

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 28, 1988

Mr. Thomas R. Berger
Barrister & Solicitor
300 - 171 Water Street
VANCOUVER, British Columbia
V6B 1A7

Dear Mr. Berger:

Since I will be out of the office until October 11, 1988, I thought I would give you an update of the current state of planning for the November Consultation. I am off to Montreal and Paris tomorrow (she said casually).

All of the invitations have gone out to participants, and we have asked that they let us know by October 7th whether they will be attending. I have invited approximately 110 people, and I anticipate that the final number of people attending will be approximately 75. All of the people who I have asked to speak to Native issues have accepted our invitation, except Roberta Jamieson of the Indian Commission of Ontario. To complete this panel, I think I will ask Chief Norton from Kahnawake. I have sent him a letter asking him to participate, and expect to hear back from him by the time I return from holiday. The morning speakers - Michael Jackson, Chester Cunningham, Sam Stevens, Robert Depew and Judge Coutu - are all quite enthusiastic about the session. With the addition of Chief Norton, I think we will have a really interesting group of people.

I am having a little bit more difficulty with the "Black" session. Rocky Jones is confirmed as are Esmeralda Thornhill from the Quebec Human Rights Commission and Judge George Carter from the Provincial Court of Ontario. Professor Days from Yale cannot come because the date conflicts with American Thanksgiving. Rosemary Brown has declined to be a participant on the panel, because she feels somewhat removed from these issues. The "bottom line" on Charlie Roach appears to be that he is quite well regarded as an activist by people outside of the legal

Mr. Thomas Berger

September 28, 1988

community, but those who are part of the legal community have very little regard for him (to put it mildly). I have sent him an invitation to participate in the Consultation, but will not ask him to be a panelist, unless there seems no other option. I am going to ask Dan MacIntyre, the Race Relations Commissioner for Ontario, to join the panel. There are still one or two more spots on the panel, which I am working on.

We are having second thoughts about inviting the Director of Public Prosecutions for England, primarily because our own research on this issue concludes that the Australian model for the Director of Public Prosecutions is preferable to the English one. I am not keen on bringing someone in from Australia for such a short time, so we are trying to get a speaker who will give their own view of what the best approach would be. We have contacted Justice Archie Campbell from Ontario, who has been both Deputy Solicitor General and Deputy Attorney General, to be the primary speaker. I am hoping that Roland Penner and Morris Manning will comment. We have yet to approach Penner and Manning.

We have made a reservation for you at the Sheraton Hotel from November 22 to November 25, inclusive. The Consultation will be held in the Sheraton, and most of the participants from out of town will be staying there as well. If you would prefer to stay somewhere else, please let me know.

Kindest regards,

Yours truly,



Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 28, 1988

(copy) original signed and mailed

Mr. Hugh MacKinley
Transport Consulting Service Ltd.
P.O. Box 551
BEDFORD, Nova Scotia
B4A 2Y2

Dear Mr. MacKinley:

David Orsborn has directed your letter of September 15, 1988 to me for reply. I want to thank you for taking time to write to the Royal Commission, but I must advise you that there is nothing that we can do in relation to your particular concern. While it is true that the mandate of the Royal Commission is broader than simply looking into the facts of the Marshall case, it does not extend so far as to encompass your area of concern. We are examining aspects of the criminal justice system that have been alluded to in the Marshall case, but we cannot exceed the limits of our mandate.

Once again thank you very much for your interest in the Royal Commission.

Yours truly,

Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 28, 1988

*copy (original signed and
mailed)*

Mr. Douglas W. Trider
Chairman of the Friends
of the Dartmouth Common
8 Brightwood Avenue
DARTMOUTH, Nova Scotia
B3A 2X2

Dear Mr. Trider:

I am responding to your letter of July 18, 1988, on behalf of the Commissioners. I apologize for the delay in response, but we have been very tied up with other matters.

Unfortunately, the issue that you raise, while an important one, could not be interpreted as being one which is within the mandate of the Royal Commission. We are limited in what we can do by the authority given to us by Order in Council. This authority extends to a full review of the Marshall case and other related matters. The items that we have defined to include "other related matters", while somewhat broad ranging, are confined to specific areas of the criminal justice system that were raised in the Marshall case.

Thank you for your interest in the Royal Commission. I am sorry that we are unable to assist you.

Yours truly,

Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

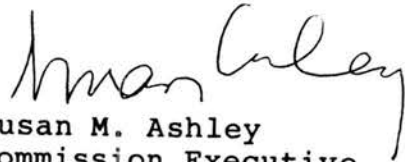
September 27, 1988

Margaret E. Graham
298 Portland Street
Dartmouth, N.S. B2Y 1K4

Dear Margaret:

I draw to your attention an error in the transcript at page 14811, line 11. It says, "before drawing any proper conclusions". I believe this should read, "before drawing improper conclusions". Will you please check the tape, and if an amendment is required, send out the appropriate notification to all counsel.

Yours truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/jm

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 27, 1988

Mr. Gordon F. Proudfoot
Office of the President
Nova Scotia Branch
Canadian Bar Association
c/o Boyne Clarke
Barristers & Solicitors
33 Alderney Drive
P. O. Box 876
Dartmouth, Nova Scotia B2Y 3Z5

Dear Gordon:

Thank you for your letter of September 14, 1988.

You have probably received George MacDonald's letter of September 23, which deals with several of the issues that were raised in your letter to me. We have asked all counsel to advise us whether they will in fact be making oral submissions, and to estimate the length of those submissions. Once we have heard from all counsel we will be able to advise you of the possible timing for the oral submission of the Canadian Bar Association. It is our intention that argument be delivered in the same order as obtained in the Public Hearings, and that those with observer status would present their argument after we have heard from parties with full standing.

Commission counsel are required to file their written submission with the Secretary of the Commission, and provide copies to all parties granted standing on or before October 19, 1988. Other counsel are required to file written submission with the Secretary of the Commission and to provide copies to all other parties on or before October 28, 1988. Presentation of

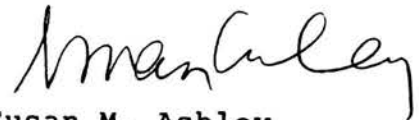
Mr. Gordon Proudfoot

September 27, 1988

oral argument will begin on Monday, October 31 and will continue through to Friday, November 4. It will be held in St. Andrew's United Church in Sydney.

If there is any further information you need, please let me know.

Yours truly,

A handwritten signature in cursive script, appearing to read "Susan Ashley".

Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

September 26, 1988

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

Mr. Darrel I. Pink
Patterson, Kitz
Barristers & Solicitors
Bank of Montreal Tower
Suite 1600
5151 George Street
P. O. Box 247
HALIFAX, Nova Scotia
B3J 2N9

Dear Darrel:

RE: PUBLIC POLICING IN NOVA SCOTIA - RESEARCH REPORT
BY APOSTLE AND STENNING AUGUST, 1988

You will recall that during the workshop held on August 31, 1988, to discuss the above noted report, the Deputy Solicitor General, Ms. Nadine Cooper-Mont undertook that her department would provide us with written comments outlining their concerns and criticisms of the report.

Indeed, I understood from my discussions with Ms. Cooper-Mont and Ms. Kit Waters that these written comments would be provided very shortly.

We are anxious to complete the revisions and finalize the draft report. The researchers are awaiting the submission from the Department of the Solicitor General. If we do not have the department's input in a timely fashion, the whole point of their involvement in the review/vetting process will be entirely lost. May I hear from you on this matter at your earliest convenience. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
cc. Dr. Richard Apostle
Professor Philip Stenning

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 27, 1988

Mr. James R. McLeod
Taylor McCaffrey Chapman
Barristers & Solicitors
4th Floor
386 Broadway
WINNIPEG, Manitoba
R3C 3R6

Dear Rod:

RE: THE MI'KMAQ AND CRIMINAL JUSTICE IN NOVA SCOTIA - RESEARCH
REPORT BY DR. SCOTT CLARK

Thank you for your comments on Dr. Clark's report as
contained in your letter of September 22, 1988.

I have passed a copy of your letter to Scott Clark and I am
sure that he will find it helpful. Based upon a review of the
preliminary second draft, I am confident that a number of your
concerns will have been addressed by the time the final draft is
completed.

I enjoyed meeting with you in Halifax and look forward to
doing so again.

I have asked that a cheque be requisitioned to cover your
reviewer's fee and you should be in receipt of same shortly. In
due course, I will forward for your information a copy of the
final draft report. In the meantime, thank you again for your
participation and cooperation.

I remain,

Yours very truly,

John E.S. Briggs. per bjs.
John E. S. Briggs
Director of Research

JESB/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 23, 1987

Ms. Anne Derrick
Buchan, Derrick & Ring
Barristers & Solicitors
5516 Spring Garden Road
Suite 205, Sovereign Bldg.
Halifax, Nova Scotia B3J 1G6

Dear Ms. Derrick:

As you requested, enclosed is a copy of the transcript of the CBC interview of Hugh Feagan on April 11, 1988.

Yours truly,

Laurie Burnett,
Secretary

/ljb

Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 23, 1988

TO: All Counsel

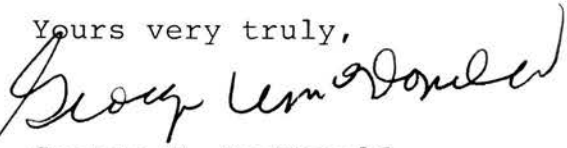
Re: Royal Commission, Donald Marshall, Jr.

At the conclusion of the public hearings in Halifax on September 21, 1988, the Chairman outlined the procedures which would be followed from this point forward until oral submissions are made to the Commission in Sydney commencing October 31, 1988. Commission Counsel are required to file a written submission with the Secretary of the Commission, and provide copies to all parties granted standing, on or before October 19, 1988. Any counsel who propose making submissions on behalf of their clients who have been granted standing, either as full participant or Observer, are required to file written submissions with the Secretary of the Commission, and to provide copies to all other parties, on or before October 28, 1988. To enable you to satisfy that requirement I enclose a listing of all parties granted standing and the mailing address which we have been using to communicate with such parties.

Chief Justice Hickman stated that counsel can assume the Commissioners will have read the written Briefs prior to the recommencement of Hearings on October 31 and expressed the wish that counsel not merely read their written submissions but instead highlight whatever points are considered to be of particular importance. We would like to attempt to prepare some type of schedule which could be presented to the Commissioners and would request, therefore, that each of you who intend to make oral submissions when the Hearings recommence estimate the time which you expect you will require. I propose advising the Commissioners of the estimated time for each party but would not want you to consider you will be restricted to the estimated time, although the Commissioners may well comment on any serious overrun which occurred.

Submissions by counsel will follow the same order as was used for examination of witnesses in the "Marshall Phase" of the Inquiry. After those counsel have been heard, any submission on behalf of Roland Thornhill will be heard, followed by oral submission, if any, on behalf of those parties granted Observer status. Would each of you let me know by October 7, 1988 whether you intend to present oral submissions to the Commission and if so, provide me with an estimate of the time you consider you would require to make such presentation on behalf of your client.

Yours very truly,

A handwritten signature in cursive script, reading "George W. MacDonald". The signature is written in dark ink and is positioned above the typed name.

George W. MacDonald
Commission Counsel

GWMacD/fm
Encl.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 22, 1988

Mr. Jamie Saunders
Patterson, Kitz
Barristers & Solicitors
Bank of Montreal Tower, Suite 1600
5151 George Street
P. O. Box 247
HALIFAX, Nova Scotia B3J 2N9

Dear Jamie:

Attached is Archie Kaiser's paper on Compensation, in response to your request.

Do not forget the memo you promised me on the November Consultation.

Yours truly,



Susan M. Ashley
Commission Executive
Secretary

SMA/bjs
Enclosure

BY COURIER

September 20, 1988

PERSONAL AND CONFIDENTIAL

Doug Hunt, Esq.
Assistant Deputy Minister
(Criminal Law)
Ministry of The Attorney General
18th Floor
18 King Street East
TORONTO, Ontario
M5C 1C5

Dear Mr. Hunt:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL - WORKSHOP
THURSDAY, SEPTEMBER 29, 1988, HALIFAX, NOVA SCOTIA

Further to our telephone conversation today, I now enclose for your information and on a confidential basis two copies of the series of opinion papers prepared by Professor John Edwards for the Royal Commission.

We will be hosting an all day in-house workshop to discuss a number of the issues raised in Professor Edwards' papers. The basic problem to be addressed in the workshop is how to correct the wide spread public perception that improper considerations affect the exercise of prosecutorial discretion. Professor Edwards' papers will provide the back ground for purposes of addressing this problem. In addition, the Thornhill and MacLean cases provide a case specific context within which a number of the issues identified in Professor Edwards' papers are joined.

I have enclosed for your information an agenda and tentative list of workshop participants. You mentioned that you would be speaking to Mr. Ian Scott, and I would simply reiterate that if he is available to join us we would be very pleased to have his attendance in addition to your own.

Mr. Doug Hunt, Esq.

September 20, 1988

As soon as you advise as to your availability, we will make the necessary travel and accommodation arrangements. I trust you will find this in order but if you should have any questions do not hesitate to give me a call. Thank you for your interest and cooperation.

I remain,

Yours very truly,

John E. S. Briggs
Director of Research

JESB/bjs
Enclosures

BY COURIER

September 21, 1988

PERSONAL AND CONFIDENTIAL

Commissioner
RCMP Head Quarters
1200 Alta Vista Drive
OTTAWA, Ontario
K1A 0R2

ATTENTION: CHIEF SUPERINTENDENT DON A. DOCKER

Dear Sir:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL - WORKSHOP
THURSDAY, SEPTEMBER 29, 1988, HALIFAX, NOVA SCOTIA

Further to my telephone conversation of today with Chief Superintendent Docker, I now enclose for your information and on a confidential basis a copy of the series of opinion papers prepared for the Royal Commission by Professor John Edwards.

We will be hosting an all day in-house workshop to discuss a number of the issues raised in Professor Edwards' papers. The basic problem to be addressed in the workshop is how to correct the wide spread public perception that improper considerations affect the exercise of prosecutorial discretion. Professor Edwards' papers will provide the back ground for purposes of addressing this problem. In addition, the Thornhill and MacLean cases provide a case specific context within which a number of the issues identified in Professor Edwards' papers are joined.

The workshop will focus in particular on mechanisms which can be put in place to correct or ameliorate the problems giving rise to the public perception referred to above.

I understand that Chief Superintendent Docker and possibly Chief Superintendent Leahy, will attend the workshop on behalf of

Commissioner, RCMP Head Quarters

September 21, 1988

the RCMP. I have enclosed for your information a copy of the agenda and tentative list of participants. If you should have and questions or concerns, please do not hesitate to contact me accordingly. Thank you for you cooperation.

I remain,

Yours very truly,

John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

cc. Chief Superintendent Leahy
Co. "H" Division
cc. James Bissell, Esquire Canada

BY COURIER

September 21, 1988

Chief Superintendent Leahy
Co. "H" Division
3139 Oxford Street
HALIFAX, Nova Scotia

Dear Chief Superintendent Leahy:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL - WORKSHOP
THURSDAY, SEPTEMBER 29, 1988, HALIFAX, NOVA SCOTIA

I enclose for your information a copy of my letter of today directed to the attention of Chief Superintendent Docker who I understand will be attending our workshop next week.

I had previously extended a general invitation to the RCMP through the offices of Jim Bissell.

In view of the importance of the subject matter of our workshop to the RCMP, I thought that you might wish to attend if you are available. I understand that you already have a copy of the opinion papers, but if that is not the case, please advise and we will have a copy forwarded by courier. If you should have any questions or concerns, please do not hesitate to contact me accordingly. Thank you.

I remain,

Yours very truly,

John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

BY COURIER

September 21, 1988

Ms. Anne S. Derrick
Buchan, Derrick & Ring
Barristers & Solicitors
5516 Spring Garden Road
Suite 205, Sovereign Building
HALIFAX, Nova Scotia
B3J 1G6

Dear Anne:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL - WORKSHOP
THURSDAY, SEPTEMBER 29, 1988, HALIFAX, NOVA SCOTIA

I enclose for your information and on a confidential basis a copy of the series of opinion papers prepared for the Royal Commission by Professor John Edwards.

We will be having an in-house workshop on Thursday, September 29, 1988 which will follow a format similar to that employed for the other workshops. If you are interested in attending the workshop, please let me know and I will have you added to the list of participants. Thank you.

I remain,

Yours very truly,

John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

BY COURIER

September 21, 1988

Professor Bruce Archibald
Dalhousie University
Law School
Weldon Law Building
HALIFAX, Nova Scotia

Dear Bruce:

RE: PROSECUTING OFFICERS AND THE ADMINISTRATION OF
CRIMINAL JUSTICE IN NOVA SCOTIA - THE SECOND
DRAFT

~~W~~ERE IS IT?

