

APR 29 1988



Department of Justice  
Canada

Ministère de la Justice  
Canada

(902) 426-7594

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Immeuble Banque Royale  
5161 rue George  
Halifax, Nouvelle-Écosse  
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Our file  
Notre dossier AR-21,613

Your file  
Votre dossier

Mr. John E.S. Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova scotia  
B3J 3K5

April 28, 1988

Dear Mr. Briggs:

Re: Donald Marshall Inquiry

I acknowledge receipt of your letter dated April 19, 1988.

I have not received any letter from Dr. Clark to date. May I have a copy of the letter as soon as possible.

Yours very truly,

A. R. Pringle  
Senior Counsel  
Atlantic Region

ARP:mm

c.c.: Dr. Scott Clark  
G.S. Clark and Associates Ltd.  
Suite 712  
151 Slater Street  
Ottawa, Ontario  
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APR 28 1988

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ALSO OFFICES AT  
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BEDFORD, NOVA SCOTIA

April 27, 1988

BY HAND


Mr. W. Wylie Spicer  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia

Dear Wylie:

MacKeigan et al v. Hickman et al  
S.H. No. 63241  
Our File No. 9201/1

Thank very much for the copy of your letter to Chief Justice  
Glube dated April 25th, with enclosures.

Yours very truly,



Jamie W.S. Saunders

JWSS/cs  
c.c. Mr. R.J. Downie, Q.C.  
Ms. Anne Derrick

LEONARD A. KITZ, Q.C., D.C.L.  
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April 27, 1988

BY HAND

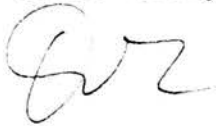
Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear John:

Our File No. 9201/1

This is to confirm meetings have been arranged for Dr. Philip Stenning to meet with Mr. Gordon Coles and Mr. R.A. MacDonald on May 5, 1988. The meeting with Mr. Coles is scheduled for 10 a.m. at his offices, 1 Government Place, 5th Floor, 1700 Granville Street. The meeting with Mr. MacDonald is scheduled for 12 o'clock at his offices, 10th Floor, Bank of Montreal Tower, 5151 George Street.

Yours truly,



Darrel I. Pink

DIP/jl

APR 27 1988

**STEWART MacKEEN & COVERT**  
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OUR FILE REFERENCE:

DONALD A. KERR, O.C.

COUNSEL  
BRIAN FLEMMING, O.C.

HUGH K. SMITH, O.C.

COPY

April 27, 1988

**DELIVERED**

Her Ladyship, Chief Justice C. Glube,  
Nova Scotia Supreme Court,  
Trial Division,  
The Law Courts,  
1815 Upper Water St.,  
Halifax, Nova Scotia.

My Lady:

RE: Donald Marshall, Jr. v.  
The Royal Commission -  
Certiorari Application  
S.H. No. 64118

I am in receipt of Anne Derrick's correspondence to you dated today (April 27, 1988). It is my position on behalf of John MacIntyre that neither decision referred to you by Mr. Ruby touches in any way the issues dealt with by the authorities raised in my earlier Brief to Your Lady. With respect to R. v. Jewitt, this decision is limited by its own terms as expressed at 21 C.C.C. (3d) at p. 14:

Lord Devlin has expressed the rationale supporting the existence of a judicial discretion to enter a stay of proceedings to control prosecutorial behaviour prejudicial to accused persons. In Connelly v. Director of Public Prosecutions, [1964] A.C. 1254 at p. 1354 (H.L.):

Are the courts to rely on the Executive to protect their process from abuse? Have they not themselves an inescapable duty to secure fair treatment for those who come or who are brought before them? To questions of this sort there is



April 27, 1988

2

only one possible answer. The courts cannot contemplate for a moment the tranference to the Executive of the responsibility for seeing that the process of law is not abused.

I would adopt the conclusion of the Ontario Court of Appeal in R. v. Young, supra, and affirm that [at p. 31]:

...there is a residual discretion in a trial court judge to stay proceedings where compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency and to prevent the abuse of a court's process through oppressive or vexacious proceedings.

I would also adopt the caveat added by the court in Young that this is a power which can be exercised only in the "clearest of cases".

(Emphasis Added). The stay described by the Supreme Court of Canada is a stay entered by the Court after a decision has been made by the Attorney General or his agent to publicly accuse someone of a crime in an unfair way. That is not what the submissions on behalf of John MacIntyre were dealing with at all.

With respect to R. v. Ertel, we are again provided with a situation where a person has been publicly accused of a crime. Certainly in those circumstances there is room for judicial review to ensure that the exercise of the power of direct indictment under s. 507 (3) of the Code is not "being used for ulterior, improper or capricious motives.", 20 O.A.C. at p. 274. Indeed, the Ontario Court of Appeal held that s. 507 (3) withstood constitutional scrutiny under the Charter because:

...one must keep in mind that the accused who are directly indicted are treated in the same way as all other accused when they come before the court for trial. Their fundamental right to make full answer and defence is protected. This lessens the force of the first disadvantaging effect described by the appellant to the preferring of a direct indictment. The second concern raised by the appellant, that is, that direct indictments allow elected officials who are not impartial and do not hold hearings to commit people to trial, is met both by the political

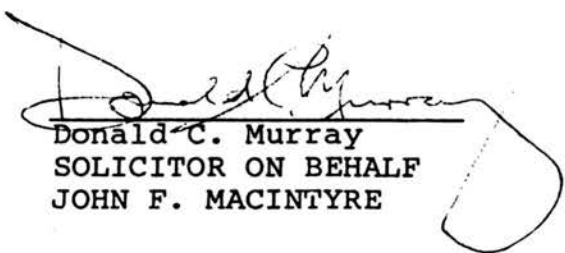
April 27, 1988

3

accountability of the Attorney General and the  
scrutiny provided by judicial review.

Again, we are dealing with a post-accusation concern.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



Donald C. Murray  
SOLICITOR ON BEHALF  
JOHN F. MACINTYRE

DCM/dmb  
c.c. Anne S. Derrick,  
    Jamie S. Saunders  
    Wylie Spicer  
N2061469

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BEDFORD, NOVA SCOTIA

April 26, 1988

BY HAND

The Honourable Chief Justice  
Constance R. Glube  
The Law Courts  
1815 Upper Water Street  
Halifax, Nova Scotia

My Lady:


MacKeigan et al  
Hickman et al  
1988 - S.H. No. 63241  
Our File No. 9201/1

I enclose on behalf of the Attorney General of Nova Scotia, as Intervenor, our Pre-Hearing Memorandum. This matter is scheduled to be heard commencing May 24th.

I am directing a copy of this letter and memorandum to Messrs. Downie, Orsborn and Ruby.

We will provide the Court with copies of our case authorities once the booklet of cases from the other parties have been received by us.

Yours respectfully,

  
Jamie W.S. Saunders

JWSS/cs  
encl:

c.c. Mr. R.J. Downie, Q.C.  
Mr. David Orsborn  
Mr. Clayton Ruby

*Pre Hg memo  
in file*

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CORRESPONDENCE  
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HALIFAX, NOVA SCOTIA B3J 3E5

OUR FILE: **8118-1**

April 26, 1988

Registrar  
Court of Appeal  
The Law Courts  
1815 Upper Water Street  
HALIFAX, N.S.


Dear Sir:

RE: 1988 S.C.A. No. 01936  
MacKeigan et al. v. Hickman et al.

I enclose herewith five (5) copies of the Factum of the Respondents, MacKeigan et al. This matter has been set for argument for Friday, May 20, 1988.

Copies of this letter together with copies of the Factum are being sent to Ms. Anne S. Derrick, solicitor for the Appellant, Marshall, and to Mr. George MacDonald and Mr. Jamie Saunders, solicitors for the Commission and the Attorney General, respectively.

Yours very truly,

  
R. J. Downie

RJD:cmg

Enclosures

cc. Ms. Anne S. Derrick  
Mr. George MacDonald ✓  
Mr. Jamie Saunders

*Factum in  
"Subpoena of  
Appeal Court  
Judge's"  
file*

# BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Patricia Lawton Day, B.Sc., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

Sovereign Building, Suite 205,  
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April 26, 1988

**COPY**  
FOR YOUR INFORMATION ONLY

Chief Justice Constance Glube  
Trial Division  
The Law Courts  
1815 Upper Water Street  
Halifax, Nova Scotia  
B3J 1S7

Your Ladyship:

RE: MacKeigan et al. v. Hickman et al. - 1988 S.H. No. 63241

Further to the above Certiorari application which is to be heard by Your Ladyship on May 24 and 25, please find enclosed Mr. Ruby's Memorandum of Law. Mr. Ruby will be appearing in this proceeding as counsel to Donald Marshall, Jr. who has been given standing to participate as amicus curiae.

I am forwarding copies of Mr. Ruby's Memorandum and this letter to the other counsel involved in this proceeding as agreed.

This Casebook of Authorities, which Mr. Ruby is providing to me sometime today, will be forwarded to you today or tomorrow.

Yours sincerely,

BUCHAN, DERRICK & RING

*ASD - Marshall*

*for* Anne S. Derrick

ASD/arm  
Marshall/  
Glube  
ASD #3

*Memo in*

Enclosure

cc. Ronald J. Downie, Q.C.  
Jamie Saunders  
James McPherson

*"Subpoena of Appeal Court  
Judges" file*

LEONARD A. KITZ, Q.C., D.C.L.  
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April 25, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Briggs:

Our File No. 9201/1

I acknowledge yours of April 18, 1988, to Jamie Saunders.

I responded on today's date to Wylie Spicer regarding the same matter. A copy of that letter is enclosed.

I am still following up on the Speaker's office.

Yours truly,



Darrel I. Pink

DIP/jl  
Enc.

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MacISAAC, Q.C.  
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April 25, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Briggs:

Our File No. 9201/1

This is further Dr. Stenning's request for information regarding municipal grants vis à vis policing.

I enclose a copy of a memorandum from the Department of Municipal Affairs to the Deputy Solicitor General which was prepared in response to Dr. Stenning's request.

Yours truly,

  
Darrel I. Pink

DIP/jl  
Enc.

c.c. Ms. Nadine Cooper-Mont

APR 26 1988

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MacISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
ROBERT M. PURDY  
RAYMOND F. LARKIN  
S. RAYMOND MORSE  
DARREL I. PINK  
JACK A. INNES, Q.C.  
DIANNE POTHIER  
JANET M. CHISHOLM  
PETER M. ROGERS

DONALD J. MacDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
J. RONALD CREIGHTON  
J. RONALD CULLEY  
NANCY J. BATEMAN  
R. MALCOLM MACLEOD  
ALAN C. MacLEAN  
DENNIS ASHWORTH  
WENDY J. JOHNSTON  
ROBERT K. DICKSON  
FERN M. GREENING

FRED J. DICKSON, Q.C.  
DAVID R. HUBLEY, Q.C.  
GERALD J. MacCONNELL, Q.C.  
RONALD A. PINK  
LOGAN E. BARNHILL  
JOEL E. FICHAUD  
J. MARK MacCREA  
D. SUZAN FRAZER  
BRUCE A. MARCHAND  
RODNEY F. BURGAR  
JANICE A. STAIRS  
DENNIS J. JAMES

JAMES C. LEEFE, Q.C.  
FRANK J. POWELL, Q.C.  
CLARENCE A. BECKETT, Q.C.  
GEORGE L. WHITE  
DAVID R. FEINDEL  
A. DOUGLAS TUPPER  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 25, 1988

BY HAND

Mr. Wylie Spicer  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Spicer:

Our File No. 9201/1

Over the last several months a number inquiries have been made of us regarding the existence of files in the Executive Council office pertaining to matters being considered by the Marshall Inquiry.

We have been advised that a search of the files at the Executive Council office indicates there is nothing in that office relating to the Roland Thornhill matter, the William J. MacLean matter or the other matters addressed in your letter of January 29, 1988, to me.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. R. Gerald Conrad, Q.C.





CENTRE OF CRIMINOLOGY  
UNIVERSITY OF TORONTO

JOHN P. ROBERTS RESEARCH LIBRARY  
ROOM 8001, 130 ST. GEORGE ST.  
TORONTO M5S 1A1  
(416) 978-3451,

Royal Commission on the Donald  
Marshall Jr. Prosecution,  
Suite 1026, Maritime Centre,  
1505 Barrington Street,  
Halifax, Nova Scotia B3J 3K5.

Attention: Mr. John Briggs  
Director of Research.

25th April, 1988.

Dear John,

Enclosed is a preliminary summary of some key aspects of the role of the Nova Scotia Police Commission. I would be most grateful if you could have a copy of it forwarded to Mr. George Smith at the Commission, with a request that he review it with a view to ensuring that it does not contain factual inaccuracies. In doing so, could you please advise him that the document is not yet complete; in particular, information with respect to the Commission's role under the Private Investigators and Private Guards Act is still to be added.

I would be grateful if you could also ask Mr. Smith to furnish the following additional information, if possible:

- (1) Information re Mr. Endres' occupation (p.7 of the document)
- (2) Information re Mr. Swim's background before joining the Commission (p.7)
- (3) Data, comparable to that included in the document, for the year 1987 (and if possible 1988, to date) on the following matters:

- meetings of N.S.P.C.
- assessments of municipal police departments
- involvement in selection and promotion routines
- public inquiries and investigations under Section 9 of the Police Act
- hearings and appeals
- public complaints against the police
- internal disciplinary matters

(4) Could he please complete the list (on p.8) of municipal police forces which have been assessed by the Commission?

(5) Which was the other force for which the Commission prepared a restructuring proposal in 1979 (p.9, first para.)?

(6) Which previous assessment was "evaluated" in 1980 (p.9, 2nd para.)?

(7) Which 2 forces were investigated by the Commission under Section 9(2)(a) of the Police Act in 1979? Were these investigations at the direction of the AG or on request of municipal authorities? (p.10, and see also p.3 of Appendix "C" to the Commission's 1979 Annual Report.)

(8) Do the figures given for investigations for the years 1982-1986 set out on p.11 of the document (which are derived from the appendices of the Annual Reports of the Commission for those years) include or exclude investigations carried out under Section 9 of the Police Act?

(9) Can the Commission provide us with more detailed statistics for public complaints and internal disciplinary matters than are set out on pp.12 & 13 of the document? Do these figures include complaints launched against members of the R.C.M.P. in the Province, or only those against municipal forces? If only municipal forces are included, can the Commission provide comparable statistics with respect to complaints against the R.C.M.P.?

I have reviewed the various requests for information which we have made up to now (see enclosed list), and as far as I can tell the current status of these requests is as follows:

1. Received.

2. I have been told verbally (by Mr. George Smith of the N.S.P.C.) "Standard promotional routine system" does not exist. Perhaps this should be confirmed in writing?

I have received the "standard municipal police compulsory training plan" (which is included at the back of the new draft Regulations under the Police Act). I would be interested to know, however, whether this document is the same as the "Standard Municipal Police Training Plan" which was submitted by the Commission to the Policy Board in 1979 (see p.7 of the Commission's 1979 Annual Report). If it is not, I would like to see a copy of that earlier document.

3. Received.

4. Received copies of 4 assessments (Berwick, Springhill, Wolfville & Glace Bay) and 1 proposal for restructuring the Sydney Police Department. I don't think I need to see any more of these.

5. Not yet received. Apparently they are having some difficulty locating them.
6. Not yet received. Same as for 5, above.
7. Not yet received (not yet available).
8. I have received materials re the AG's standing directive on the investigation of serious criminal offences, and have been told that there are no more materials available concerning this. I have not received any other materials re written policies of the AG concerning policing by the R.C.M.P. in Nova Scotia. If such policies exist, I am still interested in obtaining copies of them. If not, perhaps their non-existence should be confirmed in writing.
9. Received.
10. Received (see 8, above).
11. Apparently such notes etc. do not exist. Perhaps we should have this confirmed in writing.
12. Not yet received.
13. Not yet received. This was requested verbally from Ch. Supt. Reid during my meeting with him on 15/4/88. I said that you would request it in writing, but notice that this request was not included in your letter to Bissell dated 19/4/88. An oversight? If so, could you please write the appropriate request? Thanks.

I still have two, possibly three (depending on the quality of information I receive re provincial funding of municipal policing), interviews to conduct in connection with my research. These are with:

Gordon Coles, former Deputy Attorney General

Ron MacDonald, Executive Director, Courts and Registry,  
Attorney General's Department.

Gerry Masters, Department of Municipal Affairs.

For obvious reasons, I would like to get these interviews done as soon as possible, and suggest that you try to arrange for me to do them sometime during the week of May 2nd-6th. I can be available any time during that week, although it would obviously be preferable to schedule the interviews as close together as possible, so as to minimise the number of days I need to spend in Halifax. If those whom I am to interview cannot be available during that week, perhaps you can try for the following week (although I am still hoping to meet your May 11th deadline for submission of my part of the Police Study Report). I must be in

Toronto on the evening of Wednesday, May 11th for a meeting, but otherwise can be available at any time during that week.

I regret that I have not yet given MacPherson's brief the attention I had wanted to (writing my part of the Report has taken priority). I expect to get to it shortly, however.

Phew! I think that's all for now. Except to say that even at this distance I enjoyed Donahoe's mea culpa. Can Buchanan's be far behind? Suggest that you immediately fax copies of the enclosed article to both of them, with my compliments....

No doubt I shall be hearing from you shortly.

Yours aye,



---

Philip C. Stenning,  
Senior Research Associate

APR 25 1988



Department of the Secretary  
of State of Canada

Secrétariat d'État  
du Canada

5281 Duke Street  
Halifax, Nova Scotia  
B3J 3M1

April 21, 1988

Ms. Susan M. Ashley  
Commission Executive Secretary  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre  
Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Ms. Ashley:

Thank you very much for sharing with me the research outline regarding Blacks in the criminal justice system.

It was very helpful and you can be assured it will be in no way circulated.

Since the Regional Office of the Department of Secretary of State works with many Black (and native) community organizations, I would be interested in reviewing the final results of this research when it becomes available.

Again, thank you for your assistance.

Sincerely,

  
Sylvia Hamilton  
Assistant Regional Director

SH/dlm

Canada



Department of Justice  
Canada

Ministère de la Justice  
Canada

APR 25 1988

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(902) 426-7592

4ième étage  
Immeuble Banque Royale  
5161 rue George  
Halifax, Nouvelle-Écosse  
B3J 1M7

Our file **AR-21,613**  
Notre dossier

Your file  
Votre dossier

April 21, 1988

Mr. John E. S. Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Mr. Briggs:

Re: The Police Study - Data Collection

I acknowledge receipt of your letter of April 19, 1988.

I believe that the matter of the possibility of interviews with Detachment N.C.O.'s following Chief Reid's meeting with Dr. Apostle has been resolved. My instructions are that following the meeting with Chief Superintendent Reid, Dr. Apostle should identify any questions which he feels that he still needs to put to Detachment N.C.O.'s. Those questions will be referred to Deputy Moffat in Ottawa who will make the final decision on the matter on behalf of my client.

Yours very truly,

James D. Bissell  
General Counsel  
Director, Atlantic Region

JDB:wm

cc: Inspector H. E. Murphy

: Ms. Donna McGillis

Canada

APR 22 1988

**STEWART MACKEEN & COVERT**  
BARRISTERS AND SOLICITORS

PURDY'S WHARF TOWER ONE  
ER STREET  
CANADA

*See: Bottom  
drawer -  
"Cabinet  
Immunity"*

CE  
B3J 2X2  
1 420-3200  
1 420-1417  
3  
1 420-

J. WILLIAM E. MINGO, O.C.  
J. THOMAS MacQUARRIE, O.C.  
DONALD H. OLIVER  
DONALD H. McDOUGALL, O.C.  
JOHN S. McFARLANE, O.C.  
CARMAN G. McCORMICK  
JOHN D. MURPHY  
ROBERT P. DEXTER  
KARIN A. McCASKILL  
R. CAMILLE CAMERON  
NANCY I. MURRAY  
T. ARTHUR BARRY  
JOHN MacL. ROGERS  
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TIMOTHY C. MATTHEWS  
ROBERT G. GRANT  
MICHAEL T. PUGSLEY  
CHARLES S. REAGH  
D. GEOFFREY MACHUM  
DONALD C. MURRAY  
JAMES B. WOODER  
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GEORGE A. CAINES, O.C.  
JAMES S. COWAN, O.C.  
JOEL E. PINK, O.C.  
RICHARD R. JONES  
DOUGLAS J. MATHEWS  
JONATHAN C. K. STOBIE  
BARBARA S. PENICK  
MARK E. McDONALD  
GLEN V. DEXTER  
ELIZABETH M. HALDANE  
ERIC L. BURTON  
LAWRENCE J. STORDY  
R. BLOIS COLPITTS

COUNSEL  
BRIAN FLEMMING, O.C.

DONALD A. KERR, O.C.

HUGH K. SMITH, O.C.

OUR FILE REFERENCE:

April 21 1988

DELIVERED

Chief Justice Constance R. Glube,  
The Law Courts,  
1815 Upper Water St.,  
Halifax, Nova Scotia

My Lady:

RE: Donald Marshall, Jr. and  
T. Alexander Hickman, Lawrence  
A. Poitras and Gregory Thomas  
Evans; 1988, S.H. No.

STATEMENT OF INTEREST

This matter is scheduled before Your Ladyship on Tuesday, April 26, 1988, at 9:30 a.m., together with a related application on behalf of the Attorney-General of Nova Scotia. This Brief is submitted on behalf of John F. MacIntyre, an individual with standing before the Royal Commission on the Donald Marshall, Jr., Prosecution. Counsel on behalf of Mr. MacIntyre are not appearing with respect to the application by the Attorney-General of Nova Scotia, and take no position with respect to the application of the Attorney-General of Nova Scotia. Counsel appear on behalf of John MacIntyre as a result of the application by Donald Marshall, Jr., of which we received notice on April 18, 1988. Among the documents served was the Affidavit of Anne S. Derrick which deposed, inter alia, that:

9. In the course of making their ruling, the Commissioners held that individual views of Executive Council members would be irrelevant to the Inquiry....

11. I believe that such evidence would not be irrelevant to the Inquiry and that the Royal

APR 22 1988

# BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Patricia Lawton Day, B.Sc., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

Sovereign Building, Suite 205,  
5516 Spring Garden Road  
Halifax, Nova Scotia  
B3J 1G6  
(902) 422-7411

April 22, 1988

BY COURIER

The Prothonotary's Office  
The Law Courts  
1814 Upper Water Street  
Halifax, N.S.

RE: Donald Marshall, Jr. v. MacKeigan et. al. - S.C.A. No. 01936

Please find enclosed five copies of each of the cases which were not included in the Case Book of Authorities filed on behalf of Mr. Marshall on April 19, 1988. These cases are:

R. v. Chief Commons Commissioner, ex parte Constable (1977), 76 L.G.R. 127 (Q.B.D.), and Australian Conservation Foundation Inc. v. Commonwealth of Australia and Others (1980), 28 A.L.R. 257 (Aust.H.C.).

