PATTERSON KITZ
BARRISTERS & SOLICITORS

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DONALD J. MacDONALD, Q.C.
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JAMIE W.S. SAUNDERS
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KIMBERLEY H.W. TURNER
FERN M. MacADAM
KATHERINE F. CARRIGAN

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

ALSO OFFICES AT
TRURO, NOVA SCOTIA
BEDFORD, NOVA SCOTIA

DEC 28 1988

December 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.

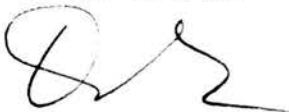
Dear Mr. Briggs:

Marshall Inquiry
Our File No. 9201/1

You will recall sometime ago your research staff requested a breakdown of information regarding complaints involving the RCMP in Nova Scotia.

We have now received that information from the Solicitor General's Department who only recently received it from the RCMP, I enclosing a copy of the material received.

Yours truly,



Darrel I. Pink

DIP/jl
Enc.

c.c. Mr. James Bissell
Ms. Nadine Cooper Mont

Royal Canadian Mounted Police | Gendarmerie royale du Canada

Your file Votre référence

Solicitor General
Province of Nova Scotia
P.O. Box 2599
Station "M"
Halifax, Nova Scotia
B3J 3N5

Our file Notre référence

71H-010-6

December 5, 1988

Attention: Ms. Nadine Cooper Mont

Dear Ms. Cooper Mont:

Re: R.C.M.P. Complaints

Your letter dated July 22, 1988 requesting statistics on complaints refers.

Statistics have been compiled for the years 1986, 1987 and for the period January 1 - July 19, 1988, and are attached. I have also included the definitions used to describe findings of complaints.

Yours truly,

G.G. Leahy

G.G. Leahy, Chief Superintendent
Commanding "H" Division

Enc.

P.O. Box 2286
Halifax, N.S.
B3J 3E1

Canada

DEFINITIONS

"substantiated complaint"

means that, upon assessing available information, it is more likely than not that the allegation is true.

"unsubstantiated complaint"

means there is insufficient information available on which to base a valid determination.

"unfounded complaint"

means that upon assessing available information it is more likely than not that the allegation is untrue or that the employee/Force acted lawfully or properly.

PUBLIC COMPLAINTS - 1986

Allegations

Against Member	71
Against Force	12
TOTAL	83

Members		Force	
Substantiated	10	Substantiated	3
Unsubstantiated	22	Unsubstantiated	2
Unfounded	39	Unfounded	7

Types of Complaints (Force)

Operational Policy	3
Inadequate Police Service	6
Operational Instructions/Procedures/Regulations	1
Canadian Human Rights Act - Use of Personal Information	1
Other	1

Substantiated Complaints (Force)

Inadequate Police Service	3

Remedial Actions

Operational Policy Developed	3

Types of Complaints (Members)

Improper Attitude/Disrespect	11
Lack of Discretion	6
Other Improper Attitude	4
Neglect of Duty	4
Drinking and Driving	1

Types of Complaints (Members)
Continued ...

Other Driving Infractions	4
Shoplifting/Theft	2
Other Improper Conduct	4
Fail to Assist General Public	3
Inadequate Investigation	6
Inadequate Police Service	3
Lack of Work Knowledge	1
Invasion of Privacy	2
Mishandling of Property	1
Excessive Force Resulting in Injury	3
Excessive Force Resulting in Damage	1
Excessive Force - No Injury/Death/Damage	5
Discharge Firearm Resulting in Death/Damage	1
Abuse Authority, Arrest	1
Abuse Authority, Search/Seizure	2
Harassment	1
Threats	1
Other: Methods	2
Vexatious, Frivolous, Trivial, In Bad Faith, Nonsensical	2

Substantiated Complaints (Members)

Improper Attitude - Disrespect	2
Inadequate Police Service - Fail to Assist Public	1
Inadequate Police Service - Inadequate Investigation	1
Improper Police Method Discharge Firearm (Damage)	1
Improper Police Method - Abuse Authority Arrest	1
Improper Police Method - Excessive Force (one file)	2
Improper Conduct	1

Remedial Action

Members Counselled	6
Member Disciplined - Cautioned	1
Member Disciplined - Warning	3

PUBLIC COMPLAINTS - 1987

Allegations

Against Member	102
Against Force	12
TOTAL	114

Members

Substantiated	18
Unsubstantiated	35
Unfounded	49

Force

Substantiated	0
Unsubstantiated	2
Unfounded	10

Types of Complaints (Force)

Inadequate Police Services	5
Operational Instructions/Procedures/Regulations	1
Other Force Complaints	2
Nonsensical	4

Types of Complaints (Members)

Drinking and Driving	1
Other Improper Conduct	10
Excessive Force Resulting in Injury	5
Excessive Force Resulting in Damage	1
Excessive Force - No Injury/Death/Damage	5
Intimidation	2
Harassment	4
Threats	3
Other Improper Methods	4
Improper Attitude - Disrespect	11
Improper Attitude - Discretion	15
Other Improper Attitude	6
Neglect of Duty	1
Other Driving Infractions	3
Inadequate Service - Fail to Assist Public	5
Inadequate Investigation	4
Poor Advice/Explanation	2
Lack of Knowledge	1
Improper Interrogation/Interview	2
Mishandling of Property	5

Public Complaints - 1987
Continued ...

Types of Complaints (Members)
Continued ...

Abuse of Authority - Arrest	4
Abuse of Authority - Search and Seizure	3
Vexatious, Frivolous, trivial, In Bad Faith, Nonsensical	5

Substantiated Complaints (Members)

Other Improper Conduct	6
Improper Attitude - Disrespect	2
Inadequate Police Service - Fail to Assist Public	1
Improper Attitude - Lack Discretion	1
Improper Conduct - Driving Infraction	1
Improper Methods	3
Vexatious, Frivolous, Trivial	1

Remedial Action

Members Counselled	11
Member Disciplined - Warning	3
Members Disciplines - Hearings	2

PUBLIC COMPLAINTS
1988-01-01 TO 1988-07-19

Allegations

Against Member	35
Against Force	3
TOTAL	38

Members

Substantiated	5
Unsubstantiated	3
Unfounded	27

Force

Substantiated	0
Unsubstantiated	3
Unfounded	0

Types of Complaints (Force)

Operational Instructions/Procedures/Regulations	1
No Action	2

Types of Complaints (Members)

Non-Payment of Debt	1
Other Improper Conduct	1
Excess Force - Injury/Damage	2
Excess Force - Death/Damage	1
Excess Force - No Injury/Death/Damage	3
Intimidation	1
Harassment	2
Other Methods	1
Operational Policy	1
Operational Instructions/Procedures/Regulations	2
Uncivil	4
Lack of Discretion	5
Neglect of Duty	2
Fail to Assist Public	1
Inadequate Investigation	1
Poor Advice/Explanation	1
Improper Interrogation/Interview	2

Public Complaints - 1988
Continued ...

Types of Complaints (Members)
Continued ...

Abuse of Authority - Arrest	3
Abuse of Authority - Search/Seizure	1
Vexatious, Frivolous, Trivial	3

Substantiated Complaints (Members)

Lack of Discretion	2
Uncivil	2
Excessive Force - No Injury/Death/Damage	1

Remedial Action

Members Counselled	4
Member Disciplined - Warning	1

DEC 20 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.
Jacqueline L. Mullenger, B.H.Ec., 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

December 19, 1988

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

Dear Wylie:

RE: Donald Marshall, Jr., Applicant and Her Majesty the Queen in Right of Nova Scotia, as Represented by the Attorney General of Nova Scotia, and the Royal Commission into the Donald Marshall, Jr., Prosecution

Thank you for your letter of December 16, 1988, enclosing the Brief and Booklet of Authorities of the Royal Commission. I have accepted service on behalf of Donald Marshall, Jr. and am enclosing the copy of which I have accepted service.

Have a very Merry Christmas!

Yours sincerely,

BUCHAN, DERRICK & RING

Anne S. Derrick

ASD/har
Spicer
ASD 3A

Enclosures

DEC 21 1988

PUBLIC ARCHIVES
NOVA SCOTIA

6016 UNIVERSITY AVENUE
HALIFAX, N. S.
B3H 1W4

423-9115

December 19, 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 for your letter of 16 December along with the nine (9) boxes of material relating to the Marshall Inquiry. This material will be added to our holdings and made available to the public without restriction.

We look forward to receiving additional material from you including the videotapes.

Yours sincerely,

Carman V. Carroll

Carman V. Carroll
Provincial Archivist

CVC/fm

Law Reform Commissio.
of Canada

130 Albert St.
Ottawa, Canada
K1A 0L6

Commission de réforme du droit
du Canada

130, rue Albert
Ottawa, Canada
K1A 0L6

DEC 20 1988

Your file Votre référence

Our file Notre référence

December 16th, 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 John,

Many thanks once again for the hospitality extended to me in Halifax last month. I found the conference to be very useful and worthwhile for my purposes. It is especially important at this juncture for our Commission to become sensitized to the dimensions of the problems that were being addressed at your conference. Also it was a good opportunity for me to meet and make contact with the leading experts in this field. I appreciated the invitation to participate with you.

I trust all goes well with you and that we will have an opportunity to see your smiling face in Ottawa before too long.

Yours sincerely,

Stanley A. Cohen
Coordinator
Criminal Procedure Project

P.S. I've taken the liberty of attaching my travel claim to this letter.

S.

Enclosure

Canadä

DEC 19 1988

111 Yorkminster Rd.

Willowdale, Ont

M2P-1M5

December 13, 1988

Dear John.

I hope that you are planning a exciting Christmas holiday season. And that things at work are going well. As you can see, I am typing this letter myself, and its not quite as good as if a secretary had done it. But I wanted to get it to you before the holidays. As we agreed, I am sending in an invoice for the final payment for my work with the Commission. I had informed Jan and Laura that I wanted that payment to be made in January, 1989 rather than during this calendar year. Thus the delay in sending it to you and Laura.

Now that the project is over, I hope that there will be occasions when we can meet and keep in touch. It has been a joy working with you, Don, and members of the Commission and staff. Of course your work is not over yet....you may be involved for t e next several months. But hopefully you will visit Toronto from time to time, or I can find an occasion to come to Halifax.

My one disappointment is that we made so little progress in setting up an organization which would develop strength and push for the implementation of at least some of the recommendations of the study. But that is a part of the problem However I still hope to stimulate some development....even from a distance. In this connection would you have Jan or Laura mail the address of Rocky Jones and Ken Crawford to me. As you can see, I don't intend to give up easily !

I certainly hope t at, as soon as the final draft is typed, that a copy will be mailed to me in its final form. And of course, I will hold it confidenti in spite of repeated requests for a copy of the Report....from the media, other organizations and friends.

You probably have noted the big news here of the latest killing of a black youth by the Mississauga police. This has created a strom of controversy. I must admit I find it difficult to understand how the youth were attemting to run down the police, when the facts indicate t at the youngster was shot in the back of the head. There are insistent calls for an inquiry. ...even a Marshall type inquiry.

Finally I have finally agreed to serve with Phil Sternis on a committee on Advocacy and Reform of the local John Howard Society. Sternis can be very persuasive! However he did not attent the first meeting I attended.

Well, that is about all of the news.....or as the New York Times puts it, all the newss thats "Fit to Print". Take good care, and here's hoping that we wi will meet again soon. In the meantime, have a great New Year!

Sincerely

DEC 19 1988

Nova Scotia

Department of Attorney General

Deputy Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

902 424-4223

File Number

09-88-0355-01

December 13, 1988

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

Dear Susan:

I am replying to your letter of December 6, 1988, addressed to Mr. Douglas Tobin, the Deputy Minister of the Civil Service Commission. You provided me with a copy of your letter, and I suggested to the Civil Service Commission that I should reply to your request because I could supply some additional detail.

I enclose information which identifies the individuals employed with this Department who are blacks or natives. The information describes their duties and indicates the location where they work.

As you know, the administration of the Family Court is the responsibility of the Department of Community Services. Family Court judges preside in the Youth Court for offenders under sixteen years of age. There may be blacks and natives in the Family Court who have a role in the administration of criminal justice. If you need that information as well, I would be pleased to assist with that request.

...2

If you need additional information, please let me know.

Sincerely yours,

D. William MacDonald

c.c. Mr. Douglas Tobin

Mr. Darrel Pink

DEC 19 1988

Supreme Court of Canada Cour suprême du Canada
OTTAWA
K1A OJ1

December 12, 1988

Mr. Wylie Spicer
1505 Barrington St., Suite 1026
Halifax, Nova Scotia

Dear Sir:

re: *DONALD MARSHALL, JR.*
v.
HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA, ET AL
File No. 21198

I wish to advise you that amendments to the Supreme Court Act and various other Acts, including the *Criminal Code of Canada*, came into effect on April 25, 1988. Among the various procedural changes included in the new legislation, the amendments provide that henceforth applications for leave to appeal to the Supreme Court of Canada may be determined by the Court on the basis of written submissions, unless the Court orders an oral hearing.

New subsection 45 (1) reads as follows:

> "**45.** (1) Notwithstanding any other Act of Parliament, an application to the Supreme Court for leave to appeal shall be made to the Court in writing and the Court shall
>
> *(a)* grant the application if it is clear from the written material that the application comes within the provisions of section 41 and does not warrant an oral hearing;
>
> *(b)* dismiss the application if it is clear from the written material that the application does not come within the provisions of section 41 and does not warrant an oral hearing; and
>
> *(c)* order an oral hearing to determine the application, in any other case."

As a result of these legislative changes, certain consequential amendments were made to the Rules of the Supreme Court of Canada. I enclose herewith, in both official languages, a copy of the amendments to the Rules, for your information.

.../2

I wish to draw to your particular attention subsection 23(11) which provides that no material can be filed after the Court has ordered an oral hearing, except with the leave of the Registrar.

Therefore, if the Respondent intends to file a memorandum in this case, this must be done within **20 clear days** after the service of the application for leave to appeal.

I wish to inform you that a revised office consolidation of the *Supreme Court Act* and Rules have been published in a special edition of the Court's Bulletin. To obtain a copy of this Bulletin, please send a cheque or money order in the amount of $5.00. All remittances should be made payable to the Receiver General for Canada and forwarded to:

Supreme Court of Canada
Finance Division - Room 32
Attention: Mrs. Carolle Tremblay
Kent & Wellington Streets
Ottawa, Ontario
K1A 0J1

Yours truly,

for Guy Y. Goulard, Q.C.
Registrar

Enclosures (2)

88-255
(SOR/DORS)

SUPREME COURT ACT

Rules of the Supreme Court of Canada, amendment

In accordance with section 103 of the Supreme Court Act, the undersigned judges of the Supreme Court of Canada hereby amend the Rules of the Supreme Court of Canada, made on January 10, 1983*, in accordance with the schedule hereto.

Ottawa, , 1988

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* SOR/83-74, 1983 Canada Gazette Part II, p. 380

APR 25 1988

SCHEDULE

1. The heading preceding Rule 13 and Rule 13 of the Rules of the Supreme Court of Canada are revoked and the following substituted therefor:

"Appointment of Counsel

13. (1) The Court or a Judge may, at any time, assign counsel to act on behalf of a party to any proceedings where, in the opinion of the Court or Judge, it appears desirable in the interests of justice that the party have legal assistance and it appears that the party has not sufficient means to obtain the services of counsel.

(2) The Court or a Judge may, at any time, assign counsel to argue the case of any person who has an interest in a proceeding and who is not represented by counsel."

2. Subsection 14(3) of the said Rules is revoked and the following substituted therefor:

"(3) A counsel or agent may, after serving a motion on the party or counsel he represents and after the filing thereof with the Registrar, move before a Judge or the Registrar for an order that he no longer represent the party or counsel."

3. Subsection 19(3) of the said Rules is revoked and the following substituted therefor:

"(3) An affidavit to be used in a proceeding shall be confined to the statement of facts within the knowledge of the deponent, but statements based on information or belief that state the source of the information or the grounds for the belief may be admitted by the Court, a Judge or the Registrar."

4. (1) Subsection 20(1) of the said Rules is revoked and the following substituted therefor:

"20. (1) Any party desiring to cross-examine a deponent who has made an affidavit filed with the Registrar on behalf of any other party may, by leave of a Judge or the Registrar, serve on the party who filed the affidavit a notice in writing requiring the production of the deponent for cross-examination before a commissioner for taking affidavits designated by the Judge or the Registrar."

(2) Subsections 20(3) and (4) of the said Rules are revoked and the following substituted therefor:

"(3) Where a deponent is not produced for cross-examination, the deponent's affidavit shall be dismissed unless otherwise ordered by the Court, a Judge or the Registrar.

(4) Any cross-examination referred to in subsection (1) shall take place before the proceeding is heard unless otherwise ordered by the Court, a Judge or the Registrar."

5. The heading preceding Rule 23 and Rule 23 of the said Rules are revoked and the following substituted therefor:

"Applications for Leave

23. (1) An application for leave shall consist of the following documentation, assembled in the following manner and order:

(a) there shall be a cover page entitled "IN THE SUPREME COURT OF CANADA", followed by a reference, in parentheses, to the court appealed from and the complete style of cause as required by Rule 21; below the style of cause shall be stated the nature of the application and the section of the statute or the Rule on which the application is based; thereunder shall appear the names and addresses of the respective counsel for the parties on the left and their agents, if any, on the right;

(b) there shall follow a complete table of contents chronologically indicating the dates of listed material, including appendices, and all subsequent pages shall be enumerated consecutively; and

(c) after the table of contents there shall be, in the following order,

(i) a notice of application for leave in Form "B.1",

(ii) an affidavit in support, if required,

(iii) any other material relied on, in chronological order,

(iv) all formal judgments followed by the respective reasons for judgment, commencing with the court of first instance followed consecutively and ending with the court

last appealed from, except where a court delivered judgment without recorded reasons, in which case a note to that effect shall appear in the table of contents in lieu of a page number,

(v) a memorandum of argument signed by the counsel responsible for its preparation or by the party appearing in person, not exceeding 20 pages unless otherwise ordered by a Judge or the Registrar, and divided into five parts as follows:

Part I: a brief statement of facts,

Part II: a concise statement of points in issue,

Part III: a brief statement of argument,

Part IV: the nature of the order requested,

Part V: a table of authorities expected to be referred to by the party, arranged alphabetically and setting out the pages in the argument where they are cited,

(vi) where the party intends to rely on any statutory enactment, copies of the relevant provisions thereof as appendices to the memorandum or five copies of the enactment shall be filed with the Registrar in lieu of those appendices, and

(vii) where a party intends to refer to evidence, a copy of only the excerpts of the evidence, including relevant exhibits, to which the party intends to refer.

