had told him when he first questioned him that weekend, there never would have been

any other witnesses. He was wrong.

For several hours, the large, built detective questioned her about the drinking incident.

But according to Emily Clemens, despite MacIntyre's pressure, Jess refused to say anything that would implicate Donald Marshall and give her and her friends the liquor.

Instead, Jess said the girls had slipped in some mazy and bumpy the liquor.

At one point during the interrogations, an agitated Emily Clemens barged into MacIntyre's office to tell him to stop bothering her daughter.

MacIntyre finally drove Emily and Jess home. As Jess got out, MacIntyre asked Emily to stay in the police cruiser. He then warned

See TRIAL's page 84



# The tangled trial of Donald Marshall

## Racial prejudice and perjury helped put him behind bars

When Donald Marshall was released from prison in March, 1962, after serving 11 years for a 1971 murder he did not commit, one of the biggest questions of Canadian judicial history was: How and why was he ever charged and convicted?

New evidence has been unearthed as part of a defence case against the CBC by former Sydney, N.S., police chief John MacIntyre — the man who arrested Marshall.

The CBC alleged, and MacIntyre denied, that Marshall was a victim of racism, police misconduct and coercion of witnesses. The case that was to start last week was, however, dropped by MacIntyre at the 11th hour.

The CBC spent \$100,000 gathering evidence and interviewing more than 50 witnesses. Alan Story, The Star's Atlantic correspondent, who has been reporting on the complex Marshall saga for years, has examined that discovery evidence and interviewed supposed witnesses.

Yesterday, in the first of two articles, Story traced the events from the murder May 28, 1971, of Marshall's black friend, Sandy Seale, 17, and the preparation of witnesses for Marshall's trial in November that year. After repeated pressure by Sydney police investigators, two youths were prepared to testify that they had seen Marshall, the 17-year-old Micmac Indian, stab Seale.

Today, Story examines Marshall's trial and the evidence that was then starting to build up against Roy Ebary who, 12 years later, would be convicted of manslaughter in Seale's death.

By Alisa Story Toronto Star

**HALIFAX** — When you look back at Donald Marshall's 1971 trial in Sydney, N.S., it's quite astounding that the three-day proceeding went as smoothly as it did.

The foundation of the crown's murder charge against Marshall was, after all, the testimony of three teenagers that was to prove perjured.

Keeping such a charade on the rails and convincing a jury to convict an innocent man is seldom as easy task.

The police officer who had gathered most of the evidence about the stabbing death May 28, 1971, of Sandy Seale was John MacIntyre, then sergeant of detectives of the Sydney police force.

In the three weeks after Seale's death, MacIntyre had convinced John Pratico, 18, and Maynard Chant, 15, that they had seen Marshall fatally stab Seale. And he had lived up 14-year-old Patricia Harris to corroborate the story they were about to give.

All three were some major liars in the case MacIntyre handed over to experienced crown attorney Donald C. MacNeil.

MacIntyre had no found murder weapons. Nor did he have an autopsy report, because no autopsy was done on Seale's body after he died May 29. And MacIntyre did not have any photographs of the crime scene.

As well, MacIntyre had no confession from the young Micmac Indian. And any possible motive for the killing was weak, Marshall and Seale, both 17, were known to be good friends.

**No crown brief**

But Mac Roeburn, the Sydney criminal lawyer defending Marshall, also had several problems to overcome.

For a start, MacNeil had not given Roeburn access to a key trial document — the crown brief, which includes statements taken by police from witnesses, who are to testify.

There was no crown brief to give because Detective MacIntyre never prepared one, as the Royal Canadian Mounted Police found out in 1982 when they re-investigated the case.

If the contradictory police statements of the three youths had been given to Roeburn, "the case would never have gone beyond a preliminary hearing," says Felix Carichone of Halifax, Marshall's current lawyer.

Roeburn himself did not check out the background of the crown's key witnesses — Pratico — who, his mother said much later, "was a very sick boy at the time" who "should not have been allowed to testify."