I am sorry not to have been able to file these cases with the Case Book, they were not available in Halifax and had to be obtained from Toronto.

Yours sincerely,

BUCHAN, DERRICK & RING

Anne S. Derrick

ASD/har

Enclosures

c.c. Mr. George MacDonald  
c.c. Mr. Ronald J. Downie, Q.C.

*Copies of cases  
in "Cabinet  
Privilege"  
file*



# BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Patricia Lawton Day, B.Sc., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

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5516 Spring Garden Road  
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April 22, 1988

BY COURIER

Chief Justice Constance Glube  
Trial Division  
The Law Courts  
1815 Upper Water Street  
Halifax, N.S.

Your Ladyship:

RE: Donald Marshall, Jr. v. Hickman et. al. - Certiorari Application

Please find enclosed the case book with respect to the above matter.

We only just received them this morning in our office from Toronto and apologize for any delay.

I am copying this letter to Mr. Jamie Saunders and Mr. Wylie Spicer and am forwarding same.

Yours sincerely,

BUCHAN, DERRICK & RING

Anne S. Derrick

ASD/har

Enclosure

c.c. Mr. Jamie Saunders  
c.c. Mr. Wylie Spicer

Case Book in  
"Cabinet Privilege"  
file  
(bottom drawer)

Ruby & Edwardh  
barristers

11 Prince Arthur Avenue  
Toronto, Ontario  
M5R 1B2  
Telephone (416) 964-9664

April 21, 1988

**COURIER**

George MacDonald, Esq.  
Commission Counsel  
Royal Commission on the Donald  
Marshall, Jr., Prosecution  
Maritime Centre  
Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear George:

We are in receipt of your letter dated April 6, 1988 and wish to raise with you a number of matters contained therein.

We were surprised to learn that it was your position that only the Attorney General and the RCMP might have any interest in participating in the second phase of hearings into "other cases" involving the administration of justice in the Province of Nova Scotia. You are aware we are "parties" having been granted full standing at this Commission of Inquiry. It does strike me that having been given this position it is inappropriate for Commission counsel to determine in what circumstances counsel for Mr. Marshall might have any "interest" in cross examining a witness. One would have thought this is best left to the experience and judgment of counsel and not to the supervision of the Commission through its counsel.

If the Commission in the discharge of its mandate is to hear this evidence in order to "make meaningful comments" and "possible recommendations" in relation to the administration of justice, it is our position that Mr. Marshall has a very keen interest in this evidence. It is apparent and indeed it has been our position throughout this Royal Commission of Inquiry, that Mr. Marshall's wrongful conviction is in part a result of his being poor and native. The opposite side of that coin is obviously the fact that the rich and powerful in Nova Scotia appear to experience the

administration of justice in an entirely different manner. Clearly the experience of the elite in relation to the administration of justice is simply part of the total picture that must be examined before any meaningful recommendations can be made.

In these circumstances, it would appear self-evident that the reduction of class and racial biases in the administration of justice are matters which deeply concern Mr. Marshall. Any evidence heard or recommendations ultimately made in this area are matters in which we would very much wish to participate to ensure that the less advantaged in Nova Scotia are given the benefit of the equal protection of the law. It is on that basis that it is our view that we indeed do have an appropriate interest with respect to these "other cases" as they are nothing more than elucidations of the same problem which led in part to our client's wrongful conviction and prolonged detention.

Further, and more particularly, I would expect this evidence to be quite revealing about the ethical standards of police and prosecutorial conduct. Mr. Marshall's experience is only explicable on the basis that the administration of justice in Nova Scotia exemplifies both incompetence and corruption. You may well take a different position; but that is ours. To build an effective foundation for that submission we need to examine this corruption in action not only in Mr. Marshall's case, but in others.

Especially if you take a different view, we must be allowed to put the questions that will support our view, or the Commission -- from the perspective of Mr. Marshall -- will be no more than a charade. This issue of corruption in the judicial system is very much a matter which affected Mr. Marshall and in which he has claimed an interest from the beginning. To say that only the Attorney General and the RCMP have a "appropriate interest" in the evidence that will show this corruption to be widespread is to create the appearance of a closed shop. Such an appearance would do great harm to the Commission and to its task. Cross examinations by parties independent of the Commission will not take place of those very bodies, the Attorney General's office and the RCMP, whose conduct is being examined.

You also inquired in your letter as to our position with respect to witnesses that ought to be

heard from. A very brief perusal of the list you have provided to us shows that you appear to have made the decision that experts who have been consulted by you are not to be called. It is clear that we have spent many months hearing evidence touching upon police practices, the nature of homicide investigations, the absence of a post mortem, reinvestigation of convictions, the use of police polygraph, disclosure by the Crown, and standards affecting defence counsel. In order that these practices and procedures be assessed in any meaningful way it is apparent that they must be compared with prevailing standards.

It may be that you have already been provided with all of this information and are satisfied that you have a clear understanding of what the appropriate standards are. Assuming that this is in fact the case, it does strike me as being exceedingly unfair that this evidence is not called so that other counsel who have spent months exploring these issues are not in a position to make meaningful recommendations based on these standards during submissions at the close of the inquiry.

One is also left with the feeling that if such information is available to the Commissioners they are obliged to make it available to counsel so that we are fully appraised of the evidence and other materials that they will be relying upon during their final deliberations. It is our view that this class of expert must be called upon to give all parties an opportunity to assess the conduct we have spent so much time hearing evidence about.

We also feel very strongly that the general social scientific research that has been done should also be called in evidence. Again, it is clear that this research may form a basis for identifying major problems within the administration of justice. The adequacy or inadequacy of the research and the conclusions available to be drawn therefrom are matters that all counsel should be able to address.

As a practical matter, to lose the opportunity of having the appropriate standards present by experts to the public through the press, is regrettable and a mistake. These ideas need public exploration and exposure before the Commissioners deal with them in their Report.

If Commission counsel do not wish to call these experts or researchers, at least their names should be made available to other counsel who might decide to make application to the Commissioners to hear their evidence.

We were also quite surprised to see that the matter of compensation is not being further dealt with. We would like to draw to your attention the fact that it would appear that both Justice Campbell and his counsel, Hugh MacIntosh, ought to testify. You may recall that when a negotiated settlement with respect to compensation occurred, Justice Campbell endorsed this settlement. However, his endorsement was converted into a "recommendation" by the Government of the day when the compensation package was announced. This process is, in our respectful view, illustrative of the improper interaction between "independent" tribunals and the Department of the Attorney General in Nova Scotia that characterizes the Marshall case. Another aspect of Justice Campbell's relationship to the Department of the Attorney General that might throw some fruitful light on the conduct of that Department is an examination of how it came to pass that Justice Campbell went from viewing police conduct as relevant to the quantum of compensation to his ultimate position that it should not be considered. This matter should be the subject matter of inquiry by the Commission.

In addition to these aspects of compensation, we strongly urge you to call those individuals with whom you have consulted to testify to those appropriate principles that should affect compensation and how such claims should be handled. In particular, this raises the question of what kind of regime ought to be in place to deal with compensation. Clearly compensation is an important matter which the Commission should fully address. Recommendations in this area may have a long term impact on the administration of the criminal law across the country.

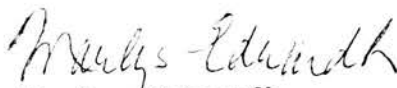
This raises for us the other another matter. We wrote to you asking whether the Commission would oppose a re-assessment of the amount of money Marshall was paid by way of compensation. You have not responded to our letter in this regard. Are we to take it that your list of witnesses indicates that this is not an area you wish to examine? For the

record, I wish to indicate that it our position that this examination should and must be undertaken.

The last and final matter I wish to deal with is the question of the four days set aside for submissions in this matter. Whether or not such a period of time is appropriate for us given the subject matter that has to be addressed depends, in part, on what your view is with respect to the time allotted to Mr. Marshall's counsel. It will also depend on your answer to whether or not you intend to file written submissions prior to oral submissions being made. It is our position that Commission counsel ought to draft and prepare written submissions, including any recommendations that they intend to urge upon the Commission. These should be filed well in advance of the oral argument. Other parties can and undoubtedly would file written submissions reflecting their own client's interest as well as their response to those put forward by Commission counsel. All of these could then be made public at the time of oral argument and oral argument could be reduced appropriately with everyone having the confidence that the Commissioners would have occasion to leisurely peruse the written argument. Without this four days is unlikely to be adequate.

We would appreciate having your views on all these matters as soon as possible.

Sincerely yours,

  
Marlys Edwardh

/ms  
cc Anne Derrick  
Buchan, Derrick & Ring  
Sovereign Building  
Suite 205  
5516 Spring Garden Road  
Halifax, Nova Scotia  
B3J 1G6



APR 21 1988

# COX, DOWNIE & GOODFELLOW

BARRISTERS AND SOLICITORS

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DOUGLAS C. CAMPBELL  
WARREN K. ZIMMER  
TERRY L. ROANE  
MICHAEL E. DUNPHY  
BRIAN W. DOWNIE  
ALAN J. DICKSON  
D. KEVIN LATIMER  
K. MICHAEL TWIFEL  
RONALD E. PIZZO

RONALD J. DOWNIE, O.C.  
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J. CRAIG MCCREA  
JAMIE S. CAMPBELL  
LORRAINE P. LAFFERTY  
A. JAMES MUSGRAVE  
JOCELYN M. CAMPBELL  
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CORRESPONDENCE  
P.O. BOX 2380, STATION M  
HALIFAX, NOVA SCOTIA B3J 3E5

OUR FILE:

April 11, 1988

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

COPY

Dear Mr. Herschorn:

RE: Mark Garnet Aylward - Disclosure

We are solicitors on behalf of Mark G. Aylward who is presently charged with first degree murder in relation to the death of Phillip White at Springhill, Nova Scotia on July 27, 1987. Also charged by separate indictment is Jason Mappin. He is represented by Mr. Brian Smith. Mr. Mappin is a young offender who was recently transferred to adult court to stand trial. Mr. Sandy Fairbanks is the Crown in charge of the prosecutions of Mr. Mappin and Mr. Aylward.

Mr. Doug Shatford originally represented Mr. Aylward, but due to a conflict we took over the file from him.

On September 23, 1987, I had Kevin Latimer of our office write to Mr. Fairbanks requesting full disclosure in a timely fashion. A copy of that letter is enclosed. It is patently obvious that we were seeking the type of disclosure directed by Attorney General Giffin in 1986:

"The Crown shall make full disclosure of its case to the accused, or counsel for the accused."

I understand that Mr. Giffin has stated that this is a positive obligation on the Crown. Mr. Giffin was apparently also of the belief that this was the practice followed by his

Page 2  
Mr. Herschorn  
April 11, 1988

prosecutors during the time that he was Attorney General.

Attorney General Donahoe in May of 1987 also stated that he had advised Crown Prosecutors that there should be "full disclosure". In our letter of September 23, 1987, we requested the class of material that is routinely disclosed. It was expected, as the offence had occurred in July, that the Crown would have in its possession the requested material or at least be aware of its existence. If it was not in the Crown's file then certainly it would be in the files of the R.C.M.P. It is rare that the police will withhold information from the Crown which would jeopardize the Crown's case.

On September 30, 1987, Mr. Fairbanks wrote to us and disclosed the material outlined in his letter of that date. A copy is enclosed.

This disclosure was, in my view, very minimal. Consequently, we wrote to Mr. Fairbanks on October 9, 1987 requesting additional clarification and repeating our request for disclosure of routine information. A copy of that letter is enclosed. My view on the extent of nondisclosure, as it came to pass, was correct. On March 15, 1988 we received 137 pages of disclosure. This was three weeks before Mr. Aylward's two week trial was to commence. I will refer to this material later.

Between October 9 and October 23, 1987 Mr. Latimer learned of the existence of some recorded telephone communications. We were lead to believe that these were the only tapes involved. We were later to learn that this was not correct. Mr. Latimer wrote to Mr. Fairbanks on October 23, 1987 once again requesting disclosure regarding the tapes. A copy of that letter is enclosed. On October 27, 1987, Mr. Fairbanks sent us a copy of Mark Aylward's statement. Nothing further was received until we appeared on the preliminary inquiry on November 5, 1987. At that time, we received additional, meager, disclosure of material requested in September. In a letter dated November 18, 1987, I expressed my concerns to Mr. Fairbanks and specifically requested that he obtain from the R.C.M.P. the material I had requested, in the event that he did not already have it in his file. I criticized his lack of cooperation in providing timely and full disclosure and pressed for the material. A copy of that letter is enclosed.

I received a reply from Mr. Fairbanks dated November 25, 1987. It was handed to me at the continuation of the



Page 3  
Mr. Herschorn  
April 11, 1988

preliminary inquiry on November 26, 1987. Mr. Fairbanks stated:

"Disclosure has been made as soon as possible of all appropriate material as it has been received here."

He also suggested that the crime laboratory reports that were spoken of in evidence at the preliminary had not yet arrived at the R.C.M.P. detachment. I finally received copies of all of the forensic laboratory reports on March 15, 1988 - four months later! Copies of the reports are enclosed and bear the following dates:

1. Hair and fiber - August 5, 1987.
2. Hair and fiber - September 5, 1987.
3. Hair and fiber - November 3, 1987.
4. Alcohol section - August 17, 1987.
5. Alcohol section - November 11, 1987.
6. Serology - November 3, 1987.
7. Toxicology - October 28, 1987.

Every report appears to have been completed at a time when Mr. Fairbanks is stating that:

". . . it would be impossible for me, the police or anyone else to have it."  
(November 25, 1987)

A copy of his letter is enclosed.

On December 14, 1987, I wrote to Mr. Fairbanks once again to review what had transpired regarding our requests for full disclosure and the material we had received in bits and pieces. Once again, it was patently obvious what we wanted by way of disclosure. It should also have been obvious that we were not getting the information that we suspected was available and, secondly, the timing of what we had received was depriving us of a fair opportunity to investigate it and put it to any use or test at the preliminary inquiry stage.

Page 4  
Mr. Herschorn  
April 11, 1988

I felt that either the Crown prosecutor was withholding the information from us or that the Crown prosecutor was seeking the information from the R.C.M.P., as he was obliged to do, but the R.C.M.P. were withholding it from him knowing that it would be turned over to the defence. I made it clear to Mr. Fairbanks at the time that I believed it was the R.C.M.P. who were at fault, but nevertheless "demanded" disclosure from him. A copy of my letter is enclosed.

On January 7, 1988 I received a letter from Mr. Fairbanks who advised that I was receiving "appropriate materials" as they were received by him. He further stated:

"The forensic services are busy and delays are to be expected."

I have already commented on the reports and the dates upon which they appear to have been available. Mr. Fairbanks continued:

"I have discussed your letter with the Royal Canadian Mounted Police and I am advised that they are not withholding any relevant and appropriate material."

Whatever "relevant and appropriate material" may mean it cannot mean forensic reports, witnesses' statements, photographs, drawings and other taped recordings of which they were aware. All of these latter items and others were unequivocally demanded in a general way in my letter of December 14, 1987 and prior to that. On March 15, 1988, I received the statements of approximately 30 potential witnesses. They are as follows:

<u>Name</u>	<u>Date</u>	<u>Agency</u>
M.V. Vienneau	July 30, 1987	R.C.M.P.
R.W. Veinotte	August 2, 1987	R.C.M.P.
R.G. Jewkes	August 2, 1987	R.C.M.P.
J.B. Noiles	August 2, 1987	R.C.M.P.
R. McCormick	August 26, 1987	R.C.M.P.
C. McLellan	no copy	R.C.M.P.
R. Hunter	no written statement	
W. Campbell	no statement attached	
S.F. Choisnet	no copy	R.C.M.P.
P.M. Weatherbee	no date	R.C.M.P.
J.A. Henry	August 3, 1987	R.C.M.P.

Page 5  
Mr. Herschorn  
April 11, 1988

<u>Name</u>	<u>Date</u>	<u>Agency</u>
J.C. Gogan	August 7, 1987	R.C.M.P.
E. Moniz	August 6, 1987	R.C.M.P.
D.J. Fraser	August 6, 1987	R.C.M.P.
K.F. Bobyk	August 10, 1987	R.C.M.P.
S. Light	no statement attached	
T.F. Dorey	no date	R.C.M.P.
T.K.S. Henwood	August 26, 1987	R.C.M.P.
D.J. Keddy	October 1, 1987	R.C.M.P.
N.S. Belong	October 2, 1987	R.C.M.P.
G.E. Townsend	October 2, 1987	R.C.M.P.
G.M. White	October 8, 1987	R.C.M.P.
T.H. Canning	October 8, 1987	R.C.M.P.
D.M. Shroder	October 20, 1987	R.C.M.P.
J. Wilson	no copy	
B.C. Kieley	no date	R.C.M.P.
I. R. Samways	February 9, 1988	R.C.M.P.

At least seven (7) of these people are scheduled as Crown witnesses and I received their statements at a time when any meaningful investigation is impossible. There are also a number of the others who can offer contradictions to the Crown's main witnesses' accounts of what occurred.

In addition, I received the summaries of 23 police witnesses which, finally, included all the forensic reports. Many of the police witnesses were completely unknown to me until then yet the Crown intended to call them as witnesses. I learned for the first time that there was a second recorded statement of Carol Martin, also an important witness for the Crown. As of today's date I have not received this statement. I learned for the first time of the existence of seized cassette tapes, photographs, film and negatives from Jason Mappin's residence. Mr. Mappin is the Crown's major witness against Mr. Aylward and accuses him of killing Phillip White. I learned for the first time about a book of drawings seized from Jason Mappin and what could only be described as bizarre tape recordings. There were photographs taken of Mappin's residence and at least one photograph "depicting" Mappin and Phillip White was seized. Although I have not seen the "depicting" photograph it apparently shows Mappin with his hand held like

Page 6  
Mr. Herschorn  
April 11, 1988

a gun pointed at Phillip White's head.

The significance of such a photo must be considered in the context of Mappin having previously threatened to kill Phillip White because White had testified against him at a trial which resulted in Mappin going to jail. It is also important as it relates to Aylward's accusation that it was in fact Mappin who killed White. Prior to March 15, 1988 I had received copies of Mr. Aylward's two statements to the police. I learned that there was a third statement that had never been disclosed to me. That was received, coincidentally, by Mr. Latimer on March 25, 1988, from Mr. Fairbanks, the same date as a pre-trial conference was scheduled before Madame Justice Glube.

The learning experience continued upon reading the disclosures. There were additional photographs taken and a fingerprint found at the scene of the crime on a beer bottle. Where it was found and whose print it was has not been disclosed. Insight was gained into the personalities and character of several major Crown witnesses that requires further investigation. It was learned that psychiatric reports were also available relating to Jason Mappin. I received a list of approximately 90 exhibits, only two of which had been introduced at the preliminary inquiry. Prior to March 15, I had no idea what was available to the Crown or what might appear at the trial.

Furthermore, on March 25 I compared the disclosure that I had received with the material that Brian Smith had received and discovered that at least seven pages had been edited from my material. This material related directly to the Crown's key witness against my client and bears directly on his credibility. Why it was removed and by whom?

It is also interesting to note that on December 15 and 16, 1987 a transfer hearing was held in Amherst concerning Jason Mappin. At that time, Christine Burton testified for the Crown concerning the physical matching of exhibits, in particular chipped teeth. Her report indicates that she received the exhibits from Constable Newell on September 3, 1987 and prepared a report on September 25, 1987. Mr. Fairbanks apparently had it for December 15 and 16, but I did not receive it until March 15, 1988. The only report I recall receiving prior to March 15 was that dated August 17, 1987 which I received

Page 7  
Mr. Herschorn  
April 11, 1988

on the preliminary inquiry on November 26, 1987.

Mr. Latimer and I met with Constable Barber of the R.C.M.P. on March 22, 1988 to review his file. Constable Barber was one of the major investigators. I had asked Corporal Barber, while on the witness stand at the preliminary, if he would allow me to read it at a later date and he agreed. He had been ill from January 20, 1988 until March 15 when he returned to duty. We reviewed a 50 page police report Corporal Barber had prepared. Mr. Latimer specifically asked if Mr. Fairbanks had everything that Corporal Barber had in his file and he answered in the affirmative. Corporal Barber had a great deal of information that we did not have yet Mr. Fairbanks stated at the pretrial that we, the defence, had everything that the Crown had.

It was during this review of Corporal Barber's file that additional important information was learned that will require further investigation. If Mr. Fairbanks has the contents of Corporal Barber's file then we are still being denied access to full disclosure.

"I have discussed your letter with the R.C.M.P. and I am advised that they are not withholding any relevant and appropriate material." (January 7, 1988 - Fairbanks)

I will allow you to conclude for yourself how this should be interpreted in light of the fact that all (except for one statement) the material eventually disclosed on March 15 was in existence on January 7, 1988 and much of it at the time of our original letter of September 23, 1987. Corporal Barber and Mr. Fairbanks appear to have different files, but regardless of how you view it, something is seriously wrong.

Mr. Aylward has directed me to take whatever steps are necessary to ensure that he will, someday, before his trial receive full disclosure and hopefully a fair trial on the first degree murder charge.

An immediate investigation is required to determine what has gone wrong to date. Secondly, I seek assurance from someone of greater authority than Mr. Fairbanks that I do in fact have full disclosure or will get it. As a result of the lack of timeliness of the disclosure to date Mr. Aylward's

Page 8  
Mr. Herschorn  
April 11, 1988

trial has had to be adjourned, until October, 1988 from April, 1988, to allow for proper investigation and the interviewing of witnesses. All of this could have been achieved prior to the original trial date had full disclosure been made in the timely fashion demanded.

I can only urge a prompt investigation. I am available at any time for further explanation.

Yours very truly,

COX, DOWNIE & GOODFELLOW

Warren K. Zimmer

WKZ/am  
Enclosures

cc: Mr. Wylie Spicer ✓  
Mr. Sandy Fairbanks  
Corporal Barber  
Chief Superintendent C.J. Reid

COPY

VIA COURIER

DKL: 3001-12

September 23, 1987

Crown Prosecutor's Office  
P.O. Box 623  
AMHERST, Nova Scotia  
B4H 4B8

Attention: David A. Fairbanks, Q.C.

Dear Mr. Fairbanks,

Re: Mark Aylward - Murder Charge

We have been retained by and are acting for Mark Aylward. The matter is presently scheduled for a preliminary inquiry at Amherst on November 5, 1987.

We are writing at this time to request timely disclosure to defence counsel of all relevant facts and witnesses known to the Crown. In particular, we are requesting the following information:

1. the name(s) of any and all police forces involved in the investigation of the charge;
2. copies of any and all police reports in relation to the charge;
3. a list of any and all witnesses the Crown intends to call on the



preliminary inquiry;

4. copies of any statements - oral, written, or reduced to writing - in the possession of the Crown or police given by the witnesses the Crown intends to call on the preliminary inquiry;
5. a list of all possible witnesses the Crown may call at the trial;
6. copies of any statements - oral, written, or reduced to writing - in the possession of the Crown or police given by the witnesses the Crown may call at the trial;
7. copies of any statements - oral, written, or reduced to writing - in the possession of the Crown or police of the accused or co-accused;
8. confirmation that, other than the statements referred to above, no other statements were taken and no further statements are presently in existence relating in any way whatsoever to this charge;
9. forensic reports;
10. exhibits lists;
11. any and all photographs.