(2) Unless otherwise ordered by the Registrar, where documents referred to in subparagraph (1)(c)(iii) are reproduced in the appeal book filed with the appeal court from which the appeal is sought to be taken, that appeal book may be filed with the Registrar in lieu of the documents.

(3) Any documents that are part of an application for leave shall be clear and legible and, unless otherwise ordered by a Judge or the Registrar, shall be prepared in accordance with Rule 33 with such modifications as the circumstances require.

(4) The respondent to an application for leave may file with the Registrar a memorandum that contains a concise statement of the facts and the law on which the respondent relies and may attach any relevant excerpts of the evidence, including exhibits. Where the respondent files a memorandum, the

memorandum, excluding excerpts of the evidence and exhibits, shall not exceed 20 pages unless otherwise ordered by a Judge or the Registrar, shall be signed by counsel responsible for its preparation or by the party appearing in person, and five copies shall be filed.

(5) The colour of the cover of the applicant's memorandum shall be grey and the cover of the respondent's memorandum shall be green.

(6) Unless otherwise ordered by a Judge or the Registrar, the applicant shall file with the Registrar five copies of the application for leave except, where an appeal book is filed in accordance with subsection (2), three copies of the appeal book may be filed.

(7) An application for leave shall be served on the parties in the courts below and filed with the Registrar within the time prescribed in paragraph 64(1)(a) of the Act or as extended pursuant to subsection 65(1) of the Act.

(8) The respondent to an application for leave shall serve on all other parties and file with the Registrar the material referred to in subsection (4) within 20 clear days after the service of the application for leave.

(9) After the respondent's memorandum has been filed, or on the expiration of the time referred to in subsection (8), the application for leave shall be referred by the Registrar to the Court for consideration pursuant to section 45 of the Act.

(10) The Registrar shall set down for argument any application for leave for which an oral hearing has been ordered pursuant to paragraph 45(1)(c) of the Act.

(11) Except with the leave of the Registrar, no material shall be filed after the Court has ordered an oral hearing pursuant to paragraph 45(1)(c) of the Act.

Motions Before the Court

23.1 (1) Subject to subsection (2), all motions before the Court shall be prepared in accordance with subsections 23(1) to (3), with such modifications as the circumstances require.

(2) All motions before the Court shall include a notice of motion in Form "B".

(3) The respondent to a motion before the Court may file with the Registrar a memorandum that contains a concise statement of the facts and the law on which the respondent relies and may

attach any relevant excerpts of the evidence, including exhibits. Where the respondent files a memorandum, the memorandum, excluding excerpts of the evidence and exhibits, shall not exceed 20 pages unless otherwise ordered by a Judge or the Registrar, shall be signed by counsel responsible for its preparation or by the party appearing in person, and 10 copies shall be filed.

(4) Unless otherwise ordered by a Judge or the Registrar, the applicant shall file with the Registrar 10 copies of the motion.

(5) An applicant shall serve the motion on all other parties at least 20 days before the hearing and shall file the motion with the Registrar at least 15 clear days before that hearing.

(6) The respondent to a motion shall serve the material referred to in sub-section (3) on all other parties and file the material with the Registrar at least seven clear days before the hearing."

6. (1) Subsection 24(1) of the said Rules is revoked and the following substituted therefor:

"24. (1) The Chief Justice or, in his absence, the senior puisne Judge present shall set the dates on which applications for leave, where the Court has ordered an oral hearing under paragraph 45(1)(c) of the Act, and motions before the Court shall be heard."

(2) Subsection 24(5) of the said Rules is revoked and the following substituted therefor:

"(5) No person shall intervene on an application for leave or a motion before the Court unless ordered by a Judge prior to the hearing of the application or motion, on such terms and conditions and with such rights and privileges as the Judge may determine."

7. Rule 25 of the said Rules is revoked and the following substituted therefor:

"25. (1) Where an applicant has not perfected an application for leave or a motion within one year after filing the notice of application for leave or the notice of motion, as the case may be, the Registrar may, on his own initiative or on a motion by the respondent, serve notice on the applicant that the application for leave or the motion will be dismissed as abandoned unless it is perfected within 30 days after service of the notice.

(2) Where an applicant does not perfect the application for leave or the motion within 30 days after service of the notice by the Registrar pursuant to subsection (1), or within such other time as a Judge or the Registrar allows, the Registrar shall make an order dismissing the application for leave or the motion as abandoned.

(3) Except in criminal cases, where an application for leave or a motion is withdrawn, the respondent shall thereupon be entitled without an order, to have the respondent's costs taxed as an abondoned application for leave or motion."

8. Subsection 26(1) of the said Rules is revoked and the following substituted therefor:

"26. (1) A notice of appeal shall be served on all other parties and filed with the Registrar within the time prescribed in paragraph 64(1)(b) of the Act or as extended pursuant to subsection 65(1) of the Act or by the Registrar."

9. (1) Subsection 28(1) of the said Rules is revoked and the following substituted therefor:

"28. (1) Unless the Court, a Judge or the Registrar otherwise orders, the respondent may, within 60 days after the filing of a notice of appeal, apply to the Court for an order quashing the appeal."

(2) Subsection 28(4) of the said Rules is revoked.

10. Subsection 29(1) of the said Rules is revoked and the following substituted therefor:

"29. (1) Where a respondent intends at the hearing of an appeal to argue that the judgment of the court below should be varied, the respondent shall, within 30 days after the service of the notice of appeal or within such other time as a Judge or the Registrar allows, give notice of that intention to all parties who may be affected thereby. The omission to give such notice shall in no way limit the power of the Court to treat the whole case as open but may, at the discretion of the Court, be a ground for an adjournment of the hearing."

11. (1) Subsection 33(9) of the said Rules is revoked and the following substituted therefor:

"(9) All pleadings, judgments and other documents shall be printed in full; the style of cause shall not be abbreviated except where two or more actions are the basis of the appeal."

(2) Rule 33 of the said Rules is further amended by adding thereto the following subsection:

"(14) The Registrar may excuse a party from complying with any of the provisions of this Rule."

12. Subsection 34(2) of the said Rules is revoked and the following substituted therefor:

"(2) A case shall be filed with the Registrar on or before the ninth Tuesday preceding the first day of the session at which the appeal is to be heard."

13. Subsection 35(1) of the said Rules is revoked and the following substituted therefor:

"35. (1) The Court, a Judge or the Registrar may, on a motion by any party, dispense with the printing or copying of any evidence, documents or plans forming part of a case."

14. Rule 37 of the said Rules is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

"(2.1) Unless otherwise ordered by a Judge or the Registrar, Parts I to IV inclusive of a factum shall not exceed 40 pages."

15. Rule 38 of the said Rules is revoked and the following substituted therefor:

"38. (1) On or before the seventh Tuesday preceding the first day of the session at which an appeal is to be heard, an appellant shall serve three copies of the appellant's factum on the other party or parties and one copy thereof on each intervener and shall file 21 copies of the factum with the Registrar.

(2) On or before the third Tuesday preceding the first day of the session at which the appeal is to be heard, a respondent shall serve three copies of the respondent's factum on the other party or parties and one copy thereof on each intervener and shall file 21 copies of the factum with the Registrar.

(3) On or before the second Tuesday preceding the first day of the session at which the appeal is to be heard, an intervener under subsection 32(4) shall serve one copy of the intervener's factum on the other party or parties and each intervener and shall file 21 copies of the factum with the Registrar.

(4) Notwithstanding subsections (1) to (3), in the case of a reference, 31 copies of each factum shall be filed with the Registrar.

16. Rule 39 of the said Rules is amended by adding thereto the following subsection:

"(5) The Registrar may excuse a party from complying with any of the provisions of this Rule."

17. Rule 42 of the said Rules is amended by adding thereto the following subsection:

"(3) Where an intervener under subsection 32(4) does not file a factum within the time required by subsection 38(3), the appellant or the respondent may move before a Judge for directions regarding production of the factum."

18. Subsection 46(1) of the said Rules is revoked and the following substituted therefor:

"46. (1) Unless otherwise ordered by the Chief Justice or the senior puisne Judge present or, if no Judge is present, by the Registrar, appeals shall be heard in the order in which they have been inscribed for hearing, and if any party neglects to appear at the proper day and time, the Court may hear the party or parties present and may dispose of the appeal without hearing the party so neglecting to appear, or may postpone the hearing on such terms, including the payment of costs, as the Court considers necessary."

(2) Subsection 46(5) of the said Rules is revoked and the following substituted therefor:

"(5) When judgment is reserved in any matter, agents for the parties and the interveners, or counsel representing the parties and the interveners, where no agent has been appointed, will be notified by the Registrar as to the date the judgment will be delivered, and counsel or their agents will be expected to attend when judgment is to be delivered in open court pursuant to paragraph 26(1)(a) of the Act.

(6) A notice of deposit of judgment referred to in subsection 27(4) of the Act shall be in Form "G.1"."

19. Subsection 47(1) of the said Rules is revoked and the following substituted therefor:

"47. (1) Leave to appeal *in forma pauperis* may be granted by making a motion before the Court, a Judge or the Registrar."

20. Subsection 50(1) of the said Rules is revoked and the following substituted therefor:

"50. (1) A party may, at any time before the expiration of 30 clear days after the delivery of a judgment, move before a Judge, or before the Registrar where all the parties affected have consented to the motion, to vary the judgment."

21. All that portion of the "SCHEDULE TO THE SUPREME COURT RULES" preceding Form "A" thereof is revoked.

22. Form "B"[1] of the said Rules is revoked and the following substituted therefor:

[1] SOR/83-335, 1983 *Canada Gazette* Part II, p. 1554

"FORM "B"
(Rules 22 and 23.1)

FORM TO BE USED IN PREPARING
MOTIONS
PURSUANT TO THE SUPREME COURT ACT
AND THE RULES OF THE SUPREME COURT OF
CANADA

IN THE SUPREME COURT OF CANADA

(Appeal from the Court of Appeal for the Province of
____________________)

(herein insert the full style of cause in the manner prescribed in Rule 21 of the Rules of the Supreme Court of Canada).

NOTICE OF MOTION

TAKE NOTICE that (the appellant, applicant or respondent or as the case may be) will apply to (this Court or the Rota Judge of this Court or the Registrar of this Court, as the case may be) at the hour of _____ o'clock on the _____ day of _____________, 19____, pursuant to (here cite the section of the statute or the Rule pursuant to which the motion is made) for an order (herein insert the nature of the order or relief asked) or such further or other order that the said (Court, Judge or Registrar) may deem appropriate.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of such motion (here identify by description and date all documents to which it is intended to refer) and such further or other material as counsel may advise and may be permitted.

AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds: (here set out concisely and number each ground on which the motion is made).

Dated at (name of City, etc., and Province) this _____ day of _____________ 19____

(FORM "B" Continued)

(Here type or write the name of counsel or firm authorizing the motion, together with their postal address and the name of the party represented.)

TO:

THE REGISTRAR OF THIS COURT

AND TO:

(The name and address of each person or firm to be served with this notice and the capacity in which the person or firm was served).

NOTICE TO THE RESPONDENT TO A MOTION BEFORE THE COURT: A respondent may serve and file a reply to this motion at least 7 clear days before the hearing date.

FORM "B.1"
(Rule 23)

FORM TO BE USED IN PREPARING
APPLICATIONS FOR LEAVE
PURSUANT TO THE SUPREME COURT ACT
AND THE RULES OF THE SUPREME COURT OF
CANADA

IN THE SUPREME COURT OF CANADA

(Appeal from the Court of Appeal for the Province of __________)

(herein insert the full style of cause in the manner prescribed in Rule 21 of the Rules of the Supreme Court of Canada).

NOTICE OF APPLICATION FOR LEAVE

TAKE NOTICE that the applicant will apply for leave to this Court pursuant to (here cite the section of the statute or the Rule pursuant to which the application for leave is made) for an order (herein insert the nature of the order or relief asked) or such further or other order that the said Court may deem appropriate.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of such application for leave (here identify by description and date all documents to which it is intended to refer) and such further or other material as counsel may advise and may be permitted.

AND FURTHER TAKE NOTICE that the said application for leave shall be made on the following grounds: (here set out concisely and number each ground on which the application is made).

Dated at (name of City, etc., and Province) this _____ day of ______________, 19____

(FORM "B.1" continued)

(Here type or write the name of counsel or firm authorizing the application for leave, together with their postal address and the name of the party represented.)

TO:

THE REGISTRAR OF THIS COURT:

AND TO:

(The name and address of each person or firm to be served with this notice and the capacity in which the person or firm was served).

NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in reply to this application for leave within 20 clear days after service of the application. If no reply is filed in that time, the Registrar will submit this application for leave to the Court for consideration pursuant to section 45 of the Supreme Court Act."

23. The said Rules are further amended by adding thereto, immediately after Form "G" thereof, the following Form:

"FORM "G.1"
(Rule 46)

SUPREME COURT OF CANADA

NOTICE OF DEPOSIT OF JUDGMENT

A.B., appellant (or applicant) v. C.D., respondent

TAKE NOTICE that on the day of , 19 , the Court delivered judgment in this case by depositing judgment with the Registrar pursuant to paragraph 26(1)(b) of the Supreme Court Act.

____

Registrar

Dated this day of , 19 "

88-255
(DORS/SOR)

LOI SUR LA COUR SUPRÊME

Règles de la Cour suprême du Canada -- Modification

En vertu de l'article 103 de la Loi sur la Cour suprême, les juges soussignés de la Cour suprême du Canada modifient, conformément à l'annexe ci-après, les Règles de la Cour suprême du Canada, édictées le 10 janvier 1983*.

Ottawa, le 1988

*DORS/83-74, Gazette du Canada Partie II, 1983, p. 380

APR 25 1988

ANNEXE

1. L'article 13 des Règles de la Cour suprême du Canada et l'intertitre qui le précède sont abrogés et remplacés par ce qui suit :

«Nomination d'un procureur

13. (1) La Cour ou un juge peut, en tout temps, désigner un procureur pour représenter une partie à une procédure lorsque, de l'avis de la Cour ou du juge, il paraît souhaitable dans l'intérêt de la justice que la partie bénéficie de l'aide d'un procureur et il appert que la partie n'a pas les moyens de retenir les services d'un procureur.

(2) La Cour ou un juge peut, en tout temps, désigner un procureur pour plaider en faveur d'une personne qui a un intérêt dans une procédure et qui n'est pas représentée par procureur.»

2. Le paragraphe 14(3) des mêmes règles est abrogé et remplacé par ce qui suit :

«(3) Un procureur ou un correspondant peut, après signification d'une requête à la partie ou au procureur qu'il représente et production de la requête auprès du registraire, s'adresser à un juge ou au registraire pour obtenir une ordonnance l'autorisant à ne plus représenter cette partie ou ce procureur.»

3. Le paragraphe 19(3) des mêmes règles est abrogé et remplacé par ce qui suit :

«(3) L'affidavit présenté dans le cadre d'une procédure doit se limiter à l'énoncé des faits dont le déposant a connaissance. Toutefois, la Cour, un juge ou le registraire peut accepter des déclarations fondées sur des renseignements ou une opinion si le déposant y indique la source de ses renseignements ou les motifs à l'appui de son opinion.»

4. (1) Le paragraphe 20(1) des mêmes règles est abrogé et remplacé par ce qui suit :

«20. (1) Lorsqu'une partie veut contre-interroger un déposant qui a signé un affidavit produit auprès du registraire pour le compte d'une autre partie, elle peut, avec l'autorisation d'un juge ou du registraire, signifier à la partie qui a produit cet affidavit un avis écrit requérant la comparution du déposant pour le contre-interroger devant le commissaire à l'assermentation que désigne le juge ou le registraire.»

(2) Les paragraphes 20(3) et (4) des mêmes règles sont abrogés et remplacés par ce qui suit :

«(3) Si le déposant ne se soumet pas au contre-interrogatoire, son affidavit doit être rejeté, sauf ordonnance contraire de la Cour, d'un juge ou du registraire.

(4) Le contre-interrogatoire visé au paragraphe (1) doit avoir lieu avant l'audience relative à la procédure, sauf ordonnance contraire de la Cour, d'un juge ou du registraire.»

5. L'article 23 des mêmes règles et l'intertitre qui le précède sont abrogés et remplacés par ce qui suit :

«Requêtes en autorisation

23. (1) La requête en autorisation est constituée des documents suivants, assemblés comme suit :

a) une couverture portant l'en-tête «COUR SUPRÊME DU CANADA» suivi de l'indication, entre parenthèses, de la cour dont le jugement est porté en appel et de l'intitulé complet conforme à l'article 21; sous l'intitulé, la nature de la requête en autorisation et les articles de la loi ou des présentes règles sur lesquels elle se fonde; enfin au bas, à gauche, les nom et adresse des procureurs respectifs des parties et, à droite, les nom et adresse de leurs correspondants respectifs, s'il y a lieu;

b) une table des matières complète dans laquelle est indiquée chronologiquement la date de chaque document, y compris les annexes; toutes les pages suivantes sont numérotées consécutivement;

c) à la suite de la table des matières, les documents suivants placés dans l'ordre indiqué :

(i) l'avis de requête en autorisation, rédigé selon la formule B.1,

(ii) l'affidavit à l'appui, s'il y a lieu,

(iii) les autres documents à l'appui, présentés dans l'ordre chronologique,

(iv) les dispositifs des jugements, chacun suivi des motifs respectifs, en commençant par le tribunal de première instance pour finir, dans l'ordre, par le tribunal dont le jugement est porté en appel; toutefois, si un tribunal a rendu un jugement sans motifs écrits, il faut le mentionner dans la table des matières à la place du numéro de page,

(v) un mémoire qui est signé par le procureur qui l'a rédigé ou par la partie qui comparaît en personne, qui ne compte pas plus de 20 pages sauf ordonnance contraire d'un juge ou du registraire, et qui est divisé en cinq parties, à savoir :

Partie I : bref exposé des faits

Partie II : énoncé concis des questions en litige

Partie III : bref exposé des arguments

Partie IV : nature de l'ordonnance demandée

Partie V : table des arrêts et ouvrages, classés en ordre alphabétique, sur lesquels la partie entend se fonder et les pages du mémoire où ils sont cités,

(vi) les extraits pertinents des textes législatifs sur lesquels la partie entend s'appuyer; ces extraits sont reproduits en annexe au mémoire ou sont produits en cinq exemplaires auprès du registraire,

(vii) une copie des seuls éléments de preuve, y compris les pièces, auxquels la partie entend faire référence.