The only defence witness Roeburn called was Donald Marshall, who turned out to be a poor one. Several times, the trial judge, Mr. Justice J.L. Dubinsky, had to order the soft-spoken Marshall to speak up. It is far from certain that the jury heard much of his testimony.

Finally, Roeburn had to overcome the racial prejudices of at least one juror.

Interviewed by The Star after Marshall's innocence was proved, the juror denied any discrimination was at work in the case.

But, then he added: "With one verdict in and one Negro involved, it was like two dogs in a field — you knew one of them was going to kill the other."

"I would expect more from a white person," he said. "We are more civilized."

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The Marshall trial began Nov. 3 in the Cape Breton County Courthouse near Wentworth Park where Seale was stabbed.

Prosecutor MacNeil, who died in 1978, told the jury that MacIntyre had conducted "a brilliant" investigation of the case being presented to them.

Pratico testified that he was sitting in bushes in Wentworth Park drinking beer when he saw Marshall and Seale get into an argument. Then Marshall pulled out a shiny object and stabbed Seale, he said.

Under cross-examination, Pratico did mention that in the three hours before the killing, he had consumed half a bottle of wine, six quart bottles of beer and three pints of beer.

Talking about that evidence 12 years later, Pratico said he put in the part about the heavy drinking so that no one would believe him. He knew in his heart that he was giving the wrong evidence and wanted the jurors not to believe him.

In the end, Pratico would be in crown's only firm eyewitness.

**Wasn't there**

The truth — which the jury, of course, never heard — was that Pratico was in his home down the street at the time of the murder.

Not surprisingly, the fiction Pratico was repeating was almost exposed.

During a recess, Pratico began talking with Marshall's father, Donald Marshall Sr.

With MacNeil, MacIntyre and Marshall's other lawyer, Simon Khalifa, listening in, Pratico blurted out that Marshall had not stabbed Seale.

Asked back in court to explain, Pratico said, "I was scared." He did not say who or who it was he feared.

Chant did not give the evidence MacNeil and Chant expected or wanted. While Chant had testified at the July 26 preliminary hearing that he was sure it was Marshall who had stabbed Seale. At the trial, he said he was not sure.

Chant was declared a hostile witness.

Patricia Harris' testimony was of some value to the crown. Although she wasn't an eyewitness, she was able to substantiate Pratico's story that no one else, besides Marshall and Seale, was on the scene just before Seale was killed.

Marshall, in his evidence, told of how two men came up to him and Seale in the park that night and asked for cigarettes.

Then, the older of the two men



Wrongly jailed: Donald Marshall leaves the Nova Scotia Court of Appeal during the 1982 retrial that saw him cleared of murder after 11 years in prison. Witnesses, pressured by police, fabricated evidence in the original 1971 trial that saw Marshall wrongly convicted of stabbing a friend.

said, "we don't like niggers or Indians," took out a knife, stabbed Seale in the stomach and slashed him on the arm, Marshall testified.

Marshall, as the shall find out, was not telling the whole truth either.

The jurors deliberated for four hours. Their verdict: guilty of non-capital murder.

Young Marshall buried his hands in his face and sobbed. Justice Dubinsky sentenced him to life in prison.

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There is one seemingly small piece of evidence which jumps out at you when you go back over the transcripts and talk to the surviving members of that Cape Breton jury.

So long after the trial, they cannot be expected to remember many details. And few do. But one piece of prejudicial evidence made an impact on most of the jurors.

One of the trial witnesses was Merle Davis, a nurse. She was at Sydney City Hospital when Marshall was brought with the knife wound on his arm after Seale was stabbed.

At the trial, she was asked by MacNeil whether she had noticed anything, besides the wound, on Marshall's arm.

Yes, she said. She had seen a tattoo.

"Can you tell us what that tattoo is?" MacNeil asked.

"I like rock," she recalled.

The evidence, left unchallenged, was admitted.

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Less than two weeks after Marshall was convicted, the former of the Seale case testified, however briefly, to 50-year-old Roy Ebary, a former seaman and vegetable cutter who lived two blocks from Wentworth Park.