With regard to the date for the preliminary inquiry, Mr. Zimmer is presently involved in a Supreme Court trial scheduled for the period including November 5, 1987. Would you kindly let us know your position with respect to an adjournment of the preliminary in this matter to allow Mr. Aylward to be represented by counsel of his choice.



I would expect that most of the materials requested above are already in your possession. Your early response to our request for disclosure and your position on an adjournment would be greatly appreciated.

I look forward to hearing from you.

Yours very truly,

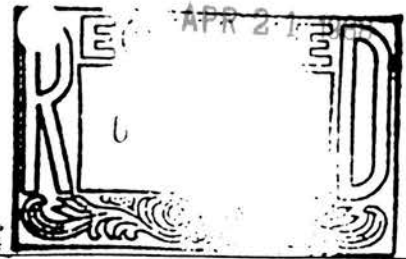
COX DOWNIE & GOODFELLOW

D. Kevin Latimer

DKL: lk



COPY



**Department of  
Attorney General**

Office of  
Crown Prosecutor

Court House  
54 Victoria Street  
P. O. Box 623  
Amherst, Nova Scotia  
B4H 4B8

30 September, 1987

VIA HAND



Cox, Downie & Goodfellow  
Barristers & Solicitors  
P.O. Box 2380, Station M  
HALIFAX, Nova Scotia  
B3J 3E5

ATT.: D.KEVIN LATIMER

Dear Mr. Latimer:

Re: R v AYLWARD, MARK

I enclose the following:

Copy of statement of Carol Martin

Copy of statement of Ricardo Monez

Copy of statement of Mark Aylward

All photos from my file (RCMP have more photos)

Copy of M.E.'s report

Copy of autopsy report

In answer to your demands I wish to advise you as follows:  
The Springhill Police Department and the Royal Canadian  
Mounted Police were the police forces involved in the in-  
vestigation of the charge. I have not yet received a written  
police report in relation to the charge. At the present time  
I intend to call the following as witnesses at the preliminary

Cst. T. Fitzpatrick —

Cpl. Barker ✓

Gary Copeland —

Carol Martin

PAGE 2.....

Ricardo Monez ✓

A N.S. Liquor Store Employee

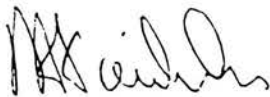
This list is not exhaustive as I may decide to add or delete to this list as time goes on.

I have not as yet received any forensic reports - but I do expect to get some from the RCMP.

I understand Mr. Zimmer has already approached Judge Cole some time ago to change the preliminary date and Judge Cole advised him that the date would not be changed. In view of that state of facts just exactly what is it that you want me to do? I wish to point out that the next setting of the Supreme Court in this area is the second (2nd) of February 1988 at the Amherst Court House. I expect the matter will go to trial at that time.

I am,

Yours truly,



D.A. FAIRBANKS, Q.C.

CROWN PROSECUTOR

DAF:dic

Encl.

COPY

DKL: 3001-12

VIA COURIER

October 9, 1987

Crown Prosecutor's Office  
54 Victoria Road  
P.O. Box 623  
AMHERST, Nova Scotia  
B4H 4B8

Attention: David A. Fairbanks, Q.C.

Dear Mr. Fairbanks,

Re: Mark Aylward - Murder Charge

I acknowledge, with thanks, receipt of your letter dated September 30, 1987 together with enclosures.

With respect to the statements of Martin, Monez and Aylward, would you kindly advise as follows:

1. method of obtaining statements;
2. whether there are any other or further statements - oral, written or reduced to writing - in the possession of the Crown or police given by either the accused or any other witnesses relating in any way whatsoever to this charge.

With respect to the other photos in the possession of the R.C.M.P., would you please provide me with a

description of these additional materials. I expect we will want to examine the photos and then decide whether or not we will require copies of any of these other photos.

With regard to the autopsy report, I would appreciate knowing what additional forensic reports you expect to receive and, of course, trust you will provide us with copies of same just as soon as these materials are available.

As for police reports, we are requesting copies of any and all police reports just as soon as you are in receipt of same.

X | In your letter of September 30, 1987, you indicated your present intention was to call six witnesses whose names you have provided at the preliminary inquiry. If there are any changes in this regard, I would ask you to let us know just as soon as possible.

In your list of witnesses, you refer to an N.S. liquor store employee. Would you kindly advise us of your reason for calling this witness and what it is you expect him to say.

Finally, would you let me know what exhibits the Crown intends to introduce on the preliminary. I appreciate that you may only be able to provide me with a tentative list at this stage.

On the matter of an adjournment, I do not know whether Mr. Zimmer had any discussions with Judge Cole as I have not had an opportunity to discuss that with him as he has been out of the office on a preliminary inquiry at Sydney since mid-September and, this week, on personal matters. The preliminary inquiry at Sydney is now apparently scheduled to continue until approximately the middle of November and that is why we would want to have this matter adjourned to a later date. If Mr. Zimmer did discuss the possibility of an adjournment with Judge Cole, I am not sure that he was aware of the present circumstances at that time. In any event, would you kindly let me know whether you would oppose a defence request for an adjournment of the preliminary at this time.

D.A. Fairbanks, Q.C.  
October 9, 1987  
Page 3

I shall await word in return from you.

Yours very truly,

COX DOWNIE & GOODFELLOW

D. Kevin Latimer

DKL: lk

COPY

October 23, 1987

Via Courier

Crown Prosecutor's Office  
54 Victoria Road  
P.O. Box 623  
AMHERST, Nova Scotia  
B4H 4B8

Attention: Mr. David A. Fairbanks, Q.C.

Dear Mr. Fairbanks:

RE: Mark Aylward - Murder Charges

We spoke by telephone on October 15, 1987.

I indicated to you that we wanted to make arrangements to enable Mr. Aylward to travel to Halifax to meet with us. You indicated that the terms of his bail required him to remain in Springhill except to travel to Amherst to meet with his then counsel. I have checked and that is the case. In view of that, I have spoken with Justice Nathanson's office about having the bail order amended so that it would permit Aylward to come to Halifax to meet with counsel. Justice Nathanson is prepared to deal with the matter, but he will only do so in the presence of both counsel. I understand from speaking with his secretary that he is agreeable to doing this by way of conference call. His Lordship will be in his office on Monday, October 26, 1987. I understand you will be back on that date as well. I suggest that we arrange a conference call for around lunchtime on Monday. I will be out of the office early Monday morning so I will have my secretary call your office to find



out whether you are agreeable to dealing with the matter is this way and, if so, to determine your availability for a phone conference sometime between 12:00 and 2:00 on that date. She can then, in turn, coordinate that with Justice Nathanson's office.

When we last spoke by telephone, you told me you had some recorded telephone communications. These conversations were recorded by Mr. Mappin. The recordings pertain to the period before and on the date of the alleged offence. The conversations are between various people whom you have not identified to me. You told me that there might be certain evidentiary problems concerning the admissibility of these communications and, for that reason, you were uncertain as to whether or not the Crown would be introducing these materials on the hearing. You further indicated that the contents of the recordings put certain restraints on your ability to discuss and disclose these communications. We are concerned that this information may be of assistance to Mr. Aylward's defence. This is therefore to request you to provide us with more and better particulars as to the contents of these recordings. We request the following information:

1. When they were made;
2. Who made them;
3. Who the conversations are between;
4. The contents of the conversations;
5. How the recordings were obtained.

The preliminary in this matter is presently scheduled for November 5, 1987. We consider this information to be relevant and, regardless of whether it is helpful to the Crown, we want to have access to the material so that we can consider it and determine whether it is helpful for the Defence. You will appreciate that time is of the essence in that regard.

I look forward to speaking with you on Monday.

Yours very truly,

COX, DOWNIE & GOODFELLOW

D. Kevin Latimer

DKL/kam

COPY

November 18, 1987

VIA COURIER

Mr. David A. Fairbanks, Q.C.  
Crown Prosecutors' Office  
P.O. Box 623  
54 Victoria Road  
Amherst, Nova Scotia  
B4H 4B8

Dear Mr. Fairbanks:

RE: Mark Aylward

During the preliminary inquiry on November 5, 1987 it became apparent that there is much more information available than has been disclosed to us. I appreciate that you may not have it physically in your file, however, I have no doubt that if you request it you will obtain it from the R.C.M.P. or the other investigators. No doubt you are aware that the Attorney General, when he spoke at the Canadian Bar Association's Annual Branch Dinner on Saturday, May 9, 1987, indicated that he has advised all of his Prosecutors that there should be "full disclosure by prosecutorial staff across the Province". Mr. Donahoe indicated this directive has come about since the Marshall Inquiry. I think we are all aware of the tragic results that can follow failure by the Crown to provide disclosure to the defence. I think the Marshall Inquiry has also made us all aware that the police may withhold information from the Crown so that it cannot be passed along to the defence. In this regard, you provided us the day of the preliminary inquiry with copies of notes or rather summaries of the notes taken by Constable Williams, Deputy Chief Copeland and Constable Barber of the R.C.M.P. That information had been requested some considerable period of time prior to the preliminary inquiry and it makes it very difficult to conduct meaningful cross-examination when the information is not disclosed

Page 2  
Mr. Fairbanks  
November 18, 1987

until the last minute. In relation to the handwritten notes of Douglas Barber, it appears that he interviewed Jason Mappin at the Springhill Police Department from approximately 0809 hours until 1030 hours. The summary does not contain any information relating to the conversation. When Mr. Latimer, myself, you and Constable Barber met outside of court, Constable Barber indicated that he had no written notes of the interview and that "it was all in his head". He further indicated that Mappin said no more than that Aylward was responsible for Phillip White's death. I would ask you to confirm that that is the absolute extent of the evidence that Constable Barber could give in relation to his conversations with Jason Mappin between the hours I specified or any other time.

Similarly, I would like you to confirm that Deputy Chief Gary Copeland has no more relevant information in relation to any statements or conversations taken from Mark Aylward, Jason Mappin, Carol Martin or Richardo Moniz other than that which has been related to us in the summary provided on November 5, 1987. If additional information is available, I would request disclosure of it. I appreciate that you may not have it in your file, however, I cannot obtain it from the police only the Crown can.

I was further surprised to learn in light of the fact that we had requested as far back as September 23, 1987, all forensic reports, that forensic tests had been carried out. Constable Byron Newell has advised us at the preliminary inquiry that he took samples of body tissue, urine, blood and vitreous fluids at the autopsy and all have been sent to the Crime Detection Laboratory in Sackville, New Brunswick. As well it may be that blood samples taken from stained twigs and hair samples were also sent.

Constable Newell further testified that he received a number of items from Constable Fitzpatrick and in particular made reference to a shirt although that has not appeared at the preliminary inquiry and I would like to know, if possible, where it is. It seems that Constable Fitzpatrick is a witness who should be called at the preliminary inquiry and perhaps if you could advise that if you do not intend to call him, if he will be present so that I may call him. In the event that he is not going to be present, perhaps you could advise me of same so that arrangements can be made for his attendance.

I would like copies of the forensic reports which

Page 3  
Mr. Fairbanks  
November 18, 1987

I understand according to Constable Newell's evidence should have been prepared and made available to us.

I can only reiterate that the lack of cooperation in relation to the matter of disclosure is making it very difficult for us to proceed in a timely manner with this preliminary inquiry. I have no intention of jeopardizing Mr. Aylward's well-being by having this matter cut short until all matters have been properly investigated and all information that is available to us has been presented.

Yours truly,

COX, DOWNIE & GOODFELLOW

Warren K. Zimmer

WKZ/am

APR 21 1988

Nova Scotia



COPY

**Department of  
Attorney General**

Office of  
Crown Prosecutor

Court House  
54 Victoria Street  
P. O. Box 623  
AMHERST, Nova Scotia  
B4H 4B8

November 25, 1987

Mr. Warren K. Zimmer  
Cox, Downie & Goodfellow  
P.O. Box 2380, Station M  
HALIFAX, Nova Scotia  
B3J 3E5

Dear Sir:

RE: R. v. ALYWARD, Mark

I acknowledge receipt of your letter dated 18 Nov. 1987 which I personally received on 23 November 1987. Your suggestion that this office has not made disclosure to your office is unwarranted. Disclosure has been made as soon as possible of all appropriate material as it has been received here.

I provided you with an opportunity to personally interview Cpl Barbour. He provided you with his report. It is not my fault that you began to relate to him things that were given in evidence at the Preliminary. I would point out to you that we "met" only to provide this witness to you. I would also point out the Deputy Chief Copeland was present at that time and if you had questions you had the opportunity to ask.

As you should remember the reports that Cst. Newell spoke about had not arrived at the R.C.M.P. Station from the Crime Laboratory and it would be impossible for myself, the police or anyone else to have it.

I can only reiterate that there has been no lack of co-operation in the matter of disclosure by this office.

I am,

Yours truly,

A handwritten signature in cursive script, appearing to read "DA Fairbanks".

David A. Fairbanks, Q.C.  
Crown Prosecutor

DAA/dea

*Received Newell/87  
at 12*

COPY

December 14, 1987

Mr. David A. Fairbanks, Q.C.  
Crown Prosecutor's Office  
P.O. Box 623  
Amherst, Nova Scotia  
B4H 4B8

Dear Mr. Fairbanks:

RE: Mark Alyward

We first wrote to you on September 23, 1987, requesting disclosure of all relevant facts and witnesses known to the Crown relating to the charge outstanding against Mr. Alyward. By your letter dated September 30, 1987 we received some disclosure relating to the charge, however, by no means full disclosure. Between that time and November 5, the date the preliminary inquiry commenced, there were a series of discussions between yourself and Kevin Latimer relating to disclosure. During the course of the preliminary inquiry it became apparent that there was much more information available, at least to the R.C.M.P., that had not been disclosed and as a result you received my letter dated November 18, 1987 outlining our position. We received no response from your office until November 26, 1987 at which time you handed me a letter dated November 25, 1987 with enclosures. One of the items that was enclosed was a forensic laboratory report dated August 17, 1987. I find it incredible that we could not have received a copy of that report prior to November 25, 1987 in the middle of the preliminary inquiry for first degree murder. Are the police withholding forensic reports from you so that they will not be disclosed to us? Are the police withholding additional material from you so that it may not be disclosed to us in the event that it may be of assistance to Mr. Alyward in his defence? We will not know unless you ask. In the event that you have made requests for full disclosure of all relevant facts and witnesses known to the police and have not received cooperation from the investigators I would request that you advise me of this fact. We now have a Solicitor General



Page 2  
Mr. Fairbanks  
December 14, 1987

who can obtain that material for you in the event that your office does not have sufficient authority to compel production from the R.C.M.P.

Furthermore, in my letter of November 18, 1987 I specifically asked you to advise me whether or not Constable Fitzpatrick would be called as a witness when the preliminary inquiry continued on November 26, 1987. You did not respond to my letter of November 18 and I assumed that Constable Fitzpatrick would be in attendance. It was only during the course of the preliminary inquiry that you advised me that Constable Fitzpatrick was not going to be call and was not even there. When Judge Cole initially indicated to me that I would not be permitted an adjournment to subpoena Constable Fitzpatrick I was very distressed. Fortunately Judge Cole reconsidered and permitted us the opportunity. I am disturbed that you would not come forward at that time and advise Judge Cole of my letter requesting information specifically concerning Constable Fitzpatrick's attendance.

On December 11, 1987 the mystery of disclosure deepened. I received at my office a hand-delivered envelope containing a statement taken from a David John Keddy dated October 1, 1987 at Shelburne, Nova Scotia. That statement was taken by Constable Fitzpatrick who, coincidentally, would have received his subpoena just a day or so before this envelope and statement mysteriously appeared at our receptionist's desk. If it came from your office I would have expected at least a covering letter and therefore assume that it came from the police either at your direction or on their own initiative. This statement of Mr. Keddy, to under state the matter, is critically relevant from the defence point of view because of the threats that Mr. Keddy heard Jason Mappin make to kill Phillip White. It is particularly critical when the Crown is calling Jason Mappin to finger Mark Alyward. Why did we have to wait, until December 11, 1987 to receive a copy of this statement? Mr. Monez has already testify and Mr. Mappin has already testify and whatever use that we can make of this statement is now lost to us on the preliminary inquiry. Whatelse has been hidden from us such that we cannot make constructive use of it on the preliminary inquiry? If you do not know perhaps it is time that you ask the R.C.M.P. to finally give you everything they have. If they will not give it to you, please advise me and I will immediately approach the Attorney General and the Solicitor General to have this matter investigated.



Page 3  
Mr. Fairbanks  
December 14, 1987

The summary of Constable Fitzpatrick's evidence that you provided to us on November 26, 1987 makes no mention of this particular statement from Mr. Keddy. Does say and I quote:

"86-10-01 and 02

That he was in Shelburne with Corporal Glen Cross to interview persons who had contact with Mappin and Monez while they were at the Boys School".

I hardly consider this any form of meaningful disclosure when it was quite obvious at the time that the summary was prepared for your office to provide to me that Constable Fitzpatrick was fully aware of the statement that he had taken from Mr. Keddy on October 1, 1987. Why was that fact hidden from us? Quite simply all we are asking for is what the Attorney General has on several occasions indicated "full, frank, fair disclosure"! I am deeply disappointed in the way this matter has proceeded. Never in my life have I had such difficulty in obtaining disclosure from the Crown. Mr. Alyward is facing a first degree murder charge and receiving important disclosure at a time when we can make little use of it. You have been pressing to proceed with this matter and in the present circumstances it can only have the effect of prejudicing Mr. Alyward at his trial. Because of the failure of the police to provide you with disclosure so that you may in turn provide it to us or in the alternative your failure to provide disclosure that has been made to you by the police, we are now forced to have this entire matter investigated privately which will necessitate time, money and delay. In this case it is not the accused, but the R.C.M.P. and/or the Crown, depending on what you have received, that is orchestrating the next move. I want to make it perfectly clear at this time, however, that I believe it is the R.C.M.P. that is withholding disclosure from you. I realize that if they will not give it to you you cannot give it me, nevertheless, I demand it.

I would appreciate an immediate reply.

Yours truly,

COX, DOWNIE & GOODFELLOW

Warren K. Zimmer

WKZ/am



April 14, 1988

Ms. Anne S. Derrick  
Buchan, Derrick & Ring  
Sovereign Building  
205-5516 Spring Garden Road  
Halifax, Nova Scotia  
B3J 1G6

Dear Ms. Derrick:

**RE: Royal Commission Inquiry to the Donald Marshall Jr. Prosecution  
- Ceriorari Application by the Attorney General of Nova Scotia**

Dear Mr. Derrick:

I acknowledge receipt of your letter of April 12th. It would appear to me to be appropriate to have the application on behalf of Donald Marshall Jr. heard at the same time on the 26th of April, as long as counsel feel there will be sufficient time to complete the matter. At the outside, I would only have the morning of the 27th to finish off if the matter cannot be argued within the space of the 26th.

I do want to meet with all counsel in advance and I will be asking my secretary to make the necessary arrangements.

Yours very truly,

A handwritten signature in cursive that reads "Constance R. Glube".

Constance R. Glube  
Chief Justice, Trial Division

CRG/rls  
c.c. W. Wylie Spicer  
Jamie W.S. Saunders



APR 21 1988

NOVA SCOTIA LEGAL AID

5212 SACKVILLE STREET SUITE 301 HALIFAX NOVA SCOTIA B3J 1K6 PHONE 423-1291

April 12, 1988

Mr. Wylie Spicer  
McInnes, Cooper & Robertson  
P.O. Box 730  
Halifax, Nova Scotia  
B3J 2V1

Dear Wylie:

Enclosed please find two legal aid tariffs. The undated tariff was the one in effect before the second came into place in April 1984. I trust this may be of some help to you.

Yours truly,

William B. Digby  
Solicitor

WBD/lw

Enc.

SCHEDULE B

Tariff of Fees and Disbursements  
for Barristers in Private Practice  
Engaged by the Commission to  
Conduct Criminal Cases

All fees in this Schedule shall be reduced by twenty-five percent.

INDICATE OFFENCES

Indicate Offences within the exclusive jurisdiction of the Supreme Court under Section 427 of the Criminal Code (Canada)-

1. Preparation for preliminary hearing and trial, including interviews with the accused and witnesses per hour.....	\$ 35.00
Subject to the maximum in each case set out below	
First degree murder.....	\$1,500.00
Second degree murder.....	1,000.00
All others.....	750.00
2. Counsel fee at preliminary inquiry- per day.....	175.00
3. Counsel fee at trial- per day.....	250.00
Junior Counsel in First Degree murder cases or with the approval of the Director in Second Degree Murder cases-per day.....	100.00

Indictable Offences other than those within the exclusive jurisdiction of the Supreme Court under Section 427 of the Criminal Code (Canada)-

4. Preparation for preliminary hearing, where applicable, and trial including interviews with the accused and witnesses-per hour.....	25.00
Subject to the maximum in each case set out below	
Armed robbery, manslaughter, rape.....	750.00
All other indictable offences.....	500.00
5. Counsel fee at preliminary inquiry- per day.....	125.00
6. Counsel fee at trial in Supreme Court- per day.....	250.00
7. Counsel fee at trial before a County Court Judge without a jury or before a Provincial Judge under Part XVI of the Criminal Code (Canada)- per day.....	200.00

Application for Bail or Reduction of Bail on behalf of a person charged with any Indictable Offence-

- 8. Application to a Justice of the Supreme Court for all services incidental to the application, including drawing notice of motion, affidavits, attendances, justifications by surety or sureties or entering into recognizance.....150.00
- 9. When application for bail is made before a County Court Judge for the above services..... 75.00
- 10. When application for bail is made before a Provincial Judge for the above services..... 35.00

Adjournments-

- 11. Attendance on any necessary adjournment before a Justice of the Supreme Court..... 35.00
- 12. Attendance on any necessary adjournment before a justice of the Supreme Court..... 35.00
- 13. Attendance on any necessary adjournment or adjournments before a Provincial Judge requested by the Crown..... 35.00
- Attendance on any adjournment before a Provincial Judge requested by the Crown..... 35.00

(A Solicitor shall not be entitled to a fee for more than one adjournment before the same Provincial Judge obtained during the same half day, unless otherwise approved by the Executive Director).