(2) Sauf ordonnance contraire du registraire, lorsque les documents visés au sous-alinéa (1)c)(iii) figurent au dossier de la cour dont le jugement est porté en appel, ce dossier peut être produit auprès du registraire au lieu des documents.

(3) Les documents faisant partie de la requête en autorisation doivent être clairs et lisibles et, sauf ordonnance contraire d'un juge ou du registraire, être conformes à l'article 33, compte tenu des adaptations de circonstance.

(4) .L'intimé peut produire auprès du registraire un mémoire dans lequel il expose avec concision les faits et les arguments de droit sur lesquels il s'appuie et y annexer les éléments de preuve pertinents, y compris les pièces; dans ce cas, le mémoire, à l'exclusion des éléments de preuve et des pièces, ne peut compter plus de 20 pages sauf ordonnance contraire d'un juge ou du registraire, doit être signé par le procureur qui l'a rédigé ou par la partie qui comparaît en personnne et doit être produit en cinq exemplaires.

(5) La couverture du mémoire du requérant doit être de couleur grise et celle du mémoire de l'intimé, de couleur verte.

(6) Sauf ordonnance contraire d'un juge ou du registraire, le requérant doit produire cinq exemplaires de la requête en autorisation auprès du registraire; toutefois, lorsqu'un dossier est produit en vertu du paragraphe (2), trois exemplaires de ce dossier suffisent.

(7) La requête en autorisation doit être signifiée aux personnes qui étaient parties au litige devant le tribunal d'instance inférieure et produite auprès du registraire dans le délai prévu à l'alinéa 64(1)a) de la Loi ou prorogé conformément au paragraphe 65(1) de la Loi.

(8) L'intimé doit signifier aux autres parties et produire auprès du registraire les documents visés au paragraphe (4) au plus tard 20 jours francs après la signification de la requête en autorisation.

(9) Après la production du mémoire de l'intimé ou à l'expiration du délai prévu au paragraphe (8), le registraire doit soumettre la requête en autorisation à la Cour pour qu'elle prenne les mesures voulues conformément à l'article 45 de la Loi.

(10) Le registraire doit inscrire au rôle toute requête en autorisation à l'égard de laquelle la Cour a ordonné la tenue d'une audience, conformément à l'alinéa 45(1)c) de la Loi.

(11) Sauf avec l'autorisation du registraire, aucun document ne peut être produit après que la Cour a ordonné la tenue d'une audience, conformément à l'alinéa 45(1)c) de la Loi.

<u>Requêtes à la Cour</u>

23.1 (1) Sous réserve du paragraphe (2), les requêtes à la Cour doivent être établies conformément aux paragraphes 23(1) à (3), compte tenu des adaptations de circonstance.

(2) Les requêtes à la Cour doivent comprendre un avis de requête rédigé selon la formule B.

(3) L'intimé peut produire auprès du registraire un mémoire dans lequel il expose avec concision les faits et les arguments de droit sur lesquels il s'appuie et y annexer les éléments de preuve pertinents, y compris les pièces; dans ce cas, le mémoire, à l'exclusion des éléments de preuve et des pièces, ne peut compter plus de 20 pages sauf ordonnance contraire d'un juge ou du registraire, doit être signé par le procureur qui l'a rédigé ou par la partie qui comparaît en personne et doit être produit en 10 exemplaires.

(4) Sauf ordonnance contraire d'un juge ou du registraire, le requérant doit produire auprès du registraire 10 exemplaires de la requête.

(5) Le requérant doit signifier la requête aux autres parties au moins 20 jours francs avant l'audience relative à la requête et la produire auprès du registraire au moins 15 jours francs avant l'audience.

(6) L'intimé doit signifier aux autres parties et produire auprès du registraire les documents visés au paragraphe (3) au moins sept jours francs avant l'audience.»

6. (1) Le paragraphe 24(1) des même règles est abrogé et remplacé par ce qui suit :

«24. (1) Le Juge en chef ou, en son absence, le doyen des juges puînés présents, fixe la date d'audience des requêtes en autorisation à l'égard desquelles la Cour a ordonné la tenue d'une audience conformément à l'alinéa 45(1)c) de la Loi et des requêtes à la Cour.»

(2) Le paragraphe 24(5) des mêmes règles est abrogé et remplacé par ce qui suit :

«(5) Nul ne peut intervenir dans une requête en autorisation ou une requête à la Cour, à moins d'y être autorisé par une ordonnance rendue par un juge avant l'audience relative à la requête et de respecter les conditions et d'agir dans les limites des droits et privilèges établis par celui-ci.»

7. L'article 25 des mêmes règles est abrogé et remplacé par ce qui suit :

25. (1) Si le requérant ne met pas en état d'être entendue une requête en autorisation ou une autre requête dans l'année qui suit la production de l'avis de requête en autorisation ou de l'avis de requête, le registraire peut, de son propre chef ou sur requête de l'intimé, signifier au requérant un avis indiquant que la requête sera rejetée en tant que requête abandonnée si elle n'est pas mise en état d'être entendue dans les 30 jours suivant la signification de l'avis.

(2) Si le requérant ne met pas la requête en état d'être entendue dans les 30 jours suivant la signification de l'avis par le registraire conformément au paragraphe (1) ou dans tout autre délai accordé par un juge ou le registraire, ce dernier doit rendre une ordonnance rejetant la requête en tant que requête abandonnée.

(3) Sauf en matière criminelle, lorsqu'une requête en autorisation ou une autre requête est retirée, l'intimé a droit, sans ordonnance, à l'adjudication de ses dépens au titre d'une requête abandonnée.»

8. Le paragraphe 26(1) des mêmes règles est abrogé et remplacé par ce qui suit :

«26. (1) L'avis de pourvoi doit être signifié à toutes les parties et produit auprès du registraire dans le délai prévu à l'alinéa 64(1)b) de la Loi, prorogé conformément au paragraphe 65(1) de la Loi ou prorogé par le registraire.»

9. (1) Le paragraphe 28(1) des mêmes règles est abrogé et remplacé par ce qui suit :

«28. (1) Sauf ordonnance contraire de la Cour, d'un juge ou du registraire, l'intimé peut, dans les 60 jours suivant la production de l'avis de pourvoi, demander à la Cour d'annuler par ordonnance le pourvoi.»

(2) Le paragraphe 28(4) des mêmes règles est abrogé.

10. Le paragraphe 29(1) des mêmes règles est abrogé et remplacé par ce qui suit :

«29. (1) Lorsque l'intimé a l'intention de demander, à l'audience relative à un pourvoi, que le jugement du tribunal d'instance inférieure soit modifié, il doit, dans les 30 jours suivant la signification de l'avis de pourvoi ou dans tout autre délai accordé par un juge ou le registraire, en aviser toutes les parties intéressées. Le défaut de donner cet avis ne restreint aucunement le pouvoir de la Cour de considérer l'ensemble de l'affaire, mais peut, à la discrétion de la Cour, justifier l'ajournement de l'audience.»

11. (1) Le paragraphe 33(9) des mêmes règles est abrogé et remplacé par ce qui suit :

«(9) Les actes de procédure, les jugements et autres documents doivent être imprimés intégralement; l'intitulé de l'affaire ne peut être abrégé que si deux actions ou plus sont à l'origine du pourvoi.»

(2) L'article 33 des mêmes règles est modifié par adjonction de ce qui suit :

«(14) Le registraire peut exempter une partie de l'obligation de suivre les dispositions du présent article.»

12. Le paragraphe 34(2) des mêmes règles est abrogé et remplacé par ce qui suit :

«(2) Le dossier doit être produit auprès du registraire au plus tard le neuvième mardi qui précède le premier jour de la session au cours de laquelle le pourvoi est censé être entendu.»

13. Le paragraphe 35(1) des mêmes règles est abrogé et remplacé par ce qui suit :

«35. (1) Sur requête d'une partie, la Cour, un juge ou le registraire peut dispenser celle-ci de l'impression ou de la reproduction de tout élément de preuve, document ou plan faisant partie du dossier.»

14. L'article 37 des mêmes règles est modifié par insertion, après le paragraphe (2), de ce qui suit :

«(2.1) Sauf ordonnance contraire d'un juge ou du registraire, les parties I à IV du mémoire ne peuvent compter plus de 40 pages.»

15. L'article 38 des mêmes règles est abrogé et remplacé par ce qui suit :

«38. (1) Au plus tard le septième mardi précédant le premier jour de la session au cours de laquelle le pourvoi est censé être entendu, l'appelant doit signifier trois exemplaires de son mémoire aux autres parties et un exemplaire à chaque intervenant et en produire 21 exemplaires auprès du registraire.

(2) Au plus tard le troisième mardi précédant le premier jour de la session au cours de laquelle le pourvoi est censé être entendu, l'intimé doit signifier trois exemplaires de son mémoire aux autres parties et un exemplaire à chaque intervenant et en produire 21 exemplaires auprès du registraire.

(3) Au plus tard le deuxième mardi précédant le premier jour de la session au cours de laquelle le pourvoi est censé être entendu, l'intervenant visé au paragraphe 32(4) doit signifier un exemplaire de son mémoire aux autres parties et à chaque intervenant et en produire 21 exemplaires auprès du registraire.

(4) Nonobstant les paragraphes (1) à (3), dans le cas d'un renvoi, 31 exemplaires de chaque mémoire doivent être produits auprès du registraire.»

16. L'article 39 des mêmes règles est modifié par adjonction de ce qui suit :

«(5) Le registraire peut exempter une partie de l'obligation de suivre les dispositions du présent article.»

17. L'article 42 des mêmes règles est modifié par adjonction de ce qui suit :

«(3) Si l'intervenant visé au paragraphe 32(4) ne produit pas son mémoire dans le délai prévu au paragraphe 38(3), l'appelant ou l'intimé peut présenter une requête à un juge pour obtenir des directives relativement à la production du mémoire.»

18. (1) Le paragraphe 46(1) des mêmes règles est abrogé et remplacé par ce qui suit :

«46. (1) Sauf ordonnance contraire du Juge en chef, du doyen des juges puînés présents ou, en leur absence, du registraire, les pourvois sont entendus dans l'ordre de leur inscription au rôle. Si une partie ne comparaît pas au jour et à l'heure fixés, la Cour peut n'entendre que les parties présentes et statuer sans entendre la partie absente, ou elle peut ajourner l'audience aux conditions qu'elle juge nécessaires, notamment quant aux dépens.»

(2) Le paragraphe 46(5) des mêmes règles est abrogé et remplacé par ce qui suit :

«(5) Lorsqu'une question a été mise en délibéré, le registraire doit aviser de la date du prononcé du jugement les correspondants des parties et des intervenants, ou les procureurs des parties et des intervenants qui ne possèdent pas de correspondant; la Cour compte sur la présence des correspondants ou des procureurs lorsque le jugement est rendu en audience publique conformément à l'alinéa 26(1)a) de la Loi.

(6) L'avis de dépôt du jugement visé au paragraphe 27(4) de la Loi est établi selon la formule G.1.»

19. Le paragraphe 47(1) des mêmes règles est abrogé et remplacé par ce qui suit :

«47. (1) L'autorisation de se pourvoir <u>in forma pauperis</u> peut être accordée sur présentation d'une requête à la Cour, à un juge ou au registraire.»

20. Le paragraphe 50(1) des mêmes règles est abrogé et remplacé par ce qui suit :

«50. (1) Une partie peut, dans un délai de 30 jours francs suivant le prononcé du jugement, demander par requête à un juge, ou au registraire si toutes les parties consentent à la requête, de rectifier le dispositif du jugement.»

21. Le passage de l'«ANNEXE AUX RÈGLES DE LA COUR SUPRÊME» des mêmes règles qui précède la «FORMULE A» est abrogé.

22. La formule B[1] des mêmes règles est abrogée et remplacée par ce qui suit :

[1]DORS/83-335, Gazette du Canada Partie II, 1983, p. 1554

«FORMULE B
(articles 22 et 23.1)

FORMULE À UTILISER POUR LES
REQUÊTES PRÉSENTÉES
EN VERTU DE LA LOI
SUR LA COUR SUPRÊME ET DES RÈGLES DE
LA COUR SUPRÊME DU CANADA

COUR SUPRÊME DU CANADA
(En appel d'un jugement de la Cour d'appel de la
province de ....)

(Inscrire ici l'intitulé complet de la cause de la façon prévue à l'article 21 des Règles de la Cour suprême du Canada.)

AVIS DE REQUÊTE

VOUS ÊTES AVISÉ par les présentes que (l'appelant, le requérant, l'intimé ou autre selon le cas) s'adressera à (la Cour, un juge de service de la Cour ou au registraire de la Cour), à ... heures, le (quantième) jour de (mois) 19..., en vertu de (indiquer l'article de la loi ou des présentes règles sur lequel se fonde la requête) pour obtenir une ordonnance (indiquer la nature de l'ordonnance ou du redressement demandé) ou toute autre ordonnance que (la Cour, le juge ou le registraire) peut juger appropriée.

VOUS ÊTES DE PLUS AVISÉ que seront invoqués à l'appui de cette requête (donner ici la description et la date de tous les documents qui seront invoqués) et tout autre document autorisé que le procureur jugera utile.

VOUS ÊTES DE PLUS AVISÉ que la requête se fonde sur les motifs suivants : (Indiquer ici de façon concise, par paragraphe numéroté, chacun des motifs sur lesquels se fonde la requête.)

FAIT à (nom de la ville et de la province), ce .... jour de .... 19...

(Inscrire ici à la main ou à la machine le nom du procureur ou de l'étude qui présente la requête et son adresse postale ainsi que le nom de la partie qu'il représente.)

AU :

REGISTRAIRE DE LA COUR

ET À :

(Inscrire les nom et adresse de chacune des personnes ou des études à qui l'avis doit être signifié et à quel titre il leur est signifié.)

AVIS À L'INTIMÉ DANS UNE REQUÊTE À LA COUR :
L'intimé peut signifier et produire une réponse à cette requête au plus tard sept jours francs avant la date de l'audience.

FORMULE B.1
(article 23)

FORMULE À UTILISER POUR LES
REQUÊTES EN AUTORISATION PRÉSENTÉES
EN VERTU DE LA LOI
SUR LA COUR SUPRÊME ET DES RÈGLES DE
LA COUR SUPRÊME DU CANADA

COUR SUPRÊME DU CANADA
(En appel d'un jugement de la Cour d'appel de la
province de ....)

(Inscrire ici l'intitulé complet de la cause de la façon prévue à l'article 21 des Règles de la Cour suprême du Canada.)

AVIS DE REQUÊTE EN AUTORISATION

VOUS ÊTES AVISÉ par les présentes que le requérant s'adressera à la Cour en vertu de (indiquer l'article de la loi ou des présentes règles sur lequel se fonde la requête en autorisation) pour obtenir une ordonnance (indiquer la nature de l'ordonnance ou du redressement demandé) ou toute autre ordonnance que la Cour peut juger appropriée.

VOUS ÊTES DE PLUS AVISÉ que seront invoqués à l'appui de cette requête en autorisation (donner ici la description et la date de tous les documents que le requérant entend invoquer) et tout autre document autorisé que le procureur jugera utile.

VOUS ÊTES DE PLUS AVISÉ que la requête en autorisation se fonde sur les motifs suivants : (Indiquer ici de façon concise, par paragraphe numéroté, chacun des motifs sur lesquels se fonde la requête.)

FAIT à (nom de la ville et de la province), ce .... jour de .... 19...

(Inscrire ici à la main ou à la machine le nom du procureur ou de l'étude qui présente la requête en autorisation et son adresse postale ainsi que le nom de la partie qu'il représente.)

AU :

REGISTRAIRE DE LA COUR

ET À :

(Inscrire les nom et adresse de chacune des personnes ou des études à qui l'avis doit être signifié et à quel titre il leur est signifié.)

AVIS À L'INTIMÉ : L'intimé peut signifier et produire un mémoire en réponse à cette requête en autorisation au plus tard 20 jours francs après la signification de la requête. Si aucune réponse n'est produite dans ce délai, le registraire soumettra la requête en autorisation à la Cour pour qu'elle prenne les mesures voulues conformément à l'article 45 de la Loi sur la Cour suprême.»

23. Les mêmes règles sont modifiées par insertion, après la formule G, de ce qui suit :

«FORMULE G.1
(article 46)

COUR SUPRÊME DU CANADA
AVIS DE DÉPÔT DU JUGEMENT

A.B., appelant (ou requérant) c. C.D., intimé.

Vous êtes avisé que le ...... jour de .... 19 .., la Cour a rendu jugement dans cette affaire en déposant le jugement auprès du registraire en application de l'alinéa 26(1)b) de la Loi sur la Cour suprême.

____
Registraire

Fait ce .... jour de .... 19.. »

DEC 15 1988

Room 141
Diefenbaker Centre
(306) 966-6189

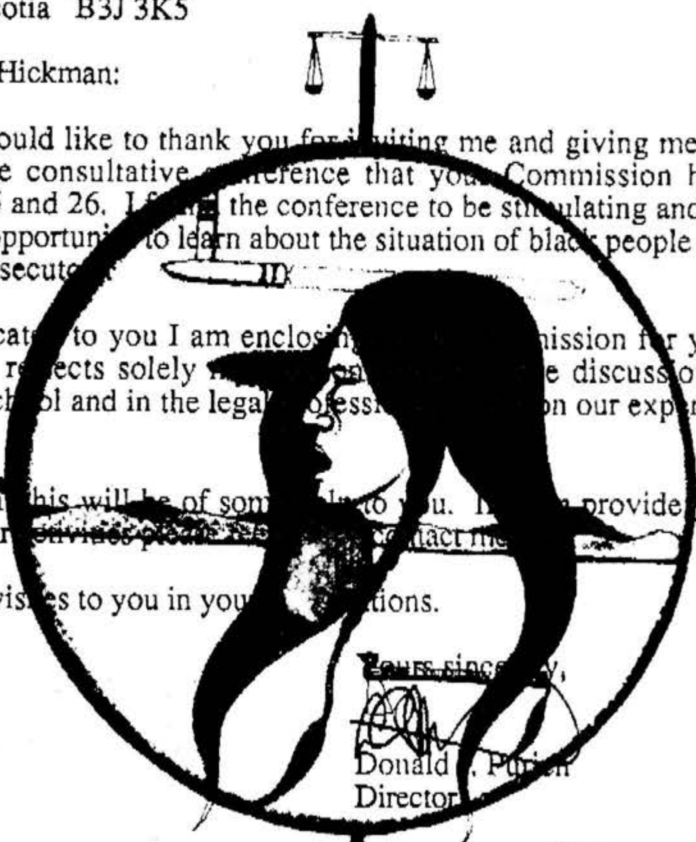
UNIVERSITY OF SASKATCHEWAN
NATIVE LAW CENTRE
Saskatoon, Canada
S7N 0W0

Our file # ______________
Your file # ______________

December 14, 1988

Chief Justice T. Alexander Hickman
Chairman, Royal Commission on the
Donald Marshall, Jr. Prosecution
Maritime Centre
Ste. 1026 - 1505 Barrington Street
Halifax, Nova Scotia B3J 3K5

Dear Mr. Justice Hickman:



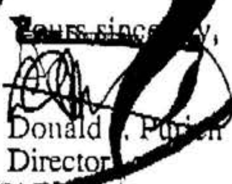
First, I would like to thank you for inviting me and giving me the opportunity to participate in the consultative conference that your Commission held in Halifax on November 24, 25 and 26. I found the conference to be stimulating and informative and it gave me a good opportunity to learn about the situation of black people in Nova Scotia and on the role of prosecut[illegible]

As I indicat[illegible] to you I am enclos[illegible] [illegible]ission for your consideration. This submission re[illegible]ects solely [illegible] [illegible]e discussion about aboriginal students in law sch[illegible]ol and in the lega[illegible] [illegible]essi[illegible] [illegible]n our experience at the Native Law Centre.