Since MacIntyre had begun his investigation in late May, he had received evidence suggesting two other men, besides Marshall and Seale, were in Wentworth Park the night Seale was stabbed.

MacIntyre first got details of a man fitting Ebary's description on May 30 from Marshall.

A detailed description was given to Sydney police the next day by George MacNeil, 18, and

Roderick MacNeil, 17.

On May 28, they left a Friday night dance for teenagers at St. Joseph's church hall and walked across the street to Wentworth Park where they saw "two men having a row."

One man had gray hair, a round fat face, was "trampish looking" and in his late 30s (Ebary).

The other man was tall, had dark hair and a thin face, was in his late 30s or early 40s, and was wearing a short brown jacket. (This was the fourth man.)

And in her first statement of June 17, Patricia Harris also said she saw Marshall talking with two other men, one of whom was short, had white or gray hair, and was wearing a long coat.

This evidence not only substantiated Marshall's version of what happened and who was on the scene, but it also contradicted what the witnesses against him were to say in court.

But the problem as far as the police were concerned was that no one had come forward with any name to match those descriptions.

Then, on Nov. 18, MacIntyre got the names. It was a startling, almost Hollywood-style development.

In the days following Marshall's conviction, Jimmie MacNeil, 21, an honest laborer who lived down in Sydney's working class district of Whitney Pier, was having a lot of trouble sleeping. His conscience was bothering him.

He knew Marshall had not stabbed Seale. He was sure that night. He was the fourth man. His drawings, made by Roy Ebary, had stabbed Seale.

Pushing up his courage, MacNeil went to MacIntyre Nov. 18 to tell him what had really happened on May 28. Marshall would be cleared when the police heard his story, MacNeil thought.

He said Marshall and Seale had tried to rob Ebary for his wallet while he and Ebary were on their way home from the Seale tavern.

His statement to MacIntyre reads:

"The colored fellow said, 'My man, dig.' Then Roy Ebary said, 'I got something for you.' He put his hand in his right pocket and took out a knife and drove into

the colored fellow's side."

MacIntyre called Ebary in for questioning. Ebary admitted he had seen in Wentworth Park "two men," the same night this boy was stabbed, "and that there had been a fight between him and a short, young fellow and between MacNeil and a tall, young lad."

"Did you stab the man you were wrestling with?" asked MacIntyre.

"Hell no," replied Ebary. "Why would I stab him?"

MacIntyre's "Why didn't you give enough impetus to reopen the Seale investigation, a new discovery which appears in MacIntyre's discovery evidence in the declassification suit, should have triggered alarm bells."

After Ebary and MacIntyre were questioned, a check was made with the RCMP computer in Halifax to see whether other men had a criminal record.

The answers came back Nov. 18. MacIntyre had better convictions. Ebary had one breach of liquor laws and, more important, a criminal conviction for possession of a concealed weapon — a knife.

In 1971, a year later, the memory of Ebary had faded for at least some members of the Sydney police. Ebary's name was not in the file containing MacIntyre's evidence to Louis Matheson, then the assistant prosecutor at Marshall's trial and now a judge in Nova Scotia.

MacIntyre passed the truth to the RCMP. He also informed Robert Anderson, then Nova Scotia deputy attorney-general and now chief provincial judge.

Neither Marshall nor his lawyer was ever told of MacNeil's story.

The RCMP conducted a minimal investigation. The only thing done was to give polygraph tests to Ebary and MacNeil on November 22.

The examiner concluded that Ebary was telling the truth. But he said he had "an indefinite opinion" about MacNeil's test.

The RCMP investigation was complete. Case closed.

In January, 1972, Marshall failed to win his appeal. He was transferred to Dorchester Penitentiary and his long wait for justice began.

## Epilogue: What the players are doing now

Donald Marshall II was not until March, 1982, that he would be freed and not until May, 1983, that he would be officially acquitted of the murder. Last year, he received \$770,000 compensation for his 11 years in prison, much of which went toward paying his legal fees.