JOHN E. S. BRIGGS

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 21, 1988

Professor Drew Days III
Yale Law School
127 Wall Street
NEW HAVEN, Connecticut
06520

Dear Drew:

Attached is a summary of recommendations that were contained in the research done for the Royal Commission on the perception of discrimination by blacks in the Nova Scotia Criminal Justice System. I attach as well a draft letter of invitation to the Consultation - a version of which you will receive if you agree to participate. The Commission is very keen to propose recommendations for solutions that would actually produce an improvement in the system. I realize that there are no easy solutions to these problems, but we are all hopeful that the meetings that we are planning will open our minds to some creative approaches.

I hope very much that you will be able to join us, although I realize that the timing is bad, in terms of American Thanksgiving. I am trying to confirm the speakers for these meetings before I go to Paris on Friday, September 30. I would appreciate it very much if you could get back to me before then.

It was very nice to talk to you again and I look forward to hearing from you soon.

Yours truly,



Susan M. Ashley
Commission Executive
Secretary

SMA/bjs
Enclosure

Please come!

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 20, 1988

Dr. Scott Clark
G. S. Clark and Associates Ltd.,
Suite 712
151 Slater Street
OTTAWA, Ontario
K1P 5H3

Dear Scott:

RE: THE MI'KMAQ IN CRIMINAL JUSTICE IN NOVA SCOTIA -
SECOND DRAFT (AUGUST 1988)

Further to my letter of September 15, 1988, I now enclose for your information a list of the typographical errors which I picked up when reading your report. I dare say there may be others which I have missed.

I also enclose for your records a corrected copy of my previous letter which had been dictated but not read. The corrections are relatively minor so I trust that you have not been inconvenienced. I had expected to meet with the Commissioners last week to discuss your recommendations, however, that meeting is now tentatively scheduled for tomorrow evening. I shall no doubt be speaking with you shortly. In the meantime, if you have any questions give me a call.

For your information, herewith a copy of my recent letter to Professor Morse.

I remain,

Yours very truly,

John Briggs per bjs.

John E. S. Briggs
Director of Research

JESB/bjs
Enclosures

LIST OF TYPOGRAPHICAL/EDITORIAL ERRORS

RE: IAN COWIE'S BACKGROUND DOCUMENT - ABORIGINAL CRIMINAL
JUSTICE ISSUES

PAGE	COMMENT
ii.	Table of Contents, Part B, "administration"
4.	Bottom, "Indian" should be pluralized and the figure "13" should be re-typed.
5.	Top, first line, "Indian"
8.	Third paragraph, "billion"
9.	First paragraph, "STATUS"
10.	Second line from bottom, "and"
12.	Second paragraph, "Special Parlimentary [Committee?]"
16.	Second Line, "insensitivities" [?]
16.	Last paragraph, third line, "sensitivity"
19.	First paragraph, first line, "discussions"
20.	Third paragraph, fourth line, "INDIAN"
23.	Fourth paragraph, last line, "Indians" [on reserve]
23.	Seventh paragraph, "legal [programme?]"
24.	Paragraph 11, second line, "a" ?
27.	Last paragraph, "the BNA [sic] Act"
28.	Paragraph 12.5, third line, "defacto"
29.	Paragraph 13.2, second last line, "arrangements"
34.	Paragraph 14.2.1, fourth line, "disallowance" and spelling of "Kahanawake" (compare with spelling on page 32)
38.	First line, "recognition"
39.	Third line, "to [the] Donald Marshall Case"
40.	"human resource limitations"
41.	Third line from bottom, "scrutiny"

MI'KMAQ AND CRIMINAL JUSTICE IN NOVA SCOTIA

BY

DR. SCOTT CLARK

LIST OF TYPOGRAPHICAL/EDITORIAL ERRORS

PAGE	COMMENT
8.	Fifth line, should this not read "Study of more communities" or larger number of communities?
25.	Second Paragraph, fourth line, should this not read "Cultural areas"
27.	Re. source footnote "1985"!
28.	Fifth line "regarding"
31.	Second paragraph, third last line, "reluctant"
32.	Second paragraph, second last line, "accommodated with"
33.	Second paragraph, fourth line, "associated"
34.	Second line, "suspicions" and second paragraph, second last line "government"
35.	Fourth last line, "the major"
36.	Fifth last line, "to"
40.	Second line, "generally". "Comments" third line, "seems", sixth line "provincial". Last line, "in particular"
48.	First line, "by by"
49.	Second paragraph, "and government had been had been"
54.	"Mi'kmaqs number approximately [???] individuals"
62.+	Table number 2 outstanding
63.+	Table number 3 outstanding
64.+	Table number 4 outstanding
71.	"Almost unanimously" - ie. a consensus as to who was and who was not more or less lenient?

PAGE	COMMENT
84.	It is Judge Robert McCleave
91.	Second paragraph, seventh line, "from their own communities"
92.	Second last line, "the their potential"
103.	Second paragraph, third last line, "Attorney General"
110.	Fourth last line, "more so"
111.	Third line, "establish [a] separate court system"
113.	Second paragraph of quotation, "aboriginal governments <u>want</u> to take over jurisdiction"
114.	Second paragraph of quotation, "another issue [which] concerns governments"
116.	There are two spellings for "Kanewake" - are they both correct?
129.	Paragraph number 4, "freely <u>available</u> to Mi'kmaq"

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Dr. Scott Clark
G. S. Clark and Associates Ltd.,
Suite 712
151 Slater Street
OTTAWA, Ontario
K1P 5H3

Dear Scott:

RE: THE MI'KMAQ IN CRIMINAL JUSTICE IN NOVA SCOTIA -
SECOND DRAFT (AUGUST 1988)

Further to our recent telephone discussions, herewith my comments with respect to your second draft. Firstly, I shall make some comments concerning Ian Cowie's background paper.

The Cowie Paper

I have attached a list of the typographical errors which I noted when reading Cowie's paper. There may well be additional errors which I did not pick up. Generally I found Cowie's paper to be educational and helpful. My principal disappointment with his paper is that I do not emerge with a clear idea of why there is a gap between the Indian leadership and the federal government and a number of the key issues. To some extent this is no doubt implicit, but that is an area which I think it unfortunate he did not treat explicitly. That aside, I have the following minor editorial comments:

1. At page 7, is the five hundred million the "well in excess of half" or is it the whole?
2. At page 18, there is reference to the 1984 - 1985 Conferences, and the fact that the proposed agreement was rejected by Indian and Inuit representatives. There is no discussion of why. Also at page 12, although there is some explanation as to why Bill C-52 was opposed by the Indian leadership the ostensible rationale is not, I would think,

Dr. Scott Clark

September 19, 1988

incompatible with "enabling framework legislation". I would have liked to have seen these questions explored further which really relates to the point I raised in my comments above.

3. At page 21, there is reference to "over sixty proposals" received under the framework agreement and at page 38, there is reference to "in excess of seventy proposals" - which is it?
4. At page 26, it reads: "the percentage of native inmates in the Atlantic region dropped 4.3 percent in 1980 to 2.6 percent" should this read "dropped from 4.3 percent" or is it a 4.3 percent drop?
5. At page 31, Cowie indicates that "regular RCMP training" is a characteristic of the RCMP (3b) Special Constable Program. Although clearly these constables receive RCMP training, my understanding of one of the complaints of this program is that the constables trained thereunder receive an abbreviated, and it is suggested consequently inadequate, training program from the RCMP.
6. At page 33, in the second and third paragraph, under the heading "Financial" there is reference to federal expenditures. I found it somewhat confusing reading the second paragraph which I presume relates to "total verifiable government expenditures on administration of justice [for natives]" it is probably just the hour of the day!

The Clark Report

I will set out my comments below:

1. Generally, I believe that your report is well done, and makes a significant, valuable, and timely contribution to an understanding and discussion of the issues and problems with which it is concerned.
2. There are three different spellings for Mi'kmaq (or variations on that word) between the title page and acknowledgements. It would be interesting, and I believe helpful, to understand the significance of those variations.
3. A detailed table of contents is required. I understand that you will be forwarding same shortly.

Dr. Scott Clark

September 19, 1988

4. At page 11, you incorrectly state that Correctional Services Canada "declined to facilitate the requested interview with Royal Commission's researcher". This was drafted prior to the Archie Walsh interview; it is no longer correct.
5. I would ask you to compare the numbers and percentages that you use on page 26 with respect to the status Indian population in Nova Scotia with the figures and percentages used at page 54, table 1, and Cowie's figures. There appears to me to be a difference between the figures which suggests an explanation or correction.
6. On page 28, you state that: "the instrument for federal policy making regarding Indians is the Indian Act". I would have thought the Indian Act was more accurately the mechanism for effecting or delivering the federal policy rather than for making it?
7. On page 34, in the last paragraph, you identify what I believe to be a very important concern namely the weakening/decimation of the policy development and program capacity of DIAND. However, the paragraph/sentence as now written is awkward and consequently detracts from the point you are making.
8. I now refer you to some comments you make at page 42, 49, 53, and 65 under the heading "Concluding Notes" [as you know the numbering in my draft is off!]. At page 42 you state: "it will be indicated in this report that these conditions and relationships [social economic conditions and political relationships] have a significant bearing on issues surrounding Indians in the criminal justice system." On page 49, you state: "these developments [centralization] had distinct implications for the social and political context in which Mi'kmaq live today, including their relations with the criminal justice system". You then go on to say at page 53, that "the process [centralization] has had significant implications for current social conditions including the Mi'kmaq relationship to the criminal justice system". Finally, at page 65, you state: "the effects of the process of underdevelopment on criminal activity is unclear at this point ...". My concern here is that I do not think that you fully flesh out or develop some of these points which for example at page 53 you indicate "will be expanded in later sections of the report". You do for example on page 49, give some specific examples of the consequences of centralization as it impacted on the

Dr. Scott Clark

September 19, 1988

criminal justice system. However, generally I think that there is something missing in relation to the various points cited above. My reaction may be simply a matter of how you have written this aspect of your report or simply my reading or misreading of it.

9. I was struck with the facts which you recited in page 55 regarding a high Mi'kmaq birth rate and significantly declining mortality rate. Although you indicate that this results in a high number of dependents with the consequent pressure on services, I am curious whether the declining mortality rate has any connection with better social economic conditions eg. better health care or what?
10. Why "Mi'kmaq villages" at page 57 rather than "reserves"?
11. At page 59, you state that: "Nova Scotia bands has thus far chosen not to engage in the 'self-government' negotiations process initiated by the Department of Indian Affairs and Northern Development" why is this so particularly given the apparent contradiction of attempting to develop "community controlled social programs ... within the framework of existing legislation".
12. At page 78, you state: "rehabilitation and half-way houses located in non-Indian towns and cities have proved to be ineffective in helping Indians" do you intend to include Halifax Mi'kmaq Friendship Centre in this indictment?
13. At page 86, under the heading "Juries" you state that "native names would never arise" and I am just wondering is it indeed "never" or should it be "ever".
14. I am not sure what you are saying at page 92 in the first sentence.
15. At page 93, you refer to "aboriginal governments" I am wondering if we are there yet?
16. Your last paragraph at page 124 seems to me to be [a bit of] a non sequitur.
17. At page 125, you refer to "a series of systemic problems in the justice system that discriminate against Aboriginal people in general". I would suggest it may be effective to recap some of the examples of systemic discrimination other than simply making the general statement that it is.

Dr. Scott Clark

September 19, 1988

18. At page 126, you indicate the "there does not exist an adequate information base in Nova Scotia ... consequently, effective policy and program planning is made more difficult ..." it seems to me that the problem is much more serious than your finding would indicate. Further, I question whether there is any policy development and program planning vis-a-vis the native communities. To put it rather simplistically, it is my impression that the province basically does not care very much about the issues with which we are concerned, does not think about them, and in consequence of the foregoing, there is virtually no policy and program development and planning.
19. At page 130, you state that "the Mi'kmaq in Nova Scotia should consider as their long term goal the institution of an autonomous tribal justice system ..." my question is why are we recommending what the native community should want, or what their goal should be? It seems to me that this quality of recommendation is inconsistent with the general philosophy reflected in your report.
20. At page 131, under the policing recommendation I wonder about a second stage to deal with the implementation of desired policing options or models.
21. Also with respect to your legal representation recommendation, do we have a model program of regular liaison to which we can refer and which could be used for purposes of developing a program in Nova Scotia?
22. At page 133, you state "in rare instances, in particularly involving elderly individuals, language is a problem for the accused" I had thought that both your research and the testimony during the Public Hearings indicated that the language problem is far from being a rare instance when involving the native accused.
23. At page 134, you state "there appears to be disparity in sentencing ..." two points occur: first, disparity is different from racial discrimination; secondly, your own attempt to make a comparative examination of native and non-native dispositions indicated nothing of significance. I am therefor bothered by the statement without further elaboration. Also, I am wondering in particular what you have in mind with regard to a Commission to examine comparative sentencing in light of the Sentencing Commission Report.

Dr. Scott Clark

September 19, 1988

24. At page 135, under the heading "Probation and Parole" you talk about the inappropriateness of some treatment programs although I do not think you give any examples of this kind of misfit in your report. I think that the problem that so often confronts the Court is that they may wish to send a person on a treatment but there is no program available at all. Your recommendation as now drafted would seem to limit a judge to the authority to simply recommend an assessment. Although this seems to be a sensible first step it would seem to me appropriate for the judge to be able to order an accused to attend a program if the need was clearly established following assessment.
25. You make no recommendation with regard to legal aid. Given its apparent overburdened status and related problems I wonder if a recommendation regarding same might not be merited?

I hope that you will find the foregoing comments to be of some use to you. I shall be back in the office on Monday, September 19, and would be happy to speak with you regarding any of the points raised above.

Thank you for your cooperation, I remain,

Yours truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

LIST OF TYPOGRAPHICAL ERRORS

RE: IAN COWIE'S BACKGROUND DOCUMENT - ABORIGINAL CRIMINAL
JUSTICE ISSUES

PAGE	COMMENT
ii.	Table of Contents, Part B, "administration"
4.	Bottom, "Indian" should be pluralized and the figure "13" should be re-typed.
5.	Top, first line, "Indian"
8.	Third paragraph, "billion"
9.	First paragraph, "STATUS"
10.	Second line from bottom, "and"
12.	Second paragraph, "Special Parlimentary [Committee?]"
16.	Second Line, "insensitivities" [?]
16.	Last paragraph, third line, "sensitivity"
19.	First paragraph, first line, "discussions"
20.	Third paragraph, fourth line, "INDIAN"
23.	Fourth paragraph, last line, "Indians" [on reserve]
23.	Seventh paragraph, "legal [programme?]"
24.	Paragraph 11, second line, "a" ?
27.	Last paragraph, "the BNA [sic] Act"
28.	Paragraph 12.5, third line, "defacto"
29.	Paragraph 13.2, second last line, "arrangements"
34.	Paragraph 14.2.1, fourth line, "disallowance" and spelling of "Kahanawake" (compare with spelling on page 32)
38.	First line, "recognition"
39.	Third line, "to [the] Donald Marshall Case"
40.	"human resource limitations"
41.	Third line from bottom, "scrutiny"

ROYAL COMMISSION ON THE DONALD MALCOLM, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 - 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 15, 1988

Professor Brad Morse
Faculty of Law
University of Ottawa
57 Copernicus Street
OTTAWA, Ontario
K1N 6N5

Dear Professor Morse:

RE: THE MI'KMAQ AND CRIMINAL JUSTICE IN NOVA SCOTIA

Further to our telephone conversation of yesterday, I now enclose for your information copies of the following documents:

1. The Mi'kmaq and Criminal Justice in Nova Scotia - research report by Dr. Scott Clark
2. Indians in The Criminal Justice System - a topical bibliography prepared by the Union of Nova Scotia Indians.

I am providing a copy of Dr. Clark's second draft report (August 1988) to you on a confidential basis. I fully expect that Dr. Clark's report will ultimately be published, probably as an appendices to the Royal Commission's final report. I am sure that you can appreciate that the report represents the views of Dr. Clark and not necessarily those, or any of them, of the Royal Commission.

I have also enclosed for your information records, a copy of our Commission's Terms of Reference and the Opening Statement of Chief Justice Hickman along with the Decision on Standing. I

-2-

Professor Brad Morse

September 15, 1988

hope you will find these materials of some use. If I may be of any further assistance, please do not hesitate to give me a call. I look forward to meeting with you shortly. In the meantime, I remain.

Yours very truly,

John Briggs per bjs

John E. S. Briggs
Director of Research

JESB/bjs
Enclosures

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Professor Jean-Paul Brodeur
1227 Sherbrooke ouest
Appartment 93
MONTREAL, Quebec
H3G 1G1

Dear Jean-Paul:

Thank you for your letter dated September 3, 1988 which accompanied two copies of your review all of which arrived on Friday, September 16, 1988.

I am delighted that you were able to prepare a written critique especially given the short notice and your many other commitments. I have forwarded copies of your review to Dr. Richard Apostle and Dr. Philip Stenning today. Generally, I thought your comments were insightful and helpful. I am sure that the authors of the report will share that view.