I hope tha[illegible] this will be of som[illegible] [illegible] to you. I[illegible] [illegible] provide you with any other information on our [illegible] [illegible] contact me.

My best wis[illegible]es to you in you[illegible] [illegible]tions.

Yours sinc[illegible]y,



Donald [illegible]. Pur[illegible]
Director

DJP/mdb
Encl.

ABORIGINAL PEOPLE AND THE LEGAL SYSTEM

by

Donald J. Purich

Director

University of Saskatchewan Native Law Centre

Statistics presented at the Consultative Conference held on November 24-26 demonstrated that aboriginal people are disproportionately represented in the arrest rate, the conviction rate and in the prison population. It can equally be said that Canada's aboriginal people play an insignificant role in the delivery and administration of justice.

The answer to this inequity, according to most aboriginal leaders and many legal scholars, is the development within native communities of a native controlled and designed justice system. The development of such a justice system is intricately tied to the development of aboriginal self-government and would represent one facet of such a government. Such governments, and the justice systems which would follow, are long term goals which realistically will take a decade or two to achieve.

Self-government is dependent upon political negotiations between the federal, provincial and aboriginal communities and upon the aboriginal community developing the machinery, including a justice system, to manage its own affairs. In order to build a legal system, aboriginal communities will first have to develop the expertise and the legal skills in order to work out the intricacies of how such a system might co-exist along side the Canadian system. Issues to be resolved include which federal and provincial laws should apply in such aboriginal communities, jurisdiction over non-aboriginals and possible extra-territorial jurisdiction.

Self-government models should be developed by aboriginal communities themselves to avoid the previous unsatisfactory history between the communities, wherein non-aboriginal communities imposed structures on aboriginal communities.

However, there is a role to be played by non-aboriginal elements of the justice system. Non-aboriginal institutions can play an important role in making legal education and training available to aboriginal people. The existence of a core of trained aboriginal legal professionals will have two results. It will give aboriginal communities the kind of expertise they need to develop their own justice systems. Second, it will help dispel the myth that there is no place in the delivery and administration of the current justice system for aboriginal people. This in turn will help restore aboriginal confidence in

the Canadian justice system.

In all areas of Canada, aboriginal people are under-represented in all aspects of the legal system. According to Statistics Canada, in 1981 there were 34,200 practicing lawyers and 44,405 law graduates in Canada. Statistics from the 1986 Census on professional groupings will be published in the winter or spring of 1989. However, in view of constant law school enrollments and a low attrition rate within the profession it can be assumed that the number of lawyers and law graduates has increased since 1981. Today, based on native Law Centre records, it is estimated that the number of aboriginal law graduates in Canada is between 130 and 140. (105 of these gained entry into law school via the Program of Legal Studies for Native People offered annually by the University of Saskatchewan's Native Law Centre.) While there is some dispute as to the number of aboriginal people in Canada, a generally accepted estimate is 1,000,000 Indian, Inuit and Metis people in Canada. Therefore, if Canada's aboriginal people were to be proportionately represented in the legal profession there should be approximately 1,400 aboriginal lawyers in Canada. As best can be determined there are no aboriginal lawyers in Nova Scotia.

The under-representation is also evident in the law school body. There are approximately 9,500 law students in Canada. Approximately 100 are of aboriginal ancestry (77 having gained entry into law school through the Centre's program). If the aboriginal population were to be proportionately represented in the law school body there should be at minimum 380 aboriginal students.

The under-representation is even greater in other aspects of the legal system. There are believed to be only four judges of aboriginal ancestry in Canada; all at the provincial court level. There are no aboriginal law professors in Canada, though Dalhousie Law School has hired the first aboriginal person, who will commence employment in the fall of 1989.

To respond to this under-representation the University of Saskatchewan started the Program of Legal Studies for Native People in 1973. At that time, there were believed to be four lawyers of aboriginal ancestry and six aboriginal law students. The eight week annual program accepts aboriginal students who do not qualify for admission to law school on the basis of their Grade Point Average and Law School Admission Test Score. Admissions decisions to the Program are made in conjunction with the law school which an applicant is interested in attending. Law schools consider such candidates in their discretionary admission category; students deemed to show some potential are granted a conditional admission, conditional upon attending and successfully completing the Saskatchewan program.

The program has two objectives; to assess the potential of students and to help them develop the study skills which will allow them to succeed in law school.

426 aboriginal students have attended the program since its inception. 277 have successfully completed the program and were

recommended to first year law. Of that number, 261 have enrolled in first year law at a Canadian law school. 105 have now graduated and 77 are currently in law school.

11 of the 426 students have been from Nova Scotia. Of those students 4 were unsuccessful and 1 withdrew. Of the six who succeeded in the program and went to law school 3 failed, 1 withdrew and two are currently in law school. Three students who have successfully completed the Saskatchewan program are currently enrolled at Dalhousie Law School, however, only 1 of those 3 is from Nova Scotia. To date, as far as can be determined only 1 aboriginal student has ever graduated from the Dalhousie Law Faculty. The Centre and Dalhousie have been canvassing ways in which more Nova Scotia aboriginal students can be attracted to the study of law.

The problem is not unique to the Dalhousie Law Faculty. While some law schools (the University of British Columbia, the University of Saskatchewan, Osgoode Hall and Queen's) have had some success in attracting a greater number of aboriginal students, no law school has yet achieved proportionate representation in its student body or in the number of its aboriginal graduates. All law schools must actively recruit in aboriginal communities and must show themselves to be concerned about aboriginal issues by offering courses and carrying out research which touches upon aboriginal concerns. In their admissions policies, law schools must recognize that aboriginal students are often at a competitive disadvantage when competing for law school positions. That disadvantage stems from many factors including; poor quality education in some aboriginal communities, lack of encouragement for educational pursuits, lack of role models and the fact that the Law School Admission Test does not always accurately predict the abilities of minority students. (The authors of the test stated in the 1983 version of the Operations Reference Book "Scores on the LSAT, as on other tests of its kind, never completely represent the potential of any student. This is especially true of American Indian, Black, Mexican-American, Puerto Rican or other minority students..."-- Section 2, pages 21-22). That such disadvantaged aboriginal students can succeed in law school is attested to by the 105 graduates from the Program of Legal Studies for Native People who have now obtained a law degree.

Law societies and bar associations must similarly take an interest in aboriginal issues. It is crucial that the aboriginal community get the message that there is a place for them in the study of law and eventually in the administration and delivery of justice.

Coupled with attracting more aboriginal students to law it is necessary to ensure that those attracted to law school have a reasonable chance of succeeding. One such way is to ensure that tutorial assistance and support services are available to such students at least during first year. Other alternatives include half-time programs for such students during first year law.

The results of increasing the number of aboriginal students,

lawyers, judges, law professors and senior legal administrators will be several. First, it will help bridge the gap between the aboriginal and non-aboriginal community by showing the aboriginal community that they too have a stake in the legal system. Such a result will help dispel the belief held by many aboriginal people that the legal system is one simply for use by non-aboriginals to control aboriginal people. Second, the presence of trained legal specialists will provide role models for the community. In many aboriginal communities professionals and persons with university backgrounds are still far and few. Finally, an increase in the number of aboriginals trained in the law will provide aboriginal communities with the legal expertise they will need to develop their own self-governing systems, within the Canadian system.

DEC 12 1988

December 6, 1988

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

Dear Ms. Ashley:

The attached discussion paper, "Issues Relating to the Future of the Ontario Tripartite Process", is hereby submitted to your office as per Mr. Ian Cowie's request.

I understand it is of interest to your office and hope that this paper is of use to you.

If I can be of any further assistance, please do not hesitate to call me.

Sincerely,

Rose Brinda

for Peter J. Akiwenzie
Intergovernmental Affairs
Director

PJA/ll

Attach (1)

cc. Bob Watts, U.O.I.

Susan has material

UNION OF ONTARIO INDIANS
27 Queen Street East, Toronto, Ontario, M5C 2M6 Phone: (416) 366-3527 Telex: 06-22710

DEC 12 1988

THOMAS R. BERGER
Barrister & Solicitor

Thomas R. Berger
Gary A. Nelson

Suite 300 - 171 Water Street
Vancouver, British Columbia V6B 1A7

Telephone: (604) 684-1311
Fax: (604) 684-6402

December 1st, 1988

PERSONAL

Ms. Susan M. Ashley
Executive Secretary
Douglas Marshall Royal Commission
1026 - 1505 Barrington Street
HALIFAX, Nova Scotia
B3J 3K5

Dear Susan:

I enclose, as promised, a copy of the revised edition of NORTHERN FRONTIER, NORTHERN HOMELAND, which I have taken the liberty of inscribing to you.

Best wishes for the Holiday Season.

Yours sincerely,

Thomas R. Berger

TRB:VC

Encl.

DEC 12 1988

PEACE
UNITY
STRENGTH

Mohawk Council of Kahnawake

P.O.Box 720,
Kahnawake, Quebec. J0L 1B0
(OFFICE OF THE COUNCIL OF CHIEFS)

Tel. (514) 632-7500

December 7, 1988

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

She:kon (Mohawk Greetings):

Thank you very much for the kind words in your letter of November 30, 1988.

I must state at this time that I considered it an honour to be included with a group of such distinguished experts/panelists and to address an audience that had been invited especially to participate in this conference.

As a result of the conference, many inquiries from the news media and other interest groups have been made regarding the issues raised in Halifax.

I am sorry that I could not stay for the duration of the conference, but am thankful to have been able to participate in this event.

Nia:wen (Thank you),

MOHAWK COUNCIL OF KAHNAWAKE

Joseph Norton

Joseph Norton,
Grand Chief

/dg

DEC 12 1988

December 6, 1988

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

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Sincerely,

Rose Brinda

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Intergovernmental Affairs
Director

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cc. Bob Watts, U.O.I.

Susan has material

UNION OF ONTARIO INDIANS
27 Queen Street East, Toronto, Ontario, M5C 2M6 Phone: (416) 366-3527 Telex: 06-22710

DEC 0 8 198[illegible]

Nova Scotia Barristers' Society
Keith Hall, 1475 Hollis Street, Halifax, Nova Scotia B3J 3M4
(902) 422-1491 Fax (902) 429-4869

Office of: **Secretary-Treasurer**

December 6, 1988

Ms. Susan Ashley
Barrister & Solicitor
Suite 1026
Maritime Centre
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear Ms. Ashley:

Re: Practising Directory

Further to our telephone conversation of today, and pursuant to your request, please find enclosed the Directory of Practising Members for 1987/88. Also enclosed is an invoice in the amount of $10.00 for the cost of same.

Yours truly,

Karen M. Chambers

Karen M. Chambers
Administrative Assistant

/kc

Encl.

JUSTICE

DEC 06 1988

(BRITISH SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS)

95a CHANCERY LANE LONDON WC2A IDT

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Telephone: 01-405 6018/9
DX 323

DIRECTOR:
LEAH LEVIN

LEGAL OFFICER:
PETER ASHMAN

LEGAL ASSISTANT:
DAVID SEYMOUR

DIRECTOR OF RESEARCH:
ALEC SAMUELS JP

PA/RC

28th November 1988

Mr. Wylie Spicer
Royal Commission on the Donald
Marshall, Jr., Prosecution
Maritime Centre Suite 1026
1505 Barrington Street
Halifax, NOVA SCOTIA B3J 3K5
CANADA

Dear Mr. Spicer

Thank you for your letter of 21st November.

I have sent you by printed matter airmail two recent reports of JUSTICE which will give you some idea of how the organisation was set up and is funded. You have already seen our comments on the desirability of an official post appeal investigative procedure in the draft of the Miscarriages of Justice report which was sent to you earlier this year.

I hope that when you visited I gave you a copy of the House of Commons Home Affairs Committee report on Miscarriages of Justice in which the respective functions of an independent investigative body and the Home Office were set out.

There are advantages and disadvantages in the voluntary and official sector. The advantages of JUSTICE investigating a case are that we usually have the confidence of the prisoner and find it easy to talk off the record to lawyers and other participants in the trial process. The disadvantages are that we have no powers of investigation and are constantly overburdened with quite lengthy and serious cases for whose investigation we do not really have sufficient resources.

The advantages of an official body are that it would have, presumably, powers to investigate and would have resources at its disposal to conduct investigations. However, there is a real danger that it would be swamped by cases and that its procedures would become formalised into a tribunal-like body with all the attendant costs and delays. I suspect that what is needed is a combination of the two with an official body being more of an Ombudsman-like institution whose most important power would be to examine the police records and notes and would be able to question both on a formal and informal basis, as well as have access to specialised help. It would have to have power to select its own cases in order to ensure it was effective.

One particular aspect of present official investigations here is that the same police force is usually asked to carry out the investigations. This does not inspire confidence, and one sometimes has the impression that the re-investigation is more concerned with discrediting our own investigations than in seeking out the truth. One possible solution used in New South Wales is to have serving police officers seconded to the investigating body for a set number of years, enjoying all the police powers. According to the NSW police, this works well. I have not had the opportunity to canvass the views of NSW lawyers, or prisoners complaining about their convictions.

I hope these thoughts are useful and I will be happy to elaborate any of them if you so wish. The final draft of our Committee's report is almost ready and I will send you a confidential copy in December.

With best wishes

Yours sincerely

Peter Ashman

DEC 06 1988

JUSTICE

(BRITISH SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS)

95a CHANCERY LANE LONDON WC2A IDT

Telephone: 01-405 6018/9

DX 323

COUNCIL:
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PA/RC

28th November 1988

Mr. Wylie Spicer
Royal Commission on the Donald
Marshall, Jr., Prosecution
Maritime Centre Suite 1026
1505 Barrington Street
Halifax, NOVA SCOTIA B3J 3K5
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With best wishes

Yours sincerely

Peter Ashman

DEC 0 6 1988

Russel Lawrence Barsh
4733 17TH AVENUE, N.E., #37
SEATTLE, WASHINGTON 98105
(206) 527-9527

28 November 1988

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

Dear Susan:

Just in case we missed the opportunity to speak at greater length over the phone, I wanted to set down a few concluding thoughts on recommendations for the Commission, in my personal capacity. I've also enclosed, for Jan Cook, my expense accounting for last week's meeting.

First of all, I think it is essential to recommend specific means of continuing both the public and "official" discussions of these issues. The Commission is not in a position to recommend highly detailed changes in the administration of justice, nor could any set of substantive recommendations made today anticipate what may prove necessary a few years from now. What is most necessary and practical at this stage is an ongoing *process* of implementation, evaluation, and further action.

It seems to me that this process should combine two elements--

(1) Periodic (at least annual) meetings between the relevant members of the Provincial cabinet and leaders of the most affected communities, to discuss onging efforts to implement the Commission's substantive recommendations, and proposals for going beyond them. The focus should be on co-operation to address community justice and policing needs in the most effective manner--that is, *programme development* rather than the resolution of specific complaints.

(2) A stronger and broader mandate for the Nova Scotia Human Rights Commission, assuring it both greater independence and investigative authority so that it can provide a "back-up" forum for specific complaints which either fall outside of the ambit of government meetings with the community, or which cannot be resolved by such meetings. The Human Rights Commission's present mandate does not explicitly include discrimination in policing or the administration of justice, and it can only act with the Minister's concurrence.

The Royal Commission may then make substantive recommendations of a rather general nature, in the understanding that the details will be developed by the Province through meetings with affected communities. Three broad recommendations seem reasonable and, in my opinion, complementary to one another--

(1) Native and minority professionals should be recruited for the bench, bar, police, and all other justice-system institutions. In the short-term this will necessitate Provincial support for affirmative-action in education and training, as well as means of "protecting" individuals from discrimination once they have been employed as public servants. Training programmes for justice-system personnel should involve minority recruits, and help them to establish collegiality on a basis of respect for their identities.

(2) The Province should facilitate and help finance creative alternatives to the justice system which involve prevention, decriminalization and diversion, under local control to the greatest possible extent. Special education activities for youth, as well as community-based treatment and rehabilitation programmes should be encouraged, particularly for drug and alcohol abuse, family violence, and juvenile offenders. Such programmes should always include agreements for sharing facilities, as well as the transfer of cases from Provincial agencies to community agencies and vice versa.

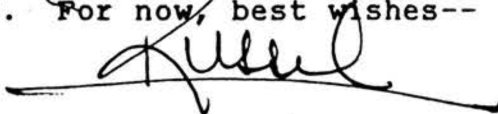
(3) The Province should respect the right of communities, in particular Indian bands, to assume responsibility for public order within their own bounds. An Indian band or consortium of bands should proceed by submitting a plan for responding internally to specified kinds of situations, such as family disputes or alcohol abuse, with due regard to human rights. The Province, in turn, should be prepared to share costs and to arrange for the orderly transfer of cases between its own agencies and newly-established local ones. This should *not* be planned Province-wide, but depend on initiatives taken by the communities themselves.