He now lives and works in Dartmouth, N.S.

The witnesses, the three youths who testified against Marshall, John Pratico, Maynard Chant, and Patricia Harris, are now in their early 30s and living in Cape Breton. Pratico lives in a boarding house on social assistance.

Chant has become a born-again Christian and works as a fish cutter.

John MacIntyre retired as chief of the Sydney police force in 1984 after a 41-year career. Prosecutor Donald C. MacNeil died of a heart attack during a plane trip over New Jersey in 1978. At the time, he was no longer a crown attorney. Ironically, on the day he died, the Progressive Conservative government of Premier John Buchanan had re-appointed him to the post.

Roy Ebary remains in Sydney as well. Now 73, he has been tried three times for the death of Sandy Seale in long-delayed court proceedings. Last month, an appeal of a conviction and one-year sentence in the case was rejected by the Nova Scotia Court of Appeal. His lawyers are currently seeking leave to appeal.

Jimmie MacNeil still lives in Sydney's Whitney Pier and works, whenever he can find a laboring job. Harry Wharton, a Royal Canadian Mounted Police staff sergeant and the man who re-investigated the Marshall case in 1982, has since been transferred to the Divisional headquarters in Halifax.

When the Marshall files closed, Wharton wrote a highly critical 1982 report proposing a further investigation into allegations that MacIntyre had "induced" the three youths to fabricate evidence in the original trial.

If an inquiry is ever held into the Marshall case, "I will be happy to testify under oath and tell what I know," Wharton told The

Star.

Wharton told The Star.

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## Obvious contradictions

The actions of Premier John Buchanan's own government contradict the excuses he gives for not deciding to appoint an inquiry into the Donald Marshall case.

The premier says his government can't discuss an inquiry until all court cases connected with the affair are over. Yet his government already did appoint an inquiry dealing with part of this affair while trials were going ahead. In 1984, the Buchanan government appointed PEI Judge Alex Campbell to recommend compensation to Donald Marshall. Obviously, then, you can separate the question of Donald Marshall's innocence and wrongful conviction from that of the pursuit of a criminal conviction for the murder of Sandy Seale.

Furthermore, the Nova Scotia government appointed an inquiry into two deaths at the Northside General Hospital

and released the report of the inquiry even though related lawsuits had started before the report's release. Likewise the provincial government established an inquiry into a recent death following surgery at the Glace Bay General Hospital; the inquiry went ahead even though litigation is possible.

The premier argues that it's a "legal no-no" to discuss the matter while it's before the courts, yet nobody's asking him to discuss the guilt or innocence of Roy Newman Ebsary (Ebsary is seeking leave to appeal.) Mr. Buchanan and his government don't have to discuss anything at all, just make the decision — as they did in the prior case with Judge Campbell — to appoint an inquiry into the circumstances leading to the wrongful conviction and prolonged punishment of a man.

The excuses for not doing so remain weak.

# Donald Marshall still wonders when ordeal will end

**HALIFAX** — Talking to Donald Marshall Jr. as I did yesterday, you're really not sure what he's saying. The 11 years he spent in prison as an innocent person, or living through the anger and frustration of the four years since his release.

Yes, he does have his physical freedom. Yes, he can eat what he wants and sleep when he wants. And yes, a Nova Scotia court has agreed that he did not kill his friend Sandy Seale 15 years ago in a Sydney park.

But when he "thinks back to March 28, 1962, the day he was finally released from Dorchester Penitentiary, Marshall, now 32, admits he never thought it would take so long to get his own little piece of justice.

Justice for Junior Marshall still means finding out everything about why he was wrongly convicted in 1971. And, though he is not especially vindictive, it means having those responsible punished.

For this he has now waited four years — and he seems certain to wait for some time to come.

"When do I get my turn?" he asks plaintively, remembering the wording of the 1982 decision of the Nova Scotia Supreme Court, which finally declared him not guilty but added that "any miscarriage of justice is most apparent when real justice is denied."

It was all very good, Junior. And still is.