It was agreed that in consideration of your participation in the workshop as a reviewer and the submission of a written critique of the Police Study, the Royal Commission would pay you a fee of \$1,000.00. In addition to your necessary travel and related expenses. I understand that your "four taxi receipts" are already being processed and I have asked that a cheque be requisitioned to cover your fee. You should be in receipt of these cheques shortly.

I very much enjoyed the opportunity of meeting with you and look forward to doing so again. Thank you for your cooperation and participation.

I remain,

Yours very truly,

John E. S. Briggs
Director of Research

JESB/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Mr. Darrel I. Pink
Patterson, Kitz
Barristers & Solicitors
Bank of Montreal Tower
Suite 1600
5151 George Street
P.O. Box 247
HALIFAX, Nova Scotia
B3J 2N9

Dear Darrel:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

I enclose for your information records a copy of "page 29" concerning The Office of Director of Public Prosecutions - The Australian Experience which page was inadvertently left out of the volume of papers previously forwarded to you. The missing page should be inserted between pages 89 and 90 of chapter three of your volume.

My apologies for the inconvenience resulting from this omission. Thank you for your cooperation.

I remain,

Yours very truly,

John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Mr. James D. Bissell
Counsel, Atlantic Region
Department of Justice
4th Floor, Royal Bank Building
5161 George Street
HALIFAX, Nova Scotia
B3J 1M7

Dear Jim:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

I enclose for your information records a copy of "page 29" concerning The Office of Director of Public Prosecutions - The Australian Experience which page was inadvertently left out of the volume of papers previously forwarded to you. The missing page should be inserted between pages 89 and 90 of chapter three of your volume.

My apologies for the inconvenience resulting from this omission. Thank you for your cooperation.

I remain,

Yours very truly,

John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Mr. Roland Penner, Q.C.
c/o Faculty of Law
Robson Hall
University of Manitoba
WINNIPEG, Manitoba
R3T 2N2

Dear Mr. Penner:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

Further to our telephone conversation of today, I now enclose the missing page "29" concerning The Office of Director of Public Prosecutions - The Australian Experience. This missing page should be inserted between pages 89 and 90 of the re-numbered volume of papers previously forwarded to you.

Thank you for bringing this omission to my attention and my apologies for the resulting inconvenience. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHA , JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Mr. Marc Rosenberg
Barrister at Law
Suite 3200 Simpson's Tower
401 Bay Street
TORONTO, Ontario
M5H 2Y4

Dear Mr. Rosenberg:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

I enclose for your information records a copy of "page 29" concerning The Office of Director of Public Prosecutions - The Australian Experience which page was inadvertently left out of the volume of papers previously forwarded to you. The missing page should be inserted between pages 89 and 90 of chapter three of your volume.

My apologies for the inconvenience resulting from this omission. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Mr. D. W. Perras, Q.C.
Deputy Attorney General
Province of Alberta
9833 - 109th Street
EDMONTON, Alberta
T5K 2E8

Dear Mr. Perras:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

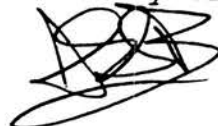
Further to our telephone conversation today, I would certainly be pleased if Mr. Neil McCrank, Assistant Deputy Minister (Criminal Law) were to attend the workshop in your absence. I am sorry that changes in your own schedule do not permit you to join us as well.

I enclose for your information records a copy of "page 29" concerning The Office of Director of Public Prosecutions - The Australian Experience which page was inadvertently left out of the volume of papers previously forwarded to you. The missing page should be inserted between pages 89 and 90 of chapter three of your volume.

My apologies for the inconvenience resulting from this omission. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMI. ON ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Mr. Stanley A. Cohen, Esquire
Coordinator Criminal Procedure Project
Law Reform Commission of Canada
130 Albert Street
OTTAWA, Ontario
K1A 0L6

Dear Stan:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

I enclose for your information records a copy of "page 29" concerning The Office of Director of Public Prosecutions - The Australian Experience which page was inadvertently left out of the volume of papers previously forwarded to you. The missing page should be inserted between pages 89 and 90 of chapter three of your volume.

My apologies for the inconvenience resulting from this omission. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Mr. Gordon Gregory, Q.C.
365 Wright Street
FREDERICTON, New Brunswick
E3B 2E3

Dear Mr. Gregory:


RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

I enclose for your information records a copy of "page 29" concerning The Office of Director of Public Prosecutions - The Australian Experience which page was inadvertently left out of the volume of papers previously forwarded to you. The missing page should be inserted between pages 89 and 90 of chapter three of your volume.

My apologies for the inconvenience resulting from this omission. Thank you for your cooperation.

I remain,

Yours very truly,


John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Dr. Philip Stenning
Room 8001, 8th Floor
Robarts Library
University of Toronto
130 St. George Street
TORONTO, Ontario
M5S 1A1

Dear Dr. Stenning:

RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

I enclose for your information records a copy of "page 29" concerning The Office of Director of Public Prosecutions - The Australian Experience which page was inadvertently left out of the volume of papers previously forwarded to you. The missing page should be inserted between pages 89 and 90 of chapter three of your volume.

My apologies for the inconvenience resulting from this omission. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Professor John Ll. J Edwards
University of Toronto
Faculty of Law
78 Queen's Park
TORONTO, Ontario
M5S 2C5

Dear Professor Edwards:

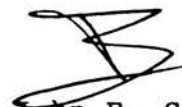
RE: THE ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

I enclose for your information records a copy of "page 29" concerning The Office of Director of Public Prosecutions - The Australian Experience which page was inadvertently left out of the volume of papers previously forwarded to you. The missing page should be inserted between pages 89 and 90 of chapter three of your volume.

My apologies for the inconvenience resulting from this omission. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

September 19, 1988

PERSONAL AND CONFIDENTIAL

Dr. Richard Apostle
Dalhousie University
Department of Sociology and
Social Anthropology
Corner Seymour and South Streets
HALIFAX, Nova Scotia
B3H 1T2

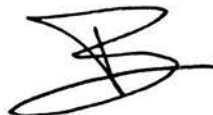
Dear Dr. Apostle:

RE: PUBLIC POLICING IN NOVA SCOTIA

Herewith for your information a copy of Jean-Paul Brodeur's review of your first draft report.

My quick reading of Jean-Paul's review suggests to me that he has made a number of insightful and helpful comments. I am unsure at this stage as to what extent you can fully act on his suggestions. However, may I suggest that we might meet on September 28, 1988 to discuss any outstanding issues/questions regarding your second draft. Let me know as to your availability. Thank you.

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

September 19, 1988

PERSONAL AND CONFIDENTIAL

Dr. Philip Stenning
c/o Centre for Criminology
Room 8001, 8th Floor
Robarts Building
University of Toronto
130 St. George Street
TORONTO, Ontario
M5S 1A1

Dear Dr. Stenning:

RE: PUBLIC POLICING IN NOVA SCOTIA

Herewith for your information a copy of Jean-Paul Brodeur's review of your first draft report.

My quick reading of Jean-Paul's review suggests to me that he has made a number of insightful and helpful comments. I am unsure at this stage as to what extent you can fully act on his suggestions. However, may I suggest that we might meet on September 28, 1988 to discuss any outstanding issues/questions regarding your second draft. Let me know as to your availability. Thank you.

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Professor John Edwards
Faculty of Law
University of Toronto
78 Queen's Park Crescent
TORONTO, Ontario
M5S 1A6

Dear Professor Edwards:

RE: PREMIER BUCHANAN'S POLICY COMMITMENT - "ETHICS
AND GOOD GOVERNMENT" (POLICY PAPER NUMBER 11)

Further to our recent discussion, I now enclose a copy of the above noted document along with a copy of my letter to Mr. Darrel Pink of today.

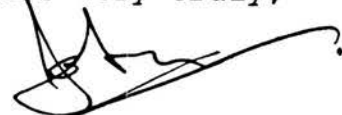
I refer you in particular to page 6 of the enclosed document which states that the Director of Public Prosecution "will report directly to the legislature and have the same independence as the Auditor General and the Ombudsman."

In addition, the DDP "will hire and supervise all Crown Prosecutors. The function of Crown Prosecutors will no longer be administered by the Attorney General's department."

Why is it that I am nervous about what they are doing - whatever that may be? It was good to see you in St. John's. I am looking forward to the workshop. I shall be in touch shortly.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosures

ROYAL COMMIS. ON ON THE DONALD MARSHA. , JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 19, 1988

Mr. Darrel I. Pink
Patterson, Kitz
Barristers & Solicitors
Bank of Montreal Tower
Suite 1600
5151 George Street
P.O. Box 247
HALIFAX, Nova Scotia
B3J 2N9

Dear Darrel:

RE: PREMIER BUCHANAN'S POLICY COMMITMENT - "ETHICS
AND GOOD GOVERNMENT" (POLICY PAPER NUMBER 11)

Thank you for a copy of the above noted document which your office forwarded last week.

I refer you in particular to page 6 of the document concerning the "Appointment of A Director of Public Prosecutions". I would request that you forward copies of any background documents or policy papers relating to the development and/or implementation of this policy commitment.

Thank you for your attention to this matter.

I remain,

Your very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 15, 1988

Dr. Scott Clark
G. S. Clark and Associates Ltd.,
Suite 712
151 Slater Street
OTTAWA, Ontario
K1P 5H3

Dear Scott:

RE: THE MI'KMAQ IN CRIMINAL JUSTICE IN NOVA SCOTIA -
SECOND DRAFT (AUGUST 1988)

Further to our recent telephone discussions, herewith my comments with respect to your second draft. Firstly, I shall make some comments concerning Ian Cowie's background paper.

The Cowie Paper

I have attached a list of the typographical errors which I noted when reading Cowie's paper. There may well be additional errors which I did not pick up. Generally I found Cowie's paper to be educational and helpful. My principal disappointment with his paper is that I do not emerge with a clear idea of why there is a gap between the Indian leadership and the federal government and a number of the key issues. To some extent this is no doubt implicit, but that is an area which I think it unfortunate he did not treat explicitly. That aside, I have the following minor editorial comments:

1. At page 7, is the five hundred million the "well in excess of half" or is it the whole?
2. At page 18, there is reference to the 1984 - 1985 Conferences, the fact that the proposed agreement was rejected by Indian and Innuit representatives. There is no discussion of why. Also at page 12, although there is some explanation as to why Bill C-52 was opposed by the Indian leadership the extensible irrational is not, I would think,

Dr. Scott Clark

September 15, 1988

incompatible with "enabling framework legislation". I would of liked to have seen these questions explored further which really relates to the point I raised in my comments above.

3. At page 21, there is reference to "over sixty proposals" received under the framework agreement and at page 38, there is reference to "in excess of seventy proposals" - which is it?
4. At page 26, it reads: "the percentage of native inmates in the Atlantic region dropped 4.3 percent in 1980 to 2.6 percent" should this "dropped from 4.3 percent" or is it a 4.3 percent drop?
5. At page 31, Cowie indicates that "regular RCMP training" is a characteristic of the RCMP (3b) Special Constable Program. Although clearly these constables receive RCMP training, my understanding of one of the complaints of this program is that the constables train there under and receive an abbreviated, and it is suggested consequently inadequate, training program from the RCMP.
6. At page 33, in the second and third paragraph, under the heading "Financial" there is reference to federal expenditures. I found it somewhat confusing reading the second paragraph which I presume relates to "total verifiable government expenditures on administration of justice [for natives]" it is probably just the hour of the day!

The Clark Report

I will set out my comments below:

1. Generally, I believe that your report is well done, makes a significant, valuable, and timely contribution to an understanding and discussion of the issues and problems with which it is concerned.
2. There are three different spellings for Mi'kmaq (or variations on that word) between the title page and acknowledgements. It would be interesting, and I believe helpful, to understand the significance of those variations.
3. A detailed table of contents is required. I understand that you will be forwarding the same shortly.

Dr. Scott Clark

September 15, 1988

4. At page 11, you incorrectly state that Correctional Services Canada "declined to facilitate the requested interview with Royal Commission's researcher". This was drafted prior to the Archie Walsh interview; it is no longer correct.
5. I would ask you to compare the numbers and percentages that you use on page 26 with respect to the status Indian population in Nova Scotia with the figures and percentages used at page 54, table 1, and in Cowie's figures. There appears to me to be a difference between the figures which suggest an explanation or correction.
6. On page 28, you state that: "the instrument for federal policy making regarding Indians is the Indian Act". I would have thought the Indian Act was more accurately the mechanism for effecting or delivering the federal policy rather than for making it?
7. On page 34, in the last paragraph, you identify what I believe to be a very important concern namely the weakening/decimation of the policy and development program capacity of DIAND. However, the paragraph/sentence as now written is awkward and consequently detracts from the point you are making.
8. I now refer you to some comments you make at page 42, 49, 53, and 65 under the heading "Concluding Notes" [as you know the numbering in my draft is off!]. At page 42 you state: "it will be indicated in this report that these conditions and relationships [social economic conditions and political relationships] have a significant bearing on issues surrounding Indians in the criminal justice system." On page 49, you state: "these developments [centralization] had distinct implications for the social and political context in which Mi'kmaq live today, including their relations with the criminal justice system". You then go on to say at page 53, that "the process [centralization] has had significant implications for current social conditions including the Mi'kmaq relationship to the criminal justice system". Finally, at page 65, you state: "the effects of the process of underdevelopment on criminal activity is unclear at this point ...". My concern here is that I do not think that you fully flesh out or develop some of these points which for example at page 53 you indicate "will be expanded in later sections of the report". You do for example on page 49, give some specific examples of the consequences of centralization as it impacted on the

Dr. Scott Clark

September 15, 1988

criminal justice system. However, generally I think that there is something missing in relation to the various points cited above. My reaction may be simply a matter of how you have written this aspect of your report or simply my reading or misreading of it.

9. I was struck with the facts which you recited in page 55 regarding a high Mi'kmaq birth rate or significantly the declining mortality rate. Although you indicate that this results in a high number of dependents with the consequent pressure on services, I am curious whether the declining mortality rate has any connection with better social economic conditions eg. better health care or what?
10. Why "Mi'kmaq villages" at page 57 rather than "reserves"?
11. At page 59, you state that: "Nova Scotia bands has thus far chosen not to engage in the 'self-government' negotiations process initiated by the Department of Indian Affairs and Northern Development" why is this so particularly given the apparent contradiction of attempting to develop "community controlled social programs ... within the framework of existing legislation".
12. At page 78, you state: "rehabilitation and half-way houses located in non-Indian towns and cities have proved to be ineffective in helping Indians" do you intend to include Halifax Mi'kmaq Friendship Centre in this inditement?
13. At page 86, under the heading "Juries" you state that "native names would never arise" and I am just wondering is it indeed "never" or should it be "ever".
14. I am not sure what you are saying at page 92 in the first sentence.
15. At page 93, you refer to "aboriginal governments" I am wondering if we are there yet?
16. Your last paragraph at page 124 seems to me to be [a bit of] a non sequitur.
17. At page 125, you refer to "a series of systemic problems in the justice system that discriminate against Aboriginal people in general". I would suggest it may be effective to recap some of the examples of systemic discrimination other than simply making the general statement that it is.

Dr. Scott Clark

September 15, 1988

18. At page 126, you indicate the "there does not exist an adequate information base in Nova Scotia ... consequently, effective policy and program planning is made more difficult ..." it seems to me that the problem is much more serious than your finding would indicate. Further, I question whether there is any policy development and program planning vis-a-vis the native communities. To put it rather simplistically, it is my impression that the province basically does not care very much about the issues with which we are concerned, does not think about them, and consequence of the forgoing, there is virtually no policy and program development and planning.
19. At page 130, you state that "the Mi'kmaq in Nova Scotia should consider as their long term goal the institution of an autonomous tribal justice system ..." my question is why are we recommending what the native community should want, what their goal should be? It seems to me that this quality of recommendation is inconsistent with the general philosophy reflected in your report. At page 131, under the policing recommendation I wonder about a second stage to deal with the implementation desired policing options remodels.
Also with respect to your legal representation recommendation, do we have a model program of regular liaison of which we can refer and which could be used for purposes of developing a program in Nova Scotia? At page 133, you state "in rare instances, in particularly involving elderly individuals, language is a problem for the accused" I had thought that both your research and the testimony during the Public Hearings indicated that the language problem is far from being a rare instance when involving the native accused. At page 134, you state "there appears to be disparity in sentencing ..." two points occur: first, disparity is different from racial discrimination; secondly, your own attempt to make a comparative examination of native and non-native dispositions indicated nothing of significance. I am therefor bothered by the statement about further elaboration. Also, I am wondering in particular what you have in mind with regard to a Commission to examine comparative sentencing in light of the Sentencing Commission Report. At page 135, under the heading "Probation and Parole" you talk about the inappropriateness of some treatment programs although I do not think you give any examples of this kind of misfit in your report. I think that the problem that so often confronts the Court is that they may wish to send a person on a treatment but there is

Dr. Scott Clark

September 15, 1988

no program available at all. Your recommendation as now drafted would seem to limit a judge to the authority to simply recommend an assessment. Although this seems to be a sensible first step it would seem to me appropriate for the judge to be able to order an accused to attend a program if the need was clearly established following assessment.