Recommendation #3 is of the greatest (but not exclusive) interest and applicability to Indian reserves. It could also be effective wherever there are geographical concentrations or neighbourhoods. Recommendation #2 should be applicable to any group that is well-enough organized to operate social programmes, and recommendation #1 is a "system-wide" reform which has nothing to do with groups' demographic or organizational character.

These proposals are complementary because, while local control of social-support programmes and disposition of cases can *strengthen the effectiveness* of government intervention in a range of social problems, some cases, even on reserves, will probably continue to be handled by the wider justice system. The optimum, then, is to take advantage of the benefits of local control, while improving the alternative provided by Provincial institutions.

One final suggestion: responsibility for non-discrimination must be *both* individual and institutional. There must be a commitment to take prompt disciplinary action against individuals involved in discrimination, as well as a commitment to build procedural safeguards into the institutions of justice.

Let me know if you plan to come to D.C. For now, best wishes--



THOMAS R. BERGER
Barrister & Solicitor

Thomas R. Berger
Gary A. Nelson

DEC 05 1988

Suite 300 - 171 Water Street
Vancouver, British Columbia V6B 1A7

Telephone: (604) 684-1311
Fax: (604) 684-6402

November 30th, 1988

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

Dear Susan:

Many thanks for your hospitality and that of the Commission during my stay in Halifax.

I thought the Consultative Conference was a success and should be of very real use to the Commissioners in framing their recommendations.

Please feel free to keep in touch, if you wish, on an informal basis, about any recommendations that you or the Commission might want me to comment upon. If you wish to have someone take a look at the whole subject of tribal courts, you might want to retain Michael Jackson or Doug Sanders (both of the Faculty of Law, U.B.C.) for the purpose.

I should add that there are a series of papers prepared by Queen's University, touching on aboriginal issues, that you can obtain by writing to the Institute of Inter-Governmental Relations, Queen's University. I enclose a paper Doug Sanders did in the Queen's series. You will find tribal courts discussed at page 52 et seq.

I enclose a copy of VILLAGE JOURNEY, my report on the situation in Alaska. Chapter Five may be of some interest in light of the meetings that were had.

. . . 2

SUSAN HAS MATERIAL

Ms. Susan Ashley November 30th, 1988

I enclose my account for my services.

Yours sincerely,

Thomas R. Berger

TRB:VC

Encl.

Government of Canada | Gouvernement du Canada

Federal-Provincial Relations Office | Bureau des relations fédérales-provinciales

Ottawa, Canada
K1A 0A3

DEC 05 1988

December 2, 1988

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

BRIGGS HAS MATERIAL REFERRED TO

Dear John:

As requested, I am enclosing copies materials relating to the federal government's policy on aboriginal self-government.

I have enclosed, as part of these materials, a kit which was handed out at the 1987 First Ministers' Conference on Aboriginal Constitutional Matters. The first document, "Aboriginal Self-Government: What it means" sets out the federal government's commitment to a "two-track" strategy of pursuing a constitutional amendment on aboriginal self-government, while at the same time pursuing non-constitutional initiatives relating to self-government for both on- and off-reserve aboriginal peoples.

As I mentioned to you, the Prime Minister has stated the federal government's commitment to a constitutional amendment on aboriginal self-government and has undertaken to convene a First Ministers' Conference when there are reasonable prospects of success for achieving such an amendment. In response to a question raised in the House of Commons on May 28, 1987, the Prime Minister outlined the government's position as follows:

> "Mr. Speaker, I thank my colleague for this question. Indeed, on four occasions, through constitutional conferences on aboriginal

Canada

issues, we attempted to reintegrate, to give native peoples the full benefit of Canada's constitutional provisions.

Again recently, despite our best efforts, we as a nation failed in this latest attempt. I pointed out at the time, and again here in the House, that in spite of that failure -- my friend would know that the provinces must cooperate if we are to succeed -- at the appropriate time I would of course be prepared to re-open the case and make a new attempt to propose a fair integration process to the native peoples with respect to the Canadian Constitution.

I remain available and interested in seeing this process through to its successful completion."

and further ...

"In regard to the very important question raised by my honourable friend, I think he will agree that the most important aspect in this kind of process is to ensure a reasonable chance of success."

Finally, I have enclosed a document which describes in somewhat greater detail the federal government's policy with respect to self-government for off-reserve aboriginal peoples.

I trust that you will find this information to be useful. Should you have any further questions, please do not hesitate to contact me.

Sincerely yours,

Fred Caron
Senior Legal Counsel

FACULTY OF LAW,
UNIVERSITY OF TORONTO

78 Queen's Park
Toronto, Canada M5S 2C5
Tel: *(416) 978-3725*
Fax: *(416) 978-7899*

DEC 05 1988

December 1, 1988

By Courier

Mr. John Briggs
Director of Research
Marshall Commission of Inquiry
Maritime Centre
Suite 1026
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

BRIGGS HAS MATERIAL REFERRED TO.

Dear Mr. Briggs:

Further to our recent telephone conversation enclosed please find:

1. Director of Public Prosecutions Act 1982 (Victoria)
2. Commonwealth Special Prosecutors Act 1982
3. Commonwealth of Australia, Director of Public Prosecutions Act 1983
4. Director of Public Prosecutions Act 1986 No. 207 (New South Wales)
5. Queensland, No. 95 of 1984
6. Director of Public Prosecutions Act and Related Legislative Materials, Canberra, 1984.

Yours truly,

for John Ll.J. Edwards
Professor Emeritus

DEC 0 2 1988

Canadian Human Rights Commission | Commission canadienne des droits de la personne

Chief Commissioner | *Président*

November 28, 1988

The Honourable Chief Justice
T.A. Hickman
Chairman
Royal Commission on the Donald
Marshall, Jr., Prosecution
Halifax, Nova Scotia

Dear Mr. Chief Justice,

Just a line, on my return to Ottawa, to express my appreciation to you and your colleagues for inviting me to last week's consultative conference in Halifax. I have rarely had occasion to be a part of so active, and, at the same time, so thoughtful, a group, and I thoroughly enjoyed my two days with you. Might I also add my thanks to Susan Ashley and your staff for their superb organisational arrangements.

I wish you well with the preparation of your report and look forward to reading it when it comes out. Meanwhile, thank you again for thinking of me.

Sincerely,

Maxwell Yalden

90 Sparks Street, Ottawa, Ontario K1A 1E1
90, rue Sparks, Ottawa (Ontario) K1A 1E1

DEC 02 1988

November 26, 1988

c/o Faculty of Law
Dalhousie University
Halifax, N. S.
B3H 4H9

Marshall Inquiry Commissioners
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear Mr. Commissioners:

Re: Native and Black People and the Justice System

As a participant at the Commission's Conference over the last two days (and having chaired an afternoon session on Friday November 25) I appreciated the opportunity all of us had to present our views on the topics under discussion. Accordingly, I want to congratulate you for the idea of these sessions and to personally thank you for the opportunity to participate.

However, I am writing with another purpose in mind. During the course of the two days' discussion on these topics I came to the conclusion that there was significant will to recognize and address the problems faced by native and black people as they relate to the justice system in Nova Scotia. I did , however, have some concerns that we were not offering enough in the way of concrete proposals for your consideration and possible recommendation. In that regard I wanted to present one such proposal for your consideration as an example of the kind of recommendation which you may wish to make and for which, in my view, there is the will to implement. This concrete proposal relates to access by minority groups to law school. I had hoped to present this idea at the closing plenary discussion but given the time constraints this opportunity never arose.

While I appreciated having been invited to the sessions, I felt that my only possible claim to any relevant expertise was as a person familiar with law school admissions at Dalhousie and in Canada generally. I chair the Canadian Law Admissions organization made up of representatives of each law school in common law Canada and have a quite up-to-date knowledge of admissions policies at Dalhousie and at the other law schools. (A lawyer friend of mine suggested that the reason for my having been invited was that I was a "neurotic liberal", with a graphic expletive between the two words, but I hardly expect you would have known that before having invited me.)

The concrete proposal I wish to commend is the inclusion in your recommendations of a specific expectation that Dalhousie La School implement a programme which would attract, admit an graduate significantly greater numbers of black and nativ lawyers. While we presently have a programme which provides som degree of support for minority applicants I am hardly tellir tales out of school, so to speak, when I say that our record i this regard is dismal and, even without the insights which yc may provide, urgently needs redress. Your observation of thi need and your recommendation that it be a matter of priorit would go a long way to galvanizing the will of the law school ar the University to making such a programme come into existence ar

the will of the government of Nova Scotia to provide financial support for it.

Such a programme, as U.B.C. and other schools have come to realize, cannot begin at the admissions office and end at the law school door. It requires reaching out to native and black communities to promote, encourage and support potential applicants to law schools long before they ever apply and to provide support and assistance while they attend law school. It does no one credit to accept more minority applicants only to fail them out because, through no fault of their own, they could not compete equally with students from the dominant culture.

Not surprisingly, these initiatives cost money, money which is not immediately available to us. To this end we prepared a proposal to a funding agency in the U.S. two years ago to try to obtain the funding for a programme which we developed with the advice of native and black groups in Nova Scotia. This proposal was not approved by the funding agency. I was advised informally that the proposal was rejected because it was not "innovative" enough to satisfy the funding agency's criteria and that it was "too ambitious" for them.

I enclose a copy of this proposal for your consideration. I do so for three reasons. The first is to present to you a concrete proposal which was developed in a cooperative way and which we all felt would go a long way to addressing the concerns of native and black people regarding access to law school and to long term participation in the justice system in Nova Scotia. In my opinion a proposal such as this continues to be a viable one and capable of being implemented at Dalhousie Law School. Second, the proposal and the fact that it went forward with the approval of the Dean and others suggests that there is the will at the law school and the university to take such steps. Indeed, such will appears to have existed for some time, the proposal having gone forward in September of 1986, and if anything, your work has heightened the need for such a programme and returned it to a high place on the agenda of the law school. Third, it is in my personal judgment something which the Government of Nova Scotia might willingly support in a financial way. The evidence of its need is certainly incontrovertible.

I have gone on long enough. I have attached the proposal and commend it to you for consideration. If there is information regarding it or regarding any information which I can provide about access of minority groups to Dalhousie Law School or other Canadian law schools I would be more than pleased to make it available to you. Once again, thank you for having invited me to participate in these meetings.

Yours truly,

W. Brent Cotter

Abstract

The Dalhousie Proposal is directed at both black and native Canadians who wish to study law. Through the Director of Minority Enrollment who will be funded through the project, we will actively recruit appropriate candidates from their own communities. The Director will assist candidates in applying to law school, and will organize a pre-law programme in the summer preceding the students' admission which will help them adjust to the demands of law school. On entering first year law, students in the programme will take a slightly modified course load deferring the Criminal Law course to a special seven week summer session. This attention to the difficulties experienced by minority students in first year law will assist them in adapting to law studies and will allow them to take advantage of the individualized tutorials that will be offered. Tutorials will be continued for minority students in their second and third year, in which they will take a full course load. The upper year curriculum will be modified to include courses and segments of courses of particular interest and relevance to minority students. To ease some of the financial burdens on minority students, we are proposing that Dalhousie University waive the tuition fees of students in the programme.

We believe that this comprehensive and innovative approach will be successful both in attracting minority applicants and ensuring that they graduate.

I. Background: Minorities in the Atlantic area are seriously underrepresented in the legal profession, and we believe that the consequences of this are more severe than in more developed parts of Canada. The relevant minority groups in the region for the purposes of this project are blacks and native people. In the past ten years Dalhousie Law School has graduated less than twenty black lawyers. To our knowledge there are no native lawyers practising in Atlantic Canada.

While Dalhousie has no formal quota for minority applicants, we do accept native people who have successfully completed the Saskatchewan programme, and black applicants both as 'regular' and as 'disadvantaged' applicants. The latter category applies to those who suffer from racial or ethnic handicaps. Although the Programme of Legal Studies for Native People at Saskatchewan has been successful in producing native applicants from other parts of Canada, we are discouraged by the fact that it is not being used by native people from Atlantic Canada. The great distance from home, unwillingness to leave families, and real differences between eastern and western native communities are factors. As well, there is no programme directed to black applicants and, historically, many black applicants have similar cultural disadvantages as native people.

Dalhousie Law School is one of only three law schools east of Montreal, the others being the Universite de Moncton and the University of New Brunswick. We are the only LSAC member in the Atlantic provinces. Because of our central location, size and reputation Dalhousie attracts applicants from all four Atlantic provinces, as well as the rest of Canada.

In creating our proposal we have contacted all Canadian law schools to learn more about their experience with minority applicants. We have also consulted with the Micmac Professional Careers Project which represents a very large number of native Canadians from the Atlantic area, and the Transition Year Programme - a Dalhousie programme directed at minority applicants just entering university.

Dalhousie is the obvious base for a regional minority enrollment project, both because of our regional focus and because of our attempts to work with the minority groups to solve this problem.

Our proposal recognizes that realizing the goal of graduating minority lawyers requires two different kinds of approaches, one directed at getting the minority applicants to enter law school and the other directed towards ways of ensuring that they successfully complete the programme after they are admitted. We have therefore developed a three year pilot project which is directed at both recruitment and law school performance of minority applicants.

II. <u>Programme Objectives</u>

The objective of our programme is to produce more legally trained people drawn from minority communities in Atlantic Canada. We believe that this objective can be achieved by pursuing a strategy made up of three elements: (a) recruitment and promotion of legal education in minority communities; (b) a programme of pre-law training and evaluation for minority applicants; and (c) institutional support for minority students at law school. We believe that this combination of strategies addresses most effectively the needs of minority communities and institutional (law school and legal profession) standards in appropriate and uncompromising ways.

A. Recruitment and Promotion of Legal Education

We propose to hire a Director of Minority Enrollment who, through existing contacts with minority communities, would make him/herself available to community leaders and potential applicants for the provision of advice and information about legal studies. This person would travel to minority communities in the Atlantic Canada region and would develop a videotape promotional film with the (committed) participation of the Micmac Theatre Company. We anticipate similar

support from the black cultural community. The Director would have responsibility to identify capable minority students and to encourage them to pursue legal education as well as to organize the pre-law programme, summer school, tutorial sessions and curriculum development.

B. Pre-Law Education and Evaluation

We propose to develop a pre-law programme of perhaps six weeks in duration, not unlike the programme run at Saskatoon, but directed at both black and native applicants. This programme would be designed to achieve five objectives:

(a) to reduce the culture shock suffered by many minority applicants upon entrance into the fairly aggressive law school environment;

(b) to give instruction in reading and writing skills;

(c) to introduce students to the study habits and educational requirements of a law school programme;

(d) to provide an introduction to legal education; and

(e) to identify those students in the programme qualified to begin legal studies.

While this approach is similar to the Saskatchewan programme, we believe it will be more accessible and relevant to native people from the Atlantic area. The programme would be available not only to natives but to all minority applicants directed by the Admissions Committee to attend, with successful completion of the programme a condition of acceptance into the first year of legal studies in September.

C. Law School Programme

We propose to develop a special programme in three parts which will overcome the main obstacles to the successful performance of minority applicants in law

school. These three elements are (a) in-school tutorial, (b) a law summer school, and (c) development of courses in our upper year programme of particular relevance to minority applicants.

1. Tutorial Programme

We propose to establish a one-to-one tutorial system for minority students in our law programme. We propose to use carefully selected senior students as tutors in this programme. They will work with the minority students to improve study skills, to improve the socialization process and to better enable the minority students to cope with legal studies generally. This tutorial programme would be supplemented by a series of seminars, organized by the Director of the programme. The Director would have overall supervisory responsibility for the programme and would meet regularly on an informal basis with the minority students at the Law School.

2. Law Summer School

We propose that minority students entering law school would be required to do our regular first year curriculum, with the exception that one of our six courses, Criminal Law, would be deferred to the following summer and taught in a seven week period. This element would make space for the tutorial programme during the school year and moderate the academic burden for minority applicants during the regular school year.

3. Additional Course Offerings

The Director will have responsibility for the development and delivery of course offerings of relevance to minority applicants. We envisage the development of one or more seminar courses offered in the second and third years of law school. These courses would begin to be offered in the 1989/90 year, the third year of this project.

D. Programme Schedule

The proposal envisages a series of basic components in the first year of the three year programme, with new components added to each of the second and third years particularly in the summer law school. The following sets out in point form the components of the programme operating during each of the three years:

1. Year I (August 1987 - August 1988)

   (a) August 1987 - Hiring of Director of Programme

   (b) September 1987 to April 1988 - Promotion of Programme and recruitment of interested applicants

   (c) September 1987 to April 1988 - Informational and educational assistance for prospective applicants; preparation of applicants for the admissions process

   (d) June to July 1988 - Summer pre-law programme for minority applicants

   (e) August 1988 - Admissions decisions with respect to minority applicants

2. Year II (August 1988 - August 1989)

   Elements (b)-(e) would be repeated on the same schedule.

   (f) September 1988 to April 1989 - adoption and implementation of the tutorial system for first year minority students

   (g) June and July 1989 - Summer law programme (the offering of the Criminal Law course in the LL.B. I programme) for minority students

3. Year III (August 1989 - August 1990)

   (Elements (b)-(e) of Year I would repeated.)

(Elements (f) and (g) of Year I would be repeated.)

(h) Offering of new courses(s) relevant to minority students.

E. Concurrent Institutional Initiatives

We recognize that this programme requires concurrent support from other quarters in order to be successful for minority applicants. It must also have the support of the native and black communities. We are now participating in a committee that is attempting to address the lack of native people in the legal community, and are making similar overtures to the black community. We have placed this proposal on the agenda for a meeting of native organizations on October 24. (A letter giving support in principle will follow.) We have devised a strategy to pursue both funding needs and institutional changes in order to implement this programme.

1. Funding

We propose, during the 1986-87 year, to pursue various governmental and private avenues to obtain financial support for applicants who might enter this programme and eventually enter law school. We envisage this support to include subsistence funding for students while they are pursuing both the pre-law and law school programme. Such funding is presently available for successful native applicants but we anticipate that funding would have to be increased to include black applicants.

The second avenue of financial support which we propose to pursue is the agreement that, at least during the pilot project, Dalhousie University would agree to waive tuition fees for students accepted into the programme.

2. Law School Changes to Academic Programmes

We have placed on agenda for consideration by our Law School the adoption of

institutional changes to make possible the law summer school programme for minority applicants. We have proposed development of courses relevant to minority students enrolled in the programme to be introduced into the upper year curriculum. We hope that these issues will be resolved in November 1986 and that the programme we propose can be implemented beginning in August 1987. Those elements of our proposal which relate to a summer law programme and an extended school year for minority students are obviously contingent upon the institutional acceptance of such a programme. If our proposal is accepted during the preliminary stage we will be able to advise the Council of whether this portion of the proposal is institutionally acceptable. We would be able to provide this advice prior to the date for final submission in December 1986.