Preventive Detention-

- 14. Preparation on an application under Part XXI of the Criminal Code (Canada) including interviews and other necessary services-per hour..... 35.00
- 15. Counsel fee on application-per day..... 250.00

Appeals to the Appeal Division of the Supreme Court-

- 16. Drawing and filing Notice of Appeal and Preparation of Appeal Book..... 100.00
- 17. Preparation, including Statement of Points of Law and Fact intended to be argued, where appeal is against sentence only..... 125.00

- 18. Preparation, including Statement of Points of Law and Fact intended to be argued and including supplementary Notice of Appeal, where appeal is against conviction and sentence or conviction only..... 250.00
- 19. Attendance to set down..... 35.00
- 20. Counsel fee on appeal from conviction-per day or portion thereof..... 250.00
- 21. Counsel fee on appeal from sentence only-per day or portion thereof..... 150.00

Appeals to the Supreme Court of Canada in respect of all Indictable Offences-

- 22. Application for Leave to Appeal including preparation of the Notice of Motion, Statement of Points of Law and Fact and the case and other necessary proceedings..... 200.00
- 23. Counsel fee on application for Leave to Appeal..... 250.00
- 24. Application before the Chief of Justice of Nova Scotia or other Judge designated by him for admission to bail including drawing of Notice of Motion, Affidavits, attendances incidental to the application, preparation of recognizances, execution thereof and justification of surety and sureties..... 150.00
- 25. Drawing, filing and serving Notice of Appeal and preparing case..... 100.00
- 26. Preparation, including factum..... 300.00
- 27. Counsel fee on appeal-per day or portion thereof..... 350.00

OTHER MATTERS

- 28. Counsel shall be allowed all reasonable and necessary disbursements in full subject to being approved by the Executive Director or a solicitor employed by the Commission.
- 29. The Executive Director or such other persons as he shall designate may allow a fee to a solicitor for the preparation of an opinion, for an additional opinion or for his attendance to make further submissions when requested by the Commission.

30. Except where the tariff item applicable to the services is a block fee item covering fees for all services, an allowance of \$25.00 per hour, to a maximum of six hours per day may be made for the time spent in travelling where the distance is fifteen miles or more one way, and the solicitor satisfies the Executive Director that such travel was reasonable and necessary under the circumstances.

31. In any matter, proceeding, action or appeal, not dealt with by this Schedule of fees, the Executive Director shall allow a reasonable fee and in determining the fee properly payable in respect of such matter, proceeding, action or appeal, the Executive Director shall have regard to the Schedule of fees herein for comparable services.

This Schedule is a legal aid, tariff reflecting fees customarily paid by a client of modest means and the fees provided for herein shall normally apply for the legal aid covered thereby, including block fees and maximum fees for preparation, provided that,

(a) such fees may be increased by the Commission in those cases where in its opinion an increase is justified, having regard to all the circumstances including the nature of the offence charged, the complexity of the case and any other factor which would warrant an increased fee;

(b) such fees may be decreased by the Commission in those cases where in its opinion a decrease is appropriate; and

(c) where a solicitor represents two or more persons charged with the same or a similar offence arising out of the same occurrence, or where a solicitor represents a person charged with two or more offences, and in either case where the trials or pleas of guilty occur in the same court at approximately the same time, for the purposes of this Schedule, the solicitor shall be entitled to fees as for one client on one charge and such additional fees as may be approved as herein provided.



NOVA SCOTIA LEGAL AID  
 TARIFF OF FEES AND DISBURSEMENTS  
 FOR LAWYERS COMPLETING  
 AUTHORIZED CERTIFICATES

EFFECTIVE APRIL 1984

		CRIMINAL TARIFF				
Offence		Years at Bar	Rate	Hours	Total	
<b>PREPARATION FOR MURDER</b>						
<u>Preliminary &amp; Trial</u>						
Subject to Maximum	.1st degree	\$	\$40.00	50	\$2,000.00	
		\$+	45.00	50	2,250.00	
	.2nd degree	\$	40.00	40	1,600.00	
		\$+	45.00	40	1,800.00	
Counsel Fee	.Preliminary	\$	40.00	6 per day	240.00	
		\$+	45.00	6 per day	270.00	
	.Trial	\$	50.00	6 per day	300.00	
		\$+	55.00	6 per day	330.00	
	.Junior (where approved)		\$ & \$+	30.00	6 per day	180.00
	<b>PREPARATION FOR MURDER</b>					
<u>Appeal</u>						
Subject to Maximum		\$	50.00	20	1,000.00	
		\$+	55.00	20	1,100.00	
Counsel Fee	.Appeal Hearing	\$	50.00	6 per day	300.00	
		\$+	55.00	6 per day	330.00	
<b>PREPARATION FOR OTHER OFFENCES</b>						
<u>Preliminary &amp; Trial</u>						
Subject to Maximum	.Preventative Detention	\$	40	30	1,200.00	
		\$+	45.00	30	1,350.00	
	.Possible Life	\$	40.00	22	880.00	
		\$+	45.00	22	990.00	
	.10 & 14 yrs max.	\$	40.00	15	600.00	
		\$+	45.00	15	675.00	
	.5 yrs max.	\$	40.00	5	200.00	
		\$+	45.00	5	225.00	
	.Summary	\$	40.00	2.5	100.00	
		\$+	45.00	2.5	112.00	
Counsel Fee	.Preliminary & Trial In Mag. or Co. Courts	\$	40.00	6 per day	240.00	
		\$+	45.00	6 per day	270.00	
	.Supreme Court	\$	50.00	6 per day	300.00	
\$+	55.00	6 per day	330.00			
<b>PREPARATION FOR OTHER OFFENCES</b>						
<u>Appeal</u>						
Subject to Maximum	.Sent. only possible life 10 yrs & 14 yrs max.	\$	40.00	10	400.00	
		\$+	45.00	10	450.00	
	.Conv. or Conv & Sent. Prev. 5 Det. poss. life 10 yrs & 14 yrs max.	\$	40.00	15	600.00	
		\$+	45.00	15	675.00	
	.Sent. only 5 yrs max.	\$	40.00	4	160.00	
		\$+	45.00	4	180.00	
	.Conv. & Sent. 5 yrs max.	\$	40.00	8	320.00	
		\$+	45.00	8	360.00	
	.Summary & Further Appeal Sup. Ct. & Appeal by Stated Case	\$	40.00	4	160.00	
		\$+	45.00	4	180.00	
Counsel Fee	.Appeal Hearing	\$	40.00	6 per day	240.00	
		\$+	45.00	6 per day	270.00	
	.Further Appeal Sup. Ct. & Appeal by Stated Case	\$	50.00	6 per day	300.00	
		\$+	55.00	6 per day	330.00	
<b>SUPREME COURT OF CANADA</b>						
<u>Appeals</u>						
Preparation	.Application for Leave	\$	50.00	6	300.00	
		\$+	55.00	6	330.00	
	.Hearing	\$	50.00	15	750.00	
		\$+	55.00	15	825.00	
Counsel Fee	.Application for Leave	\$	50.00	6 per day	300.00	
		\$+	55.00	6 per day	330.00	
	.Hearing	\$	65.00	6 per day	390.00	
		\$+	75.00	6 per day	450.00	

FAMILY AND CIVIL TARIFF

Preparation and court appearances will be paid at the rate of \$40.00 per hour for counsel having less than 5 years at the bar and at the rate of \$45.00 per hour for counsel having over 5 years at the bar.

Actual Court time will be paid subject to a maximum billing of 6 hours per day.

Actual preparation time will be paid subject to the following maximums.

PREPARATION TIME FOR FAMILY AND CIVIL	HOURS
Separation Agreement and other non-court negotiations and settlements, including the drafting and execution of all necessary documents.	3
Administrative Tribunals and uncontested court applications involving: Children's Services Act, Enforcements, Show Cause, Defaults, Application to Vary, Family Maintenance Act, Custody, Access, Maintenance and Reviews.	2
Uncontested Court Applications Involving Divorce and Matrimonial Property Act.	5
Contested Court Applications involving Enforcements, Show Cause, Default, Application to Vary, Maintenance.	4
Contested Court Applications involving Divorce, Matrimonial Property Act, Family Maintenance Act, Children's Services Act and Infants Custody Act, where custody is in issue.	8
All Services re Civil Claims, including preparation and delivery of all Pleadings, Trial preparation and necessary attendances leading to actual Trial.	8
Appeals.	8

OTHER MATTERS

Criminal, Family and Civil

Counsel shall be allowed all reasonable and necessary disbursements in full subject to being approved by the Executive Director or a solicitor employed by Nova Scotia Legal Aid.

The Executive Director or such other persons as he shall designate may allow a fee to a solicitor for the preparation of an opinion, for an additional opinion or for his attendance to make further submissions when requested by Nova Scotia Legal Aid.

Except where the tariff item applicable to the service is a block fee item covering fee for all services, an allowance of \$40.00 per hour, to a maximum of six hours per day may be made for the time spent in travelling where the distance is fifteen miles or more one way, and the solicitor satisfies the Executive Director that such travel was reasonable and necessary under the circumstances.

In any matter, proceeding, action or appeal, not dealt with by this Schedule of Fees, the Executive Director shall allow a reasonable fee and in determining the fee properly paid in respect of such matters, proceeding, action or appeal, the Executive Director shall have regard to the Schedule of Fees herein for comparable services.

This Schedule is a legal aid tariff reflecting fees customarily paid by a client of modest means and the fees provided for herein shall normally apply for the legal aid covered thereby, including block fees and maximum fees for preparation, provided that:

(a) such fees may be increased by Nova Scotia Legal Aid in those cases where in its opinion an increase is justified, having regard to all the circumstances including the nature of the offence charged, the complexity of the case and any other factor which would warrant an increased fee;

(b) such fees may be decreased by Nova Scotia Legal Aid in those cases where in its opinion a decrease is appropriate; and

(c) where a solicitor represents two or more persons charged with the same or a similar offence arising out of the same occurrence, or where a solicitor represents a person charged with two or more offences, and in either case where the trials or pleas of guilty occur in the same court at approximately the same time, for the purposes of this Schedule, the solicitor shall be entitled to fees as for one client on one charge and such additional fees as may be approved as herein provided.

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MacISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
ROBERT M. PURDY  
RAYMOND F. LARKIN  
S. RAYMOND MORSE  
DARREL I. PINK  
JACK A. INNES, Q.C.  
DIANNE POTHIER  
JANET M. CHISHOLM  
PETER M. ROGERS

DONALD J. MacDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
J. RONALD CREIGHTON  
J. RONALD CULLEY  
NANCY J. BATEMAN  
R. MALCOLM MACLEOD  
ALAN C. MacLEAN  
DENNIS ASHWORTH  
WENDY J. JOHNSTON  
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JOEL E. FICHAUD  
J. MARK MacCREA  
D. SUZAN FRAZER  
BRUCE A. MARCHAND  
RODNEY F. BURGAR  
JANICE A. STAIRS  
DENNIS J. JAMES

JAMES C. LEEFE, Q.C.  
FRANK J. POWELL, Q.C.  
CLARENCE A. BECKETT, Q.C.  
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DAVID R. FEINDEL  
A. DOUGLAS TUPPER  
DORA L. GORDON  
LORNE E. ROZOVSKY, Q.C.  
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GORDON N. FORSYTH  
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FAX (902) 429-5215  
TELEX 019-22893

ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 21, 1988

BY HAND

Mr. Ronald J. Downie Q.C.  
Messrs. Cox, Downie & Goodfellow  
Barristers and Solicitors  
1100-1959 Upper Water Street  
Halifax, N.S.

Mr. George W. MacDonald, Q.C.  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Gentlemen:

MacKeigan et al v.  
Hickman et al  
S.H. No. 63241  
Our File No. 9201/1

I enclose a filed copy of Chief Justice Glube's order adding the Attorney General as an Intervenor in these proceedings.

Yours truly,



Darrel I. Pink

/j1  
Enc.

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MacISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 21, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Briggs:

Our File No. 9201/1

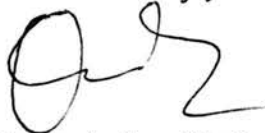
I acknowledge yours of April 18, 1988, regarding Dr. Stenning and yours of April 19, 1988, regarding amendments to the Police Act.

With regard to Dr. Stenning's meeting with Mr. Coles, I have been asked to obtain from you, an indication of the areas which Dr. Stenning proposes to question Mr. Coles about. You will recall he has had an outline which has been used for all other meetings and I hope one would be available for Mr. Coles.

If you provide this to me, it will facilitate the arrangements for a meeting.

With regard to the background material of the 1985 amendments to the Police Act, I have passed along your request and shall advise when I have the information in hand.

Yours truly,



Darrel I. Pink

DIP/jl

APR 21 1988

Office of the Dean



YORK  
UNIVERSITY

OSGOODE HALL LAW SCHOOL

4700 KEELE STREET, DOWNSVIEW, ONTARIO M3J 2R5

April 20, 1988

David Orsborn, Esq.  
Royal Commission on the Donald Marshall, Jr.  
Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear David,

Re: Donald Marshall, Jr. Commission of Inquiry

I enclose the final version of our Brief. As discussed this morning, your staff will ensure that a title page is put on it and that the appropriate copies are made and filed.

I also enclose 8 or 9 signed copies of the last page.

It is my understanding that you will file an affidavit with the Court which will provide supporting statements and documentation relating to all of the factual matters set out in our Statement of Facts.

I look forward to seeing you soon. I particularly look forward to talking to you after we have received Mr. Downie's Brief next week.

Yours sincerely,

James C. MacPherson  
Dean

MATERIAL IN FILE:

Cox, Downie:

Hearing Re:

Mackegan, et al.  
v.

Hickman, et al.

# BUCHAN, DERRICK & RING

APR 21 1988

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Patricia Lawton Day, B.Sc., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

Sovereign Building, Suite 205,  
5516 Spring Garden Road  
Halifax, Nova Scotia  
B3J 1G6  
(902) 422-7411

April 20, 1988

BY COURIER

Mr. Wylie Spicer  
c/o Royal Commission  
Suite 1026, Maritime Centre  
1505 Barrington Street  
Halifax, N.S.

Dear Wylie:

RE: Donald Marshall, Jr. Certiorari Application

Please find enclosed the Memorandum of Law prepared by Mr. Ruby with respect to the above application.

I will have the case book of authorities tomorrow and will provide it to you at that time.

Yours sincerely,

BUCHAN, DERRICK & RING



Anne S. Derrick

ASD/har  
Spicer  
ASD 4A

APR 21 1988



## Nova Scotia Barristers' Society

Keith Hall, 1475 Hollis Street, Halifax, Nova Scotia B3J 3M4  
(902) 422-1491

Office of: **Secretary-Treasurer**

April 19, 1988

Susan M. Ashley  
Commission Executive  
Secretary  
Maritime Centre  
Suite 1026, 1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Ms. Ashley:

**Re: Occasional Appearance - Application of James MacPherson**

Thank you for your letter of April 18, 1988.

I will look forward to receiving Dean MacPherson's fees and supporting documentation in due course.

Yours truly,

Kerry Oliver  
Deputy Secretary-Treasurer

KO:jmb

APR 20 1988

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FROX HALIFAX 429-7741

COPY

April 20, 1988

BY HAND

Mr. Ronald J. Downie, Q.C.  
Cox, Downie & Goodfellow  
Barristers & Solicitors  
1100 Purdy's Wharf Tower  
1959 Upper Water Street  
Halifax, Nova Scotia

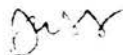
Dear Ron:

Hickman et al  
MacKeigan et al  
Our File No. 9201/1

Thank you very much for sending me a copy of your letter to  
George MacDonald dated April 13th.

I have no difficulty with the suggestion that a copy of your  
letter form part of the record.

Yours very truly,



Jamie W.S. Saunders

JWSS/cs  
c.c. Mr. George W. MacDonald, Q.C. ✓  
Ms. Anne Derrick



# BAILEY AND ASSOCIATES

BARRISTERS AND SOLICITORS

APR 20 1988

(902) 465-4888  
159 PORTLAND ST., P.O. BOX 532  
DARTMOUTH, NOVA SCOTIA  
B2Y 3Y8

**APRIL 15, 1988**

David Orsborne  
St. John's Newfoundland

BY TELECOPIER

Dear Mr. Orsborne:

RE: TESTIMONY OF SUPERINTENDENT A.E. VAUGHAN - R.C.M.P.

This will confirm our telephone conversation of April 14, 1988. I expect that by now you have been directed to my correspondence to Mr. MacDonald of February 3, 1988 and March 25, 1988. For your information, please find enclosed copies of those letters.

I have spoken to my client concerning Mr. MacDonald's response of April 6, 1988 and Superintendent Vaughan would like to testify on May 30, 1988 and has tentatively arranged his schedule in that way.

Further, my client and I are anxious to meet with you in order that he is able to go over testimony with you.

Further and as importantly, I want to discuss with you the concerns that I noted in my letter of March 25, 1988. You will see why these concerns have validity after you have reviewed the possible areas of testimony to which my client has addressed himself.

Please find enclosed as follows:

1. Superintendent Vaughan's curriculum vitae;
2. A statement of his perception of his role of the criminal officer;
3. A brief statement of his perception of his accountability;

.../2

Page 2  
April 15, 1988

4.A statement concerning relationships;

5.A total of nineteen (19) statements of position  
in regard to a number of matters all of which  
are self-explanatory;

After you have reviewed this matter, I would appreciate receiving a phone call from you so we might further discuss the matter. As you can see, we are most anxious to meet with you.

Yours very truly,

Brian F. Bailey  
Barrister and Solicitor

BFB/sah  
cc/client  
cc/Jim Bissell

# BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Patricia Lawton Day, B.Sc., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

Sovereign Building, Suite 205,  
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B3J 1G6  
(902) 422-7411

April 19, 1988

Mr. George MacDonald  
Barrister & Solicitor  
Commission Counsel  
Royal Commission  
Suite 1026  
Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear George:

RE: Appeal by Donald Marshall, Jr.

I understand that you will not be participating in our Appeal from Chief Justice Glube's decision not to grant Mr. Marshall standing as an intervenor (parte) in the Certiorari proceeding to be heard May 24 and 25. Mr. Marshall's appeal is being heard on May 20, and as a courtesy I am providing you with a copy of our Factum and Casebook of Authorities.

Yours sincerely,

BUCHAN, DERRICK & RING



Anne S. Derrick

ASD/arm  
MacDonald  
ASD #2

Enclosures

Documents found  
in "Buchan Derrick  
& Ring file re:  
Application to  
Intervene & Appeal"

APR 19 1988

**BLOIS, NICKERSON, PALMETER & BRYSON**  
**BARRISTERS AND SOLICITORS**

---

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JANE E. HOLMES  
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CORRESPONDENCE:  
P.O. Box 2147  
Halifax, Nova Scotia  
B3J 3B7

OUR FILE REFERENCE:  
SB0/31907-001

April 18, 1988

Susan M. Ashley,  
Commission Executive Secretary,  
Royal Commission on the Donald  
Marshall, Jr., Prosecution,  
Maritime Centre,  
Suite 1026,  
1505 Barrington Street,  
Halifax, Nova Scotia  
B3J 3K5

Dear Susan:

Further to earlier correspondence, I have now had an opportunity to review the tentative list of witnesses circulated by Commission counsel.

Of the witnesses on the list, the only ones for which I require transcripts are Messrs. Edwards, Barlow, Vaughan and Gale.

Naturally, if other witnesses are added to the list, I would appreciate being advised.

Yours very truly,

**BLOIS, NICKERSON, PALMETER & BRYSON**

S. Bruce Outhouse

SB0:sw

APR 18 1988

# Donahoe MacInnes

BARRISTERS AND SOLICITORS

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PETER CLAMAN, Q.C.        HENRY JOHN DIETRICH  
RAYMOND F. WAGNER        D. WILLIAM MacDONALD  
R. BRUCE RAWDING        MICHAEL F. FEINDEL  
TONY M. TAM               ANNA MARIE BUTLER  
KEVIN P. DOWNIE         NEIL R. FERGUSON

April 14, 1988

Royal Commission on the  
Donald Marshall Jr. Prosecution  
Maritime Centre, Suite 1026,  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Attention: George W. MacDonald, Q.C.

Dear Mr. MacDonald:

Re: Joseph Gaudet - Marshall Inquiry

Thank you for your correspondence of the 30th day of March, 1988.

I have reviewed with Cst. Gaudet your request to speak to him concerning his investigation of the fire at Billy Joe MacLean's restaurant in Port Hawkesbury. Cst. Gaudet will not be available to speak to you until he is under subpoena. If your intention is to issue a subpoena, then kindly contact me with respect to arrangements for service.

Yours very truly,

DONAHOE, MACINNES

RAYMOND F. WAGNER

RFW:dmm

cc: Cst. Joseph Gaudet

APR 18 1988

**PATTERSON & KITZ**  
BARRISTERS & SOLICITORS

BANK OF MONTREAL TOWER  
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B2N 5B9  
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FROX HALIFAX 429-7741

COPY April 15, 1988

BY HAND

The Honourable Chief Justice  
Constance R. Glube  
Supreme Court  
Trial Division  
The Law Courts  
1815 Upper Water Street  
Halifax, N.S.

My Lady:

MacKeigan et al v.  
Hickman, et al  
S. H. No. 63241  
Our File No. 9201/1

Enclosed is a consent order regarding the intervention of the Attorney General in this matter. Once it has been initialled, would you please have your secretary contact mine and we shall arrange for filing.

Respectfully yours,

Darrel I. Pink

DIP/jl  
Enc.

c.c. Mr. Ronald J. Downie, Q.C.  
Mr. George W. MacDonald, Q.C.

APR 18 1988



PO Box 955  
1800 Argyle Street  
Halifax, Nova Scotia  
Canada  
B3J 2V9

902 421-8686

April 15, 1988

Royal Commission on the  
Donald Marshall Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

ATTN: Susan M. Ashley  
Commission Executive Secretary

Dear Susan:

Thank you for your letter of April 14, 1988.

Please find enclosed a copy of the 8th floor lay out. Your areas are highlighted in yellow.

We understand that the required space will be occupied from Monday, May 16, 1988, to Thursday, June 30, 1988; this being a period of 6 business weeks.

We will not be charging you for the area on Fridays, Saturdays and Sundays if it is not used.

The agreed upon rental rate for this space was set at \$2,460.00 per week. The breakdown of which is:

Office Suite 3 (Commissioners) - \$150.00/day x 4 days/week x 6 weeks  
Conference Room 4 (Legal Prep) - \$40.00/day x 4 days/week x 6 weeks  
Theatre 33 (media) - \$75.00/day x 4 days/week x 6 weeks  
Reception/Manager (Staff) - \$50.00/day x 4 days/week x 6 weeks  
Product Display (Hearing) - \$300.00/day x 4 days/week x 6 weeks

We hope that you find the information to your satisfaction and should you have any questions or concerns, please give us a call.


. . . /2



Susan M. Ashley  
Page 2  
April 15, 1988

Looking forward to having your high profile event with us at the World Trade Centre.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Graham Hudson", written in black ink.

Graham Hudson  
CONVENTION SERVICES MANAGER

/tnr

1988

S. H. No.

IN THE SUPREME COURT  
TRIAL DIVISION

BETWEEN:

HER MAJESTY THE QUEEN in right of  
the Province of Nova Scotia,  
as represented by the Attorney  
General of Nova Scotia

APPLICANT

- and -

THE ROYAL COMMISSION INTO THE  
DONALD MARSHALL JR. PROSECUTION

RESPONDENT

A F F I D A V I T

I, Susan M. Ashley, Barrister and Solicitor, make oath and say as follows:

1. THAT I am Executive Secretary to the Respondent Royal Commission and as such have personal knowledge of the matters hereinafter deposed to except where otherwise stated.