20. You make no recommendation with regard to legal aid. Given its apparent overburdened status and related problems I wonder if a recommendation regarding same might not be merited?

I hope that you will find the foregoing comments to be of some use to you. I shall be back in the office on Monday, September 19, and would be happy to speak with you regarding any of the points raised above.

Thank you for your cooperation, I remain,

Yours truly,

A handwritten signature in cursive script that reads "John Briggs per bjs".

John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

LIST OF TYPOGRAPHICAL ERRORS

RE: IAN COWIE'S BACKGROUND DOCUMENT - ABORIGINAL CRIMINAL
JUSTICE ISSUES

PAGE	COMMENT
ii.	Table of Contents, Part B, "administration"
4.	Bottom, "Indian" should be pluralized and the figure "13" should be re-typed.
5.	Top, first line, "Indian"
8.	Third paragraph, "billion"
9.	First paragraph, "STATUS"
10.	Second line from bottom, "and"
12.	Second paragraph, "Special Parlimentary [Committee?]"
16.	Second Line, "insensitivities" [?]
16.	Last paragraph, third line, "sensitivity"
19.	First paragraph, first line, "discussions"
20.	Third paragraph, fourth line, "INDIAN"
23.	Fourth paragraph, last line, "Indians" [on reserve]
23.	Seventh paragraph, "legal [programme?]"
24.	Paragraph 11, second line, "a" ?
27.	Last paragraph, "the BNA [sic] Act"
28.	Paragraph 12.5, third line, "defacto"
29.	Paragraph 13.2, second last line, "arrangements"
34.	Paragraph 14.2.1, fourth line, "disallowance" and spelling of "Kahanawake" (compare with spelling on page 32)
38.	First line, "recognition"
39.	Third line, "to [the] Donald Marshall Case"
40.	"human resource limitations"
41.	Third line from bottom, "scrutiny"

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 - 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 15, 1988

Professor Brad Morse
Faculty of Law
University of Ottawa
57 Copernicus Street
OTTAWA, Ontario
K1N 6N5

Dear Professor Morse:

RE: THE MI'KMAQ AND CRIMINAL JUSTICE IN NOVA SCOTIA

Further to our telephone conversation of yesterday, I now enclose for your information copies of the following documents:

1. The Mi'kmaq and Criminal Justice in Nova Scotia - research report by Dr. Scott Clark
2. Indians in The Criminal Justice System - a topical bibliography prepared by the Union of Nova Scotia Indians.

I am providing a copy of Dr. Clark's second draft report (August 1988) to you on a confidential basis. I fully expect that Dr. Clark's report will ultimately be published, probably as an appendices to the Royal Commission's final report. I am sure that you can appreciate that the report represents the views of Dr. Clark and not necessarily those, or any of them, of the Royal Commission.

I have also enclosed for your information records, a copy of our Commission's Terms of Reference and the Opening Statement of Chief Justice Hickman along with the Decision on Standing. I

Professor Brad Morse

September 15, 1988

hope you will find these materials of some use. If I may be of any further assistance, please do not hesitate to give me a call. I look forward to meeting with you shortly. In the meantime, I remain.

Yours very truly,

John Briggs per bjs

John E. S. Briggs
Director of Research

JESB/bjs
Enclosures

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 12, 1988

Mr. Roland Penner, Q.C.
c/o Faculty of Law
Robson Hall
University of Manitoba
WINNEPEG, Manitoba
R3T 2N2

Dear Mr. Penner:

Enclosed please find your flight schedule re. The Role of the Office of Attorney General - Workshop, Thursday, September 29, 1988.

Date	Air Canada Flight No.	Depart	Time	Arrive	Time
Sept. 28	176	Winnipeg	12:10 p.m.	Ottawa	5:10 p.m.
Sept. 28	138	Ottawa	5:31 p.m.	Halifax	7:38 p.m.
Sept. 29	139	Halifax	5:05 p.m.	Ottawa	5:43 p.m.
Sept. 29	181	Ottawa	7:35 p.m.	Winnipeg	9:20 p.m.

Locator Number WT3955CS

Reservations have also been made for you to stay at the Prince George Hotel on Market Street in downtown Halifax for the night of September 28, 1988.

Yours very truly,

John Briggs per bjs

John E. S. Briggs
Director of Research

JESB/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

September 9, 1988

PERSONAL AND CONFIDENTIAL

Mr. D. W. Perras, Q.C.
Deputy Attorney General
Province of Alberta
9833 - 109th Street
EDMONTON, Alberta
T5K 2E8

Dear Mr. Perras,

RE: THE ROLE OF THE OFFICE OF ATTORNEY GENERAL -
WORKSHOP THURSDAY, SEPTEMBER 29, 1988

Further to our telephone conversation of yesterday, I now enclose for your information and on a confidential basis a copy of the series of opinion papers prepared by Professor John Edwards for the Royal Commission.

I would be very pleased if you were able to attend the all day workshop to be held in Halifax on September 29, 1988. The workshop is the second stage of the review process which we use for each of our research reports. The first stage consists of outside review by three reviewers. The intention of the workshop is to have a full and candid discussion of all the issues raised by the research with the participation of the three Commissioners, Counsel, the reviewers, researcher, and other invited participants. It is not a public event and participants are asked to maintain the confidentiality of the proceedings.

As I indicated, the Commission will pay the necessary travel and related expenses of invited participants. As soon as you advise as to your flight requirements, we will make the necessary ticketing and accommodation arrangements at this end. I shall be forwarding an agenda and a list of workshop participants shortly.

-2-

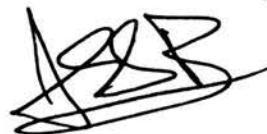
Mr. D. W. Perras

September 9, 1988

In the meantime, if you should have any questions or concerns please do not hesitate to let me know. I very much look forward to your participation.

Thank you. I remain,

Yours very truly,

A handwritten signature in black ink, appearing to be "JESB", with a horizontal line drawn through the middle of the letters.

John E. S. Briggs
Director of Research

JESB/bjs
Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, ... PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

PERSONAL & CONFIDENTIAL
BY COURIER

September 8, 1988

Roland Penner, Q.C.
c/o Faculty of Law
Robson Hall
University of Manitoba
R3T 2N2

Dear Mr. Penner:

Re: The Role of the Office of Attorney General - Workshop
Thursday, September 29, 1988

Further to our telephone conversation yesterday, I now enclose for your information and on a confidential basis a copy of the series of opinion papers prepared by Professor John Edwards for the Royal Commission.

I would be pleased if you would act as one of the outside reviewers of Professor Edwards' papers. The review process consists of outside review by three reviewers followed by an in-house workshop in Halifax. The intention of the workshop is to have a full, thorough and frank discussion of all of the issues raised by the research with the participation of the three Commissioners, Counsel, and other invited participants. The workshop is not a public event and participants are required to maintain the confidentiality of the proceedings.

The reviewers are required to provide a written critique or commentary prior to the workshop or as soon thereafter as possible. If you are agreeable to act as a reviewer, the Royal Commission will pay you an honorarium of \$1,000. plus of course your necessary travel, accommodation and related expenses associated with your attendance at the workshop. If you are unable to act as a reviewer, I would be pleased if you would attend the workshop as an invited participant. Although there is no fee payable to participants, the Commission will pay all necessary expenses.

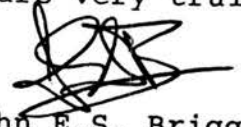
Page 2
September 8, 1988

As I indicated to you during our telephone conversation, the workshop is an all-day event and therefore it would be necessary for you to fly to Halifax on Wednesday, September 28th. As soon as you advise as to your flight requirements, we will make the necessary ticketing and accommodation arrangements at this end. I shall be forwarding an agenda and a list of workshop participants shortly.

In the meantime, if you should have any questions or concerns please do not hesitate to let me know.

Thank you for your co-operation. I remain,

Yours very truly,



John E.S. Briggs
Director of Research

JESB:jc

enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 2, 1988

Mr. Ronald N. Pugsley, Q.C.
Stewart, MacKeen & Covert

Mr. Jamie W. S. Saunders
Patterson Kitz

Mr. Darrel Pink
Patterson, Kitz

Mr. James Bissell
Department of Justice

Ms. Anne Derrick
Buchan, Derrick & Ring

Mr. John Merrick, Q.C.
MacInnes, Wilson, Flinn & Wickwire

Dear Sirs and Ms. Derrick:

Re: Royal Commission, Donald Marshall, Jr.

I have been informed by Bruce Wildsmith that he intends to appear at the commencement of the Hearings in the Thornhill case. He tells me his involvement will depend on the extent of questioning which is conducted by other counsel. His interest is to make certain that any preferential treatment afforded to Mr. Thornhill is fully established.

...../2

I have arranged for Mr. Wildsmith to obtain copies of the Statement of Facts and the booklet of documents on the same understanding as was reached today when we provided the documents to you at our offices; that is that the documents and Statement of Facts are provided to counsel for the purposes of preparing for the Hearing and are not to be disclosed to anyone except your client as it is considered necessary to obtain instructions from your clients. The documents will be introduced at the Hearings individually as required.

Yours very truly,

George W. MacDonald/fm

George W. MacDonald
Commission Counsel

GWMacD/fm

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

PERSONAL & CONFIDENTIAL
BY COURIER

September 8, 1988

Mr. James D. Bissell
Department of Justice Canada
4th Floor, Royal Bank Building
5161 George Street
Halifax, Nova Scotia B3J 1M7

and

Mr. Jamie W.S. Saunders
Patterson, Kitz
5151 George Street
Suite 1600
Halifax, Nova Scotia B3J 2N9

Dear Jim and Jamie:

Re: Billy Joe MacLean

In the absence of an agreed Statement of Facts it may be useful if the enclosed documentation was included in the Booklet of Documents already forwarded to you. The extract from the 1984 report of the Auditor General is self-explanatory, as is the fifteen page RCMP chronology. The five-page insertion is taken from the files of the Auditor General and represents notes and comments made by Mr. Cormier in preparing for his meeting with the Attorney General and the Speaker on November 20, 1984 and in providing a summary of events.

I don't believe that the inclusion of this document should cause either of you any difficulty, but if you have any concerns kindly let me know at your earliest convenience.

I also enclose herewith a tentative outline of the witness schedule for the final set of hearings.

Yours very truly,



David B. Orsborn
Commission Counsel

DBO:jrc
enclosures

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 7, 1988

Mr. James D. Bissell
Counsel, Atlantic Region
Dept. of Justice Canada
5161 George Street, 4th Floor
Halifax, Nova Scotia
B3J 1M7

Dear Jim:

Re: The Role of the Office of Attorney General - Workshop
Thursday, September 29, 1988

I enclose on a confidential basis for the information of yourself and Al Pringle, two copies of the series of opinion papers prepared by Professor Edwards for the Royal Commission.

As you know, the workshop will be held on Thursday, September 29th at the Chateau Halifax (Bluenose Room). The format for this workshop will be similar to that which we used for the workshop on Crown Prosecutors. I will forward an agenda and list of workshop participants to you shortly.

In the meantime, should you have any questions or concerns please do not hesitate to let me know.

Thank you for your co-operation. I remain,

Yours very truly,

John E.S. Briggs
Director of Research

JESB:jc

enclosures

ROYAL COM. MISSION ON THE DONALD MARS. L.L., JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 7, 1988

Mr. Darrel I. Pink
Patterson, Kitz
Suite 1600
5151 George Street
Halifax, Nova Scotia
B3J 2N9

Dear Darrel:

Re: The Role of the Office of Attorney General - Workshop
Thursday, September 29, 1988

I enclose on a confidential basis for the information of yourself and your colleagues, six copies of the series of opinion papers prepared by Professor Edwards for the Royal Commission.

I expect that the format for this workshop will be similar to the one which we have used in the other workshops. I shall forward an agenda and list of workshop participants shortly.

In view of the importance and relevance to the Department of Solicitor General of a number of the issues raised by Professor Edwards, please advise as to representation, if any, from that department.

As you are well aware and as I have often indicated, the purpose of these workshops is to have a candid and thorough working discussion of the issues raised by the research effort. The success of this exercise is very much dependent upon both the extent to which participants have made themselves conversant with the research, the issues, and the policy implications as well as their willingness to participate in and contribute to the workshop discussions.

I understand that the Attorney General's Department will be represented by yourself and Jamie as well as Messrs. MacDonald, Conrad, Davidson, and Herschorn. You will let me know about representation from the Solicitor General's Department.

Page 2
September 6, 1988

In the meantime, should you have any questions or concerns please do not hesitate to let me know.

Thank you for your co-operation. I remain,

Yours very truly,

John E.S. Briggs
Director of Research

JESB:jc

enclosures

ROYAL COMMISSION ON THE DONALD MARSH L, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 6, 1988

Stanley A. Cohen, Esq.
Criminal Law Project Co-ordinator
Law Reform Commission of Canada
131 Albert Street
Ottawa, Ontario K1A 0L6

Dear Stan:

Re: The Role of the Office of Attorney General - Workshop
Thursday, September 29, 1988

I would appreciate if you would act as a reviewer of Professor Edwards' series of opinion papers a copy of which I have previously forwarded to you.

In consideration for acting as a reviewer and attending the all-day workshop scheduled for Thursday, September 29, 1988, the Commission will pay you a fee of \$1,00. plus your necessary travel and related expenses. I expect that the workshop format will be similar to the one which we used for discussion of Bruce Archibald's paper on Crown Prosecutors. In any event, I shall be in touch with you prior to the workshop to seek out your thoughts on the agenda and the structuring of workshop discussions. In the meantime, I have asked Laurie Burnett of our office to make travel and accommodation arrangements for you, the details of which will be communicated to you shortly.

If you should have any questions or concerns please do not hesitate to let me know. Thank you for your co-operation. I remain,

Yours very truly,



John E.S. Briggs
Director of Research

JESB:jc

enclosures

P.S.: I am enclosing a Table of Contents for Professor Edwards' series of opinion papers.

ROYAL COMMISSION ON THE DONALD MARSH CASE, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 6, 1988

Mr. Gordon Gregory, Q.C.
365 Wright Street
Fredericton, New Brunswick
E3B 2E3

Dear Gordon:

Re: The Role of the Office of Attorney General - Workshop
Thursday, September 29, 1988

Further to our telephone conversation this morning, I now enclose for your information and on a confidential basis a copy of Professor Edwards' series of opinion papers.

You have agreed to act as a reviewer of these papers and in consideration for so doing the Commission will pay you a fee of \$1,000. plus your necessary travel and related expenses in connection with your attendance at the workshop.

I expect that we will follow essentially the same format which we employed during the workshop on Crown Prosecutors. However, I will no doubt speak with you prior to the workshop regarding the proposed structuring of the workshop discussions.

I have asked Laurie Burnett of our office to make the necessary travel and accommodation arrangements for you and you will be advised shortly. In the meantime, if you should require anything further please do not hesitate to let me know. Thank you for your co-operation.

I remain,

Yours very truly,


John E.S. Briggs
Director of Research

JESB:jrc

ROYAL COMMISSION ON THE DONALD MARSH L. JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 6, 1988

Mr. Marc Rosenberg, Esq.
Suite 3200, Simpson's Tower
401 Bay Street
Toronto, Ontario M5H 2Y4

Dear Marc:

Re: The Role of the Office of Attorney General - Workshop
Thursday, September 29, 1988

I enclose for your information and on a confidential basis a copy of the series of opinion papers prepared by Professor Edwards for the Royal Commission.


I would appreciate if you would act as a reviewer of Professor Edwards' papers and in consideration for so doing the Commission will pay you a fee of \$1,000. plus your necessary travel and related expenses in connection with your attendance at the workshop on September 29, 1988.

Although I expect that we will follow a format similar to that which we employed during the workshop on Crown Prosecutors I shall be in touch with you shortly to discuss the agenda and your thoughts on the structuring of the workshop discussions.

I have asked Laurie Burnett of our office to make the necessary travel and accommodation arrangements for you, the details of which will be communicated shortly. In the meantime, if you should have any questions or concerns please do not hesitate to let me know. Thank you for your co-operation.

I remain,

Yours very truly,


John E.S. Briggs
Director of Research

JESB:jrc

ROYAL COMMISSION ON THE DONALD MARSHALL, R., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 1, 1988

TO: All Counsel

Dear Sirs:

Re: Royal Commission, Donald Marshall, Jr.

We have confirmed that Michael Harris will attend to give evidence at the commencement of Hearings in Halifax on September 12, 1988. You will recall the Commissioners indicated their desire to hear evidence from Mr. Harris with respect to any knowledge he had concerning the alleged attempt by John MacIntyre to conceal documents from Staff Sgt. Wheaton.

We secured the voluntary attendance of Mr. Harris by undertaking that questions to him by Commission Counsel would be restricted to this one topic. Further, we agreed that Commission Counsel would object to any questions from other counsel which attempted to deal with any other topic.