Looking at his life again, I've got nothing to lose. I've already lost it all. Marshall said. The Toronto Star in the Dartmouth



**ALAN STORY**  
View from the East

apartment he shares with a few friends and family.

Junior has worked little or no, he did start to organize a retreat program for Nova Scotia Miqmaq Indians who had dropped out of school, and for native youths who needed alcohol and drug rehabilitation.

In the end, though, the program never got off the ground when federal financing fell through.

"And these days, I can't work, my head is too involved in this case; it's a full-time job," Marshall says.

Perhaps it is an excuse. But then who can throw the first stone at a person who has gone through his ordeal?

And certainly Junior will someday have to break free from the chains of his 11-year prison experience — even if he will never be able to forgive and forget.

These memories will be at the forefront again in coming weeks when he and two other former inmates tour a number of Miqmaq reserves in Nova Scotia and New Brunswick.

As part of a "waxed straight" program, Marshall will tell other native youth about the reality of prison life and why they should at

all costs, try to stay clear. And, after these seminars are over, what will you do next, Junior?

He looks a bit frightened and says he does not know.

For now, Marshall is waiting for two decisions, to be made during the next few months by the Royal Canadian Mounted Police and the Supreme Court of Canada.

Monday, Nova Scotia Attorney-General Ron Giffin said he did not have any objections to the RCMP reopening its investigation of the two former Sydney police officers who investigated Seale's killing in 1971 and arrested Marshall.

That criminal investigation had been halted in May, 1982, on orders from senior officials in Giffin's department.

At the time, two RCMP officers reinvestigating the Marshall case wanted to further examine the allegations of three youths who testified at Marshall's trial that they had been pressured by the Sydney police officers into lying on the witness stand.

On the basis of that investigation, the RCMP officers were to decide whether there were sufficient grounds to lay criminal charges.

Giffin's statement this week puts the ball back in the RCMP's court.

In a brief interview with The Star, Mr. Giffin said he was "regarding the matter to determine if, in fact, there is any basis to continue the investigation."

Vaughan refused to say when his assessment will be completed.

but the decision is important though that the division's commanding officer is being consulted.

Marshall — and Marshall watchers — will have to wait until at least Sept. 29 for a key decision to be made by the Supreme Court of Canada.

At that time, the court will hear Nova Scotia legal aid lawyers for Roy Ebbery, already convicted in both 1983 and 1985 of killing Seale, ask for leave to appeal his most recent conviction.

Whether Ebbery is, in the end, finally found innocent or guilty of killing Seale is, in one sense, unimportant.

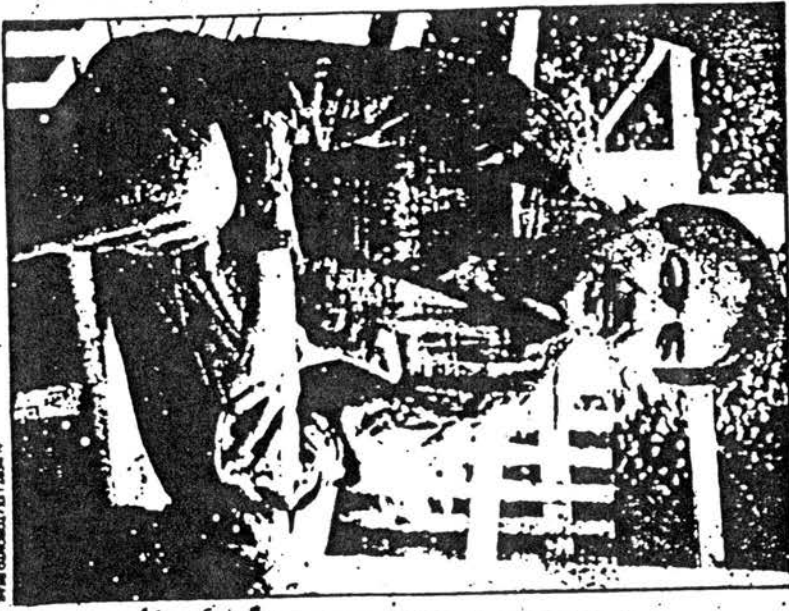
Since May, 1983, when Ebbery was first charged with murder (later lowered to manslaughter), two successive provincial attorneys-general have used "the Ebbery case is before the courts" as an excuse for refusing to call a public inquiry into the Marshall case.