BUDGET

Year (1) 2 3 (circle one)

BUDGET ITEM

A.	Direct Costs	
	1. Salaries and Wages (Professional and Clerical)	$ 44,000
	2. Employee Benefits	$ 4,500
	3. Travel	$ 5,000
	4. Equipment	$ 1,500
	5. Materials and Supplies	$ 2,500
	6. Consultants or Subcontracts	$ 19,000
	7. Other (printing, etc.)	$ 4,400
B.	Indirect Costs	$ 14,080
C.	Total requested from LSAC/LSAS	$ 94,980
D.	Institutional support (must include the amount in Item B)	$ 30,580

BUDGET

Year 1 (2) 3 (circle one)

BUDGET ITEM

A.	Direct Costs	
	1. Salaries and Wages (Professional and Clerical)	$ 47,000
	2. Employee Benefits	$ 5,170
	3. Travel	$ 5,000
	4. Equipment	$ 1,500
	5. Materials and Supplies	$ 2,500
	6. Consultants or Subcontracts	$ 37,500
	7. Other (printing, etc.)	$ 4,400
B.	Indirect Costs	$ 34,340
C.	Total requested from LSAC/LSAS	$ 137,410
D.	Institutional support (must include the amount in Item B)	$ 65,840

BUDGET

Year 1 2 (3) (circle one)

BUDGET ITEM

A.	Direct Costs	
	1. Salaries and Wages (Professional and Clerical)	$ 50,000
	2. Employee Benefits	$ 5,500
	3. Travel	$ 5,000
	4. Equipment	$ 1,500
	5. Materials and Supplies	$ 2,500
	6. Consultants or Subcontracts	$ 40,500
	7. Other (printing, etc.)	$ 4,400
B.	Indirect Costs	$ 49,540
C.	Total requested from LSAC/LSAS	$ 158,940
D.	Institutional support (must include the amount in Item B)	$ 81,540

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.
Jacqueline L. Mullenger, B.H.Ec., 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

NOV 29 1988

November 28, 1988

Mr. Wylie Spicer
Barrister & Solicitor
c/o The Royal Commission on the
Donald Marshall, Jr. Prosecution
Suite 1026, 1505 Barrington St.
Halifax, NS

Dear Wylie:

RE: Leave Application to the Supreme Court of Canada - Cabinet Confidentiality

I am enclosing with this letter two copies of the Application Record in support of our Leave Application. As you will see the blue tags on the volumes, one copy is for you and the other copy "for Court" is to be endorsed by you admitting service. I would appreciate you then forwarding the "for Court" copy on to Jamie for him to endorse as well and return to me.

Thank you for your assistance in this regard, and if you have any questions, please do not hesitate to call me.

Yours sincerely,

BUCHAN, DERRICK & RING

Anne S. Derrick

ASD/har
Spicer
ASD 5A

Enclosures

Ruby & Edwardh
barristers

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

NOV 25 1988

November 22, 1988

Ms. Susan Ashley
Royal Commission on the
Donald Marshall, Jr. Prosecution
Maritime Centre
Suite 1026
1505 Barrinton St.
Halifax, Nova Scotia

Dear Susan:

Chief Justice Evans was interested in the question of whether there is an obligation on the Court of Appeal to raise an issue that has not been raised by the parties. This recent Australian decision will be of interest to the Commissioners if they are concerned with that issue. I have marked the passages there, particularly important.

Would you be good enough to give this to the Commissioners and to circulate it on my behalf to other counsel, if you think it right.

Yours very truly,

Clayton C. Ruby

/lr

enc.

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.

company. The actual stripping of the assets of the Western Australian companies was complete by December 1980 although attempts to liquidate them continued later. The process of stripping the assets of Oarebros did not commence until about May 1981. In my opinion the transaction regarding Oarebros is to be regarded for present purposes as quite separate from either the conspiracy or the transactions involving the Western Australian companies: cf *Hally* [1965] Qd R 582.

To treat separate crimes as appropriate for concurrent sentences because they were committed in the course of a criminal business would give advantage to a professional criminal over a person making sporadic forays into crime whether as tax defrauder, armed robber or otherwise.

There is no inherent entitlement to concurrency, but as there is only a choice between complete concurrency and complete cumulation, it is necessary to make that choice.

In my view to impose on this respondent out of an available total of eight years' imprisonment a total sentence of five and a half years would be to fail to give due weight to his previous good character, pleas of guilty and the atmosphere of the times of the offences. The respondent is not to be made a scapegoat to atone for a widespread lapse in standards at a time of relatively low penalties.

I consider that accordingly the choice should be to make the sentences concurrent.

I regard a minimum term of eighteen months on count one and two years on count two as appropriate to be served before becoming eligible for parole. This would provide an effective custodial sentence of three years six months with a minimum term of two years to be served before becoming eligible for parole.

I would allow the appeal and set aside the sentences and instead impose the following sentences on the respondent:

On count one, imprisonment for two years with eighteen months fixed as the term during which he shall not be eligible to be released on parole.

On count two, imprisonment for three years and six months and a fine of $35,000 with two years fixed as the term during which he shall not be eligible to be released on parole.

The sentences of imprisonment on counts one and two are directed to be served concurrently.

There is no appeal against the orders for reparation and no order should be made in respect of them.

Appeal allowed

Solicitors for the respondent: *Charles Anzarut & Co.*

CRW

[COURT OF CRIMINAL APPEAL, WESTERN AUSTRALIA]

COLLETTE DAWN ROSS

Brinsden, Olney and Rowland JJ

6 February, 27 February 1987

Conspiracy — Statutory offence of conspiring to sell or supply heroin — Scope of — Misuse of Drugs Act 1981 (WA), ss 6(1), 7(1), 33(2).

Criminal Appeal — Allowing an appeal against conviction on a ground not raised by the appellant.

The appellant was convicted of a statutory offence of conspiring to sell or supply a quantity of heroin to another. On appeal, it emerged that the agreement sought to be proved was an agreement to put an undercover officer (who was not a party to the agreement) in touch with a third person (also not a party to the agreement) for the purpose of the sale or supply of heroin by that third person to the undercover officer. This point was not raised by the appellant.

Held: (1) The agreement sought to be proved was not an agreement between the conspirators to sell or supply heroin so that there was no basis for a conviction for conspiracy.

(2) The Court of Criminal Appeal can allow an appeal against conviction by reference to matters not relied upon by the appellant.

APPEAL AGAINST CONVICTION

H A Wallwork QC and *W B Harris*, for the appellant.

M J Murray QC and *J MacTaggart*, for the respondent.

Cur adv vult

27 February 1987

BRINSDEN J. I do not intend to dwell at length upon the grounds of appeal in this matter since I have reached the view that the appeal should be allowed on a ground which was not taken by counsel for the appellant and was indeed conceded by him as to have no application but because the matter was raised in argument with Crown counsel and it is within the criminal jurisdiction that this appeal is being heard it behoves this Court to allow an appeal notwithstanding that that is to be done on grounds not argued by the appellant.

The indictment upon which the trial proceeded alleged that on 26 November 1985 at Mandurah and Victoria Park the appellant, MacNeill and Peel conspired together to sell or supply a quantity of heroin to another. There was a further count that on 26 November at Victoria Park, Logan sold a quantity of heroin to another but Logan pleaded guilty as did MacNeill so the trial proceeded only on the first count in respect of the appellant and Peel. Peel was found not guilty whereas the appellant was convicted. The count against the appellant was laid pursuant to s 33(2) of the

"A person who conspires with another to commit an offence (in this subsection called 'the principal offence') commits—

(a) if the principal offence is an indictable offence under s 6(1) or 7(1), the indictable offence . . ."

Section 6(1) provides that:

"Subject to subsection (3), a person who

(c) sells or supplies . . . to another, a prohibited drug commits an indictable offence. . . ."

A conviction under s 33(2) renders the offender liable to a term of imprisonment not exceeding twenty years without the option of a fine.

A lot of the facts were common ground and where they were not common ground I propose to discuss the case on the basis that the jury would have accepted the Crown case placed at its highest. The appellant lived at Kalgoorlie but had come down to Perth staying at the Flag Motel. As she was about to leave those premises early on 26 November a man approached her informing her that his name was Glen and that he was the boyfriend of a friend of the appellant. The following is taken from the record of interview:

"Q. When you met this person, what happened then? A. He wanted me to arrange to meet somebody so that he could score.

Q. What do you mean by score? A. He wanted to buy some heroin.

Q. Did you agree to do this? A. Yes, I said I would go to see some friends.

Q. What happened then? A. Well he didn't want me to score for him so he came with me.

Q. What do you mean by that? A. He wanted to see the stuff and score it himself."

Of course the word "score" in the jargon of the drug trade meant that Glen wanted to purchase some heroin. Thereafter Glen accompanied the appellant to Mandurah where she left him at a hotel while she visited Peel who was an acquaintance. Peel was unable to help but through him she was put in contact with MacNeill who was also resident in Mandurah. MacNeill could not help by providing the drug himself but he agreed to contact somebody in Perth who might be able to help. He made some phone calls to effect that purpose. Peel, his girlfriend, the appellant, Glen, and MacNeill journeyed to Perth in the appellant's motor car. After leaving Peel's girlfriend at an address in Perth the other four ultimately went to Victoria Park to the house inhabited by Logan. While Peel, the appellant, and Glen remained in the motor car, MacNeill went into that house and after some time returned with a sample of what purported to be heroin. When the sample was established by them as heroin the appellant gave MacNeill $900 while Glen gave him $4,500 to be handed by him to Logan (though the identity of Logan was apparently not known to either the appellant or Glen) to purchase approximately 12 g of heroin of which 2 g was for the appellant and the remainder for Glen. Armed with the money MacNeill went back into the house and then returned with a package of what ultimately on analysis proved to be approximately 10 g of heroin. He got back into the car which was then driven off a short distance at which point the police intervened. Glen was in fact an undercover officer of the drug squad.

The agreement said to be the conspiratorial agreement was made according to the Crown between the appellant, Peel and MacNeill to sell or

supply heroin to Glen. The trial judge left to the jury in his summing up the charge on that basis. In his address to us Crown counsel submitted that a conspiracy is not limited to a case where one of the conspirators is to be the person who sells or supplies but may be one which involves the achievement of a sale or supply of heroin to another by a conspiratorial agreement. He conceded that the relevant act of sale or supply was from Logan to Glen and that what the Crown case amounted to was an allegation that there had been a conspiracy among these three people that Glen was to be supplied with heroin by some third party not party to the conspiracy. The Crown also maintained that its submission was good notwithstanding Peel had been found not guilty for there still remained the substance of an identical agreement between the appellant and MacNeill.

The conspiracy alleged is not an agreement between the appellant, MacNeill and Logan, the latter being the person who sold or supplied the drug to Glen. This means that we are invited to interpret s 33(2) of the Act, if the Crown case is to be sustained, to read so as to cover a conspiracy with another, not to sell or supply the drug to the consumer, but to assist, to use a neutral word, a third party to sell or supply the drug to the consumer. That necessarily requires me to consider the nature of the crime of conspiracy.

In *Director of Public Prosecutions v Nock* [1978] AC 979 at 994, Lord Scarman said:

"The classic description of the crime of conspiracy at common law is that it consists of an agreement to do an unlawful act or a lawful act by unlawful means: *Mulcahy* (1868) LR 3 HL 306 at 317. The agreement itself constitutes the offence. The mens rea of the offence is the intention to do the unlawful act: the actus reus is the fact of agreement."

The unlawful act involved in the charge in this case is the offence under s 6(1)(c) namely selling or supplying the drug to another. A person who attempts or incites another to commit an offence or becomes an accessory after the fact to that offence commits, if the principal offence is an indictable offence as this one is, that offence: s 33(1). The appellant was not charged with attempting to commit an offence under s 6(1)(c) nor inciting Logan, or MacNeill for that matter, to commit such an offence. As Lord Scarman pointed out (at 997), adopting what Lord Tucker had said in *Board of Trade v Owen* [1957] AC 602 at 623-625, the whole object of the crime of conspiracy is to make agreements punishable to prevent the commission of the substantive offence before it has even reached the stage of an attempt. If the appellant was guilty of the offence she must have been guilty as soon as the agreement was concluded with MacNeill. His acts in contacting Logan by telephone and later going to her house and obtaining the drug and handing it over to Glen were overt acts in pursuance of the conspiratorial agreement. "First . . . an agreement is a conspiracy to commit a statutory offence only if it is an agreement to do that which Parliament has forbidden": per Lord Scarman at 998. What statutory offence has Parliament forbidden which was the subject of this agreement? If there was an offence the subject of the agreement it was not the offence of selling or supplying the drug to Glen. The agreement which the parties reached was nothing more than an agreement to assist Glen in being put in contact with somebody who would sell or supply the drug to him. The case for the Crown was never put

on the basis that it was MacNeill who supplied the drug to Glen and indeed Crown counsel expressly disavowed that as being the Crown case. Whether the Crown case could be mounted on that basis I put aside.

It is my view, therefore, that this appeal should be allowed and the conviction quashed. This is a case where there should be no order for a retrial.

OLNEY J. The indictment giving rise to the conviction presently under appeal charged that on 26 November 1985 at Mandurah and Victoria Park, Collette Dawn Ross (the appellant), John MacNeill and Shane Bradley Peel conspired together to sell or supply a quantity of heroin to another and further that on 26 November at Victoria Park, Fiona Margaret Logan sold a quantity of heroin to another.

In October 1986 MacNeill pleaded guilty to the conspiracy charge and Logan pleaded guilty to having sold a quantity of heroin to another. The appellant and Peel pleaded not guilty and were tried in the District Court at Perth on 11, 12 and 13 November 1986. On the latter day the appellant was found guilty and Peel, not guilty.

The *Misuse of Drugs Act* 1981 (WA) provides in s 33(2):

> "A person who conspires with another to commit an offence (in this subsection called 'the principal offence') commits—
>
> (a) if the principal offence is an indictable offence under section 6(1) or 7(1), *the* indictable offence, but is liable on conviction to the penalty referred to in section 34(1)(b) . . . ."[My emphasis.]

In the present context the relevant principle offence is that created by s 6(1)(c) which provides that a person who sells or supplies to another a prohibited drug commits an indictable offence.

Notwithstanding the manner in which the indictment was framed, the effect of s 33(2)(a) is that the offence charged against the appellant was that created by s 6(1)(c) namely the indictable offence of selling or supplying a prohibited drug to another. To establish its case the prosecution sought to establish that the appellant had conspired with others to commit that offence. The statute does not make conspiracy to sell or supply a prohibited drug an offence separate from the principal offence but rather equates the conspiracy with the offence contemplated by the conspirators.

Prosecuting counsel opened the case to the jury as follows. On 26 November 1986 whilst at the Flag Lodge Motel in Perth the appellant was approached by a man, then unknown to her, who was in fact one Glen, an undercover officer as defined in s 31 of the Act. He asked her if she could obtain for him a supply of heroin. She agreed. The appellant and Glen then drove to Mandurah in the appellant's car where the appellant made contact with Peel. Subsequently she contacted MacNeill also in Mandurah and later with Peel, his girlfriend, MacNeill and Glen returned to Perth: Having dropped off Peel's girlfriend in Perth the remaining four went to a tavern in Victoria Park where MacNeill made some phone calls after which they drove to an address in East Victoria Park where MacNeill went inside a house. Initially the person he wanted to see was not there but some time later he returned with a small quantity of heroin which Peel injected into himself. At this stage Glen handed MacNeill $4,500 and the appellant handed him $900. MacNeill then returned to the house and later came out with a quantity of

heroin in two small packages. The group was then intercepted by detectives who had them under surveillance. The detectives entered the house where they found Logan in possession of the $4,500.

At the end of his opening address prosecuting counsel summarised the Crown case in this way:

> "That in outline is the case the Crown puts up. To reiterate, the Crown says there was an agreement made at the Flag Lodge Motel between Ross and this detective that Ross would obtain for him a quantity of heroin, that she, Ross, then involved Peel by asking Peel to help her get the stuff, Peel being in Mandurah.
>
> Ross and the detective drove to Mandurah, picked up Peel who, as I say, took them to MacNeill, and the party then returned to Perth where in fact a quantity of drugs was obtained by MacNeill and brought out from the house to the car where the detective and Ross and Peel were. The detective gave them money in the presence of Ross to MacNeill, who took it inside the house. Ross herself gave money to the same man and a quantity of drugs was taken out and handed over.
>
> The Crown simply say, putting all that together, you have a conspiracy between Ross and Peel to supply heroin to the detective and that in general is the case the Crown puts to you."

It seems to me that counsel seriously misstated the Crown case when he said "you have a conspiracy between Ross and Peel to supply heroin to the detective." The case as charged was that there was a conspiracy between Ross, Peel and MacNeill to supply heroin to the detective but at its highest the evidence went only to establish that the conspirators agreed to endeavour to arrange with some third person to supply heroin to the detective.

There was never any suggestion either in the prosecutor's opening address or in the evidence that either the appellant or the persons with whom she is said to have conspired contemplated actually selling or supplying heroin to Glen.

In the course of his charge to the jury the trial judge said:

> "On the question of conspiracy, what is conspiracy? The Crown of course says that the accused persons conspired with each other and with MacNeill to do an unlawful act, namely to sell or supply heroin to the undercover officer. A conspiracy means an agreement to do an unlawful act. It is important for you to remember that proof of an agreement is the first essential to the proof of the charge of conspiracy.
>
> . . .
>
> So the Crown must satisfy you, ladies and gentlemen, that there was a definite close agreement reached between the parties and that those parties had precisely the same objective or common purpose, an objective or purpose that was identical for each of them — that is to say in the present case, the purpose of selling or supplying heroin to the man Glen (the undercover officer).
>
> . . .
>
> So there must be the close agreement established by the Crown and that those people who are parties to the agreement all had exactly the same purpose — that is to say, the unlawful purpose alleged, to sell or supply heroin to the man Glen; not to buy for themselves only but to supply it or sell it to the man Glen

. . .

> In summary, ladies and gentlemen, there are three elements which the Crown must show before a charge of conspiracy can be made out. They are, first, that an agreement was made between the parties who are alleged to be parties to the conspiracy in which the agreed objective was to sell or supply a quantity of heroin to the undercover officer; secondly, that in making the agreement the parties knew the precise nature of that objective, that is to say they each had exactly the same purpose and agreed to that purpose; and thirdly, that they intended actually to carry out that purpose, in the present case to sell or supply heroin to the man Glen."