We have been advised also that counsel for the Black United Front intends to apply to the Commission to have a number of witnesses called to discuss the general topic of discrimination against blacks in the criminal justice system. Commission Counsel have refused to call such witnesses and the Application to the Commissioners is being made pursuant to the Rules of the Commission which were established prior to the commencement of Hearings. We refused to call such witnesses because the general topic of discrimination is being dealt with by a researcher retained by the Commissioners, and a report will be filed in due course.

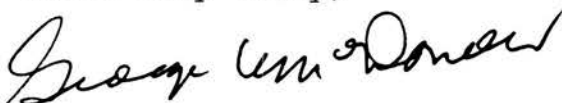
After Mr. Harris' evidence is concluded and the Application is heard, it is our intention to proceed to call evidence dealing with the "Thornhill" and "MacLean" cases. The evidence in each of these cases will be restricted to the manner in which they were handled by members of the Attorney General's Department and the R.C.M.P. As you know, a great deal of evidence has been introduced already dealing with the normal

or expected procedures and practices followed by the Attorney General's Department and the Police. There have been numerous suggestions that different practices and procedures are followed when "persons of influence" are involved with the criminal justice system and the purpose of dealing with these two cases is to seek to determine whether there is any substance to these suggestions of preferential treatment.

Once we have concluded the evidence on the Thornhill and MacLean cases, Hearings will adjourn. Final submission by all interested counsel will be heard in Sydney commencing October 31, 1988. Commission Counsel will make the first submission and other counsel will then be heard in the same order as has been followed for examination of witnesses. We will circulate our written submission to all other counsel by October 19, 1988. Written submissions of all other counsel who intend to make submissions to the Commissioners must be submitted in writing to the Commission by Friday, October 28, 1988.

We hope this background information will be sufficient to enable each of you to determine whether the interest of your client requires you to be present when Hearings resume on September 12. Please advise whether it is your intention to make final submissions to the Commissioners in order that we can make some estimate of the time required to reserve the facilities.

Yours very truly,

A handwritten signature in dark ink, appearing to read "George W. MacDonald", written in a cursive style.

George W. MacDonald
Commission Counsel

GWMacD/fm

I-1816

August 31, 1988

Dear Anne:

Re: HER MAJESTY THE QUEEN in right of the
Province of Nova Scotia, as represented
by the Attorney General of Nova Scotia
and THE ROYAL COMMISSION INTO THE
DONALD MARSHALL, JR., PROSECUTION
and DONALD MARSHALL, JR.; S.C.A. No. 01908

I enclose copies of the Commission's position
with respect to its Application for September 14 and
also a booklet containing the authorities referred
to therein.

Yours very truly,

MCINNES, COOPER & ROBERTSON

W. Wylie Spicer

Ms. Anne Derrick
Buchan, Derrick & Ring
Barristers & Solicitors
205-5516 Spring Garden Road
Halifax, Nova Scotia

Enclosures

BY COURIER

I-1816

August 31, 1988

Dear Jamie:

Re: HER MAJESTY THE QUEEN in right of the
Province of Nova Scotia, as represented
by the Attorney General of Nova Scotia
and THE ROYAL COMMISSION INTO THE
DONALD MARSHALL, JR., PROSECUTION
and DONALD MARSHALL, JR.; S.C.A. No. 01908

I enclose copies of the Commission's position
with respect to its Application for September 14 and
also a booklet containing the authorities referred
to therein.

Yours very truly,

McINNES, COOPER & ROBERTSON

W. Wylie Spicer

Jamie Saunders, Esq.
Patterson Kitz
Barristers & Solicitors
1600-5151 George Street
P. O. Box 247
Halifax, Nova Scotia
B3J 2N9

Enclosures

BY HAND

I-1816

August 31, 1988

Dear Sir:

Re: HER MAJESTY THE QUEEN in right of the
Province of Nova Scotia, as represented
by the Attorney General of Nova Scotia
and THE ROYAL COMMISSION INTO THE
DONALD MARSHALL, JR., PROSECUTION
and DONALD MARSHALL, JR.; S.C.A. No. 01908

I am enclosing five copies of a letter containing the Royal Commission's position with respect to the Application to be made by it on September 14. I am also enclosing five copies of a booklet containing the cases referred to in the letter.

Yours very truly,

MCINNES, COOPER & ROBERTSON

W. Wylie Spicer

The Registrar
The Supreme Court of Nova Scotia
Appeal Division
The Law Courts
1815 Upper Water Street
Halifax, Nova Scotia

Enclosures

BY HAND

August 31, 1988

My Lords:

Re: HER MAJESTY THE QUEEN in right of the
Province of Nova Scotia, as represented
by the Attorney General of Nova Scotia
and THE ROYAL COMMISSION INTO THE
DONALD MARSHALL, JR., PROSECUTION
and DONALD MARSHALL, JR.; S.C.A. No. 01908

This letter sets forth the position of the Respondent Royal Commission with respect to the Application being made by it before Your Lordships on September 14, 1988, and in particular, the Application to strike grounds 1, 2 and 3 of the Appellant's Notice of Appeal.

Grounds 1, 2 and 3 of the Notice of Appeal are:

1. The Learned Chief Justice erred in law in her interpretation of the scope of the terms of reference of the Respondent, the Royal Commission into the Donald Marshall Jr. Prosecution ("Commission") contained in the order-in-council dated October 28, 1986, and in her determination of the matters before the Commission relevant to those terms of reference.
2. The Learned Chief Justice erred in law by failing to rule that the Commission erred in law and jurisdiction by its interpretation of the scope of its terms of reference contained

in the order-in-council dated October 28, 1986, and in its determination of the matters relevant to those terms of reference.

3. In particular, without limiting the generality of numbers 1 and 2, the Learned Chief Justice and the Commission erred by interpreting its mandate as set forth in the order-in-council so as to permit compulsion of evidence from the Appellant on matters which are not "related" to the "charging and prosecution" and the "conviction and sentencing" of Donald Marshall, Jr. These matters include the process by which compensation was paid by the Appellant to Mr. Marshall and other aspects of the "administration of justice" not related to the charging and prosecution, conviction and sentencing of Mr. Marshall.

Argument in connection with these grounds of Appeal is contained in paragraphs 47-59 of the Appellant's Factum. The matters raised in grounds 1, 2 and 3 of the Notice of Appeal were not argued before Chief Justice Glube (nor is there any indication of them in the pleadings, Appeal Book p.6), and the Appellant seeks to raise them in the Appeal Division for the first time. As set out in the Commission's Notice of Application, had these matters been raised in the Trial Division, the Commission would have introduced evidence in respect of them either by way of cross-examination of the Attorney General on his Affidavit, or otherwise. The matters not having been raised, the Commission would be seriously prejudiced if the Appellant is permitted to argue these grounds in this Court.

Raising a new issue on Appeal is generally refused for two reasons, fairness to the Respondent and the Court of Appeal's reluctance to decide new questions of fact.

FAIRNESS:

In Re Cowburn, ex parte Firth, [1882] 19 Ch. D. 419 at 429, Jessel, M.R. states:

"An appellant will not be allowed to raise in the court of appeal a point which he did not raise in the court below, even though there is some evidence in support of it, if the nature of that evidence is such that, by any possibility, the respondent might have been able to rebut it if the point had been raised originally.

... the rule is that, if a point was not taken before the tribunal which hears the evidence, and evidence could have been adduced by which any possibility would prevent the point from succeeding, it cannot be taken afterwards. You are bound to take the point in the first instance, so as to enable the other party to give evidence." (emphasis added)

NEW FACTS:

Your Lordships do not have before you all the facts which the Commission would wish placed before the Court to enable it to decide issues concerning the scope of the Commission's mandate. In such circumstances, the Court should refuse to hear the Appellant in connection with grounds 1, 2 and 3.

In National Trust Co. v. Bouckhuys (1987), 43 D.L.R. (4th) 543, the Ontario Court of Appeal refused to hear a new issue on Appeal where at Trial the Trial Judge had observed that there had been no attack or challenge made concerning the validity of regulations sought to be impugned in the Appeal Court. Cory J.A. for the Ontario Court of Appeal at p.549:

"It would be unfair to permit the appellant to now attack the validity of the regulations. Additional material and further submissions might well have been made both on behalf of the respondent and the intervenant had that issue been raised upon the application. In *Canadiana Towers Ltd. v. Fawcett* (1978), 21 O.R. (2d) 545, 90 D.L.R. (3d) 758 (C.A.), Morden J.A. at p. 547, O.R., p. 761 D.L.R. quoted with approval the reasoning of Lord Herschell in *The "Tasmania" v. The "City of Corinth"* (1890), 15 App. Cas. 223 at p. 225, cited in an earlier appeal court decision:

It appears to me that under these circumstances a Court of Appeal ought only to decide in favour of an appellant on a ground there put forward for the first time, if it be satisfied beyond doubt, first, that it has before it all the facts bearing upon the new contention, as completely as would have been the case if the controversy had arisen at the trial; and next, that no satisfactory explanation could have been offered by those whose conduct is impugned if an opportunity for explanation had been afforded them when in the witness box.

That principle is applicable to this appeal. It would, I think, be even more unfair to the respondent and the intervenant to permit the appellants to raise the issue at this stage, given that the appellants had specifically conceded on the application that they were not challenging the validity of the regulations. These reasons will, therefore, proceed on the basis that the regulations of the Tobacco Board are valid."

This is precisely the situation here. As noted by Chief Justice Glube in her Decision, the scope of the Commission's mandate was not a subject of attack in the Trial Division. At p.25 of the Decision (p.189 of the Appeal Book):

"The broad nature of the Inquiry when established, the relatively unlimited (and unchanged and unchallenged) scope of the inquiry ..."
(emphasis added)

and at p. 24 of the Decision (p. 188 of the Appeal Book):

"The establishment of the Commission, the position taken by the Commission as to the areas it has indicated it will investigate, (which to date have not been challenged,) all indicate the serious and all encompassing matter which is under review by the Commission." (emphasis added)

The Appellants now seek, inter alia, (in ground 3 of their Notice of Appeal) to challenge the Commission's right to consider the process by which compensation was paid to Donald Marshall, Jr. The Commission had absolutely no idea at the Hearing before Chief Justice Glube that such a matter was in issue. It would now be both unfair and would require the Appeal Court to make new findings of fact concerning the scope of the Commission's mandate if the Appellant were permitted to argue these grounds of appeal.

The Royal Commission respectfully submits that this Court should order that grounds 1, 2 and 3 of the Appellant's Notice of Appeal be struck and that the Appellant not be permitted to make any argument in connection with these grounds of appeal.

All of which is respectfully submitted.

Yours very truly,

McINNES, COOPER & ROBERTSON

W. Wylie Spicer

Counsel for the Commission

Appeal Division
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, Nova Scotia

BY HAND

CC Ms. Anne Derrick
Jamie Saunders, Esq.

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

September 2, 1988

Dean James MacPherson
Osgoode Hall Law School
York University
4700 Keele Street
Downsview, Ontario

Dear Dean MacPherson:

**Re: MacKeigan et al. v. Hickman et al.
S.C.A. No. 02004; S.C.A. No. 01991**

Please find enclosed a copy of the Appeal Book, volumes I - III with respect to the above-noted matter.

Yours very truly,

W. Wylie Spicer
Commission Counsel

WWS:jrc

enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

September 2, 1988

Ms. Anne Derrick
Buchan, Derrick & Ring
Barristers & Solicitors
5516 Spring Garden Road
Suite 205
Halifax, Nova Scotia

Dear Ms. Derrick:

Re: **MacKeigan et al. v. Hickman et al.**
S.C.A. No. 02004; S.C.A. No. 01991

Please find enclosed a copy of the Appeal Book, volumes I - III with respect to the above-noted matter.

Yours very truly,

W. Wylie Spicer
Commission Counsel

WWS:jrc

enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

September 2, 1988

Mr. Ronald J. Downie, Q.C.
Cox, Downie & Goodfellow
Suite 1100
1959 Upper Water Street
Halifax, Nova Scotia

Dear Mr. Downie:

Re: MacKeigan et al. v. Hickman et al.
S.C.A. No. 02004; S.C.A. No. 01991

Please find enclosed a copy of the Appeal Book, volumes I - III with respect to the above-noted matter.

Yours very truly,

W. Wylie Spicer
Commission Counsel

WWS:jrc

enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

September 2, 1988

Mr. Jamie W.S. Saunders
Patterson, Kitz
Barristers & Solicitors
Suite 1700
5151 George Street
Halifax, Nova Scotia

Dear Mr. Saunders:

Re: **MacKeigan et al. v. Hickman et al.**
S.C.A. No. 02004; S.C.A. No. 01991

Please find enclosed a copy of the Appeal Book, volumes I - III with respect to the above-noted matter.

Yours very truly,

W. Wylie Spicer
Commission Counsel

WWS:jrc

enclosure

ROYAL COMMISSION ON THE DONALD MARSHAL JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

September 2, 1988

A. Martin Smith, Q.C.
Registrar of the Appeal Division
Supreme Court of Nova Scotia
Law Courts Building
1815 Upper Water Street
Halifax, Nova Scotia

Dear Mr. Smith:

Re: MacKeigan et al. v. Hickman et al.
S.C.A. No. 02004; S.C.A. No. 01991

Please find enclosed five (5) copies of the Appeal Book,
volumes I - III with respect to the above-noted matter.

Yours very truly,

W. Wylie Spicer
Commission Counsel

WWS:jrc

enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 1, 1988

Mr. Darrel Pink/Mr. Jamie Saunders
Patterson, Kitz
Barristers & Solicitors
Bank of Montreal Tower
Suite 1600
5151 George Street
HALIFAX, Nova Scotia
B3J 2N9

Dear Darrel and Jamie:

Thank you for agreeing to meet with me on Friday, September 2, at the Commission offices. I enclose a memo which describes a meeting which the Commissioners will be holding in late November. I am seeking your comments on the agenda and the list of participants.

1. Agenda

While we will be focusing on discussions of solutions to problems that have been identified by the Royal Commission, the Commissioners have some concern that not enough time might be provided in the agenda for discussion by all of the experts that have been invited. This is one of the matters on which I would like your comments. There are several ways of providing more time for discussion. One would be to reduce the number of participants, or to have shorter panels. An alternative suggestion would be to simply make the Consultation a longer process, perhaps having discussion of the Black issues on day one with Berger's comments that evening, a discussion of the Native issues on day two, and the Attorney General's issues on day three. The Commissioners have expressed some concern that there may be people who are interested in one portion of the agenda and not the other. Dividing off each segment into separate days would accommodate this concern, but it would effectively result in three separate meetings with three separate groups of people.

If you have any views on this please let me know.

Mr. Darrel Pink/Mr. Jamie Saunders

September 1, 1988


2. List of Participants

The number of participants to some extent will depend on the manner in which we structure the discussion, as indicated above. At this point, I would like to know if you have any comments on the proposed list. I would appreciate any suggestions that you might have, on the understanding that the Commission will be making their invitations based on a numbers limit and other factors.

The structure of the agenda and the list of participants must be finalized within the next two weeks or so, since all invitations must go out before the end of September. Some fine-tuning of the agenda may still be possible, until about the middle of October. I do wish to have some input on these matters, to ensure that the sessions accomplish everything that we expect them to do. While the participation in the Consultation is by invitation of the Commissioners, we are hoping that we can have adequate representation from local as well as national experts.

I hope that you have a chance to read this material prior to the meeting tomorrow. I apologize for the short notice, but it was unavoidable.

Yours truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/bjs
Enclosures

*The same letter was given
to Bruce Wildsmith by
Susan while he was in
our office.*

BS.

ROYAL COMMISSION ON THE DONALD MARSHAL JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 1, 1988

Mr. E. Anthony Ross
Smith, Gay, Evans & Ross
Barristers & Solicitors
604 Queen Square
P.O. Box 852
DARTMOUTH, Nova Scotia
B2Y 3Z5

Dear Tony:

Thank you for agreeing to meet with me on Friday, September 2, at the Commission offices. I enclose a memo which describes a meeting which the Commissioners will be holding in late November. I am seeking your comments on the agenda and the list of participants.

1. Agenda

While we will be focusing on discussions of solutions to problems that have been identified by the Royal Commission, the Commissioners have some concern that not enough time might be provided in the agenda for discussion by all of the experts that have been invited. This is one of the matters on which I would like your comments. There are several ways of providing more time for discussion. One would be to reduce the number of participants, or to have shorter panels. An alternative suggestion would be to simply make the Consultation a longer process, perhaps having discussion of the Black issues on day one with Berger's comments that evening, a discussion of the Native issues on day two, and the Attorney General's issues on day three. The Commissioners have expressed some concern that there may be people who are interested in one portion of the agenda and not the other. Dividing off each segment into separate days would accommodate this concern, but it would effectively result in three separate meetings with three separate groups of people.

If you have any views on this please let me know.