2. THAT attached to this Affidavit and marked Exhibit "A" is a copy of the Decision of the Commissioners dated May 14, 1987, concerning the various applications for funding made to the Respondent. I refer specifically to the comments of the Commissioners on page 4 of the Decision:

"Standing has been granted to the Black United Front and the Union of Nova Scotia Indians. These groups requested standing because they hold the view that discrimination and racism influence the administration of justice in the Province of Nova Scotia, and may have contributed to Donald Marshall, Jr. being convicted and sent to prison. These serious allegations will be considered by the Commission."

3. THAT attached to this Affidavit and marked Exhibit "B" is a copy of the Opening Statement of Chief Justice Hickman delivered on September 9, 1987,



# COX, DOWNIE & GOODFELLOW

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- CRAIG MCCREA  
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AL. JAMES MUSGRAVE  
JOCELYN M. CAMPBELL  
BRIAN A. TABOR

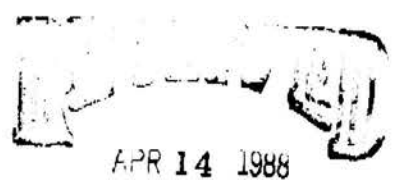
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LAN MCK. SILLIKER  
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CORRESPONDENCE  
P.O. BOX 2380, STATION M  
HALIFAX, NOVA SCOTIA B3J 3E5

OUR FILE: 8118-1

April 13, 1988



Chief Justice Constance R. Glube  
Supreme Court of Nova Scotia  
Trial Division  
The Law Courts  
1815 Upper Water Street  
HALIFAX, N.S.

McINNIS COOPER & ROBERTSON

My Lady:

RE: MacKeigan et al. v. Hickman et al.  
1988 S.H. No. 63421


This application is to come on for argument on May 24. It had been agreed - although not carved in stone as I understand it - that Submissions would be exchanged on April 18.

The Intervention of the Attorney General of Nova Scotia has recently been confirmed. Mr. Saunders advises that a bit more time would assist him - it would also assist me and other counsel.

I have spoken with all counsel and we agree - subject of course to acceptance by the Court, that Submissions will be exchanged on Tuesday, April 26. This still leaves almost a month before the hearing date.

May we proceed on this basis unless Your Ladyship directs otherwise.

Yours very truly,

  
R. J. Downie

RJD:cmg  
cc. Mr. George W. MacDonald, Q.C.  
Mr. Jamie W. S. Saunders  
Ms. Anne Derrick

# COX, DOWNIE & GOODFELLOW

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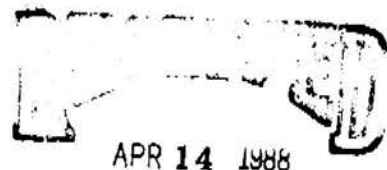
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OUR FILE: 8118-1

April 13, 1988

Mr. George W. MacDonald, Q.C.  
McInnes, Cooper & Robertson  
Barristers & Solicitors  
1673 Bedford Row  
Halifax, N.S.



MCINNES COOPER & ROBERTSON

Dear George:

RE: MacKeigan et al. v. Hickman et al.

As you know, David Orsborn discussed the possibility of drafting the questions he would propose to put to the Justices if they were to appear. This would be for the purpose of confirming the base for the argument on the law.

It was understood between Mr. Orsborn and myself that he could not comment on what other questions might be put by him depending upon answers received to the "first" questions. It was also identified that there was no way of knowing what questions might be put by the various counsel for all of the other parties who have standing before the Commission. I wrote to Mr. Orsborn in this regard on February 25. A few days ago we spoke about this, and I did agree that Mr. Orsborn was not obligated to write to me with proposed questions.

I do wish to be sure we don't have any misunderstanding, and write to confirm the following points:

1. The law, in our view, is that the validity of the orders to attend can be tested in Court without the Justices personally responding, having questions put to them, and then objecting. In any event, Mr. Orsborn

Page 2 Mr. George W. MacDonald, Q.C. April 13, 1988


and I agree that this would not be necessary. The validity or enforceability of the orders to attend would be tested under the law and neither of us would try to side-track the issue on the basis that the precise questions had not been stated;

2. Even if the precise questions or areas of questioning could be identified beforehand, Commission Counsel would wish to reserve the right to ask further questions;
3. Counsel for all other parties having standing would have the right to put question to the Justices if the Justices were to appear in response to the orders to attend;
4. The areas which Commission Counsel wished to explore - and the areas where questions would be put - included the following:
  - (i) all of the subject matters referred to in the January 5, 1988 letters to Macdonald, J. and MacKeigan, J.;
  - (ii) the matters referred to in paragraph 10 of my Affidavit of January 25, 1988;
5. The orders to attend were issued in general terms and do not in words limit the questions which might be put, or the areas of inquiry - presumably, subject only to relevancy;
6. The Affidavit of Ms. Anne Derrick on file herein is indicative of some of the areas in which Ms. Derrick wishes to put questions.

As was noted in an earlier letter, Chief Justice Glube, at one of the pre-trial meetings, inquired whether the areas of interest or questions had been further identified. If you agree, this letter of mine could be put before the Court as part of the record.

I invite your early response.

Yours very truly,

  
R. G. Downie

RJD:cmg  
cc. Mr. Jamie W.S. Saunder  
Ms. Anne Derrick

# BUCHAN, DERRICK & RING

APR 18 1988

BARRISTERS · SOLICITORS

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Sovereign Building, Suite 205,  
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April 15, 1988

Mr. W. Wylie Spicer  
c/o The Royal Commission into  
the Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, N.S.  
B3J 3K5

Dear Wylie:

RE: Marshall Inquiry - Application for Certiorari

Please find enclosed copies of the documents I have filed with respect to Donald Marshall, Jr.'s Application to quash that portion of the Commissioner's decision limiting the scope of questioning of former and present Cabinet Ministers.

I would appreciate your acknowledging receipt as satisfactory service of these documents upon you.

Yours sincerely,

BUCHAN, DERRICK & RING



Anne S. Derrick

ASD/har



APR 15 1988

April 13, 1988

Mr. A.R. Pringle,  
Department of Justice,  
4th Floor, Royal Bank Building,  
5161 George Street,  
Halifax, N.S.  
B3J 1M7

Dear Mr. Pringle;

Re: Marshall Inquiry

I refer to your letter of April 5, 1988 addressed to Mr. John Briggs at the Royal Commission offices, a copy of which was forwarded to me. I have recently expressed my concern regarding the Department's response to Mr. Briggs who agreed that I should write to you again.

In our initial telephone conversation on January 7, 1988, you requested that I send you a letter identifying areas of questioning for an interview with Mr. Walsh fo the Parole Office in Sydeny. As well, you wanted me to state whether or not I was interested in departmental or Parole Board policy. In my letter to you of January 13, 1988, I described the areas of questioning, as requested, and pointed out that I was not interested in matters of policy.

Your recent letter has asked for a list of exact questions to be asked. First, as I wrote in my earlier letter, I am interested to know about matters such as how Mr. Walsh goes about compiling the information he needs in order to write a community assessment report. What kinds of people does he talk to in the community? As well, I noted that I am interested in the conditions that tend to be placed on parole orders for Native offenders. Again, none of these topics were to relate to individual cases, but were to refer in general terms to the process as it applies to Natives. As I also pointed out, I am interested in hearing any ideas that Mr. Walsh, as an experienced parole officer in the Native community, might have regarding parole problems specific to Natives as well as ways that any problems might be tackled.

Second, it is very difficult to identify exact interview questions ahead of time. I am always guided in an interview by

the respondent, who is usually more familiar with the issues than me and who knows the points that should be made.

In your letter to Mr. Briggs you noted that you had been instructed to suggest that "a knowledgeable person or persons in Ottawa" might be available to provide answers. With due respect to the people in Ottawa, I doubt that they would be able to address the nut-and-bolts topics that I want to discuss with Mr. Walsh. It is his experience in a long working relationship with Eskasoni and Membertou that I am hoping to tap, not the experience of a departmental representative in Ottawa.

Finally, your letter suggests that I should have "no intention to examine the practices policies procedures management or control of Correctional Services Canada or the Parole Board." You have pretty well struck any questioning with that condition, if by "practices and procedures" you mean the kinds of questions for Mr. Walsh that I described above. As I said, I am not interested in policy; nor am I interested in management or control of Correctional Services Canada or the Parole Board. I am, however, interested in Mr. Walsh's experiences in working with Cape Breton Native people (though not specific individuals) in terms of the parole system.

As I suggested in my letter of January 13th, I am sure that Mr. Walsh would not find the interview at all difficult either from a personal or a departmental point of view. And as I mentioned to you in our January telephone conversation, I would be quite willing to conduct the interview by means of a conference call involving you, Mr. Walsh and me.

I hope that this matter can be resolved in the near future. The question of parole is an important one that should be included in the Royal Commission's analysis. I have spoken to many Native people about parole; I feel that the Ministry should also have input.

I look forward to hearing from you soon.

Yours sincerely,



Scott Clark

→ cc. Mr. John Briggs, Marshall Inquiry

G.S. CLARK AND ASSOCIATES LTD.

Suite 712  
151 Slater Street  
Ottawa, Ontario  
K1P 5H3 Canada  
Tel.: (613) 234-1827

COPY

January 13, 1988

Mr. A.R. Pringle,  
Department of Justice,  
4th Floor, Royal Bank Building,  
5161 George Street,  
Halifax, N.S.  
B3J 1M7

Dear Mr. Pringle;

Re: Marshall Inquiry

We talked by telephone last week about my need to interview Mr. Archie Walsh of Parole Services in Sydney. I understand that you must get clearance for such an interview and that you will probably be present during the interview.

My questions for Mr. Walsh would concern Natives in the criminal justice system who apply for parole. The interview would not address specific cases but would deal with the issue of parole for Natives in general terms. I am interested to know, for example, how Mr. Walsh compiles the information for his community assessment reports and the kinds of conditions that are placed on Native parolees. As well, I would be interested in any suggestions that Mr. Walsh has for improving the process, in light of his lengthy experience.

I am not concerned about departmental policy but only about the process whereby Natives, in particular, are assessed for and granted or denied parole. The interview should thus prove to be quite easy for Mr. Walsh.

I will have to travel to Sydney again on another matter and would appreciate meeting with Mr. Walsh at that time. I have some flexibility in this but would like to be able to do the interview by mid-February at the latest.

I look forward to hearing from you.

Yours sincerely,



Scott Clark

→ cc. John Briggs, Marshall Inquiry



DEPARTMENT  
OF  
ATTORNEY GENERAL  
NOVA SCOTIA

APR 15 1988

5788 UNIVERSITY AVENUE  
HALIFAX, NOVA SCOTIA  
B3H 1V8

April 14, 1988

Mr. George W. MacDonald  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Mr. MacDonald:

RE: YOUR LETTER DATED APRIL 6, 1988

I will be available on May 26, 1988 to give evidence at the hearings. I will also be available to meet with you for a pre-hearing discussion.

Yours truly,

R. A. Perry, M.D.  
Chief Medical Examiner  
for Nova Scotia

RAP/ljm

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
ROBERT M. PURDY  
RAYMOND F. LARKIN  
S. RAYMOND MORSE  
DARREL I. PINK  
JACK A. INNES, Q.C.  
DIANNE POTHIER  
JANET M. CHISHOLM  
PETER M. ROGERS

DONALD J. MACDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
J. RONALD CREIGHTON  
J. RONALD CULLEY  
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R. MALCOLM MACLEOD  
ALAN C. MACLEAN  
DENNIS ASHWORTH  
WENDY J. JOHNSTON  
ROBERT K. DICKSON  
FERN M. GREENING

FRED J. DICKSON, Q.C.  
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JOEL E. FICHAUD  
J. MARK MCCREA  
D. SUZAN FRAZER  
BRUCE A. MARCHAND  
RODNEY F. BURGAR  
JANICE A. STAIRS  
DENNIS J. JAMES

JAMES C. LEEFE, Q.C.  
FRANK J. POWELL, Q.C.  
CLARENCE A. BECKETT, Q.C.  
GEORGE L. WHITE  
DAVID R. FEINDEL  
A. DOUGLAS TUPPER  
DORA L. GORDON  
LORNE E. ROZOVSKY, Q.C.  
WYMAN W. WEBB  
GORDON N. FORSYTH  
KIMBERLEY H. W. TURNER

BANK OF MONTREAL TOWER  
SUITE 1600, 5151 GEORGE STREET  
P.O. BOX 247  
HALIFAX, NOVA SCOTIA B3J 2N9  
TELEPHONE (902) 429-5050  
FAX (902) 429-5215  
TELEX 019-22893

ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 14, 1988

BY HAND

Dr. Philip Stenning  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre  
1505 Barrington Street  
Suite 1026  
Halifax, Nova Scotia

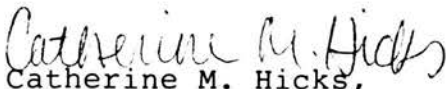
Dear Dr. Stenning:

Marshall Inquiry  
Our File No. 9201/1

I enclose copies of documents related to investigation of serious crimes. Specifically these are:

1. Letter dated October 9, 1987 to Gordon S. Gale from A.E. Vaughn;
2. Memo to Gerald Conrad from Gordon Gale dated October 14, 1987;
3. Letter to Terry Donahoe from C.J. Reid dated December 1, 1987;
4. Memo regarding Ed MacNeill, January 19, 1988;
5. Letter to Nadine Cooper-Mont from Gordon S. Gale dated January 22, 1988;
6. Letter to C.P.O. H Division, RCMP from Gordon S. Gale dated March 30, 1984 with supporting letters.

Yours truly,

  
Catherine M. Hicks,  
Legal Assistant to  
Darrel I. Pink

CMH/cs  
encl:

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
ROBERT M. PURDY  
RAYMOND F. LARKIN  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 14, 1988

BY HAND

Mr. W. Wylie Spicer  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre  
1505 Barrington Street  
Suite 1026  
Halifax, Nova Scotia

Dear Mr. Spicer:

Marshall Inquiry  
Our File No. 9201/1

Enclosed please find complete copies of the following files:

1. A.G. File No. 94-04-88-0036-05, Civil Litigation, Thompson: Brenda vs. Morris: Edmund;
2. A.G. File No. 04-88-0036-05, 1 - various letters conferring this case, 2 - related cases and acts.

Yours truly,

*Catherine M. Hicks*  
Catherine M. Hicks,  
Legal Assistant to  
Darrel I. Pink

CMH/cs  
encl:

*Wylie has copy:  
Brenda has original  
(to index)*

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. McISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 14, 1988

BY HAND

Mr. W. Wylie Spicer  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Spicer:

Marshall Inquiry  
Our File No. 9201/1

I enclose copies of documents which have been filed with the Prothonotary regarding our application to quash the March 18, 1988, decision of the Commission dealing with public interest immunity in Cabinet discussions.

Could you kindly acknowledge receipt of these documents as satisfactory service upon the Commission.

The originals have been filed with the court.

Yours truly,



Darrel I. Pink

DIP/jl  
Enc.

DOCUMENTS IN FILE:  
APPLICATION TO QUASH  
MARCH 18TH DECISION  
Re: CABINET IMMUNITY

PATTERSON KITZ  
BARRISTERS & SOLICITORS

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W.S. SAUNDERS  
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TELEX 019-22893  
  
ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 14, 1988

COPY

BY HAND

The Honourable Chief Justice  
Constance R. Glube  
Supreme Court  
Trial Division  
The Law Courts  
1815 Upper Water Street  
Halifax, N.S.

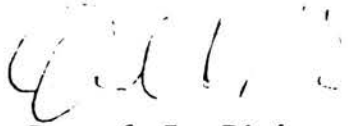
My Lady:

The Queen v. Marshall Inquiry  
Our File No. 9201/1

Enclosed is a copy of the Originating Notice (Application), Affidavit of Attorney General Donahoe, my Affidavit and a draft Order regarding the application which is scheduled to be heard on April 26, 1988.

We intend to have our brief forwarded to you by April 22, 1988.

Respectfully yours,



Darrel I. Pink

DIP/jl  
Enc.

c.c. ✓ Mr. W. Wylie Spicer



APR 14 1988

LEONARD A. KITZ, Q.C. D.C.L.  
JOHN D. MacISAAC, Q.C.  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 13, 1988

BY HAND

Dr. Philip Stenning  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Dr. Stenning:

Our File No. 9201/1

In your meeting with the Deputy Solicitor General, you requested material regarding proposed re-structuring of the Nova Scotia Police Commission. Enclosed is a copy of that material.

Because names are mentioned in the various documents, I insist the names referred to remain confidential.

Yours truly,



Darrel I. Pink

DIP/jl  
Enc.

APR 14 1988

# STEWART MacKEEN & COVERT

BARRISTERS AND SOLICITORS

PURDY'S WHARF TOWER ONE  
1959 UPPER WATER STREET  
**HALIFAX, CANADA**

J. WILLIAM E. MINGO, Q.C.  
J. THOMAS MacQUARRIE, Q.C.  
DONALD H. OLIVER  
DONALD H. McDUGALL, Q.C.  
JOHN S. McFARLANE, Q.C.  
CARMAN G. McCORMICK  
JOHN D. MURPHY  
ROBERT P. DEXTER  
KARIN A. McCASKILL  
R. CAMILLE CAMERON  
NANCY I. MURRAY  
T. ARTHUR BARRY  
JOHN MacL. ROGERS  
RICHARD A. HIRSCH  
JAMES M. DICKSON

JOHN D. MOORE, Q.C.  
DAVID A. STEWART, Q.C.  
G. DAVID N. COVERT, Q.C.  
J. GERALD GODSOE, Q.C.  
WILLIAM L. RYAN  
DAVID MILLER  
JOHN D. PLOWMAN  
TIMOTHY C. MATTHEWS  
ROBERT G. GRANT  
MICHAEL T. PUGSLEY  
CHARLES S. REAGH  
D. GEOFFREY MACHUM  
DONALD C. MURRAY  
JAMES B. WOODER  
DAVID P. S. FARRAR

RONALD N. PUGSLEY, Q.C.  
GEORGE A. CAINES, Q.C.  
JAMES S. COWAN, Q.C.  
JOEL E. PINK, Q.C.  
RICHARD K. JONES  
DOUGLAS J. MATHEWS  
JONATHAN C. K. STOBIE  
BARBARA S. PENICK  
MARK E. MacDONALD  
GLEN V. DEXTER  
ELIZABETH M. HALDANE  
ERIC L. BURTON  
LAWRENCE J. STORDY  
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TELECOPIER (902) 420-1417  
TELEX 019-22593

DIRECT DIAL (902) 420-

OUR FILE REFERENCE:

DONALD A. KERR, Q.C.

COUNSEL  
BRIAN FLEMMING, Q.C.

HUGH K. SMITH, Q.C.

April 12, 1988

Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre  
Suite 1026  
1505 Barrington St.  
Halifax, N.S.  
B3J 3K5

ATT: George W. MacDonald, Q.C.  
Commission Counsel

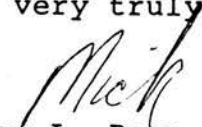
Dear George,

I thank you for your letter of April 6, 1988.

I have no interest in the evidence of "other cases" involving the administration of justice in the Province of Nova Scotia.

I thank you for keeping me informed as to the progress of the hearing.

Yours very truly,

  
William L. Ryan

WLR:tlr  
C0543055

# SYDNEY DISCOVERY SERVICES

OFFICIAL COURT REPORTERS

185 CHARLOTTE STREET  
SYDNEY, NOVA SCOTIA  
B1P 6H4

P.O. BOX 542

PH. (902) 539-7591

April 12, 1988

Ms. Susan M. Ashley  
Royal Commission  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Susan:

This is the information I mentioned regarding times when we at Sydney Discovery Services would not be in full staff:

July 13 through to July 22  
August 15 through to August 19  
September 19 through to October 7

It would be appreciated if, in planning a return to Sydney, these dates were taken into consideration. We wish to continue to give our best services to the Commission in providing daily transcript.

If you do have a date in mind when the Commission will be returning to Sydney, could you please let us know at your earliest possible time. Of course, that date would be kept confidential.

Sincerely,

**Sydney Discovery Services**

*Judy*  
Judith M. Robson, OCR, RPR  
Managing Owner

JMR/lem



LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 13, 1988

BY HAND

Mr. George MacDonald, Q.C.  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

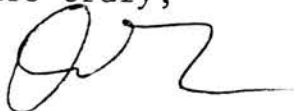
Dear George:

Our File No. 9201/1

I acknowledge yours of April 7, 1988, enclosing material for Frank Edwards. I have forwarded that material to him.

I shall be in touch with you shortly regarding a date to meet with Frank for preparation.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. R. Gerald Conrad, Q.C.

*George -  
We've now agreed to  
May 10<sup>th</sup> - at a  
time + place to be  
determined  
J*

**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**

April 13, 1988

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

Dear Darrel:

Re: Marshall Inquiry  
MacKeigan et al  
Hickman et al  
Your File No. 9201/1

Enclosed please find the Order regarding the above-noted matter to which I have consented.

Yours very truly,



George W. MacDonald  
Commission Counsel

GWMacD:jrc

APR 13 1988

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. McISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
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TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 13, 1988

VIA COURIER

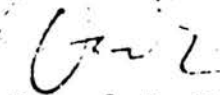
Mr. George W. MacDonald  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre  
1505 Barrington Street  
Suite 1026  
Halifax, Nova Scotia

Dear Mr. MacDonald:

Marshall Inquiry  
MacKeigan et al  
Hickman et al  
Our File No. 9201/1

Please find enclosed an Order respecting the above-noted matter. If acceptable please sign and return to the undersigned. Ron Downie has agreed to form.

Yours truly,

  
Darrel I. Pink

DIP/cs  
encl:

APR 13 1988

**STEWART MacKEEN & COVERT**  
BARRISTERS AND SOLICITORS

PURDY'S WHARF TOWER ONE  
1959 UPPER WATER STREET  
**HALIFAX, CANADA**

J. WILLIAM E. MINGO, O.C.  
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DONALD H. OLIVER  
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OUR FILE REFERENCE:

DONALD A. KERR, O.C.

COUNSEL  
BRIAN FLEMMING, O.C.

HUGH K. SMITH, O.C.

RNP  
2076-2

April 12, 1988

George W. MacDonald, Q.C.  
Commission Counsel  
The Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Suite 1026, Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Mr. MacDonald:

Pursuant to your letter of April 6, I will make my application on  
May 16 to the Commission for the calling of additional witnesses.

Yours very truly,

Ronald N. Pugsley

RNP:dk

N0182176

APR 13 1988

**STEWART MacKEEN & COVERT**  
BARRISTERS AND SOLICITORS

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April 8, 1988

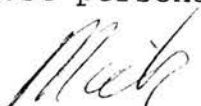
Susan M. Ashley  
Commission Executive Secretary  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre  
Suite 1026  
1505 Barrington St.  
Halifax, N.S.  
B3J 3K5

Dear Susan,

I thank you for your letter of April 5, 1988. I no longer  
require copies of the transcript of the Public Hearings.