With respect, I do not think that any fault can be found with the manner in which the trial judge explained the relevant law in the context of the particular indictment. It is apparent, however, that the case presented by the prosecution did not fit the explanation of the law in that there was no evidence whatsoever on which the jury could have found that an agreement had been made between any of the alleged conspirators to sell or supply a quantity of heroin to Glen.

In responding to the appeal senior counsel for the Crown submitted "that a conspiracy to sell or supply a quantity of heroin is not limited to the situation where one of the conspirators is proposed to be the person who sells or supplies". He suggested that what is meant by the section is to "encompass a conspiracy" involving the achievement of a sale or supply of heroin to another by a conspiratorial agreement. He said that any other formulation of the offence would be hopelessly narrow and would be contrary to the policy of the legislation. Subsequently when pressed to indicate what was the agreement that the Crown asserted had been made between the appellant and MacNeill counsel responded that it was "that Glen was to be supplied with heroin".

In the absence of authority I am unable to construe s 33(2) of the *Misuse of Drugs Act* 1981 in the manner advocated by the Crown.

The section provides for a particular mode in which the offence of inter alia selling or supplying a prohibited drug may be committed. On the plain meaning of the words used a conspiracy to sell or supply heroin must involve an agreement between the conspirators to sell or supply heroin. The offence is committed once the agreement is reached irrespective of whether the drug is later sold or supplied. In this case the only agreement sought to be proved was an agreement to put the undercover officer (who was not a party to the agreement) in touch with a third person, not a party to the agreement, for the purpose of the sale or supply of heroin by that other person to the undercover officer. Notwithstanding a concession to the contrary made by counsel for the appellant during argument it is my opinion that s 33(2) does not make it an offence to do what the Crown alleges the appellant in this case did. It is not to the point to attempt to justify a wider construction of the section that the formulation which I favour would "hopelessly narrow and cut to pieces the policy of the legislation in this area". It may well be that in the circumstances of the present case it was open to the Crown to charge the appellant as a principal offender pursuant to s 7 of the *Criminal Code* (WA), and that I think would provide a sufficient answer to the Crown's complaint.

Although the case was argued on behalf of the appellant on different grounds, it is appropriate that the appeal be allowed and the conviction quashed. There should be no order for retrial.

ROWLAND J. The appellant and two others, MacNeill and Peel, were charged on indictment that on 26 November 1985 at Mandurah and Victoria Park they conspired together to sell or supply a quantity of heroin to another. MacNeill pleaded guilty. The appellant and Peel pleaded not guilty and after trial Peel was found not guilty and the appellant guilty. The appellant now appeals. The offences arise under ss 33 and 6 of the *Misuse of Drugs Act* 1981 (WA).

Relevantly by a combination of ss 33 and 6(1):"a person who conspires with another to sell or supply to another a prohibited drug commits the offence of selling or supplying to another a prohibited drug."

What is required to establish the offence is an agreement between two or more of the persons charged to effect the sale or supply of a prohibited drug to another person. It is not necessary that the principal offence, that is, the sale or supply of the drug actually takes place. As I understand the submissions made by senior counsel for the Crown, he says that the only sensible way to construe the Act is to say that the conspiracy is a conspiracy that the offence be committed. Or put another way, he said it encompasses a conspiracy which involves the achievement of a sale or supply of heroin. It was, I believe, necessary for him to argue on that basis because the evidence disclosed that at no stage were the appellant or Peel able to sell or supply a prohibited drug to anybody. At best they could introduce a would-be purchaser to MacNeill who could sell or supply the drug. And that was not the Crown case.

For the purpose of this appeal the facts may be shortly stated. An undercover police officer (not known by any of those charged to be such) approached the appellant and she agreed to assist him to obtain a supply of heroin. In order to do this she then approached Peel and evidently Peel could not by himself assist but they then both approached MacNeill who knew somebody who could supply the heroin to the undercover officer. The appellant, Peel and MacNeill then collected the undercover officer in Mandurah and drove to Perth. Eventually MacNeill was given some $4,500 by the undercover officer as the purchase price for the heroin which he required and the appellant then decided that she also wanted some heroin so she gave MacNeill a lesser sum of money. Whilst the others remained in the motor vehicle MacNeill went into the house and came out with a quantity of the drug. He gave some 10 g or thereabouts to the undercover officer and he gave a lesser quantity of approximately 2 g to the appellant. Shortly after this, police officers arrested the three alleged conspirators.

The evidence seems to disclose that the only one who knew the seller or supplier of the drug was MacNeill and he in fact, on behalf of the supplier, seems to have sold and supplied the same to the undercover officer and to the appellant.

There are several grounds of appeal formulated but in the event it is not necessary to go to those because I do not accept that the provisions of the *Misuse of Drugs Act* 1981 can be construed in the manner suggested by counsel for the Crown. The agreement in the usual conspiracy case can

normally be inferred because in many cases the parties go on to enact the substantive offence. In this case a substantive offence was carried out. The undercover police officer was in fact sold and supplied with heroin and certainly it would be difficult for MacNeill to say that he was not party to the sale and supply because he in fact was the one who actually knew the ultimate supplier and he was the one who collected the money from the appellant and the undercover officer and with that money acquired the requisite drugs and supplied them to both the appellant and the undercover officer.

In so far as there was an agreement in Mandurah between the appellant and Peel, it was that they would approach MacNeill for the purpose of enabling the undercover officer to get in touch with a supplier or to be supplied.

In so far as there was an agreement between MacNeill, Peel and the appellant in Mandurah, it remained to the same effect. At best, the evidence led by the Crown established that the appellant, Peel and MacNeill agreed in Mandurah that they would put the undercover officer in touch with another who could supply him with heroin. That is the conspiracy. When it became apparent at Victoria Park that MacNeill was playing a greater role than was apparent from the agreement reached in Mandurah, it is arguable that a further conspiracy occurred. It is not necessary for me to pause to consider this. Only one conspiracy was alleged and it had to be, in order to be consistent with the indictment, the one that was reached in Mandurah. And that was not, in the words of the sections as set out in the indictment, a conspiracy by any two of the three accused to sell or supply a prohibited drug to another.

It is not necessary to consider what offences the appellant may have committed in the course of this exercise. She was not charged with any other offences. I would allow the appeal and quash conviction.

Appeal allowed
Conviction quashed

Solicitors for the appellant: *William Berkley Harris & Co.*

PG

[HIGH COURT OF AUSTRALIA]

WALDEN v HENSLER

Brennan, Deane, Dawson, Toohey and Gaudron JJ

29 June, 6 November 1987

Claim of Right — Claim of acting without intention to defraud — Criminal Code (Qld), s 22.

Common Law Defence — Acting in exercise of an honest claim of right — Contrasted with defence of Criminal Code (Qld), s 22.

Fauna — Offence of keeping prescribed protected fauna — Fauna Conservation Act 1974 (Qld), s 54.

Review of Sentence Conviction — Role of High Court — Criminal Code (Qld), s 657A.

Aboriginal — Offence against fauna legislation committed while hunting for food — Acting in accordance with tribal custom.

Costs — Orders for payment of costs where conviction quashed.

The accused, an Aboriginal living in Mt Isa, obtained permission from a station owner to hunt for food on the property. He shot a plain turkey and took it home to eat. He also took a turkey chick home as a pet. He was charged by a fauna officer with keeping prescribed protected animals. He did not know that the fauna were protected; nor did he know that it was illegal for him to take or keep plain turkeys. He believed that he was entitled to do what he did, and than he had done nothing wrong. Though acting in accordance with Aboriginal custom in hunting for food he did not raise the question of whether (and if so how) Aboriginal people had lost their traditional entitlement to gather food.

This appeal against conviction and penalty was brought to the High Court by special leave from an adverse judgment of the Full Supreme Court (Qld).

Held: (1) (per curiam, Gaudron J dissenting) The appellant's conduct was not within the scope of the honest claim of right principle set out in s 22 of the *Criminal Code* (Qld). (per Brennan J) That defence related to property, which was not the case here. (per Deane J) The provision of the Code did not relieve from liability one whose only claim was in effect that he acted in ignorance of the criminal law. (per Dawson J) A relevant claim is necessarily a claim to a private right arising under civil law. The facts of this case did not relate to such a circumstance. (per Toohey J) The claim here to use turkeys was not a claim respecting property in terms of s 22. (per Gaudron J) The claim did fall within the ambit of s 22.

(2) Observations on the elements of the s 22 defence, and the common law defence of honest claim of right respecting property. (per Brennan J) Observations on the contrasts between the two defences.

(3) (per curiam, Gaudron J reasoning on another ground) Notwithstanding the appellant's technical liability, this was an appropriate case for granting an absolute discharge under s 657A of the *Criminal Code* (Qld). Normally the matter would be remitted to the Full Court or the magistrate to reconsider conviction or sentence. Given the extenuating circumstances here, it was however proper to finalise the matter in the High Court, and to make an order discharging the appellant.

(4) Consideration of payment of costs in case of successful appeal against conviction.

FACULTY OF LAW,
UNIVERSITY OF TORONTO

78 Queen's Park
Toronto, Canada M5S 2C5
Tel: *(416) 978-3725*
Fax: *(416) 978-7899*

NOV 25 1988

October 22, 11987

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

Dear John,

As promised I am enclosing copies of the following reports that will give you some additional insights to the workings in Australia of the Offices of D.P.P. and Special Prosecutor:

Annual Report of the Office of the Director of Public Prosecutions - Victoria - June 30, 1987;

Director of Public Prosecutions Annual Report 1984-85;

Director of Public Prosecutions Annual Report 1985-86;

Director of Public Prosecutions Annual Report 1986-87;

Office of the Special Prosecutor Annual Report 1982-83

Annual Report of the Special Prosecutor 1983-84.

Please return when you have finished with them.

Kindest regards,

Sincerely,

John.

J.Ll.J. Edwards
Professor Emeritus

/dw

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.
Jacqueline L. Mullenger, B.H.Ec., 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

NOV 23 1988

November 15, 1988

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

Dear Susan:

RE: Accounts

Thank you for your memo of November 9, 1988.

This is just to advise you that I will be submitting my final statement of account relating to final submissions this month as I have not done so yet. I will also be submitting statements of account to you for work associated with our Leave Application to the Supreme Court of Canada and the Judicial Immunity Appeal (although Clayton Ruby is doing most of the work associated with these corollary matters himself).

Yours sincerely,

BUCHAN, DERRICK & RING

Anne S. Derrick

ASD/har
Ashley
ASD 1A

Ruby & Edwardh
barristers

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

NOV 21 1988

November 16, 1988

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

Dear Wiley:

Here is a copy of a very recent English case that I thought would be of interest to you. You might want to share it with the Commissioners as you contemplate the need for more clearly defined rules and procedures for the payment of compensation to those who are deserving.

I hope you find it useful.

Sincerely,

Marlys Edwardh

ME:jp

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.

COX, DOWNIE & GOODFELLOW

BARRISTERS AND SOLICITORS

TELEPHONE (902) 421-6262
FACSIMILE (902) 421-3130
TELEX 019-22514

A. WILLIAM COX, Q.C.
W. R. E. GOODFELLOW, Q.C.
ROBERT G. MacKEIGAN, Q.C.
JOHN ARNOLD
DANIEL F. GALLIVAN
THOMAS P. DONOVAN
ANTHONY L. CHAPMAN
J. CRAIG McCREA
JAMIE S. CAMPBELL
LORRAINE P. LAFFERTY
A. JAMES MUSGRAVE
JOCELYN M. CAMPBELL

RONALD J. DOWNIE, Q.C.
DAVID McD. MANN, Q.C.
MICHAEL S. RYAN, Q.C.
GREGORY I. NORTH
PETER W. GURNHAM
FREDERICK P. CROOKS
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WARREN K. ZIMMER
TERRY L. ROANE
MICHAEL E. DUNPHY
BRIAN W. DOWNIE
ALAN J. DICKSON
D. KEVIN LATIMER
K. MICHAEL TWEEL
BRIAN A. TABOR

1100 PURDY'S WHARF TOWER
1959 UPPER WATER STREET
HALIFAX, CANADA

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

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Canadian Who's Who 1987

BERGER, Hon. Thomas Rodney, B.A., LL.B.; barrister and solicitor; b. Victoria, B.C. 23 Mar. 1933; s. Maurice Theodore and Nettie Elsie Perle (McDonald) B.; e. Univ. of B.C., B.A. 1955, LL.B. 1956; m. Beverley Ann, d. Joseph O. Crosby, 5 Nov. 1955; children: Erin Frances, David Bruce; called to Bar of B.C. 1957; practised law in Vancouver 1957-71; Judge, Supreme Court of B.C. 1971-83; Chrmn., Royal Comn. on Family and Children's Law (B.C.) 1973-74; Commr., Mackenzie Valley Pipeline Inquiry (Can.) 1974-77; Comr., Indian and Inuit Health Consultation 1979-80; Chrmn., Alaska Native Review Comm., 1983-85; served as M.P. (NDP) for Vancouver-Burrard 1962-63; M.L.A. for Vancouver-Burrard 1966-69; Anglican; Club: Jericho Tennis; Office: 300, 171 Water St., Vancouver, BC V6B 1A7.

Department of Justice Canada
Ministère de la Justice Canada

Ottawa, Canada
K1A 0H8
Access to Information and Privacy Office
Suite 205 - Justice Building
Tel: 952-8361

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Our file: A88-00120

November 16, 1988

BY COURIER

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

To whom it may concern:

We have received an access to information request pertaining to:

> "Discussion papers/briefing notes/other records 1987 and 1988 compensation for wrongfully convicted and imprisoned persons, and on how such a scheme/which options could be implemented and at what costs with or without the provinces".

In processing the request we have located two pages which originated from your organization, viz. pages 53-54, herewith enclosed.

We would be grateful if you could review the enclosed pages with a view to releasing them to the applicant. If any of the pages are exempt from release, please indicate the applicable provision of the Access to Information Act.

A reply by December 9, 1988 would be much appreciated.

Yours sincerely,

Hélène Goulet

Hélène Goulet
Counsel

Enclosures

Canada

AREAS OF INTEREST RE DOUGLAS RUTHERFORD TESTIMONY

1. General experience re issue of wrongful conviction

   - Explanation of remedies that are available under the Criminal Code
   - If possible, an explanation of accepted principles in dealing with requests for compensation in cases of wrongful conviction

   no –

2. Involvement with Nova Scotia Department of Attorney General in determination of procedure to be followed in Marshall case, including factors pro and con a free pardon and the procedure actually undertaken, and also including details of any communication with the Nova Scotia Court of Appeal and the effect of that communication, if any, on the form of the proceeding and documentation.

3. Whether or not the issue of compensation was raised at any time by the Department of Attorney General officials during the course of considering what procedure to take. OK no –

4. Knowledge if any of contacts with Marshall's solicitor in connection with remedies available. OK

5. Knowledge of compensation arrangements, including federal involvement, if any, in settlement with Marshall, and knowledge if any of later federal contribution to same.

copy of TF Report – highlight Crosby; press release

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 TELECOPIER

February 26, 1988

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

Dear Mr. Bissell:

Enclosed please find the general areas of interest that we expect to cover with Mr. Doug Rutherford. They are not in any particular order, and George MacDonald has not yet reviewed them. Accordingly, he may wish to expand upon them when he returns on Monday, February 29, 1988.

Thank you.

Yours very truly,

J. Cook

for David B. Orsborn
Commission Counsel

DBO:jrc

enclosure

PATTERSOı ˙ KITZ
BARRISTERS & SOLICITORS

NOV 18 1988

LEONARD A. KITZ, Q.C., D.C.L.
JOHN D. MacISAAC, Q.C.
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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

November 17, 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
Our File No. 9201/1

I enclose material for inclusion in the Advice to Prosecutors manual.

Yours truly,

Darrel I. Pink

DIP/jl
Enc.

Nova Scotia

Attorney General

Memorandum

From Martin E. Herschorn, Q.C. Director (Prosecutions) M.E.H.

Our File Reference

To Prosecuting Officers and Assistant Prosecuting Officers

Your File Reference

Subject **Special Prosecutors' Section**

Date November 10, 1988

I am pleased to advise that Mr. Gary Holt, Q.C. and Ms. Bernadette Macdonald have been appointed as Special Prosecutors, reporting to the Director (Prosecutions). Gary Holt will coordinate the activities of this Section. A set of guidelines establishing which cases are appropriate to be dealt with by the Special Prosecutions Section are being developed and will be circulated to you in the near future. In the interim, if you feel you have a case which warrants the attention of this Section, I would appreciate your contacting me.

MEH:if

#

SECTION 9

PROSECUTING OFFICERS (Continued)

Conduct 9.3

Conference Attendance 9.38

Department Structure 9.29

Disclosure (See Policy Statements, Section 7)

Media Relations (See Policy Statements, Section 7)

Negotiations with Defence Counsel (See Policy Statements, Section 7)

Remuneration - Per Diem Prosecuting Officers 9.31

Results Indicators 9.32

Special Prosecutor's Section 9.39

SECTION 10

SENTENCE

Commencement 10.1

Consecutive - Concurrent Sentences 10.5.1

Death of Livestock 10.6

Intermittent 10.7

Pre-Sentence Reports 10.14

Probation Orders - Requiring Charitable Contribution 10.15
- Condition Requiring Urine Testing 10.18
- Reporting and Supervision Conditions 10.19

9.40

Attorney General

Memorandum

From	Martin E. Herschorn, Q.C. Director (Prosecutions) M.E.H.	Our File Reference	01-88-6021-19
To	Prosecuting Officers and Assistant Prosecuting Officers	Your File Reference	
Subject	**Office Premises**	Date	November 14, 1980

In the event that you encounter any problems concerning your office premises, you are requested to contact me in order that the problem can be raised with the Department of Government Services which is responsible for the resolution of such matters. Situations have been encountered in the past where Prosecutors have dealt directly with a landlord, without the Department of Government Services being aware of the situation. I would appreciate your cooperation in informing me of any such problems in order that it might be resolved through appropriate channels.