It is a most transparent argument, as many newspaper editorials have pointed out.

Much to the dismay of Giffin and others, public interest in the Marshall case is just starting to be rekindled with a number of new revelations published earlier this week in The Star and starting to trickle out in the media here.

Unless the Supreme Court hears Ebbery's appeal — thus delaying the matter for several more years — Giffin will probably be forced to finally establish an inquiry this fall.

If it happens, Junior Marshall, for one, will be thankful.



**Still fighting:** Though he was released from prison four years ago after serving 11 years for a crime he did not commit, Donald Marshall says his case remains "a full-time job."

# Giffin breaks the silence

## Probe into City Police wasn't quashed, says attorney general

BY BETSY CHAMBERS  
Halifax Bureau  
Cape Breton Post

The RCMP did investigate the Sydney police department's role in the wrongful conviction of Donald Marshall Jr., Attorney-General Ron Giffin said Wednesday.

Giffin said the report remains confidential. He said the CBC's libel lawyer, Robert Murrant, should go to the RCMP if he has new evidence that might spark reopening of the file on the City Police role in Marshall's conviction.

But Murrant said the RCMP already knows what information was unearthed in the 2 1/2 years he was preparing the CBC's defence against a related libel suit that was dropped hours before it was to go to trial this month.

"It's at their discretion now as to what, if anything, they do," Murrant said. Giffin has ruled out for the moment any public inquiry into the events leading to Marshall's conviction for the 1971 murder of Sandy Saks in Sydney's Wentworth Park, for which Marshall served about 11 years in prison. But the attorney general has said the RCMP is free to look into the Sydney police role in the investigation.

"The RCMP are always at liberty as an investigative police force to pursue any matter they feel appropriate to investigate," said Giffin. Reopening the file would require new evidence, he added. Giffin said that contrary to repeated allegations, the RCMP completed a report to his department in 1983 on the actions of the Sydney force after the killing. The report has never been made public.

During the 1984 provincial election campaign in Truro, Giffin's Liberal opponent Kirby Grant released parts of a report indicating the RCMP had been told to put its investigation of the Sydney force on hold. In 1983 the RCMP had wanted to interview Sydney police officers involved in the Marshall case after one witness from the original trial admitted she had lied on the witness stand because of pressure from the police.

"What happened is that when the case was reopened back in 1983 the first concern the department here had was to get the rehearing before the appeal division so Marshall's status could be dealt with," Giffin explained. Marshall was still in Dorchester Penitentiary for



### On criminal director Gordon Gale:

Poor Gordon, who is a civil servant, can't get up and defend himself with these things

He has been wearing this for years — this accusation that he stopped an RCMP investigation

Donham said that contrary to the view of the Supreme Court of Nova Scotia, Marshall had not been the author of his own misfortune. Donham blamed racism, the judicial system, police coverups, and coercion of witnesses.

When the suit was withdrawn, there was concern voiced that evidence amassed in the case could not be made public for fear of inviting further lawsuits. That prompted renewed calls for a public inquiry into the whole Marshall affair.

Giffin said Murrant should take his information to the RCMP if he's so concerned.

"He's like any other citizen. He is perfectly at liberty to go to the RCMP and say, 'Here is what I've got.'"

Murrant has obtained new information. But he said it is more along the lines of a reinterpretation or re-analysis of existing material.

The RCMP knew about it because of all the interviews they sat through in connection with libel case, the lawyer said.

"At least six members of the RCMP would have testified on our behalf."

To go to the RCMP now would be redundant, he suggested.

Murrant maintains that the information he has could be used for a new detailed investigation.

"It's really back at their court as to what they do about it," he said, referring to the RCMP.