I thank you for your consideration.

Kindest personal regards,

  
William L. Ryan

WLR:tlr  
C0547768



LEONARD A. KITZ, Q.C., D.C.L.  
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BEDFORD, NOVA SCOTIA

April 12, 1988

BY HAND

Mr. George MacDonald, Q.C.  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.


Dear Mr. MacDonald:

Our File No. 9201/1

I now have in my possession the James Doran and Gerald Allan Mombourquette files requested by you.

When you wish to review them, please give me a call to make arrangements.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. R. Gerald Conrad, Q.C.

APR 12 1988

# STEWART MACKEEN & COVERT

BARRISTERS AND SOLICITORS

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HUGH K. SMITH, Q.C.

RNP  
2076-2

April 11, 1988

George W. MacDonald, Q.C.  
Commission Counsel  
The Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Suite 1026, Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5


Dear Mr. MacDonald:

Thank you for your letter of April 6.

I will get back to you after I have had an opportunity of considering the matters raised.

My request to have Constable Gaudet called is still outstanding. What disposition do you plan to make of that request?

Yours very truly,

  
Ronald N. Pugsley

RNP:dk

N0182163



# Nova Scotia Barristers' Society

Keith Hall, 1475 Hoilis Street, Halifax, Nova Scotia B3J 3M4  
(902) 422-1491

Office of: **Secretary-Treasurer**

April 7, 1988

George W. MacDonald, Q.C.  
McInnes, Cooper & Robertson  
P.O. Box 730  
1673 Bedford Row  
Halifax, N.S.  
B3J 2V1

Dear Mr. MacDonald:

**Re: Occasional Appearance Application of James MacPherson**

The Qualifications Committee of the Society met on April 7, 1988, and approved Mr. MacPherson's application to make an Occasional Appearance in connection with the Donald Marshall, Jr., Prosecution.

Pursuant to Regulation 32, Mr. MacPherson must comply with the following conditions prior to his appearance in our courts:

1. He must pay a fee of \$1,000.
2. He must provide a Certificate of Good Standing from the Law Society of Saskatchewan.
3. He must either provide proof he is covered by professional liability insurance while practicing in Nova Scotia, or a waiver signed by the Commission in lieu thereof, indicating that the Commission understands that Mr. MacPherson is not insured and waives any claim or right of action it may have or obtain against the Society as a result of any acts or omissions by Mr. MacPherson.
4. He must advise the Society of the name of the Nova Scotia lawyer who will be the Solicitor of Record.

Once Mr. MacPherson has complied with these conditions, he will be eligible to appear in any proceedings relating to this matter, until it has been concluded.

Yours truly,

Kerry Oliver  
Deputy Secretary-Treasurer

cc: James MacPherson

KO:jmb

APR 11 1988

Office of the Dean



YORK  
UNIVERSITY

OSGOODE HALL LAW SCHOOL

4700 KEELE STREET, DOWNSVIEW, ONTARIO M3J 2R5

April 6, 1988

George W. MacDonald, Esq., Q.C.  
McInnes, Cooper & Robertson  
P.O. Box 730  
1673 Bedford Row  
Halifax, Nova Scotia  
B3J 2V1

Dear George,

I enclose a draft brief. I also enclose seven copies of a signed last page. As agreed, you will prepare the title page.

I have worked hard to finish this draft ten days before filing date. I have done this to give you, David and Wylie time to read it carefully and suggest changes, additions or deletions. I stand ready to consult with you next week in any way you find useful.

Best regards,

Yours sincerely,

James C. MacPherson  
Dean

Encs:

JCM/P

APR 11 1988

Nova Scotia



Attorney General

Memorandum

From D. William MacDonald, Q.C.  
Deputy Attorney General

Our File Reference  
09-88-0182-01

To All Prosecuting Officers

Your File Reference

Subject **Marshall Inquiry Questionnaire**

Date March 30, 1988

Professor Bruce Archibald advises that he has received thirty-two responses to his questionnaire forwarded to all Prosecuting Officers as part of the research project which he is conducting for the Marshall Inquiry regarding the role of the local Crown Prosecutor. Professor Archibald has asked this Department to encourage those who have not responded to do so at their earliest convenience.

A handwritten signature in cursive script, appearing to read "D. William MacDonald".

bcc Professor Bruce Archibald ✓

LEONARD A. KITZ, Q.C., D.C.L.  
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BEDFORD, NOVA SCOTIA

April 8, 1988

BY HAND

Mr. George MacDonald, Q.C.  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear George:

Our File No. 9201/1

Thank you for yours of April 6, 1988, enclosing the letter  
from Philip Cohen.

Yours truly,



Darrel I. Pink

DIP/jl

APR 8 1988

LEONARD A. KITZ, Q.C. D.C.L.  
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BEDFORD, NOVA SCOTIA

April 7, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Briggs:

Our File No. 9201/1

I have in my possession the material from the Attorney General's Department regarding the investigation of serious crimes. When Dr. Stenning wishes to have access, please advise and I shall make it available for his perusal.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. Gordon Gale, Q.C.  
Ms. Nadine Cooper-Mont

APR 8 1988

**BLOIS, NICKERSON, PALMETER & BRYSON**  
**BARRISTERS AND SOLICITORS**

---

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ALAN J. STERN, Q.C.  
S. BRUCE OUTHOUSE, Q.C.  
JANE E. HOLMES  
MICHAEL B. SHERAR  
THOMAS M. MACDONALD  
PAMELA J. MACKEIGAN  
GLENN R. ANDERSON

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OUR FILE REFERENCE:

April 6, 1988

Susan M. Ashley,  
Commission Executive Secretary,  
Royal Commission on the Donald  
Marshall, Jr., Prosecution,  
Maritime Centre,  
Suite 1026,  
1505 Barrington Street,  
Halifax, Nova Scotia  
B3J 3K5

Dear Susan:

In response to your letter of April 5th, my initial reaction is that I will only require transcripts of evidence for any additional R.C.M.P. witnesses who are called and, of course, Frank Edwards. However, I don't like to commit myself on that without reviewing a list of all the witnesses yet to be called. Consequently, I'd appreciate it if you would provide me with such a list and I will return a copy of it to you indicating those for which I require transcripts.

Yours very truly,

**BLOIS, NICKERSON, PALMETER & BRYSON**



S. Bruce Outhouse

SB0:sw



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April 6, 1988

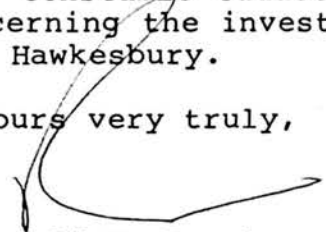
George W. MacDonald, Q.C.  
Commission Counsel  
The Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Suite 1026, 1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear George:

Constable Gaudet

I would appreciate your earliest response as to whether or not the Commission is prepared to call Constable Gaudet and require him to bring his file material concerning the investigation into the Billie Joe MacLean fire at Port Hawkesbury.

Yours very truly,

  
Ronald N. Pugsley

RNP:dk

N0182116

APR 7 1988



FACULTY OF LAW,  
UNIVERSITY OF TORONTO

78 Queen's Park  
Toronto, Canada M5S 2C5

MEMORANDUM

TO: The Commissioners  
Chief Justice T. Alexander Hickman  
Associate Chief Justice Lawrence A. Poitras  
The Honourable Mr. Justice Gregory Thomas Evans

Commission Counsel  
Research Director  
Executive Secretary

FROM: John L.I.J. Edwards

DATE: April 6, 1988

---

I enclose herewith my opinion on the office of "special prosecutor" or "independent counsel" as developed in the United States federal law since the Watergate affair 10 years ago.

Its particular relevance to the Commission is underlined by the statement made by Attorney General Donahoe in the Legislature a few weeks ago indicating the interest being taken by his Department in adopting a similar approach for the Province of Nova Scotia.

A handwritten signature in cursive script that reads "John Edwards".

J.L.I.J. Edwards  
Special Adviser to the Commission

/dw

APR 7 1988

LEONARD A. KITZ, Q.C., D.C.L.  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

April 6, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Briggs:

Our File No. 9201/1

This is further to yours of March 30, 1988, regarding  
the question of Prosecuting Officers.

The Deputy Attorney General has sent a reminder to the  
Prosecuting Officers as earlier had been requested by  
Professor Archibald. As you know, it is not the Department's  
intention to direct that prosecutors fill out the questionnaire.  
When I reviewed it with you, I stated what I thought would  
be concerns of prosecutors and I suggest that the format  
of many of the questions may be a significant factor for  
many prosecutors' reluctance to complete the document.

Hopefully, you will have a better response from the follow  
up letter.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. R. Gerald Conrad, Q.C.  
Mr. Martin E. Herschorn

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MacISAAC, Q.C.  
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April 6, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Briggs:

Our File No. 9201/1

This is further to yours of March 24, 1988, regarding the review of Professor Archibald's paper. You have subsequently advised that the date for that has been tentatively set for June 15, 1988.

In addition to Jamie's and my presence, we would like to suggest that proper representation from the Attorney General's Department would include Martin Herschorn as Director (Prosecutions), Gerald Conrad as Executive Director (Legal Services) and two or three prosecutors.

We believe the only way to achieve a proper mix of views is with numbers who are sufficient to ensure that various thoughts are expressed. If those numbers are acceptable to you, please let me know and I can make the arrangements or advise you of the names and you can issue the formal invitation.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. R. Gerald Conrad, Q.C.  
Mr. Martin E. Herschorn

11 Prince Arthur Avenue  
Toronto, Ontario  
M5R 1B2  
Telephone (416) 964-9664

March 18, 1988

Received from  
Alan Story -  
Jonas Star -  
F.Y.I.

Mr. Ray Hnatyshyn  
Minister  
Department of Justice  
135 East Block  
House of Commons  
Parliament Building  
Wellington Street  
Ottawa, Ontario  
K1A 0A6

Dear Mr. Hnatyshyn:

Re: Donald Marshall, Jr.

A lawsuit is presently underway between the three Commissioners appointed by the Government of Nova Scotia to investigate the wrongful conviction and related matters concerning Donald Marshall, Jr. and five Justices of the Nova Scotia Court of Appeal who are maintaining that a subpoena issued to them by the Royal Commission ought to be quashed.

The matter is to be heard at first instance by Chief Justice Constance Glube, of the Trial Division, who is in the unfortunate position of having to spend her working life subject to appeal to the eight judges of the Court of Appeal. Five of these judges are now litigants before her.

If the matter goes thereafter to the Nova Scotia Court of Appeal, the three Justices remaining on that Bench will have to sit in judgment on a claim brought by their fellow judges, the majority of that Bench, men with whom they must spend the rest of their working life.

This situation is obviously unfortunate. It is important that justice be seen to be done, and that those who exercise judicial power be seen to be free from any perception of systemic pressure or restraint by virtue of the structural relationship that they have with these litigants. The present case is unusual and creates a necessarily difficult situation.

Clayton Ruby, B.A., LL.B., LL.M. • Marlys Edwardh, B.A., LL.B., LL.M.  
Michael Code, B.A., LL.B. • Melvyn Green, B.A., LL.B. • Marcia Matsui, LL.B.

In these circumstances, on behalf of Donald Marshall, Jr., I ask that you order a Reference to the Supreme Court of Canada so that this issue, presently before the Nova Scotia Trial Division, can be decided there at first instance. Justice cannot be seen to be done in any other way.

The issue of the validity of such subpoenae is interesting and important, and has not been dealt with before by any Court in Canada. It is therefore an issue that is appropriate for the Supreme Court of Canada.

The matter is due to be determined at first instance on May 24 and 25, 1988, and I would ask that you therefore act very quickly in this matter.

Yours very truly,



Clayton C. Ruby

/ms



Department of Justice  
Canada

Ministère de la Justice  
Canada

APR 6 1988

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BY COURIER

*Our file* AR-21,613  
*Notre dossier*

*Your file*  
*Votre dossier*

Mr. John E.S. Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

April 6, 1988

Dear Mr. Briggs:

Re: Donald Marshall Inquiry

We acknowledge receipt of your letter of March 31, 1988. We have sent copies of your letter to our clients, the RCMP, in Halifax and Ottawa.

On behalf of our clients we must express both surprise and concern with the statements set out in page 2 of your letter. We believe you are aware of the extensive co-operation and assistance which the RCM Police have extended to assist the Commission of Inquiry. Preparation, copying and listing of the majority of the Exhibits for the Sydney phase is a prime example. Another major area involved the production, copying and organization of both the MacLean and Thornhill files. We could go on but we trust that you are aware of the numerous other examples of co-operation and assistance extended by the R.C.M. Police.

We trust that you did not intend to convey any kind of explicit or implicit hint that our client's response to this latest issue of interviewing detachment N.C.O.'s could result in any adverse comment on the Federal force. Our client's position as set out in our letter of March 24, 1988 to you was balanced and cordial in expressing concern while putting forward a very realistic alternative.

.../2

Canada

In the interest of keeping a spirit of mutual co-operation we request that you let us know the specific questions which you feel require answers from Detachment N.C.O.'s. Upon receipt of such specifics the matter will be reviewed and practical co-operation and assistance provided insofar as Constitutional limits permit.

Yours very truly,



James D. Bissell  
General Counsel  
Director, Atlantic Region

JDB:mm

c.c.: Mr. David Orsborn  
Mr. George MacDonald

Enclosure of Mr. Brigg's letter dated March 31, 1988.





Department of Justice  
Canada

Ministère de la Justice  
Canada

APR 6 1988

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PRIORITY POST

Our file / Notre dossier AR-21,613

Your file / Votre dossier

Mr. John E.S. Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

April 5, 1988

Dear Mr. Briggs:

Re: Donald Marshall Inquiry

I refer to your note of March 24, 1988, Mr. Clark's letter of January 13, 1988 and our telephone conversation of March 29, 1988.

I am instructed that if Mr. Clark will let us know the exact questions he wants answered we can arrange for a knowledgeable person or persons in Ottawa to provide available answers.

I understand that there is no intention to examine the practices polices procedures management or control of Correctional Services Canada or the Parole Board. Would you or Mr. Clark kindly confirm that I am correct in such understanding.

Yours very truly,

A. R. Pringle  
Senior Counsel  
Atlantic Region

ARP:mm

c.c.: Mr. Scott Clark  
G.S. Clark and Associates Ltd.  
Suite 712  
151 Slater Street  
Ottawa, Ontario K1P 5H3

Canada

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ALSO OFFICES AT  
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April 5, 1988

BY HAND

Mr. W. Wylie Spicer  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Wylie:

Our File No. 9201/1

I acknowledge yours of March 31, 1988, to Jamie Saunders regarding the Brenda Thompson file. I am sure a subpoena will not be necessary and I expect to have the file in my possession shortly.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. R. Gerald Conrad, Q.C.

LEONARD A. KITZ, Q.C., D.C.L.  
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April 5, 1988

BY HAND

Mr. W. Wylie Spicer  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Wylie:

Our File No. 9201/1

I acknowledge yours of March 31, 1988, to Jamie Saunders regarding Billy Joe MacLean.

As the appeal period for the MacIsaac matter has not yet passed, we obviously will not be able to produce this file until that time. In any event, I have communicated your request to our client and shall advise of our position.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. R. Gerald Conrad, Q.C.

LEONARD A. KITZ, Q.C., D.C.L.  
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April 5, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear John:

Our File No. 9201/1

Further to your request, I am enclosing a copy of the Federal/Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons adopted at the conference of ministers responsible for criminal justice held in Saskatoon on March 17-18, 1988. Although marked confidential, the enclosed document has been made public.

Yours truly,



Darrel I. Pink

DIP/jl

APR 5 1988

# BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Patricia Lawton Day, B.Sc., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

Sovereign Building, Suite 205,  
5516 Spring Garden Road  
Halifax, Nova Scotia  
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April 5, 1988

BY COURIER

Mr. George MacDonald  
Royal Commission on the  
Donald Marshall Prosecution  
1505 Barrington Street  
Suite 1026  
Halifax, N.S.

Dear Mr. MacDonald:

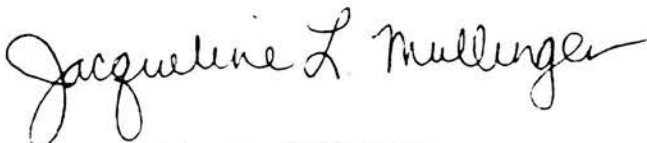
Re: MacKeigan et. al. and Hickman et. al. - Intervenor Application

Further to the above mentioned matter pleased find enclosed a copy of the Appeal Book which has been filed with the Prothonary as of today.

I trust that this is satisfactory.

Yours sincerely,

BUCHAN, DERRICK & RING



Jacqueline L. Mullenger  
Articled Clerk

JLM/har  
MacDonald  
JLM 1A

Enclosure

Material in file:  
"Buchan, Derrick  
& Ring;  
Appeal Book"

LEONARD A. KITZ, Q.C., D.C.L.  
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March 29, 1988

Ruby & Edwardh  
Barristers  
11 Prince Arthur Avenue  
Toronto, Ontario  
M5R 1B2

**ATTENTION: Clayton C. Ruby**

Dear Mr. Ruby:


**Marshall Inquiry: Application to  
the Supreme Court of Nova Scotia  
Our File Number: 9201/1**

Thank you for your letter dated March 18, 1988 which I did not receive until March 28.

Chief Justice Glube has advised us that she will hear our application on April 26, 1988 commencing at 9:30 a.m.

I suggest that if you have representations to make you contact the court directly.

Yours very truly,



Jamie W. S. Saunders

JWSS/cam

c.c. Wylie Spicer,  
c.c. Anne Derrick

LEONARD A. KITZ, Q.C., D.C.L.  
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DORA L. GORDON  
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FROM HALIFAX 429-7741  
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ALSO OFFICES AT  
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BEDFORD, NOVA SCOTIA

March 30, 1988

Mr. George W. MacDonald, Q.C.  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear George:

**Donald Marshall Royal  
Commission of Inquiry  
Our File Number: 9201/1**

This follows our brief conversation last week when the hearings disbanded. I understand that your computer will furnish a printout showing all instances where Frank Edwards' name was mentioned or his actions described. This should be a useful guide in preparing Frank to testify and working our way through his direct evidence.

I can understand that you will want to meet with Frank before he testifies. Would you let me know what dates you have in mind and I will check with him. It would also be helpful to have the computer printout in advance so that we may confer with Frank and refresh our own memory on these points.

Yours very truly,



Jamie W. S. Saunders

JWSS/cam

LEONARD A. KITZ, Q.C., D.C.L.  
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March 29, 1988

Mr. George W. MacDonald, Q.C.  
Commission Counsel  
**Royal Commission on the  
Donald Marshall, Jr., Prosecution**  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear George:

**Donald Marshall Royal  
Commission of Inquiry  
Our File Number: 9201/1**

I understand from the revised schedule that Martin Herschorn will conclude his testimony on Monday, May 16, 1988, to be followed on Tuesday-Wednesday by His Honour Judge Felix Cacchione. I expect you plan to begin with Frank Edwards on Thursday, May 19.

Doesn't it make more sense to put a few short witnesses on for Thursday, May 19 so that Mr. Edwards can begin the week of May 24th?

What other witnesses do you have scheduled, and what are their specific dates beyond Mr. Edwards?

I would like to hear from you as soon as possible so that Mr. Edwards can start making his plans.

Yours very truly,



Jamie W. S. Saunders

JWSS/cam



MAR 30 1988

1 Prince Arthur Avenue  
Toronto, Ontario  
M5R 1B2  
Telephone (416) 964-9664

March 18, 1988

Jamie Saunders, Esq.  
Messrs. Patterson, Kitz  
Barristers  
10 Church Street  
P.O. Box 1068  
Truro, Nova Scotia  
B2N 5B9

Dear Mr. Saunders:

Re: Marshall Inquiry: Application  
to the Supreme Court of Nova Scotia

I consider it to be of the greatest importance that the application proceed with great dispatch. I would hope that you could persuade Chief Justice Glube to set us a date within the next 10 to 14 days so that the issue of cabinet privilege can be argued and moved onto the appeal court stages quickly, in turn, as it is likely that this kind of issue will have to be determined by the Supreme Court of Canada. I am very mindful that the mandate of the Commission will expire when they produce a report and I do not wish to see that report delayed.

Would you please advise Ms. Derrick when you propose to attend on Justice Glube to obtain that early date so that representations may be made to this effect by us on behalf of Donald Marshall, Jr. at that time.

Yours very truly,



Clayton C. Ruby

/ms

cc ~~all~~ other counsel



MAR 30 1988

Dear Sir,

The information I had forwarded to you in letter form are the facts relating to my situation. I believe that any inquiry would, in due course, be my statement. I submit that there has been a grave miscarriage of justice, a deliberate concealment and fabrication of evidence, and a conspiracy entered into by the police officers I have named.

I am writing to ask for your assistance and guidance in bringing this matter to the attention of the proper parties for rectification and resolution.

Any assistance and guidance as to a course of action to be followed will be appreciated.

Respectfully  
Alexander John Reddick

P. S. Please call lawyer James Moorie at 420-1144



MAR 30 1988

DALHOUSIE UNIVERSITY  
HALIFAX, N.S.  
B3H 1T2

DEPARTMENT OF SOCIOLOGY  
AND SOCIAL ANTHROPOLOGY  
TELEPHONE: (902) 424-6593

March 30, 1988

Mr. John Briggs  
Director of Research  
Royal Commission on the Donald Marshall Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Mr. Briggs:

This letter is written in response to your memorandum of March 29th concerning submission of the first draft report. In my letter of March 21st to you on this topic I stated, "the additional delays we have encountered with our RCMP fieldwork mean that I cannot guarantee completion of the police project as planned for the middle of May". I will, as I indicated there, do everything possible to finish a draft by then, but I am not in a position to ensure completion. In particular, I would note that: (1) the officer information sheets are just going out to RCMP detachments now, and the bulk of them are not expected back until the third week of April. This leaves little time for processing and analyzing this data; and (2) we still do not know how satisfactory the response(s) to our in-depth interview questions will be. We may still have to argue for some detachment-level interviews. I do not know whether we would be successful in this endeavour, or how much time it might take.

Yours sincerely,

Richard Apostle

RA:de

MAR 30 1988

# BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Patricia Lawton Day, B.Sc., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

Sovereign Building, Suite 205,  
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March 25, 1988

Royal Commission on the  
Donald Marshall Prosecution  
Suite 1026 Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Attention: Mr. George MacDonald

Dear George:

Re: Research Project

There has been much recent reference by Chief Justice Hickman concerning ongoing research being done under the Commissions' auspicious. As there appear to be a number of issues which the Commission expects will be best addressed through the research, I am most interested in knowing how you intend to present the research studies and results to the Commission.