Mr. Anthony Ross

September 1, 1988


2. List of Participants

The number of participants to some extent will depend on the manner in which we structure the discussion, as indicated above. At this point, I would like to know if you have any comments on the proposed list. I would appreciate any suggestions that you might have, on the understanding that the Commission will be making their invitations based on a numbers limit and other factors.

The structure of the agenda and the list of participants must be finalized within the next two weeks or so, since all invitations must go out before the end of September. Some fine-tuning of the agenda may still be possible, until about the middle of October. I do wish to have some input on these matters, to ensure that the sessions accomplish everything that we expect them to do. While the participation in the Consultation is by invitation of the Commissioners, we are hoping that we can have adequate representation from local as well as national experts.

I hope that you have a chance to read this material prior to the meeting tomorrow. I apologize for the short notice, but it was unavoidable.

Yours truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/bjs
Enclosures

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 1, 1988

Mr. Burnly "Rocky" Jones
Black United Front
2001 Gottingen Street
HALIFAX, Nova Scotia
B3K 3A9

Dear Rocky:

Thank you for agreeing to meet with me on Friday, September 2, at the Commission offices. I enclose a memo which describes a meeting which the Commissioners will be holding in late November. I am seeking your comments on the agenda and the list of participants.

Agenda

While we will be focusing on discussions of solutions to problems that have been identified by the Royal Commission, the Commissioners have some concern that not enough time might be provided in the agenda for discussion by all of the experts that have been invited. This is one of the matters on which I would like your comments. There are several ways of providing more time for discussion. One would be to reduce the number of participants, or to have shorter panels. An alternative suggestion would be to simply make the Consultation a longer process, perhaps having discussion of the Black issues on day one with Berger's comments that evening, a discussion of the Native issues on day two, and the Attorney General's issues on day three. The Commissioners have expressed some concern that there may be people who are interested in one portion of the agenda and not the other. Dividing off each segment into separate days would accommodate this concern, but it would effectively result in three separate meetings with three separate groups of people.

If you have any views on this please let me know.

Mr. Rocky Jones

September 1, 1988

2. List of Participants

The number of participants to some extent will depend on the manner in which we structure the discussion, as indicated above. At this point, I would like to know if you have any comments on the proposed list. I would appreciate any suggestions that you might have, on the understanding that the Commission will be making their invitations based on a numbers limit and other factors.

The structure of the agenda and the list of participants must be finalized within the next two weeks or so, since all invitations must go out before the end of September. Some fine-tuning of the agenda may still be possible, until about the middle of October. I do wish to have some input on these matters, to ensure that the sessions accomplish everything that we expect them to do. While the participation in the Consultation is by invitation of the Commissioners, we are hoping that we can have adequate representation from local as well as national experts.

I hope that you have a chance to read this material prior to the meeting tomorrow. I apologize for the short notice, but it was unavoidable.

Yours truly,



Susan M. Ashley
Commission Executive
Secretary

SMA/bjs
Enclosures

DRAFT

September 1, 1988

CONSULTATION

Statement of Purpose

Background:

The Royal Commission on the Donald Marshall, Jr. Prosecution was established to inquire into the conviction of a Micmac youth in 1971 for a murder he did not commit. This task has necessarily required a detailed examination of the actual circumstances of the murder of Sandford Seale, and the factors leading to Donald Marshall Jr.'s conviction and subsequent acquittal. The Commission's investigation of these matters will determine what went wrong. However, this is only the beginning. The terms of reference of the Royal Commission require us to make recommendations for change to the system which allowed this situation to occur. In order to make meaningful recommendations for change the Commission must review the contributing factors to the Marshall case against the current state of the administration of criminal justice in Nova Scotia.

The opportunity for an in-depth examination of this system which is so much taken for granted is unprecedented in Canada. Because of the similarities between the provinces in their prosecutorial and criminal justice systems, it is likely that the work undertaken within the Commission's terms of reference may provide the impetus for change in other provinces of Canada, as well as in Nova Scotia.

To date, the Commission has held broad-ranging Public Hearings (82 days, 103 witnesses) which have served not only to define the factual questions, but have also directly raised more general policy matters. These have included the proper functioning of the courts, the obligations of defense and crown counsel, the appropriate role of the Attorney General in prosecutorial decision-making, questions of police training and practices, and difficult issues concerning racism against native and black people in the criminal justice system. Allegations that have been brought forward in the Hearings have raised concerns about the public's confidence in the integrity and fairness of our justice system. The aim of the Commission is to see if these concerns are well-founded, and if so, to try to deal with them in a constructive way.

The Public Hearings are only part of the process of investigation. To assist in arriving at recommendations and to give a broader base of information than can be obtained in structured Hearings, five major research projects have been undertaken. An important part of the research process has been consultation with other experts in the areas of work being

CONSULTATION cont.

studied, and with community leaders who have day to day experience in the issues under discussion. The peer and community review process will help ensure that the research is sound, and will permit the Commissioners to feel confident in making recommendations based on information found in the research reports.

On the basis of the extensive Public Hearings and the ambitious research programme, the Commission now has sufficient information to define the problems facing the Nova Scotia criminal justice system. The challenge now is to identify appropriate and meaningful solutions.

The Consultation:

To further this end, the Commission intends to hold a Consultation, bringing together experts on the broad general topics of the impact of racism against natives and blacks in the criminal justice system, and the proper relationship between the police, the crown prosecutor, and the Attorney General. This meeting will be attended by invitation of the Commissioners, but will be accessible to the media, as necessary. These invited experts and community leaders will be challenged to propose and discuss options for improvement and change. Such a Consultation will provide a forum for high-level discussion which we hope will further assist the Commissioners in making innovative, yet practical, recommendations.

It should be emphasized that the research reports will not be the starting point for discussion. While some reference may be made to the research in the comments, the discussion at this Consultation should strive to rise above the detail of the research reports, and have a broader policy focus. The focus will be on defining solutions.

The major purpose of this Consultation is to give the Commissioners access to a very broad range of expert advice to bring to the process of framing recommendations which will deal with the difficult issues that have been uncovered in this Inquiry. We are asking local and national experts to share their expertise with the Commission. We believe that this will be a unique and important exercise in public policy-making, and will ensure that the recommendations which the Commissioners make to government are based on sound, current, and complete knowledge of the issues.

CONSULTATION cont.

The Consultation will be held on November 24 - 26, 1988 at the Sheraton Hotel in Halifax. It will be chaired by Mr. Thomas Berger, who will also give the keynote address.

A tentative schedule follows, giving suggestions for topics and speakers. I have included some commentary, where an explanation is necessary.

THURSDAY

EVENING

6 - 7:30 p.m.

Registration

7:30

Opening remarks, and introduction to the keynote speaker.

Keynote address by Thomas Berger

FRIDAY

MORNING

IMPROVING THE TREATMENT OF NATIVE PEOPLE IN THE CRIMINAL JUSTICE SYSTEM: WHAT DOESN'T WORK AND WHAT MIGHT.

9:15 a.m.

Introductory remarks - Chair

9:30 a.m.

SESSION 1: THE POLITICAL LEVEL

(This will set the context in which solutions might be recommended, and will discuss how the criminal justice issues tie into broader national issues, ie. self-government. It is important that all speakers on all topics should be encouraged to offer suggestions as to where solutions might lie, so that all of the proposed solutions are on the table for the general discussion which will follow.)

Panel: Michael Jackson (author of C.B.A. report re. natives)
a native person: Erasmus, Bruyere??

CONSULTATION cont.

FRIDAY cont.

A federal government representative, who will indicate that self-government is a major federal initiative.

10:45 a.m.

BREAK

11:00 a.m.

SESSION 2: THE CANADIAN EXPERIENCE
An assessment of the initiatives taken, and their value.

(This topic would include discussion of such issues as native courtworkers/counsellors, cross-cultural education and training, native policing, native Justices of the Peace, holding court on reserves ...)

Panel: We should choose 3 - 4 people. These names are suggestions only:
Stan Jolly (Attorney General's Department, Ontario; has written widely on native justice issues)
Robert Depew (did a study in 1986 on native policing; now at DIAND)
Tom Sampson (running a programme re. involving elders where young people are involved in crime)
Sam Stevens (Director of Native Law Programme, U.B.C.)
Don Purich (Director, Saskatchewan Native Law Programme)
Delila Opekokew (co-author of 1985 Saskatchewan report "Reflecting Indian Concerns and Values in the Justice System")
Joe Norton (re. Kahnawahe Tribal Court)
Chester Cunningham, (Alberta Native Counselling Services, engaged in training native counsellors etc.)
Marie Battiste, Micmac Educator

12:30 p.m.

LUNCH

CONSULTATION cont.

FRIDAY cont.

AFTERNOON

2:00 p.m.

SESSION 3: COMPARATIVE SOLUTIONS

(This will focus primarily on the experience in other countries - the United States, Canada, and Australia - re. tribal courts.)

Panel: Choose 3 - 4 people from the following list. (Other names could, of course, be suggested.)

Doug Sanders (most widely recognized Canadian legal scholar on native law issues; Professor, U.B.C. Law School)

Sam Stevens

Michael Jackson (Professor, U.B.C. Law School)

Curt Griffiths (criminologist, Simon Fraser University, involved with the Northern Conference)

Ralph Johnson (Professor of Law, University of Washington, leading authority on tribal courts in the U.S.A.)

3:15 p.m.

BREAK

3:30 p.m.

SESSION 4: FUTURE STRATEGIES

(The Chair will attempt to direct a discussion towards consensus.)

SATURDAY

MORNING

BLACKS IN THE CRIMINAL JUSTICE
SYSTEM: WHAT CAN BE DONE

9:30 a.m.

SESSION 5: Introduction to keynote
speaker.

CONSULTATION cont.

SATURDAY cont.

9:40 a.m.

Address:
Burnley "Rocky" Jones

(Mr. Jones will discuss briefly the history and present composition of the black community in Nova Scotia, making comparative references to other black communities in Canada. It will attempt to identify the main problems facing blacks in the criminal justice system. The panel will focus on solutions that might be or have been tried.)

Panel: Choose 2 or 3, or others.
Ken Crawford (local black lawyer)
Rosemary Brown
Dan MacIntyre (Race Relations Commission Ontario, from New Brunswick)
Dan Hill (Ombudsman, Ontario) - not available
Juanita Westmoreland-Toure (black activist lawyer, Montreal)

11:00 a.m.

BREAK

11:15 a.m.

SESSION 6: FUTURE STRATEGIES

Directed discussion by Chair, as above.

12:30 p.m.

LUNCH

CONSULTATION cont.

SATURDAY cont.

AFTERNOON

A NEW START - THE APPROPRIATE ROLE
FOR THE ATTORNEY GENERAL IN
PROSECUTIONS

2:00 p.m.

SESSION 7: Introduction to the
speaker

Address:
Jim MacPherson or
Philip Stenning

(This discussion will canvas some
of the solutions which have been
identified to provide an
independent prosecutorial service.
It will consider the independent
special prosecutor and the Director
of Public Prosecutions models (and
perhaps others), and make
suggestions as to which solution is
more appropriate and adaptable in
the context of current provincial
needs.)

Panel: Mark Rosenberg
MacPherson or Stenning
other suggestions??

3:15 p.m.

BREAK

3:30 p.m.

SESSION 8: A PROPOSAL FOR CHANGE

Directed discussion as above, with
the floor open to all issues.

4:30 p.m.

Concluding remarks by Chair and
Chief Justice Hickman.

CONSULTATION cont.

COMMENTS:

1. There will be no formal receptions or banquets, as this might put the wrong focus on the meeting in the public eye. This Consultation should be presented as a serious working meeting.
2. Travel and living expenses would be paid for all invited participants from out of town. No fees will be paid to participants or presenters for their attendance or involvement, other than to the Conference Chair. The approach would be similar to an academic conference.
3. Presenters could be asked to submit a written text of their comments, which could be distributed at or prior to the meeting, or they could present them in writing to the Commissioners after the session. If we distributed them to participants for the meeting, we would alleviate the inevitable pressure to circulate copies of the written proceedings, which would be too costly.
4. The session should be video-taped, in the same way as the Public Hearings. It should also be taped by the court reporters, for the record, although I'm not sure we need it transcribed if we have the written presentations.
5. A separate media room would be provided with a video monitor. This would provide full access to the media, and also keep media representatives outside the meeting room.
6. This is not a public meeting, although media access would be provided. Participation is by invitation of the Commissioners. There may be a few public seats available, which would be given on a first-come first-served basis.

POSSIBLE PARTICIPANTS

(Try for a good mix of local/regional/national, black/native/white, male/female, academic/legal/government/community people. Should have an upper limit of numbers - I would suggest 75, excluding Commission people).

1. Dr. Scott Clark (author of the Commission's research study on natives).
2. Dr. Carole LaPrairie (expert on aboriginal justice, with federal Department of Justice).
3. Rod MacLeod (native lawyer from Manitoba).
4. Dr. Fred Wien (local expert on Micmacs).
5. Dr. Wilson Head (author of Commission's research study on blacks).
6. Dan MacIntyre (Race Relations Commissioner for Ontario, black).
7. Dr. Llewellyn Watson (sociologist from University of P.E.I., black).
8. Dr. Tony Johnston (Director, Nova Scotia Human Rights Commission, black).
9. Dr. Philip Stenning
10. Judge Barry Stuart (Magistrate, N.W.T.)
11. Dr. Don Clairmont
12. Dr. Alan Grant (University of Toronto).
13. Chris Murphy (incoming Director, Dalhousie Institute of Criminology).
14. C. L. Campbell (Director, Atlantic Police Academy, Charlottetown).
15. Dr. John Edwards (author of Commission's study on the role of the Attorney General).

16. Max Yalden (Chief Commissioner, Canadian Human Rights Commission)
17. Prof. Bruce Archibald (author of the Commission's study on Crown prosecutors).
18. Ken Chasse Q.C. (Director of Research, Ontario Legal Aid Plan).
19. Mark Rosenberg (Greenspan & Rosenberg, Toronto).
20. Gordon Gregory Q.C. (former Deputy Attorney General, New Brunswick).
21. Professor Ralph Johnson (Professor of Law, University of Washington, leading authority on tribal courts)
22. Jim MacPherson (Dean, Osgoode Hall, special counsel to the Commission).
23. Professor Charles Wilkinson (Professor of Law, University of Colorado, leading U.S. authority on native law)
24. Judge Murray Sinclair (Manitoba Inquiry on Natives)
25. Judge Hamilton "
26. Innis Christie (Dean, Dalhousie Law School).
27. Bruce Wildsmith (Assoc. Dean, Dalhousie Law School; Counsel, Union of Nova Scotia Indians).
28. Tony Ross (Counsel, Black United Front, Counsel, Confederacy of Nova Scotia Micmacs).
29. George Erasmus (Assembly of First Nations).
30. David Scott
31. Wayne MacKay (Prof. Dalhousie Law School, local expert on Charter issues).
32. Archie Kaiser (Prof. Dalhousie Law School, wrote article on compensation for wrongful conviction).
33. Dick Vogel (former Deputy Attorney General of British Columbia.)