The attorney general's department mainly limits dealings with the RCMP to legal advice, Giffin said. Most of it comes locally through Crown attorneys who are sought to give counsel on whether and what charges should be laid.

"If it's a matter of great importance, then they may come to the senior staff here in the department," he said. "It's the kind of thing that just happens on a case-by-case basis."

"Now, on something like the reopening of the Marshall case, that was obviously something of great importance."

The attorney general's department was in closer touch with the RCMP over the matter, Giffin said.

He added that if the RCMP uncovered evidence and reopened the investigation, they might tell us they were doing it but they wouldn't say our names.

new information and the attorney general's office was trying to prepare for a hearing, which subsequently acquitted Marshall in May, 1982.

When the RCMP expressed interest in pursuing Sydney police involvement in the case, the department thought the Mounties had their priorities wrong. Gordon Gale, director of criminal matters for the department, responded with a note.

Giffin said: "Gordon sent a memo to the RCMP and said look, let's get this business of Marshall straightened out first. We will get the rehearing done and just put those other inquiries — just hold them in abeyance until we get them out of the way first."

Giffin added: "Those are the words he used — 'in abeyance' — and that is exactly what he meant, because after that, after Marshall's conviction had been set aside, Gordon sent a memo to the RCMP instructing them to investigate what had happened in 1971. "Poor Gordon, who is a civil servant, can't get up and defend himself with these things. He has been wearing this for years — this accusation that he stopped an RCMP investigation."

When Grant's accusation first surfaced, Giffin said, "to respond to her allegation I would have had to make public a confidential RCMP report to my department, which I couldn't do. So we just had to sit there and let the allegations stand."

Murrant said, "That's new to me." He had never heard of the confidential RCMP report before. When he read "abeyance" in the memo, "we took it as a euphemism for meaning stop."

The aborted libel case Murrant was launched by former Sydney police chief John MacIntyre, angered at statements on CBC radio that he believed reflected poorly on his involvement in the 1971 investigation. In a November 28, broadcast on the national net-

Chronicle - Herald

# Marshall inquiry to await appeal

By EVA HOARE  
Staff Reporter

A provincial government inquiry into the Donald Marshall case may be held "within a week or two" of the Roy Ebsary appeal, but the hearing could not begin until late fall at the earliest, Attorney General Ron Giffin said Sunday.

"Sooner or later, the Ebsary case is going to end. Whenever it has ended, we will outline what we will do in terms of an inquiry," said Mr. Giffin.

Donald Marshall, 32, of Dartmouth, and formerly of Sydney, was released from prison in 1982, after wrongfully serving 11 years in connection with the 1971 stabbing death of his friend, Sandy Seale. A subsequent trial cleared Marshall of murder charges.

Roy Newman Ebsary, 74, was convicted of manslaughter in 1985 in connection with the Seale death.

Mr. Giffin, who denied a recent Toronto Star story which reported an inquiry would be held in two months, said the government has always maintained that a public inquiry into the Donald Marshall case would be held.

"I don't know where they got the two-month business. We have no problem with an inquiry, but we will not initiate one until the Ebsary case ends," he said.

See MARSHALL page 16

# Marshall

(Continued from page one)

But the inquiry must follow the Ebsary appeal, he said.

"The government has nothing to hide or fear from an inquiry. But I've always maintained that it would be a mistake to hold an inquiry before the Ebsary appeal is heard before the courts," he said.

Ebsary's lawyer, Allan Nicholson, has filed papers with Canada's highest court, and will ask for leave to appeal Sept. 29. Ebsary was charged with Seale's murder in 1983. Those charges were reduced to manslaughter, and Ebsary was convicted in 1985 after a third trial on the charge.

Ebsary, who faces a year's imprisonment, is now out on bail pending an appeal on the conviction.

Mr. Giffin would not comment on the direction an inquiry may take, while the Toronto Star story, quoting unnamed sources, said it would probe charges made in 1982 RCMP report. That report has not been made public.

Mr. Giffin said the inquiry's terms of reference will not be clarified until its announcement, pending the outcome of the Ebsary appeal.

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