Yours sincerely,

BUCHAN, DERRICK & RING



Anne S. Derrick

ASD/har  
Inquiry  
ASD 6A



## NOVA SCOTIA LEGAL AID

189 TOWNSEND ST. P.O. BOX 1373 SYDNEY, N.S. B1P 6K3 PHONE 563-2295

March 28, 1988

David V. Orsborn  
Commission Counsel  
c/o Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre  
Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear David:

Re: Lawrence Burton

Further to your letter dated March 10, 1988, this is to advise you that I would indeed concur with the opinion of Mr. and Mrs. Angus Burton regarding their son, Lawrence, that indeed he presents an extremely difficult problem for all concerned in this matter.

I have had numerous discussions with the Burtons regarding Lawrence, and to the best of my knowledge, I have shared with them, all the assessments and the reports that we have obtained to date on their son.

However, Mr. Angus Burton refuses to accept the results of the various assessments we have done, which essentially all say that Lawrence Burton is fit to stand trial, and that his problems arise more from psychiatric and psychological problems as opposed to any brain damage as a result of an automobile accident he was involved with a number of years ago.

There has been, I would submit, no effort spared on obtaining assessments of Mr. Burton. In fact, I believe every time he was involved in a serious criminal matter, an assessment was obtained, and the results of all these assessments are remarkably similar.

. . . 2

The problem with Mr. Burton is that there appears to be no way the courts can adequately deal with this man with the options presently available to them. Lawrence Burton can be an extremely dangerous individual, and at this time, certainly protection of the public must be considered foremost in any judge's mind, when sentencing Mr. Burton. On the other hand, Mr. Burton has very serious psychological problems, and certainly the value of prison in either protecting the public and, in this case I believe the other inmates in prison must be considered as public as well, whether rehabilitating Mr. Burton or deterring him from further activity, is of little or no value.

Mr. Burton, at this time, must be segregated from society, but it should be done in the confines of a mental institution, and not a penal institution, as penal institutions are simply not equipped to deal with people like Lawrence Burton.

The dilemma is that psychiatrists repeatedly find him fit to stand trial, and able to instruct counsel, and appreciate the nature and consequences of his act, so there is no defence of insanity available to Lawrence Burton, and so, a judge cannot sentence him to a mental institution.

The bottom line with Mr. Burton, simply put, is that he cannot be sentenced to a mental institution, he should not be sent to prison, nor should he be released back into society in his present state.

My plan of action in dealing with this matter at the present time, is to meet with Dr. Sheard, and explore the seemingly insurmountable problems this case presents, and try to formulate a plan that will both protect the public and rehabilitate Lawrence Burton, at the same time.

- 3 -

If you have any further questions in this matter, please do not hesitate to contact me.

Yours truly,

NOVA SCOTIA LEGAL AID

A handwritten signature in black ink, appearing to read 'Allan F. Nicholson', written in a cursive style.

Allan F. Nicholson  
Barrister and Solicitor

AFN/dl

MAR 29 1988

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BEDFORD, NOVA SCOTIA

March 29, 1988

BY HAND

Mr. John E.S. Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia

Dear Mr. Briggs:

Marshall Inquiry  
Our File No. 9201/1

I acknowledge receipt of the Subpoena which covers the third batch of 49 cases for Mr. Barnwell's review.

Yours truly,

*Catherine M. Hicks*  
Catherine M. Hicks,  
Legal Assistant to  
Darrel I. Pink

CMH/cs  
encl:



MAR 29 1988

LEONARD A. KITZ, Q.C., D.C.L.  
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March 29, 1988

BY HAND

Mr. John E.S. Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia

Dear Mr. Briggs:

Marshall Inquiry  
Our File No. 9201/1

I enclose a copy of a numeric control list with highlighted file names. Please prepare a Subpoena in the usual manner for disclosure of these files in the Crown Office. I require the Subpoena by Wednesday, March 30, 1988 so that I may provide same to Mr. Kaulback.

Yours truly,



Catherine M. Hicks,  
Legal Assistant to  
Darrel I. Pink

CMH/cs  
encl:

MAR 29 1988

LEONARD A. KITZ, Q.C. D.C.L.  
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March 28, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Briggs:

Our File No. 9201/1

This acknowledges yours of March 24, 1988, re the review process for Professor Archibald's study.

I commend you for the proposal as I feel it will be the most constructive method of reviewing this and the other work being undertaken by the Commission.

I hope to be back to you shortly with suggestions for participants at the seminar.

Is a similar process planned for the other research papers? If so, will this be done at the same or a different time?

I look forward to any comments you might be able to make about that process at this stage.

Yours truly,



Darrel I. Pink

DIP/jl

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
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March 28, 1988

BY HAND

Mr. George W. MacDonald, Q.C.  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

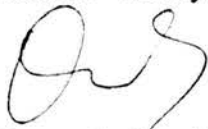
Dear George:

Our File No. 9201/1

I acknowledge yours of March 21, 1988, to Jamie Saunders.

We have requested the files referred to and shall advise once we have had an opportunity to review them.

Yours truly,



Darrel I. Pink

DIP/jl

c.c. Mr. R. Gerald Conrad, Q.C.

MAR 29 1988

Office of the Dean



YORK  
UNIVERSITY

OSGOODE HALL LAW SCHOOL

4700 KEELE STREET, DOWNSVIEW, ONTARIO M3J 2R5

March 23, 1988

Ms. Susan Ashley  
Royal Commission on the Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Susan,

Re: Donald Marshall, Jr. Commission of Inquiry

As you requested in our telephone conversation earlier this week, I enclose a copy of my c.v.

I spoke to Mr. Iain Montiplay, the Secretary of The Law Society of Saskatchewan. He will send you a certificate of good standing which you should receive in a few days.

Enclosed is my Statement of Account with respect to the legal opinion I prepared two or three weeks ago.

It was good to talk to you, and I look forward very much to seeing you in May, if not sooner.

Yours sincerely,

James C. MacPherson  
Dean

Enc:

JCM/P

MAR 29 1988



DALHOUSIE LAW SCHOOL HALIFAX CANADA B3H 4H9

March 28, 1988

John E. S. Briggs, Esq.  
Research Director  
Royal Commission on the Donald Marshall Jr.  
Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, N. S.  
B3J 3K5

Dear John:

Please find enclosed copies of correspondence received today from Madine VanderPlaat.

You will note that there is a budget for the Defence Counsel Survey which has been revised to reduce cost by cutting out the originally proposed follow-up letters.

There is also a revised budget for the Survey of Crown Prosecutors. As I understand it this is an increase of approximately \$240.00 to reflect the necessity of sending out a second follow-up letter as a result of the disappointing rate of return to the initial questionnaire mailing.

I wonder if you might peruse these documents and indicate to me whether you agree with them so that I may formally give Madine VanderPlaat the green light.

Sincerely,

A handwritten signature in cursive script, reading "Bruce P. Archibald".

Bruce P. Archibald  
Associate Professor of Law

BPA/m

encs.

MAR 28 1988

# Donahoe MacInnes

BARRISTERS AND SOLICITORS

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PETER CLAMAN, Q.C.  
RAYMOND F. WAGNER  
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KEVIN P. DOWNIE

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March 28, 1988

Royal Commission  
10th Floor, Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Attention: David Orsborn, Counsel

MacInnes, Cooper & Robertson  
P. O. Box 730  
Halifax, Nova Scotia  
B3J 2V1

Attention: George W. MacDonald, Q.C.

Dear Sirs:

Re: Joseph Gaudet - Marshall Inquiry

I understand that Mr. MacDonald is interested in discussing various matters with Mr. Gaudet pertaining to certain issues before the Marshall Inquiry.

I wrote to Mr. Orsborn on the 10th day of February, 1988 advising him that Mr. Gaudet had retained myself as Counsel. After review of the "MacLean file", I understand that Mr. Gaudet wouldn't be required to appear before the Commission. Recently a request has been made, apparently to the Department of Justice, for Mr. Gaudet's attendance before Mr. MacDonald for discussion of his participation in the "MacLean file".

The first I heard of this request was from Mr. Gaudet.

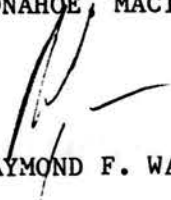
I wish to advise that Mr. Gaudet is represented by myself and still requests that all communication pertaining to the Marshall Inquiry be directed through my office as his legal representative and not through either the Department of Justice or Mr. Gaudet personally. I intend to be present during all phases of Mr. Gaudet's comments before the Commission and it's Counsel.

Mr. David Orsborn  
Mr. George MacDonald  
March 28, 1988  
Page 2

Could you kindly acknowledge receipt of my correspondence with any comments that you may have.

Yours very truly,

DONAHOE, MACINNES




RAYMOND F. WAGNER

RFW:dmm

cc: Joseph Gaudet

---



Bruce P. Archibald  
Associate Professor of Law

BPA/m

c.c. - Professor Stanley Schiff

MAR 28 1988

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. McISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
ROBERT M. PURDY  
RAYMOND F. LARKIN  
S. RAYMOND MORSE  
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DONALD J. MacDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
J. RONALD CREIGHTON  
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TELEX 019-22893

ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

March 23, 1988

BY HAND

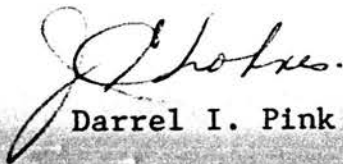
Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear Mr. Briggs:

Dr. Philip Stenning  
Our File No. 9201/1

Further to yours of March 11, 1988, I have arranged for Dr. Stenning to meet with Mr. Gordon Gale on Wednesday, March 30, 1988, at 10 a.m. at our offices.

Yours truly,



Darrel I. Pink

/jl





Department of Justice  
Canada

Ministère de la Justice  
Canada

4th Floor  
Royal Bank Building  
5161 George Street  
Halifax, Nova Scotia  
B3J 1M7

4ième étage  
Immeuble Banque Royale  
5161 rue George  
Halifax, Nouvelle-Écosse  
B3J 1M7

(902) 426-7592

Our file AR-21,613  
Notre dossier Vol. V

Your file  
Votre dossier

March 24, 1988

BY COURIER

Royal Commission on the  
Donald Marshall, Jr., Inquiry  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Attn: John E. S. Briggs - Director of Research

Dear Mr. Briggs:

Re: The Police Study - Date Collection

This letter is further to my letter of March 16, 1988, and in confirmation of our conversation on March 22, concerning Dr. Apostle's police study.

Deputy Commissioner Moffat has now had an opportunity to review the proposed study by Dr. Apostle. The Deputy Commissioner has no problem with the officer information sheet which Dr. Apostle proposes to send to every sworn member of the R.C.M.P. in "H" Division. As Dr. Apostle and I discussed on an earlier occasion, we are both in agreement that the R.C.M.P. cannot order its members to complete the questionnaire and compliance is voluntary.

Deputy Commissioner Moffat's concern relates to the "Detachment I.C. Indepth Interview" which deals in large measure with issues for which the local N.C.O. has no responsibility. It may well be relevant for municipal police forces, but not for the R.C.M.P. given its different organizational structure and chain of command. However, the R.C.M.P. is anxious to co-operate with Dr. Apostle and the Commission. Therefore, I have been instructed to advise you that the R.C.M.P. is prepared to answer the questions posed in this interview from a divisional

...2

Royal Commission on the  
Donald Marshall, Jr., Inquiry  
March 24, 1988  
Page 2

perspective through its commanding officer, Chief  
Superintendent C. J. Reid.

If I can be of further assistance, please advise.

Yours very truly,



James D. Bissell  
General Counsel  
Director, Atlantic Region

JDB:wm

cc: Chief Superintendent C. J. Reid  
: Inspector Harry Murphy  
: Donna McGillis

March 25/88

# BAILEY AND BLACK

BARRISTERS AND SOLICITORS

BRIAN F. BAILEY  
JOHN A. BLACK

(902) 465-4888  
159 PORTLAND ST., P.O. BOX 532  
DARTMOUTH, NOVA SCOTIA  
B2Y 3Y8

**MARCH 25, 1988**

Royal Commission on the  
Donald Marshall, Jr. Prosecution  
10th Floor Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

ATTENTION: GEORGE W. MACDONALD  
COMMISSION COUNSEL

Dear George:

**RE: SUPERINTENDENT AL VAUGHAN**

Thank you for your letter dated February 10, 1988. I have gone over its contents with my client and there are some concerns that I did wish to raise with you.

First of all as to the matter of timing, Superintendent Vaughan will be out of the country for a week in May. In addition, I am involved in a number jury of matters that will keep me in court for the entire month of May. In addition, there have been a great number of matters for my client to review in preparation for his testimony. Accordingly, we would like to have a date set late in June, 1988 for my client to testify. Further, we would like to have an idea how long you anticipate that he will be on the stand.

I have spoken to my client and we believe that it would be most helpful to the Commission, to you and to us if we could meet with you very soon on this matter to outline some of our concerns. Also, Superintendent Vaughan would very much like to go over some of the areas with you before he testifies. It is our desire to co-operate to the extent that we are able with the Commission and its counsel.

I do though, have a very real concern in this matter. Superintendent Vaughan will in some ways be asked to testify as to facts. When he asked to testify as to his recollection on the facts as he knows them, I readily agree that it would be inappropriate for him to speak to a person and endeavour to determine their views before answering a question on the facts.

Page 2  
George MacDonald  
March 25, 1988

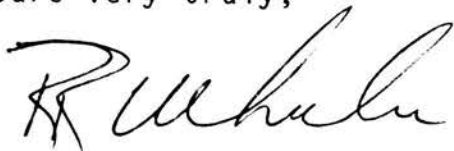
It seems to me though, that a great aspect of my client's testimony will concern interpretation and philosophy in respect of his role as senior member of the R.C.M.P., as the senior office in charge of Criminal Investigations and in respect of his relationships with municipal police forces, other members of the Royal Canadian Mounted Police and the Attorney General. In attempting to prepare for this type of testimony, Superintendent Vaughan has endeavoured to gather up various policy memoranda and he has attempted to review files that might bear on the issue. Because of the nature of the testimony and because of the large quantity of materials which must be referred to that bear on the issue, Superintendent Vaughan is of the view that he will need to refer both to these materials and he will require the assistance of his counsel during the course of his testimony in regard to those matters. I have been made aware that the Commission has adopted a general stance with respect to communication by a witness with other persons during their testimony and they appear to have taken the traditional view of it.

I would like to know your views on the matter and how best to deal with this delicate subject.

The question of standing has been considered. I have referred to Cromwell's "locus standi". It does not appear that Superintendent Vaughan anticipated that he would be called as a witness at the time advertisements were made for applications for standing. It was not until he discovered that the matter might bear on him personally that he became interested in standing. While I appreciate that the Commission would desire to set rules to assist them in their procedure, I do not believe that these rules can apply to prevent interested persons from acquiring standing in proper circumstances. Having said all that, my client and I have no interest in making an issue of standing so long as his interests are considered in this matter.

I will await to hear when we can meet with you at your earliest convenience.

Yours very truly,



for Brian F. Bailey  
Barrister and Solicitor

BFB/bjb  
cc/client

MAR 25 1988



University of Toronto

TORONTO, CANADA

M5S 1A1

DEPARTMENT OF PSYCHOLOGY

March 11, 1988

Mr. W. Wylie Spicer  
Commission Counsel  
Royal Commission on the Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, N.S.  
B3J 3K5

Dear Wylie:

The enclosed extracts from a recent Judgment corrects the "Canadian Credulity" to which the title of the enclosed paper refers. I think that the complete paragraph on p. 13 is an especially clear summary of the facts, which are based on "elementary science" and a clear understanding of basic terms, an understanding that, so far, has been successfully obfuscated by North American CQT polygraphers. Perhaps, after all the heat, some light is beginning to emerge.

With best regards,

Yours sincerely,

A handwritten signature in cursive script that reads "John JF".

John J. Furedy, Ph.D.  
Professor

JJF/js  
encl.

P.S. The abstract of the paper was written a few months ago, so the remarks about the Marshall Commission are somewhat dated (although it is still true that only a polygrapher, albeit not a very clever one, testified). In any case, from my perspective I'm glad to see that Toronto is straightening out Thunder Bay on these matters.



FACULTY OF LAW,  
UNIVERSITY OF TORONTO

78 Queen's Park  
Toronto, Canada M5S 2C5

M E M O R A N D U M

**TO:** The Commissioners  
Chief Justice Hickman  
Associate Chief Justice Poitras  
Mr. Justice Gregory T. Evans

Commission Counsel  
Research Director  
Executive Secretary

**FROM:** Professor John L.J. Edwards

Re: The Office of Director of Public Prosecutions -  
the Australian experience

Accompanying this covering memorandum is my opinion on the Australian innovations with respect to the statutory office of D.P.P. The history is very recent, commencing with the State of Victoria in 1982. The Commonwealth Government, after experimenting with Special Prosecutors, followed in the footsteps of the State Government in 1984 but with significant variations. Queensland and New South Wales have fallen into line in 1984 and 1986, respectively. This ferment of legislative activity, in my opinion, has many important lessons for Canada and, in particular, for Nova Scotia.

I shall next turn to the United States experience. You will already be aware of the initiative by the Attorney General's Department to which Terence Donahoe referred in the Legislature a few weeks ago. By another coincidence, the federal office of "Special Prosecutor" or "independent counsel" (to give it its present title) is front page news in the United States these days. Happily for us, the constitutional questions that face the U.S. Supreme Court are not germane to our constitutional arrangements.

*John Edwards.*

J.L.J. Edwards  
Professor Emeritus

MAR 24 1988



FACULTY OF LAW  
UNIVERSITY OF TORONTO

MEMORANDUM

March 17, 1988  
Date:

To:

From: John E.S. Briggs

Subject: John L.I. J. Edwards

Opinions on the offices of Attorney General,  
Solicitor General and Director of Public Prosecutions

---

Your letter of March 3rd was on my desk when I got back from my visits to The Bahamas and Jamaica. Maybe there will be an opportunity to tell you more about the series of talks that occupied the first 2 weeks of my visit, but for now I can testify to the usefulness of learning something of the experience of these Caribbean countries in handling many of the questions that presently face the Marshall Commission.

I was pleased to learn of your plans to conduct an in-house seminar in the near future which will bring together the Commissioners, Commission Counsel, the researchers and the reviewers. June seems a long way away but I suppose it would be unrealistic to project any earlier date for the kind of workshop you have in mind. As you and I are keenly aware there is a lot of ground to be covered, by way of preliminary reading and during the workshop discussions. How many days do you have in mind for the in-house get together?

When I spoke to you last Wednesday evening I indicated that I was now better able to respond to your patient inquiries aimed at providing a realistic estimate of the time and costs that will be entailed in writing the series of opinions that your earlier memorandum of December 7, 1987 envisaged. Attached to this memorandum is the list of specific questions and issues which you invited me to address, with my estimate of the time and projected costs involved in meeting this mandate. What I have done is to translate the program of opinions on which I am embarked, and which we have discussed from time to time, into the specific categories that you listed in your Dec 7, 1987 memorandum. I hope this will meet your needs. The figures are estimates and rough ones at that. They derive from the opinions I have already prepared for the Commission, i.e., on the Office of Solicitor General and the Office of D.P.P. with reference to the British and Australian experiences.

*Yours ever,  
John Edwards*



1. The advisability of effecting changes respecting the office and role of the Attorney General, including consideration of such issues as selection and appointment, standards of conduct, tenure, relationship to and membership in, the Legislative Assembly, government, Cabinet, a political party, Caucus; the advisability of reassigning any of the responsibilities of the Attorney General to another Cabinet member or office or agency, (e.g. the judiciary; policing and corrections to the recently proposed Department of the Solicitor-General).

12 days: \$12,000

2. The advisability of effecting changes with respect to any other officers who are employed in the office of the Attorney General and play a role in the administration of justice, with consideration given to such issues as method of selection, appointment, standards of conduct, tenure, and specific responsibilities within the prosecutorial system.

1 1/2 days: \$1,500

3. Whether or not existing processes are appropriate or should be altered to ensure that the advice or decisions of the Attorney General are determined, and appear to be determined, free of improper political, personal or other considerations. (Consideration will be given to the handling of specific cases as these cases reflect and illuminate the process.)

2 days: \$2,000

4. The advisability of creating a statutory Office of Director of Public Prosecutions, including consideration of the role and functions of such an office, its relationship to and superintendences by the Attorney General, and any other relevant considerations. (The relatively recent experience of Australia, at both the federal and state level, with this statutory Office is of particular interest).

14 days: \$14,000

5. The advisability of developing publicly accessible guidelines setting forth criteria for the initiation, staying and termination of prosecutions and addressing such other issues as disclosure, negotiated dispositions and the specific responsibilities and role of crown prosecutors for the carriage of cases.

3 days: \$3,000



MAR 22 1988

**STEWART MacKEEN & COVERT**  
BARRISTERS AND SOLICITORS

J. WILLIAM E. MINGO, O.C.  
J. THOMAS MacQUARRIE, O.C.  
DONALD H. OLIVER  
DONALD H. McDOUGALL, O.C.  
JOHN S. McFARLANE, O.C.  
CARMAN G. McCORMICK  
JOHN D. MURPHY  
ROBERT P. DEXTER  
KARIN A. McCASKILL  
R. CAMILLE CAMERON  
NANCY I. MURRAY  
T. ARTHUR BARRY  
JOHN MacL. ROGERS  
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DOUGLAS J. MATHEWS  
JONATHAN C. K. STOBIE  
BARBARA S. PENICK  
MARK E. MacDONALD  
GLEN V. DEXTER  
ELIZABETH M. HALDANE  
ERIC L. BURTON  
LAWRENCE J. STORDY  
R. BLOIS COLPITTS

DONALD A. KERR, O.C.

COUNSEL  
BRIAN FLEMMING, O.C.

HUGH K. SMITH, O.C.

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**HALIFAX, CANADA**

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TELECOPIER (902) 420-1417  
TELEX 019-22593

DIRECT DIAL (902) 420-

OUR FILE REFERENCE:

RNP  
2076-2

March 18, 1988

George W. MacDonald, Q.C.  
Commission Counsel  
The Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Suite 1026, 1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Mr. MacDonald:


Prospective Witnesses

Thank you for your letter of March 10.

I am not prepared to accept the decision reached by Commission Counsel with respect to my request and wish to make application to the Commissioners in support of my submission that the individuals named should be called as witnesses by Commission Counsel.

I take it that this application will be heard when we reconvene in May and would appreciate your advice as to the timing preferred by the Commissioners.

Yours very truly,

  
Ronald N. Pugsley

RNP:dk

c: Clayton Ruby  
c: Michael G. Whalley, Q.C.  
c: Frank L. Elman, Q.C.

George W. MacDonald, Q.C.  
March 18, 1988  
Page 2

c: Jamie W.S. Saunders  
c: James D. Bissell  
c: Allison R. Pringle  
c: Charles Broderick  
c: S. Bruce Outhouse, Q.C.  
c: Guy LaFosse  
c: Bruce H. Wildsmith  
c: E. Anthony Ross  
c: W. Wylie Spicer

N0182047



March 21, 1988

Mr. Jamie S. Saunders  
Patterson Kitz  
P.O. Box 1068  
10 Church Street  
Truro, Nova Scotia  
B2N 5B9

**RE: Marshall Inquiry**

Dear Mr. Saunders:

Thank you for your letter of March 18th with enclosure and further to our telephone conversation, this is to confirm that the dates for the MacKeigan et al v. Hickman et al matter have been rescheduled to May 24th, 25th, and 26th, if necessary. Also to confirm that you will be determining whether or not there is any necessity for the Attorney General to apply to intervene or whether any order should be granted, and that you will advise the court of your conclusions at the earliest opportunity to ensure that all matters of a preliminary nature are cleared away prior to the hearing dates.