34. Roy McMurtry (former Attorney General of Ontario).
35. Alan Blakeney (former Premier of Saskatchewan).
36. Bob Hyslop (Director of Public Prosecutions, Nfld.).
37. Alan Borovoy (Director, Canadian Civil Liberties Assoc.).
38. Nadine Cooper-Mont (Deputy Solicitor General, Nova Scotia).
39. Bill MacDonald (Deputy Attorney General, Nova Scotia).
40. Graydon Nicholas (President, Union of New Brunswick Indians).
41. Viola Robinson (Native Council of Nova Scotia)
42. Representative from Nova Scotia Association of Black Educators
43. Stan Cohen (Coordinator, Criminal Law Project, Law Reform Commission of Canada).
44. Darrell Pink (Counsel to Attorney General's Department).
45. Jamie Saunders " "
46. Marlys Edwardh (Counsel to Donald Marshall, Jr.).
47. Anne Derrick " "
48. Judge Felix Cacchione (County Court of Nova Scotia, former counsel to Donald Marshall, Jr.).
49. Representatives of U.N.S.I.
50. "
51. "
52. Representatives of Black United Front, Yvonne Atwell
53. "
54. "
55. Representatives of Confederacy of Mainland Indians
56. "
57. "
58. Juanita Westmoreland-Toure (black lawyer, Montreal)
59. Carolyn Thomas (moderator, African United Baptist Federation)

60. Dr. Ed Renner (Prof., Dalhousie - Psychology; writes on criminal justice/race/sex).
61. Judge Connie Sparks (black Family Court Judge, Nova Scotia)
62. Rosemary Brown (former member of British Columbia legislature, well-known black activist)
63. Representative from Nova Scotia Association of Black Social Workers.
64. Steve Aronson (former counsel for Donald Marshall Jr., and DIAND; witness)
65. Mary Two-Axe Early (Native Council of Canada).
66. Sam Stevens (Director, Native Law Programme, University of British Columbia).
67. Carol Montagnes (Ontario Native Council on Justice).
68. Jenny Margetts (formerly with Indian Rights for Indian Women)
69. Roberta Jamieson (Indian Commission of Ontario).
70. Louis "Smokey" Bruyere (Native Council of Canada)
71. Jim Mitchell
72. Stan Jolly (Formerly with Ontario Native Council on Justice; Attorney General's Department, Ontario.)
73. Louise Mandell (native lawyer, B.C.)
74. Brad Morse (Professor, University of Ottawa Law School)
75. Doug Sanders (Professor, U.B.C. Law School)
76. Michael Jackson " " " "
77. Frank Edwards (prosecuter in Cape Breton, witness)
78. Dana Giovanetti (Attorney General's Department of Nova Scotia, witness)
79. Rudy Street (black probation officer)
80. Gus Wedderburn " "
81. Cass Williams " "

82. Ken Crawford (black lawyer, Nova Scotia)
83. George Boyd (local black writer, commentator)
84. Don Purich (Saskatchewan Native Law Centre)
85. Robert Depew (DIAND, native policing)
86. Delila Opekokew (co-writer Saskatchewan report on Indians
in the Justice System)
87. John Hylton (has written on native issues)
88. Sakej Henderson (re. tribal courts)
89. Marie Battiste (local Micmac educator)
90. Curt Griffiths (criminologist, Simon Fraser University.)
91. Joe Norton (Grand Chief of the Mohawks, Kahnawahe Reserve)
92. Rocky Jones (local black activist)
93. Chester Cunningham (Executive Director, Alberta Native
Counselling Services)
94. Tom Sampson (runs a programme in Victoria involving
community elders in cases where young native
people have been charged with a crime)
95. Judge J. C. Coutu (responsible for the Quebec Northern
Circuit)
96. Andrew Thompson (Chair, CBA Native Justice Committee)
97. Ian Cowie (lawyer/consultant re. native issues)

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

September 1, 1988


Mr. John Merrick, Q.C.
MacInnes Wilson Flynn Wickwire
Barristers & Solicitors
2100 Central Trust Tower
1801 Hollis Street
P. O. Box 1054
Halifax, Nova Scotia B3J 2X6

Dear Mr. Merrick:

At a Meeting of the Commissioners held on Monday, August 29th, it was agreed that Mr. Thornhill be granted standing to participate in those portions of the Public Hearings that relate to his interests. These Hearings will commence on September 12, 1988, at Saint Thomas Aquinas Church Hall. We have scheduled the Hearings for September 12th - 15th, September 19th - 22nd, and September 26th - 28th.

You indicated in your letter to me of August 23rd that you would like the opportunity to present evidence, if necessary. I enclose a copy of the Rules of Procedure which govern the Public Hearings. You will note that all witnesses are called by Commission counsel, and that a procedure is set out by which other counsel can request that certain witnesses be called. If you have any questions about the application of these rules, please give me a call.

Yours truly,


Susan M. Ashley,
Commission Executive
Secretary

SMA/ljb

Enclosure

AUG 30 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 29, 1988

Mr. Jamie W. S. Saunders
Patterson Kitz
Barristers and Solicitors
P. O. Box 1068
Truro, Nova Scotia
B2N 5B9

Mr. James D. Bissell
Department of Justice
4th Floor, 5161 George Street
Halifax, Nova Scotia
B3J 1M7

Dear Sirs:

Re: MacLean - Port Hawkesbury Fire

I spoke recently with Mr. Ruby who inquired whether it was our intention to proceed with this particular matter when Hearings resume in September. I explained to him that following review of the materials in the possession of the Attorney General's Department and the R.C.M.P. Commission Counsel concluded that there was nothing in this file which warranted calling evidence before the Commission.

It is not our intention to attempt and deal with every case where it is suggested that something inappropriate has taken place. From a review of the materials it appears the normal practices were followed in that an investigation was conducted by the R.C.M.P. and a Crown Prosecutor was asked for his opinion whether the evidence which was available would support a charge of arson. The Crown Prosecutor concluded that there was not sufficient evidence to establish a prima facie case.

We became interested in this case in the first instance because of evidence given by Staff Sgt. Wheaton. We reviewed the file and interviewed Constable Gaudet to determine if there was anything to be gained by calling

evidence which may tend to challenge the credibility of Staff Wheaton. Following such review we concluded there was no such evidence available.

We are interested only in determining the procedures followed by the Attorney General's office and the police in Nova Scotia when investigating and prosecuting alleged crimes. It is not our wish, and neither is it within the terms of the mandate of the Commission, to question the actual exercise of discretion by persons within the administration of justice system, except to the extent that such discretion may have been exercised for improper purposes. We do not consider there is any evidence to support such a suggestion in this particular file.

Mr. Ruby asked if it would be possible for him to review, on a confidential basis, the contents of the files involving this matter which are in the possession of the Attorney General's Department and the R.C.M.P. I told him I would pass this request along to counsel for those parties and provide him with a response as quickly as possible. I would appreciate, therefore, if you would advise whether your client is prepared to allow Mr. Ruby to review the files in your possession on a confidential basis.

Yours very truly,

George W. MacDonald
Commission Counsel

GWMacD/fm

cc: Mr. Clayton Ruby

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX

NOVA SCOTIA, B3J 3K5

902-424-4800 FAX No. 902-424-2709

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 30, 1988

Mr. Thomas R. Berger
Barrister & Solicitor
300 - 171 Water Street
VANCOUVER, British Columbia
V6B 1A7

Dear Mr. Berger:

Yesterday I had the opportunity to discuss the proposal for the Consultation in late November with the Commissioners. They had some very useful comments. Their primary concern was that we should ensure that there is sufficient time for all of the participants to make a contribution to the discussion. In their view this could be accomplished either by inviting fewer people to the meeting and having shorter panels, or by adding another day to the sessions.

One of the concerns was that people interested in the native portion of the agenda might not be interested in the other matters that we wish to discuss. The same would apply to those interested in matters relating to blacks, and the role of the Attorney General. One option to deal with this concern would be to hear the black issues on Thursday, the native issues on Friday, and the Attorney General issues on Saturday morning. Your address could be delivered on Thursday night, tying together both of the "minority" days, and also making it possible for people who are interested only in day one to leave at the end of your speech. Likewise people only interested in day two, could start their participation on Thursday night. My gut feeling to this approach, however, is that there is a benefit in having all of the invited participants involved in all sessions, even though their interest might be limited.

I am encouraged that the Commissioners are concerned that enough time be given for adequate discussion. Perhaps you could give me your views as to how we might best achieve this.

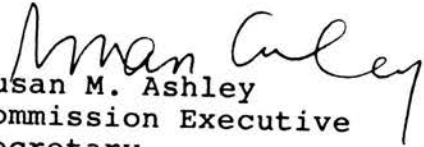
Mr. Thomas Berger

August 30, 1988

I have noted the comment in your August 15 letter that it would be useful to have someone on the black panel discuss briefly the composition of the black community in Nova Scotia, and perhaps compare it with the black communities in Montreal and Toronto. I think you are right. There is a local black activist in Nova Scotia who I think could do this for us. Burnley "Rocky" Jones is involved with the Black United Front, and has a fairly high public profile in Nova Scotia and perhaps beyond. For all kinds of reasons, we would like to give Rocky the opportunity to present his perspective on black problems in Nova Scotia and Canada, and I would suggest him as being the main speaker on this issue.

You mentioned in your letter that you would be in central Canada around September 8, and that we might be able to arrange a meeting to finalize these matters. Perhaps you could let me know when and where you might be available to meet.

Yours truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

Please note that I've
neither given you an
'Honorable' or a Q.C. !
H.

ROYAL COMMISSION ON THE DONALD MARSHAL JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

PERSONAL & CONFIDENTIAL

BY COURIER

August 30, 1988

Mr. James D. Bissell
Department of Justice Canada
4th Floor, Royal Bank Building
5161 George Street
Halifax, Nova Scotia B3J 1M7

and

Mr. Darrel I. Pink
Patterson, Kitz
5151 George Street
Suite 1600
Halifax, Nova Scotia B3J 2N9

Dear Mr. Bissell and Mr. Pink:

Re: Billy Joe MacLean Documents

I intend to add to the booklet of MacLean materials, the representations made at the time of sentencing. I take it that you have no objection to this addition. I enclose a copy of the representations for your information.

Kind regards,

Yours very truly,


W. Wylie Spicer
Commission Counsel

WWS:jrc

enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

August 26, 1988

Mr. Burnley "Rocky" Jones
c/o Black United Front
2006 Gottingen Street
HALIFAX, Nova Scotia
B3K 3A9

Dear Rocky:

RE: PUBLIC POLICING IN NOVA SCOTIA - A RESEARCH
REPORT PREPARED BY DR. RICHARD APOSTLE AND
PROFESSOR PHILIP STENNING

As discussed yesterday I enclose for your information and on a confidential basis a copy of the above noted draft research report.

You have been invited to participate in the workshop which we are holding on Wednesday, August 31, 1988 at the Delta Barrington Inn in Halifax.

The workshop is part of our review process which consists essentially of two stages, namely:

- a) Outside review by three reviewers each of whom will be required to provide a written critique of the research reports;
- b) An all day workshop at which the report will be thoroughly discussed with the participation of the reviewers, researchers, Commissioners, and other invited participants. It is our intention that there be a frank, informed, and wide range in discussion of the research and all of the relevant issues that flow from it during the workshop. It will not however be a public event and as I am sure you can appreciate, you will be required to maintain the confidentiality of the research report and the discussions flowing from the review process.

Mr. Rocky Jones

August 26, 1988

I have also enclosed for your information a tentative agenda outline and a list of the workshop participants. If you should have any questions please do not hesitate to give me a call.

Thank you for your cooperation.

I remain,

Yours very truly,

A handwritten signature in black ink, appearing to be 'JESB', written over a horizontal line.

John E. S. Briggs
Director of Research

JESB/bjs
Enclosures

ROYAL COMMISSION ON THE DONALD MARSHAL JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

August 26, 1988

PERSONAL AND CONFIDENTIAL

Professor Chris Murphy
c/o Foundation Year Program
University of Kings College
HALIFAX, Nova Scotia
B3H 2A1

Dear Chris:

RE: PUBLIC POLICING IN NOVA SCOTIA - APPENDIX "E" -
"RECENT CASE LAW CONCERNING PROVINCIAL JURISDICTION
RE: THE RCMP"

I enclose for your information and insertion in your copy of the Police Study the correct version of the above noted appendix.

Mr. apologies for this glitch. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs

Enclosures

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

August 26, 1988

PERSONAL AND CONFIDENTIAL

Professor Alan Grant
Professor of Law
York University
Osgoode Hall Law School
4700 Keele Street
NORTH YORK, Ontario
M3J 1P3

Dear Alan:

RE: PUBLIC POLICING IN NOVA SCOTIA - APPENDIX "E" -
"RECENT CASE LAW CONCERNING PROVINCIAL JURISDICTION
RE: THE RCMP"

I enclose for your information and insertion in your copy of the Police Study the correct version of the above noted appendix.

Mr. apologies for this glitch. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs

Enclosures

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

August 26, 1988

PERSONAL AND CONFIDENTIAL

C. L. Campbell, Esquire
Director, Atlantic Police Academy
295 Grafton Street
CHARLOTTETOWN, P.E.I.
CLA 8W4

Dear Mr. Campbell:

RE: PUBLIC POLICING IN NOVA SCOTIA - APPENDIX "E" -
"RECENT CASE LAW CONCERNING PROVINCIAL JURISDICTION"
RE: THE RCMP"

I enclose for your information and insertion in your copy of the Police Study the correct version of the above noted appendix.

Mr. apologies for this glitch. Thank you for your cooperation.

I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs

Enclosures

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

BY COURIER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 25, 1988

Mr. James D. Bissell
General Counsel
Director, Halifax Region
4th Floor
Royal Bank Building
5161 George Street
HALIFAX, Nova Scotia
B3J 1M7

Dear Jim:

RE: PUBLIC POLICING IN NOVA SCOTIA - RESEARCH REPORT
BY DR. RICHARD APOSTLE AND DR. PHILIP STENNING

I have your letter of August 18, 1988, copies of which I have passed along to Drs. Apostle and Stenning for their consideration and action as appropriate.

Your first concern would appear to relate entirely to a matter of fact which if the researchers have it wrong can no doubt be easily corrected.

I have also noted in particular the second concern to which you "take very strong exception". Although I believe that the comment which you have quoted from appendix "N", including the footnote to the comment (which you have not quoted), is factually correct, at the same time I agree that it is open to an interpretation which is unfavourable to the RCMP. This is unnecessary and I am confident that the researchers will take this into consideration when revising their report for the final draft.

Mr. James D. Bissell

August 25, 1988

Thank you for bringing these matters to my attention. I look forward to your participation in the workshop next week.

I remain,

Yours very truly,

A handwritten signature in dark ink, appearing to be 'JESB', with a large, sweeping flourish underneath.

John E. S. Briggs
Director of Research

JESB/bjs
cc Dr. Richard Apostle
cc Dr. Philip Stenning

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 25, 1988

Stanley A. Cohen, Esq.
Criminal Law Project Co-ordinator
Law Reform Commission of Canada
131 Albert Street
Ottawa, Ontario K1A 0L6

Dear Stan:

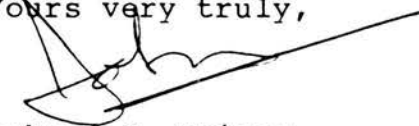
Re: The Office of the Attorney General and Related Issues
- A Series of Opinion Papers by Prof. John Edwards

I am pleased to enclose a copy of the above-noted series of opinion papers for your information and on a confidential basis.

I shall be forwarding to you shortly a tentative agenda and list of participants for the workshop which is scheduled for September 29, 1988 in Halifax.

Thank you. I remain,

Yours very truly,



John E.S. Briggs
Director of Research

JESB:jc

enclosures

ROYAL COMMISSION ON THE DONALD MARSHAL JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 25, 1988

Tom McMahon, Esq.
Executive Secretary
Aboriginal Justice Inquiry
Suite 1760-155 Carleton Street
Winnipeg, Manitoba R3C 3H8

Dear Tom:

Further to telephone conversation of August 24, 1988, I now enclose for your information, copies of the following:

1. The Royal Commission's rules of practice and procedure;
2. The rulings made to-date.

I would hope that our five research reports would be published this fall. I shall keep you informed of developments. I shall follow up on the issue of in camera evidence and submissions with my spies from other royal commissions. I shall be in touch shortly.

In the meantime, I remain,

Yours very truly,


John E.S. Briggs
Director of Research

JESB/jc

enclosures

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

August 25, 1988

Mr. Stanley A. Cohen, Esquire
Coordinator Criminal Procedure Project
Law Reform Commission of Canada
130 Albert Street
OTTAWA, Ontario
K1A 0L6

Dear Stan:

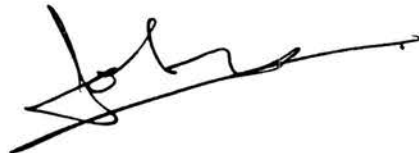
RE: CRIMINAL LAW REVIEW - GOVERNMENT GROUP
CONSULTATIONS - ST. JOHN'S, SEPTEMBER 15 - 16,
1988.

Thank you for the package of materials which were forwarded to me by Sally Morrow.

I appreciate the invitation to join your St. John's meetings which I believe will be most helpful to me in carrying forward with work of the Royal Commission.

Thank you, I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, C.I., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER


August 24, 1988

Mr. John P. Merrick, Q.C.
MacInnes Wilson Flinn Wickwire
Barristers and Solicitors
2100 Central Trust Tower
1801 Hollis Street
P.O. Box 1054
HALIFAX, Nova Scotia
B3J 2X6

Dear Mr. Merrick:

Thank you for your letter of August 23, 1988 in which you request that the Commissioners grant full standing to Mr. Thornhill to participate in the up-coming session of Hearings of the Royal Commission. The Commissioners will be meeting early next week and I will put your request before them at that time. I will advise you of their decision on this matter as soon as a decision is made.

Yours very truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 24, 1988

Ms. Margaret E. Graham
Margaret E. Graham Discovery Service
298 Portland Street
DARTMOUTH, Nova Scotia
B2Y 1K4

Dear Margaret:

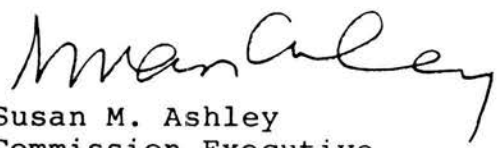
Please be advised that the September Hearings of the Royal Commission will be held at St. Thomas Aquinas Church Hall on Cornwall Street in Halifax.

We have set aside the following days for hearings:

Monday, September 12 - Thursday, September 15
Monday, September 19 - Thursday, September 22
Monday, September 26 - Wednesday, September 28

If you have any questions about the new arrangement, please let me know.

Yours truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 24, 1988

Ms. Margaret Kneeland
1055 Lucknow Street
No. 701
HALIFAX, Nova Scotia
B3J 2T3

Dear Margaret:

Please be advised that the September Hearings of the Royal Commission will be held at St. Thomas Aquinas Church Hall on Cornwall Street in Halifax.

We have set aside the following days for hearings:

Monday, September 12 - Thursday, September 15
Monday, September 19 - Thursday, September 22
Monday, September 26 - Wednesday, September 28

If you have any questions about the new arrangement, please let me know.

Yours truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 24, 1988

Mr. Andrew Mitchell
Telav/I.S.T.S.
100 Illsley Avenue
Unit M-M
Burnside Industrial Park
DARTMOUTH, Nova Scotia
B3B 1L3

Dear Andrew:

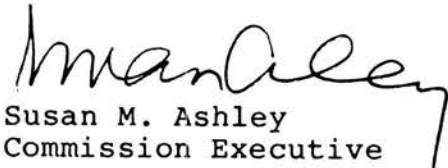
Please be advised that the September Hearings of the Royal Commission will be held at St. Thomas Aquinas Church Hall on Cornwall Street in Halifax.

We have set aside the following days for hearings:

Monday, September 12 - Thursday, September 15
Monday, September 19 - Thursday, September 22
Monday, September 26 - Wednesday, September 28

If you have any questions about the new arrangement, please let me know.

Yours truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/bjs

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 23, 1988


Ms. Yvonne Atwell
President, Black United Front
2006 Gottingen Street
HALIFAX, Nova Scotia
B3K 3A9

Dear Ms. Atwell:

I have just been contacted by someone in the media, who received a call from a woman identifying herself as "doing research for the Marshall Inquiry" on the Benefit Brown case. The media person phoned me to confirm that this woman was in fact a Commission employee. I told her that she was not. I assume that this person was working for B.U.F. on their Secretary of State Project. Would you please make sure that your researchers take particular care not to identify themselves as employees of the Royal Commission or as doing research for the Royal Commission. It should be made clear that the information that they are seeking is for the Black United Front and is not being sought on behalf of the Royal Commission. There should be no confusion in the minds of the people being interviewed as to the use that will be put to the information that is being requested, and by whom.

Thank you for your attention to this matter.

Yours truly,


Susan M. Ashley
Commission Executive
Secretary

SMA/bjs
cc Anthony Ross, Counsel
Black United Front

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

August 19, 1988

Mr. R. J. Downie, Q.C.
Cox, Downie & Goodfellow
Barristers and Solicitors
P. O. Box 2380, Station "M"
Halifax, Nova Scotia
B3J 3E5

Dear Mr. Downie:

Re: Hickman et al v. MacKeigan et al

I enclose Notice of Appeal filed on behalf
of the Commissioners.

As you know, the dates for this appeal have
already been settled. We will be including the Notice
of Appeal in the Appeal Book which is being prepared.

Yours very truly,



George W. MacDonald
Commission Counsel

GWMacD/fm
Encl.

cc: Mr. Jamie Saunders
Mr. Clayton Ruby
Ms. Anne Derrick

1988

S.C.A. No. 02004

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

BETWEEN:

T. ALEXANDER HICKMAN, LAWRENCE A.
POITRAS and GREGORY THOMAS EVANS

APPELLANTS

- and -

IAN M. MACKEIGAN, GORDON L. S. HART,
MALACHI C. JONES, ANGUS L. MACDONALD
and LEONARD L. PACE

RESPONDENTS

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA

INTERVENOR

- and -

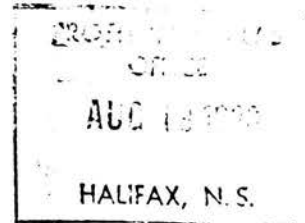
DONALD MARSHALL, JR.

INTERVENOR

NOTICE OF APPEAL

TAKE NOTICE that the Appellants appeal from the judgment of Chief Justice Glube of the Supreme Court dated the 22nd day of June, 1988 and the Order for Judgment dated the 9th day of August, 1988 and proceedings in the Supreme Court bearing S. H. No. 63241.

AND THAT the grounds of the appeal are:




THAT the learned Chief Justice erred in law:

1. By quashing the Orders to Attend issued by the Appellants to the Respondents;
2. By finding that the Appellants are totally immune from testifying about matters which arose while they were engaged in performance of judicial duties or any matter incidental thereto;
3. By finding that Judges could not testify voluntarily with respect to matters which arose while they were engaged in performance of judicial duties or any matter incidental thereto.

AND THAT the Appellants will ask that the judgment appealed from be reversed and that the relief claimed by the Respondents be denied.

DATED at Halifax, Nova Scotia, this 19th day of August, 1988.


GEORGE W. MACDONALD, Q.C.
Counsel for the Appellants

TO: The Respondents,
their solicitors
or agents

AND: The Registrar of the
Supreme Court of Nova Scotia
Appeal Division

1988

S.C.A. No.

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

T. ALEXANDER HICKMAN, LAWRENCE A. POITRAS
and GREGORY THOMAS EVANS

APPELLANTS

- and -

IAN M. MACKEIGAN, GORDON L. S. HART,
MALACHI C. JONES, ANGUS L. MACDONALD
and LEONARD L. PACE

RESPONDENTS

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA

INTERVENOR

- and -

DONALD MARSHALL, JR.

INTERVENOR

NOTICE OF APPEAL

ROYAL COMMISSION ON THE DONALD MARSHALL, JR.
PROSECUTION

1026 - 1505 BARRINGTON STREET
HALIFAX, NOVA SCOTIA

MEMORANDUM

TO: DAVID ORSBORN AND GEORGE **DATE:** AUGUST 22, 1988
MACDONALD

FROM: WYLIE SPICER **RE:** BILLY JOE MACLEAN

I am attaching a copy of the notes I made during my meeting with Norm Clair.

I have arranged to meet the Speaker on Wednesday, August 24, at 10:00 a.m. and to meet the Auditor General on Friday, September 2, at 10:00 a.m. The meeting with Joel Pink is now scheduled for September 1, at 2:00 p.m. Are either of you able to attend any of those meetings?

WWS

bjs
Enclosures

NOTES OF MEETING WITH NORM CLAIR

AUGUST 22, 1988

- Norm Clair assisted in drafting the Information.
- He said that this was not an unusual practise.
- The file came to him by Dave Thomas just turning it over to him.
- Clair had a role in determining which charges were going to be laid and he made that decision after reviewing the available evidence.
- A number of charges is based strictly on the evidence available.
- At this point in time he had no contact with anyone in the Attorney General's Department other than Dave Thomas.
- With respect to the April 28, 1986 letter from Joel Pink:
- The difficulty that Norm Clair was having was that he did not want to give Joel copies of statements of certain witnesses because he had heard that pressure was being exerted on those witnesses.
- Indeed it was to the point where Norm called Joel and told him that if this did not stop he would have Billy Joe charged.
- Joel was permitted to come over and look at the statements, but not take copies.
- With respect to the Plea Bargaining:
- Joel approached Clair and offered them a guilty plea to one count of Uttering.
- Clair indicated that they would take guilty to the fraud charge.
- There was some backing and forthing and eventually agreement was reached on a plea of guilty to the foremost serious Uttering charges.
- According to Norm Clair Fraud is not more serious than the Uttering charges and indeed strictly speaking according to the Code the Uttering charges are more serious.
- Clair says that they had an excellent case on all charges.
- He says that he consulted with Martin with a view to the deal but never disagreed with Martin and Clair feels that no influence what so ever was exerted upon him to handle the MacLean plea bargaining in any way peculiar to the fact that it was Billy Joe MacLean.

Five to ten thousand dollars was Norm Clair's view as

to what was satisfactory by way of sentence.

- He said they were prepared to make the deal and because they would have guilty pleas to the foremost serious Uttering charges since he knew that they would not get a plea if he indicated he was going to ask for imprisonment and he was concerned about the witnesses.
- Norm Clair also indicated that this was a first offense and the accused was pleading guilty and that at the time there was no case law to say that jail was appropriate for a first offense.
- Subsequent to that there were cases in our court: Tucker and Redmond which indicated that jail was appropriate on a first offense.
- Clair also had information that Billy Joe's finances were not in very good shape, that he had a number of judgments against him, and that his financial position was weak so that he felt that a monetary penalty would be a serious matter for MacLean.
- Clair says that there was no interference at all in the process of coming to his conclusions in respect of sentencing.
- He specifically tried to treat this case as he would any other case partly at least because he was aware of the nature of the case.
- His concern for the witnesses was a factor but he did say that even if he had not had that concern he probably would have done the same thing.
- Clair attended a meeting with Martin, Hershorn and the Attorney General. The purpose of which was to explain to the Attorney General what Clair was doing. He said he received no direction from the Attorney General concerning the course of action he was following.
- With the MacIssac case:
By the time the sentencing came around on that our court had decided Tucker and/or Redmond and Clair had a yard stick by which to ask for imprisonment.
- The basic distinction in Clair's mind between the Billy Joe and MacIssac situations was that in Billy Joe there was fraud but it was perpetrated by the use of five different schemes whereas in MacIssac he was only charged with fraud because there was only one scheme.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

August 19, 1988

PERSONAL AND CONFIDENTIAL

Mr. Stanley A. Cohen, Esquire
Coordinator Criminal Procedure Project
Law Reform Commission of Canada
130 Albert Street
OTTAWA, Ontario
K1A 0L6

Dear Stan:

Further to our telephone conversation of August 18, 1988, I now enclose for your information and on a confidential basis a copy of a draft research report prepared for the Royal Commission by Dr. Richard Apostle and Dr. Philip Stenning entitled: Public Policing in Nova Scotia.

We are holding an in-house workshop, similar in format to the one which you attended on Crown Prosecutors, in Halifax on Wednesday, August 31, 1988. I thought that the Police Study might be somewhat too parochial in focus and scope to be of substantial interest to the Law Reform Commission. However, when you have had an opportunity to look at the enclosed let me know if you have a particular interest in attending the workshop.

I would expect to forward you a copy of Professor Edwards' papers next week and copies of the two discrimination studies with reference to Blacks and Natives prepared by Dr. Wilson Head and Dr. Scott Clark respectively. In the meantime, if there is anything that I have forgotten please do not hesitate to let me know.

Thank you, I remain,

Yours very truly,



John E. S. Briggs
Director of Research

JESB/bjs
Enclosures

August 18, 1988

Mr. Billy Joe MacLean
25 Philpott Street
Port Hawkesbury, Nova Scotia
B0E 2V0

Dear Mr. MacLean:

It is the intention of Commission counsel to present evidence to the Commissioners during the scheduled Hearings of the Commission commencing September 12, 1988, dealing with the manner in which the Attorney General's Office and the Royal Canadian Mounted Police handled particular files other than the Donald Marshall, Jr., matter. More specifically, it is our intention to look at the way in which the Attorney General's Office and the R.C.M.P. dealt with the charges against yourself involving your expense accounts.

We intend to introduce evidence and documents which deal with the activities of members of the Attorney General's Office and the R.C.M.P. I am enclosing a proposed outline of facts which is intended to give you an indication of the matters to be dealt with in evidence at the Commission Hearings.

We have prepared a Book of Documents which we intend to introduce into evidence at the Hearings. This Book of Documents is available for perusal either by yourself or your representative at the Commission Offices in Halifax.

We wanted to give you notice of our intention to proceed in this matter at the Hearings commencing on September 12, 1988, and we would be prepared to

.../2

- 2 -

meet with you or your representative to elaborate on any of the points set out in this letter or in the accompanying draft Statement of Facts.

Yours very truly,

W. Wylie Spicer
Commission Counsel

/s/

BY COURIER

BCC Mr. George MacDonald, Q.C.
Mr. David Orsborn

PROPOSED OUTLINE OF FACTS

With Respect to the "MacLean" Case

Chronology of Events

I. BACKGROUND

1. This case relates to matters arising from the investigation, charging and conviction of Billy Joe MacLean ("MacLean") on four charges of uttering forged documents (s. 326 of the Criminal Code) in connection with expense account claims submitted by him to the Province when a member of the Legislative Assembly and a provincial Cabinet minister.

II. PRE-INVESTIGATION STAGE - OCTOBER 1983 to MAY 1985

2. On October 21, 1983 Mr. Arnold Sarty, Provincial Auditor General, contacted the RCMP to arrange a meeting with Inspector Blue, OIC, Commercial Crime Section in order to discuss the MacLean expense account claims.
3. On October 26, 1983 Inspector Blue and Staff Sgt. Leigh, Commercial Crime Section, met with the Auditor General, his Deputy, Mr. Paul Cormier, et al, to provide advice with respect to the expense claims submitted by MacLean. The RCMP determined "that the matters required investigation and appeared to be criminal in nature". They advised the Auditor General that they would review the material and contact him on October 28th.

On their return from this meeting, Inspector Blue and Staff Sgt. Leigh met with the CIB officer and it was decided that a meeting should be arranged between representatives of the Auditor General's Department, the Department of the Attorney General and the RCMP for Tuesday, November 1, 1983.

4. On October 28, 1983 Supt. McGibbon and Insp. Blue met with the Auditor General and his Deputy (and other members of their staff) to recommend that the MacLean matter be brought to the attention of the Attorney General's office. It was agreed to do this following a briefing of the Speaker, Mr. Arthur Donahoe, upon his return to the country.

ROYAL COMMISSION IN THE DONALD MARSHALL , PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

BY COURIER

August 16, 1988

Ms. Marlys Edwardh
Ruby & Edwardh
Barristers & Solicitors
11 Prince Arthur Avenue
Toronto, Ontario
M5R 1B2

Dear Ms. Edwardh:

I acknowledge your letter of July 7, 1988 in which you set out the reasons you consider Donald Marshall, Jr., is entitled to be represented during the evidence to be presented to the Commission in September, 1988. I have also re-read your letter of April 21, 1988, and my response of May 24, 1988.

I must emphasize that when we examine the Thornhill and MacLean cases in September, the evidence will be restricted to examining the conduct and activity of members of the Attorney General's Department and the Royal Canadian Mounted Police when dealing with those particular cases. The objective will be to obtain evidence which may disclose different practices followed by those authorities, and different treatment afforded to individuals who, depending on circumstances, may be considered to be prominent, or otherwise in a position to influence the authorities. Evidence has already been called to establish the "normal or expected" practice to be followed by the Attorney General's Department and the R.C.M.P. One can argue whether such normal practices were followed in the Donald Marshall, Jr., case. When the evidence is presented in the Thornhill and MacLean cases, arguments could be advanced whether practices and standards other than "normal" were applied in those circumstances.

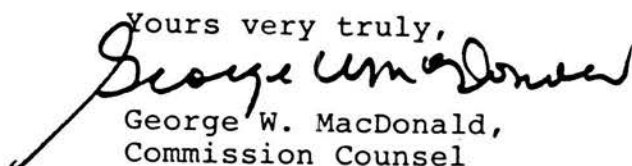
.../2

The Commissioners have stated on several occasions their interpretation of the mandate given to them to include a general review of the administration of justice system in Nova Scotia. While the treatment of Donald Marshall, Jr., by the system is of fundamental importance, it has been recognized from the beginning that an examination of the system per se must include inquiry into more than one case. We cannot lose sight of the fact, however, that the wrongful conviction of Mr. Marshall was the catalyst which gave rise to the creation of the Inquiry. Accordingly, if you consider counsel for Mr. Marshall must be present at this next phase of the Hearings in order to protect his legitimate interests, I will not raise any objection.

As you know, the Commissioners are very sensitive to the need to protect individuals who are not directly involved at the Hearings. I anticipate, therefore, that strict guidelines will be applied during the next phase of the Hearings and questioning from any counsel will necessarily have to be directly related to the interest of such counsel's client, and not constitute an attempt to canvass topics or issues which have been exhaustively considered already.

We have prepared a Booklet of Documents for the Thornhill matter, and agreed with counsel for the R.C.M.P. and the Attorney General on the contents of a Statement of Facts. At the present time, we hold the documents on the understanding they will not be allowed out of our possession and will be revealed only to authorized persons. We are authorized to have you, or Anne Derrick, attend at the Commission offices to review the documents and the Statement of Facts, and at that time we can discuss any questions you might have concerning the process to be followed.

Yours very truly,


George W. MacDonald,
Commission Counsel

GWMacD/mm-7/20

cc: Ms. Anne Derrick

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

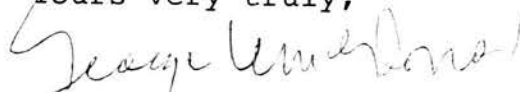
August 16, 1988

Honourable Gregory T. Evans, Q.C.
44 Charles Street West
Apartment #1221
Toronto, Ontario
M4Y 1R8

Dear Commissioner:

I enclose a copy of a letter I have forwarded to Marlys Edwardh, counsel for Donald Marshall, Jr. Also enclosed are copies of the earlier correspondence between Ms. Edwardh and I dealing with the topic of the requirement for counsel for Donald Marshall, Jr., to be present when Hearings recommence in September.

Yours very truly,



George W. MacDonald,
Commission Counsel

GWMacD/mm-7/25

Enclosures