Thank you for your cooperation.

Yours very truly,

A handwritten signature in cursive script that reads "Constance R. Glube".

Constance R. Glube  
Chief Justice, Trial Division

CRG/rls

c.c. Mr. Ronald J. Downie, Q.C.  
✓ Mr. David Orsborne  
c/o Mr. George MacDonald, Q.C.  
Ms. Anne Derrick

MAR 22 1988

LEONARD A. KITZ, Q.C. D.C.L.  
JOHN D. MacISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

March 21, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.

Dear John:

Our File No. 9201/1

This is further to yours of March 15, 1988, after your review of the Auditor General's file.

Pursuant to the subpoena issued under the signature of the Chairman, dated March 11, 1988, I enclose the 19 documents requested by you.

Yours truly,



Darrel I. Pink

DIP/jl  
Enc.

Mar. 22/88

John Briggs has  
the enclosures.

MAR 22 1988



DALHOUSIE UNIVERSITY  
HALIFAX, N.S.  
B3H 1T2

DEPARTMENT OF SOCIOLOGY  
AND SOCIAL ANTHROPOLOGY  
TELEPHONE: (902) 424-6593

March 21, 1988

Mr. John Briggs  
Director of Research  
Royal Commission on the Donald Marshall Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Mr. Briggs:

In keeping with our telephone conversations over the past three weeks, I am writing to notify you that the additional delays we have encountered with our RCMP fieldwork mean that I cannot guarantee completion of the police project as planned for the middle of May. However, if RCMP cooperation is forthcoming in the near future, I will do everything I can to finish a draft of my report before I leave on a fisheries project. As mentioned, I will be going to Aarhus, Denmark, from May 11 to May 29 as part of my fisheries research.

I would also like to report that the 10 additional interviews we will be doing for Philip Stenning's component of the project may add up to 5 days (at \$150 per day) to the budget item we have allocated for interviews. In addition, you will find a copy of the Survey Centre's estimates for our fieldwork enclosed. They are within the limits originally estimated for our work.

Sincerely,

Richard Apostle

RA:de

Dr. Richard Apostle  
Dept. of Sociology and  
Social Anthropology  
Dalhousie University  
Halifax, N.S., B3H 4H9

March 16, 1988

Dear Dr. Apostle:

Attached please find the expected costs associated with conducting a mail-out survey of 25 police forces in Nova Scotia.

We understand our responsibilities are to include the following:

- set-up of population list
- typing of drafts, final questionnaire, information sheets and covering letters
- printing of 25 questionnaires and 1500 information sheets
- distribution of questionnaires, information sheets and covering letter
- photocopying completed data collection instruments
- coding, data entry and editing of all data collection instruments
- data analysis

We understand your responsibilities to include:

- drafting of data collection instruments
- drafting of covering letter

Projects conducted by the Survey Centre must first meet with the approval of our Advisory Board. I will forward the appropriate materials to the Board upon your acceptance of our proposal.

I look forward to hearing from you in the near future.

Sincerely,



Madine VanderPlaat  
Director  
THE SURVEY CENTRE

SURVEY OF PROVINCIAL POLICE FORCES  
BUDGET

Professional Fees

	Per Diem	Days	Cost
Co-ordination, Supervision and Administration	\$240.00	5	\$1,200.00
Secretarial	\$120.00	3	360.00
Distribution and Retrieval	\$120.00	3	360.00
Data Entry and Editing	\$120.00	4	480.00
Data Analysis	\$320.00	5	1,600.00
			<hr/>
	Sub-total		\$4,000.00

Expenses

Printing		\$500.00
Postage		166.00
Materials and Supplies		100.00
Computer		50.00
		<hr/>
	Sub-total	\$816.00
	TOTAL	\$4,816.00

MAR 21 1988

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MacISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
JAMIE W. S. SAUNDERS  
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ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

March 18, 1988

BY HAND

Mr. John Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Suite 1026  
1505 Barrington Street  
Halifax, N.S.


Dear Mr. Briggs:

Marshall Inquiry  
Dr. Philip Stenning  
Our File No. 9201/1

Further to your letter of March 11, 1988, please be advised I have arranged Dr. Stenning to meet with Ms. Nadine Cooper-Mont on March 29, 1988, at 9:30 a.m. at her offices (10th Floor, Joseph Howe Building, Hollis Street) and Murray Ritch on March 29, 1988, at 2 p.m. at our offices.

We are still attempting to set up the other meetings requested in your March 11, correspondence and shall be back to you when this has been arranged.

Yours truly,



Darrel I. Pink

/jl



PATTERSON KITZ  
BARRISTERS & SOLICITORS

MAR 18 1988

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10 CHURCH STREET  
P.O. BOX 1068  
TRURO, NOVA SCOTIA  
B2N 5B9  
TELEPHONE (902) 895-1631  
FROM HALIFAX 429-7741

COPY

March 18, 1988

BY HAND

The Honourable Madame Chief Justice  
Constance R. Glube  
The Law Courts  
1815 Upper Water Street  
Halifax, Nova Scotia

Your Honour:

Marshall Inquiry  
Our File No. 9201/1

I enclose a copy of my letter to Ronald J. Downie, Q.C. confirming my instructions to participate on behalf of the Attorney General of Nova Scotia. I have also provided a copy to Mr. Orsborn.

Yours respectfully,

Jamie W.S. Saunders

JWSS/cs  
c.c. Mr. Ronald J. Downie, Q.C.  
Mr. David Orsborn

**PATTERSON KITZ**  
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TELEPHONE (902) 895-1641  
FROM HALIFAX 429-7741

COPY

March 18, 1988

BY HAND

Mr. Ronald J. Downie, Q.C.  
Cox, Downie & Goodfellow  
Barristers & Solicitors  
1100 Purdy's Wharf Tower  
1959 Upper Water Street  
Halifax, Nova Scotia

Dear Ron:

Marshall Inquiry  
Your File No. 8118-1  
Our File No. 9201/1

I received instructions this week that I am to participate on behalf of the Attorney General of Nova Scotia at the hearing presently scheduled for April 26-27th. I would appreciate receiving from you any schedule of dates for filing of written material with the Court in advance of the hearing.

I understand that Chief Justice Glube was anxious to know if we intended to participate and I am forwarding a copy of this letter to her to confirm that we have been so instructed. I do not know whether the Attorney General of Canada has yet taken a position.

I am also forwarding a copy of this letter to Mr. Orsborn for the information of Commission Counsel.

Yours very truly,

Jamie W.S. Saunders

JWSS/cs  
c.c. The Honourable Madame Chief Justice  
Constance R. Glube  
Mr. David Orsborn,



Department of Justice  
Canada

Ministère de la Justice  
Canada

4th Floor  
Royal Bank Building  
5161 George Street  
Halifax, Nova Scotia  
B3J 1M7

4ième étage  
Immeuble Banque Royale  
5161 rue George  
Halifax, Nouvelle-Écosse  
B3J 1M7

MAR 18 1988

AR-21,613

Our file  
Notre dossier

Your file  
Votre dossier

426-7592

March 17, 1988

Mr. George W. MacDonald  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Mr. MacDonald:

**RE: Billy Joe MacLean - Access to RCMP File**

At your request, I have consulted the RCMP concerning Mr. MacLean's application to view his file.

The position of the RCMP is the same as that of the Attorney General of Nova Scotia; namely, that consent to such a request cannot be given.

Yours very truly,

James D. Bissell  
General Counsel  
Director, Atlantic Region

JDB/vpc

c.c. Mr. Jamie W.S. Saunders  
Patterson, Kitz  
P. O. Box 247  
Halifax, Nova Scotia  
B3J 2N9

Inspector H. E. Murphy  
R.C.M. Police  
P. O. Box 2286  
Halifax, Nova Scotia  
B3J 3E1

Canada



Department of Justice  
Canada

Ministère de la Justice  
Canada

MAR 16 1988

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AR-21.613

Our file:  
Notre dossier:

Your file:  
Votre dossier:

426-7592

March 16, 1988

Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Attention: John E.S. Briggs, Director of Research

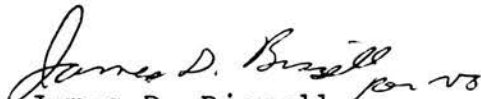
Dear Mr. Briggs:

**RE: The Police Study - Data Collection**

Thank you for your letter of March 15, 1988, the contents of which I have noted.

I regret the delay, but assure you that, despite your impression from our conversation last Thursday, the concerns are not merely local concerns. The items I identified last Thursday were merely items that caught my attention. Assistant Commissioner Moffat has requested to review the study and was scheduled to meet with Donna McGillis on Monday, March 14th. Unfortunately, due to Assistant Commissioner Moffat's illness on Monday that meeting was postponed. I am in regular contact with Ms. McGillis and hope to have my instructions shortly. Once I am in a position to advise you, I will. We are sensitive to your time constraints.

Yours very truly,

  
James D. Bissell  
General Counsel  
Director, Atlantic Region

JDB/vpc

Canada

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
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March 14, 1988

BY HAND

Mr. W. Wylie Spicer  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia

Dear Wylie:


Marshall Inquiry  
Our File No. 9201/1

This is further to yours of March 4, 1988 regarding Eileen Richards.

I have reviewed the matter. Because of the date during which this occurred, there would be no files any longer in existence.

Quite frankly I am at a loss as to what you wish us to do regarding this. Do you suggest the sentence imposed was illegal? If so, I don't think there is any need for me to have the Department research the matter. You are as able to do that as we are. If there is something I have missed and that you wish us to address please advise.

Yours truly,



Darrel I. Pink

DIP/cs

c.c. Mr. Jamie Saunders  
Mr. R. Gerald Conrad, .Q.C.

LEONARD A. KITZ, Q.C. D.C.L.  
JOHN D. MacISAAC, Q.C.  
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ALSO OFFICES AT  
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BEDFORD, NOVA SCOTIA

March 14, 1988

BY HAND

Mr. George MacDonald  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia

Dear George:

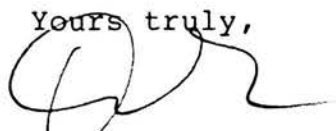
Marshall Inquiry  
Our File No. 9201/1

This will acknowledge yours of March 11th re the Auditor General's files.

The file is available for review in our office. Once that review is complete, I would suggest we discuss whether an additional Subpoena is required to produce copies of the required documents.

You mentioned that John Briggs is probably going to examine the file. Please have him contact Cathie Hicks to make those arrangements.

Yours truly,



Darrel I. Pink

DIP/cs

c.c. Mr. R. Gerald Conrad, Q.C.  
Mr. Paul Cormier

MAR 14 1988

LEONARD A. KITZ, Q.C., D.C.L.  
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BEDFORD, NOVA SCOTIA

March 14, 1988

BY HAND

Mr. W. Wylie Spicer  
Commission Counsel  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia

Dear Wylie:

Marshall Inquiry  
Our File No. 9201/1

This is further to yours of January 29th.

Unfortunately it has taken quite a while to gather the material requested as it was in storage in another department and not readily available.

We have obtained copies of available minutes if the Tri-Partite Liaison Committee for the years 1972 and 1973. Alan Clarke has looked for other minutes both prior and subsequent to those dates but none have been found.

We have minutes for meetings of the Tri-Partite Committee from August, 1979 to April, 1984 and for the Cabinet Committee on Aboriginal Affairs for June, 1985 to September, 1987.

This material is available for you to review should you wish though I can tell you there is almost nothing in it which you are not already aware of from review of the Native Court Worker file.


We are not prepared to release all this file material as it deals with matters that fall outside the purview of the Inquiry. However, I think once you look at the material you'll agree that it's not terribly relevant and we can decide how best to deal with it.

Mr. W. Wylie Spicer  
March 14, 1988  
Page 2

You have asked for details of equilization grants and other financial arrangements where money is transferred by the Federal Government to the province for the provision of justice related services to native people. I am not able to locate anyone who is able to provide this information. If you can assist with this I will follow up on it further.

As for the other matters addressed, I am not able to find any information of any assistance to the Commission.

Yours truly,



Darrel I. Pink

DIP/cs

c.c. Mr. Jamie Saunders  
Mr. R. Gerald Conrad, Q.C.



LEONARD A. KITZ, Q.C. D.C.L.  
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March 14, 1988

BY HAND

Mr. John E.S. Briggs  
Director of Research  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia

Dear John:

Marshall Inquiry  
Our File No. 9201/1

I have yours of March 11th re Dr. Philip Stenning.

As I indicated to Dr. Stenning I was prepared to allow his introductory meetings with Mr. Smith to take place without Jamie or me being present, however, the meetings contemplated in your letter will require attendance by one of us and therefore cannot practically be arranged during the week of March 21st. As you know our client's witnesses are on the stand that week and both Jamie and I intend to be present at the hearings.

Having said that, I might be able to arrange evenings meetings and I am making inquiries to determine if that might be arranged for some of the people Dr. Stenning wishes to speak to.

I understand that on Thursday or Friday of last week, Dr. Stenning called Graham Walker at the Legislative Council Office. Perhaps he was not aware of the protocol that we had previously agreed to. I remind you that any requests from Government should be directed to us initially. We might simply pass on the request or have it made directly but without an indication of what is being sought we are not able to keep on top of the information collected and as I have said on many occasions that is our primary concern.

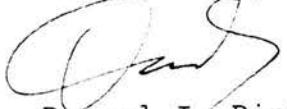
Mr. John E.S. Briggs  
March 14, 1988  
Page 2

As for the request made of Mr. Walker, I am following up with him and shall advise when I have information.

You have requested significant amounts of additional information. I have passed on your requests and as soon as I know what information is available I shall let you know. At the present time it is our position that "assessments and evaluations of municipal police forces undertaken by the Nova Scotia Police Commission since 1976 and in particular that relating to the Glace Bay Police Force" cannot be released by the Police Commission. Have you made efforts to obtain them from the individual police forces?

I am endeavouring to collect the other material and shall let you know when I have it.

Yours truly,



Darrel I. Pink

DIP/cs

c.c. Mr. Jamie Saunders  
Ms. Nadine Cooper-Mont

MAR 14 1988

Ruby & Edwardh  
barristers

11 Prince Arthur Avenue  
Toronto, Ontario  
M5R 1B2  
Telephone (416) 964-9664

March 14, 1988

The Honourable Lorne Clarke  
Chief Justice of Nova Scotia  
Supreme Court of Nova Scotia  
Court of Appeal  
Law Courts  
Halifax, Nova Scotia  
B3J 3C8

Dear Chief Justice:

**Re: Donald Marshall, Jr., Application to Intervene  
in the case of MacKeigan et al. v. Hickman et al.  
SH63241**

I have today filed a Notice of Appeal from the refusal of Chief Justice Glube to grant standing to Donald Marshall, Jr. as a party in the matter referred to above. Because the substantive issues will be dealt with before Chief Justice Glube on April 26 and 27, 1988, time is of the essence in having the application heard and dealt with.

In addition, if either party should be dissatisfied with the result of the appeal before your Court, the last available day for an application for leave to appeal to be heard in this matter in the Supreme Court of Canada will be April 25, 1988. An expedited order by the Chief Justice of Canada would, of course, have to be obtained in order to get the case on before the Supreme Court of Canada that quickly.

Because of the time constraints, and because the issues raised are not complex, I intend to ask your Court for an expedited hearing -- if possible within 10 days. I understand that such applications are usually made on Thursday before a Justice of Appeal sitting in Chambers.

I write to you to advise you of my intentions, and because I know that you will want to insure that none of the Justices involved in this litigation is

# Ruby & Edwardh

placed in the awkward position of having this matter suddenly appear on their docket.

If it is convenient to you, and to Mr. Downie, I would be pleased to attend before you any day this week to discuss the issue of when a panel can be composed to hear Mr. Marshall's appeal. My Halifax agent is Anne Derrick of Buchan, Derrick & Ring and you may find it convenient to reach me through her office.

Yours very truly,



Clayton C. Ruby

/ms

cc Ronald Downie, Esq.  
Messrs. Cox, Downey  
Barristers  
P.O. Box 2380  
Station M  
Halifax, Nova Scotia  
B3J 3E5

cc George MacDonald, Q.C.  
Royal Commission  
Suite 1026  
Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

MAR 14 1988

11 Prince Arthur Avenue  
Toronto, Ontario  
M5R 1B2  
Telephone (416) 964-9664

March 14, 1988

The Honourable Chief Justice Constance Glube  
Supreme Court of Nova Scotia  
Trial Division  
P.O. Box 2314  
Law Courts  
Halifax, Nova Scotia  
B3J 3C8

Dear Chief Justice:


I am expecting to file today a Notice of Appeal from your decision refusing to grant intervention as a party to Donald Marshall, Jr. in the case of MacKeigan et al v. Hickman et al. (S.H. 63421) delivered orally on March 10, 1988.

You indicated at the time that you would provide further reasons in the future but expressed some concern that it might take some time to do so.

I am making application to the Court of Appeal that the appeal be heard on an expedited basis, within seven days if possible, so that the issue can be determined by them well in advance of the June 26, 1988 date set for argument before you.

I know that the Court of Appeal will be greatly assisted in their task if they had reasons for judgment from you, and I write to advise you of the speed with which I would like to move, knowing you will do your best to assist them.

Yours very truly,



Clayton C. Ruby  
Counsel for Donald  
Marshall, Jr.

/ms

cc Ronald Downie, Esq.  
Messrs. Cox, Downie  
Barristers  
P.O. Box 2380  
Station M  
Halifax, Nova Scotia  
B3J 3E5

cc George MacDonald, Q.C.  
Royal Commission  
Suite 1026  
Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

MAR 14 1988

# BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Patricia Lawton Day, B.Sc., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

Sovereign Building, Suite 205,  
5516 Spring Garden Road  
Halifax, Nova Scotia  
B3J 1G6  
(902) 422-7411

March 14, 1988

BY COURIER

Mr. George MacDonald, Q.C.  
McInnes, Cooper & Robertson  
1673 Bedford Row  
Halifax, N.S.  
B3J 2V1

Dear George:

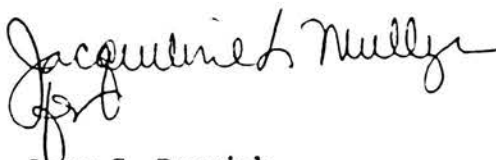
Re: MacKeigan et al v. Hickman et al, S.C.A. 01936

Further to the above proceeding, with respect to which Donald Marshall, Jr. wishes to be made an intervenor, please find enclosed our Notice of Appeal filed with the Court today.

As I advised David on Thursday by telephone, our application on behalf of Mr. Marshall to intervene in the proceeding was unsuccessful although Chief Justice Glube did make an Order permitting us to appear at the April 26 hearing as amicus curiae. I will send you a copy of her Judgement and the Order once I have them.

Yours sincerely,

BUCHAN, DERRICK & RING



Anne S. Derrick

ASD/har  
MacDonald  
ASD 2A

Enclosure

1988

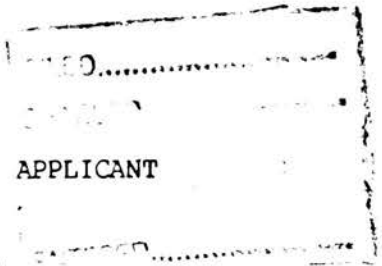
S.C.A. NO. 61936

IN THE SUPREME COURT APPEAL DIVISION

APPEAL DIVISION

BETWEEN:

DONALD MARSHALL, JR.



APPLICANT

Ian M. MacKeigan, Gordon L. S. Hart, Malachi C. Jones, Angus L. MacDonald and Leonard L. Pace

RESPONDENTS

NOTICE OF APPEAL

TAKE NOTICE that the Appellant applies for Leave to Appeal and, if granted, will appeal from the judgement of the Honourable Chief Justice Constance Glube of the Supreme Court of Nova Scotia dated the 10th day of March, 1988, being an Interlocutory Judgement respecting an application by Donald Marshall, Jr. to intervene as a party pursuant to Civil Procedure Rule 8.01 in an Application made by the Respondents for an Order or Orders providing declaratory relief and relief in the nature of certiorari directed to and against T. Alexander Hickman, Lawrence A. Poitras and Gregory Thomas Evans ("The Commissioners") in their positions and capacities as Commissioners appointed October 28, 1986, under the Public Inquiries Act, R.S.N.S. 1967, c. 250, to inquire into the death of Sandford William Seale and the charging, prosecution, conviction and sentencing (and such other related matters) of Donald Marshall, Jr. for the non capital murder of Sandford William Seale, such relief being more specifically enumerated in the Originating Notice (Application Inter Partes) dated January 25, 1988, and filed in this matter bearing S.H. No. 63421;

AND THAT the grounds of proposed appeal are:

THAT the learned Chief Justice erred,

(i) in deciding that the Appellant did not have an interest in the subject matter of the proceeding;

(ii) in defining the meaning of the word "interest" and in the application of that concept to the facts of the case;



(iii) in determining the subject matter of the proceeding;

(iv) and such further grounds as may appear on perusal of the reasons for the judgement.

AND THAT the Appellant will request that the Judgement appealed from be reversed so that Donald Marshall, Jr. may, pursuant to Nova Scotia Civil Procedure Rule 8.01, intervene in the Application and become a party thereto.

FURTHER TAKE NOTICE that the Appellant will apply to a Judge of the Appeal Division on Thursday the 17th day of March, 1988 at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard for an order setting the matter down for hearing and giving directions as to what appeal book and factums, if any, shall be filed.

DATED at Halifax, Nova Scotia this <sup>14<sup>th</sup></sup> day of March, 1988.



ANNE S. DERRICK

Solicitor for Donald Marshall, Jr.  
Buchan, Derrick & Ring  
Suite 205  
5516 Spring Garden Road  
Halifax, N.S.  
B3J 1G6

TO: The Registrar

Mr. Ronald Downie, Q.C.  
Solicitor for the Respondents  
Cow, Downie & Goodfellow  
1100 Purdy's Wharf Tower  
1959 Upper Water Street  
Halifax, N.S.

Mr. George MacDonald, Q.C.  
Solicitor for Justices Hickman, Poitras  
and Evans  
Royal Commission  
Suite 1026  
Maritime Centre  
1505 Barrington Street  
Halifax, N.S.

ASD #5  
Marshall  
Not. of Appeal

1988  
S.C.A. NO.

IN THE SUPREME COURT APPEAL DIVISION  
APPEAL DIVISION

BETWEEN:

DONALD MARSHALL, JR.

APPLICANT

Ian M. Mackeigan, Gordon L. S.  
Hart, Malachi C. Jones, Angus L.  
Macdonald and Leonard L. Pace

RESPONDENTS

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NOTICE OF APPEAL

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