MEH:if

#

SECTION 9

PROSECUTING OFFICERS (Continued)

Conduct 9.3

Conference Attendance 9.38

Department Structure 9.29

Disclosure (See Policy Statements, Section 7)

Media Relations (See Policy Statements, Section 7)

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Office Premises 9.40

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Results Indicators 9.32

Special Prosecutor's Section 9.39

SECTION 10

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- Condition Requiring Urine Testing 10.18
- Reporting and Supervision Conditions 10.19

Release Date
November 14, 1988

Ontario

Ministry of Citizenship
Ministère des Affaires civiques

400 University Avenue
11th Floor
Toronto, Ontario
M7A 1T7
416/965-3423

Your File:

Our File:

November 16, 1988

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

Dear Susan Ashley:

Please find attached a copy of the notes for my presentation to the special session of the Royal Commission on the Donald Marshall Jr. Prosecution on November 25, 1988. I apologize for the delay in getting these notes to you, however, workload has been even worse than usual.

In my presentation, I will be focussing on race relations policy and administrative machinery, rather than issues related to what should be the content of a training program or employment equity strategy. I shall also omit any substantive reference to the critical role of the community and the requirements to support their involvement in any race relations strategy. Nevertheless, I would be happy to respond to questions in these areas.

.../2

November 16, 1988

Susan Ashley

However, I suspect that I may be of greatest assistance in providing information on how the government can put into place a mechanism to follow-up this inquiry. Without an appropriate infrastructure and strategy, it is doubtful that effective race relations programs will be realized, notwithstanding the important role of the Human Rights Commission.

I look forward to seeing you.

Sincerely yours,

Dan McIntyre
Executive Coordinator
Race Relations Directorate

DM/jc

Attachment

"PROBLEMS IN SEARCH OF POLICY"

NOTES FOR

A PRESENTATION TO THE

ROYAL COMMISSION ON THE DONALD MARSHALL JR. PROSECUTION

NOVEMBER 24 TO 26, 1988

BY DAN MCINTYRE

EXECUTIVE COORDINATOR

RACE RELATIONS DIRECTORATE

MINISTRY OF CITIZENSHIP

INTRODUCTION:

THE PRESENTATION BY DAN MCINTYRE, WHO IS CURRENTLY EXECUTIVE COORDINATOR OF THE RACE RELATIONS DIRECTORATE (ONTARIO MINISTRY OF CITIZENSHIP) WILL TOUCH ON THE FOLLOWING AREAS:

1. BRIEFLY REVIEW THE DOCUMENTED BARRIERS TO BLACKS IN THE CRIMINAL JUSTICE SYSTEM AND RELATED SOCIAL POLICY AREAS.

2. IDENTIFY THE NEED FOR A RACE RELATIONS POLICY FRAMEWORK IN NOVA SCOTIA.

3. DESCRIBE TWO RACE RELATIONS POLICY FRAMEWORKS - ONTARIO AND FEDERAL GOVERNMENTS.

4. ILLUSTRATE THE POTENTIAL IMPACT THAT A RACE RELATIONS POLICY FOCUS CAN HAVE IN KEY PROGRAM AREAS - CRIMINAL JUSTICE SYSTEM, MUNICIPALITIES, EDUCATION, PUBLIC HOUSING, EMPLOYMENT.

5. OUTLINE THE ROLE OF THE RACE RELATIONS DIRECTORATE, A BRANCH OF THE MINISTRY OF CITIZENSHIP IN IMPLEMENTING THE ONTARIO POLICY ON RACE RELATIONS

RCV BY:XEROX TELECOPIER 7010 ;11-17-88 1:58PM ; CCITT G3→ 4242709;# 6
SENT BY:MIN. OF LABOUR ; 17-88 ; 12:59 ;Std&Prgms#416598 8→ 4242709;# 6

DUE TO TIME CONSTRAINTS THE PRESENTATION WILL NOT ATTEMPT TO ADDRESS THE CRITICAL ROLE OF THE COMMUNITY IN ADVOCATING AND MONITORING CHANGES IN RACE RELATIONS, NOR WILL IT ATTEMPT TO MAKE SPECIFIC RECOMMENDATIONS ON ISSUES SUCH AS TRAINING, EMPLOYMENT EQUITY, RESEARCH AND DATA COLLECTION. ALL OF THESE AREAS ARE ADDRESSED TO SOME EXTENT IN THE WILSON HEAD REPORT.

THIS PRESENTATION WILL ARGUE THAT IN THE ABSENCE OF A RACE RELATIONS POLICY FRAMEWORK THAT IS GOVERNMENT WIDE IN SCOPE, COUPLED WITH A SPECIAL OFFICE TO COORDINATE AND MONITOR PROGRESS, THE RECOMMENDED CHANGES INCLUDED IN THE HEAD REPORT ARE LIKELY TO BE AD HOC AND HAVE MINIMAL IMPACT.

THE VIEWS EXPRESSED IN THE PRESENTATION ARE STRICTLY THAT OF THE AUTHOR AND <u>DO NOT</u> REPRESENT THE OPINIONS OR POSITION OF THE ONTARIO GOVERNMENT.

NOTES FOR PRESENTATION

"THE PROBLEMS FACING BLACKS IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN NOVA SCOTIA - AND BEYOND: WHAT CAN BE DONE?"

SUMMARY OF POSSIBLE BARRIERS IN THE CRIMINAL JUSTICE SYSTEM:

POLICE:
- POLICE/COMMUNITY RELATIONS;
- INADEQUATE REPRESENTATION OF BLACKS ON THE POLICE FORCE;
- POLICE MISCONDUCT/DIFFERENTIAL TREATMENT BASED ON RACE;

COURTS:
- INADEQUATE REPRESENTATION OF BLACKS IN THE COURT SYSTEM AS JUDGES, LAWYERS, CROWN PROSECUTORS ETC;
- DIFFERENTIAL TREATMENT IN THE LAYING OF CHARGES, AND SENTENCING;
- INADEQUATE LEGAL REPRESENTATION OF BLACKS IN THE COURT SYSTEM;
- LACK OF ACCOUNTABILITY.

CORRECTIONS:
- DIFFERENTIAL TREATMENT OF BLACK INMATES IN INSTITUTIONS;
- INADEQUATE SUPPORT OR REHABILITATIVE SERVICES FOR BLACKS;
- INADEQUATE REPRESENTATION OF BLACKS ON STAFF;
- LACK OF ACCOUNTABILITY;

BARRIERS TO BLACKS IN RELATED POLICY AREAS:

- EMPLOYMENT/ECONOMIC DEVELOPMENT
- EDUCATION
- HOUSING
- SOCIAL SERVICES

WHAT IS NEEDED?

A. THERE IS A NEED FOR AN OVERALL RACE RELATIONS POLICY FRAMEWORK THAT:

1) ARTICULATES THE NOVA SCOTIA GOVERNMENT'S COMMITMENT AND RESPONSIBILITIES TO ELIMINATE INEQUALITIES BASED ON RACE IN ALL SOCIAL, ECONOMIC AND CULTURAL POLICY AREAS INCLUDING THE CRIMINAL JUSTICE SYSTEM.

2) ARTICULATES THE NOVA SCOTIA GOVERNMENT'S COMMITMENT AND RESPONSIBILITIES TO REDUCE AND ELIMINATE RACIAL TENSION AND CONFLICTS.

3) DEFINES THIS RESPONSIBILITY AS BEING GOVERNMENT WIDE WITH THE EXPECTATION THAT ALL GOVERNMENT DEPARTMENTS AND THEIR RESPECTIVE AREAS OF JURISDICTION WILL BE HELD ACCOUNTABLE FOR THEIR PERFORMANCE IN RACE RELATIONS.

4) ESTABLISHES A RACE RELATIONS OFFICE AND A MINISTER RESPONSIBLE FOR RACE RELATIONS THAT COORDINATES AND MONITORS THE GOVERNMENT-WIDE IMPLEMENTATION OF ITS RACE RELATIONS POLICY AND REPORTS ANNUALLY ON GOVERNMENT INITIATIVES AND PROGRAMS.

TWO POLICY FRAMEWORKS FOR RACE RELATIONS

ONTARIO MODEL - RACE RELATIONS AND MULTICULTURALISM	FEDERAL MODEL-RACE RELATIONS RELATIONS AND MULTICULTURALISM
MINISTER OF CITIZENSHIP - RESPONSIBLE FOR RACE RELATIONS, MULTICULTURALISM AND HUMAN RIGHTS COMMISSION.	- MINISTER OF MULTICULTURALISM
- POLICY ON RACE RELATIONS (1986). - MULTICULTURALISM STRATEGY (1987).	- MULTICULTURALISM ACT (1988) (INCLUDES RACE RELATIONS) REQUIRES ANNUAL REPORT ON PROGRESS.
- CABINET COMMITTEE ON RACE RELATIONS.	- PARLIAMENTARY COMMITTEE ON MULTICULTURALISM.
- STAFF WORKING GROUP UNDER THE CABINET COMMITTEE. MINISTRIES REPORT TO C.C.R.R. ON PROGRESS.	
- MULTICULTURALISM STRATEGY INCLUDES $7.7 MILLION FOR MINISTRY PROGRAMS IN MULTICULTURALISM.	- NO SIGNIFICANT INCENTIVE FUND FOR DEPARTMENTAL INITIATIVES IN RACE RELATIONS OR MULTICULTURALISM.
RACE RELATIONS DIRECTORATE - SPECIAL BRANCH OF THE MINISTRY OF CITIZENSHIP TO CO-ORDINATE AND MONITOR IMPLEMENTATION OF RACE RELATIONS POLICY.	- NEW DEPARTMENT OF MULTICULTURALISM

B. EXAMPLES OF APPROACHES TO RACE RELATIONS IN KEY AREAS

1) CRIMINAL JUSTICE SYSTEM:

- PUBLIC COMPLAINTS COMMISSIONER'S OFFICE - CIVILIAN REVIEW AGENCY OF ALLEGED POLICE MISCONDUCT.
- SCOPE - METRO TORONTO ONLY, DRAFT LEGISLATION IN PROGRESS TO EXPAND TO PROVINCE.

- METRO TORONTO - COUNCIL ON RACE RELATIONS AND POLICING - FUNDED BY ATTORNEY GENERAL TO BRING TOGETHER REPRESENTATIVES OF POLICE AND COMMUNITY LEADERS TO ADDRESS RACE RELATIONS ISSUES.

- MINISTRIES OF SOLICITOR GENERAL, ATTORNEY GENERAL AND CORRECTIONS ARE REPRESENTED ON THE CABINET COMMITTEE ON RACE RELATIONS AND ARE DEVELOPING 1-3 YEAR RACE RELATIONS ACTION PLAN TO ADDRESS BARRIERS TO FAIR TREATMENT OF NATIVE PEOPLE AND RACIAL MINORITIES IN THE CRIMINAL JUSTICE SYSTEM.

2) MUNICIPALITIES:

- CURRENTLY 15 MUNICIPAL RACE RELATIONS COMMITTEES IN ONTARIO TO ADDRESS ISSUES OF EQUITY AND RACIAL TENSIONS/CONFLICT.

- COMMITTEES HAVE DIFFERENT MODELS OF REPRESENTATION AND TERMS OF REFERENCE - SOME ARE PREDOMINATELY COMMUNITY REPRESENTATIVES; OTHERS A BLEND OF COMMUNITY, MUNICIPAL POLITICIANS, AND INSTITUTIONS SUCH AS POLICE.

- MINISTRY OF MUNICIPAL AFFAIRS IS DEVELOPING A RACE RELATIONS ACTION PLAN TO ADDRESS ISSUES OF EQUITY, RACIAL TENSIONS TO SUPPORT MUNICIPAL RACE RELATIONS COMMITTEES AND PROGRAMS.

3) EDUCATION:

- CURRENTLY 15-20 SCHOOL BOARDS HAVE RACE RELATIONS POLICIES ADDRESSING ISSUES SUCH AS STREAMING, CURRICULUM, TEACHER TRAINING, HANDLING RACIAL INCIDENTS, SCHOOL COMMUNITY RELATIONS AND EMPLOYMENT BARRIERS TO MINORITIES AND NATIVE PEOPLE.

- MINISTRY OF EDUCATION IS DEVELOPING A RACE RELATIONS POLICY FOR ALL SCHOOL BOARDS IN ONTARIO IN ADDITION TO A RACE RELATIONS ACTION PLAN FOR THE CABINET COMMITTEE ON RACE RELATIONS INCLUDING NATIVE CONCERNS.
- A FEW COLLEGES AND UNIVERSITIES HAVE/ARE DEVELOPING RACE RELATIONS POLICIES.

- MINISTRY OF COLLEGES AND UNIVERSITIES IS DEVELOPING A RACE RELATIONS ACTION PLAN.

4) PUBLIC HOUSING:

- METRO TORONTO HOUSING AUTHORITY - 3RD LARGEST HOUSING AUTHORITY IN NORTH AMERICA (130,000 TENANTS), HAS A DIRECTOR OF RACE RELATIONS AND A RACE RELATIONS PROGRAM IN PLACE.

- MINISTRY OF HOUSING IS DEVELOPING A RACE RELATIONS ACTION PLAN FOR ALL PUBLIC HOUSING AUTHORITIES IN ONTARIO.

5) EMPLOYMENT EQUITY:

- ONTARIO PUBLIC SERVICE HAS AN EMPLOYMENT EQUITY PROGRAM FOR WOMEN, RACIAL MINORITIES, NATIVE PEOPLE, DISABLED PERSONS, AND FRANCOPHONES. GOALS AND TIMETABLES FOR EACH MINISTRY TO COMMENCE IN SEPTEMBER 1989.
- INTERNAL WORKING GROUP ARE DEVELOPING POLICY OPTIONS REGARDING EMPLOYMENT EQUITY FOR THE BROADER PUBLIC AND PRIVATE SECTORS.

- O.P.P. AND METRO POLICE HAVE MADE COMMITMENTS TO EMPLOYMENT EQUITY FOR WOMEN, RACIAL MINORITIES AND NATIVE PEOPLE.

RACE RELATIONS DIRECTORATE:

- FORMERLY THE RACE RELATIONS DIVISION OF THE ONTARIO HUMAN RIGHTS COMMISSION, HEADED BY A COMMISSIONER FOR RACE RELATIONS.

- 1987 - REORGANIZED AS THE RACE RELATIONS DIRECTORATE OF THE MINISTRY OF CITIZENSHIP, HEADED BY AN EXECUTIVE COORDINATOR.

- MANDATE INCLUDES:
  - DEVELOPING, COORDINATING AND MONITORING GOVERNMENT-WIDE POLICIES AND PROGRAMS IN RACE RELATIONS.

  - MONITORING RACIAL TENSIONS AND PROVIDING MEDIATION/VOLUNTARY DISPUTE RESOLUTION SERVICES IN RACE RELATIONS SUCH AS CONFLICTS BETWEEN POLICE AND COMMUNITY.

  - PROVIDES ADVICE AND ASSISTANCE TO MUNICIPALITIES, SCHOOL BOARDS, POLICE, CORRECTIONS AND GOVERNMENT MINISTRIES ON THE DEVELOPMENT AND IMPLEMENTATION OF RACE RELATIONS COMMITTEES, POLICIES AND PROGRAMS.

- CONDUCTS PUBLIC EDUCATION AND TRAINING PROGRAMS ON RACE RELATIONS AND EMPLOYMENT EQUITY FOR RACIAL MINORITIES AND NATIVE PEOPLE.

- JOINTLY ADMINISTERS A $500,000 RACE RELATIONS PROJECT FUND FOR COMMUNITY GROUPS, NATIVE ORGANIZATIONS (e.g. BAND COUNCILS) MUNICIPALITIES AND SCHOOL BOARDS.

- COORDINATES INTERGOVERNMENTAL AGENCIES ACTIVITIES IN RACE RELATIONS IN METRO TORONTO THROUGH THE INTERGOVERNMENTAL RACE RELATIONS NETWORK.

CONCLUSION:

AS WILSON HEAD'S REPORT INDICATES, RACISM IN CONTEMPORARY SOCIETY IS A STRUCTURAL PROBLEM WHICH IS EVIDENT IN ALL ASPECTS OF COMMUNITY LIFE AND VIRTUALLY ALL OF OUR MAJOR POLICY AREAS INCLUDING THE CRIMINAL JUSTICE SYSTEM, EMPLOYMENT, EDUCATION, HOUSING AND SOCIAL SERVICES. TO EFFECTIVELY ADDRESS THIS ISSUE THERE IS A NEED FOR A PARTNERSHIP AMONG GOVERNMENTS, COMMUNITY AND VARIOUS KEY STAKEHOLDERS SUCH AS UNIONS, EMPLOYERS ETC.

THE PROVINCIAL GOVERNMENT HAS A CRITICAL ROLE TO PLAY TO ENSURE THAT:

1) ITS HOUSE IS IN ORDER, AND
2) TO PROVIDE LEADERSHIP TO OTHER STAKEHOLDERS

TO ASSIST IN REACHING THESE OBJECTIVES IT IS IMPORTANT THAT THE NOVA SCOTIA GOVERNMENT DEVELOP ITS OWN RACE RELATIONS POLICY, ACTION PLAN, AND APPROPRIATE STRUCTURE TO ENSURE THAT THE RACE RELATIONS SITUATION IN NOVA SCOTIA IS IMPROVED.

November 1988

NOV 1 7 1988

STEWART MACKEEN & COVERT

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GLEN V. DEXTER
ELIZABETH M. HALDANE
JOHN MacL. ROGERS
RICHARD A. HIRSCH
JAMES M. DICKSON
ELIZABETH JOLLIMORE

COUNSEL

DONALD A. KERR, Q.C.
BRIAN FLEMMING, Q.C.
HUGH K. SMITH, Q.C.

COPY

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

CORRESPONDENCE
P.O. BOX 997
HALIFAX, CANADA B3J 2X2

TELEPHONE (902) 420-3200
TELECOPIER (902) 420-1417
TELEX 019-22593

DIRECT DIAL (902) 420-

OUR FILE REFERENCE:

RNP
2076-2

November 16, 1988

The Honourable Terence R. Donahoe, Q.C.
Attorney General, Province of Nova Scotia
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Attorney General:

John MacIntyre

I read in the Chronicle-Herald of Friday, November 11, 1988, in an article by Brian Underhill, that the Department of the Attorney General is reviewing evidence given during the course of the Inquiry with the suggestion that the Department "may take action in light of evidence which surfaced during the final days of hearings".

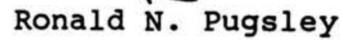
I appeared on behalf of John MacIntyre and made submissions to the Commission that no charges should be laid against Mr. MacIntyre with respect to any matters that arose during his investigation in 1971 or the re-investigation in 1982.

In the event the Department is giving any consideration at all to Mr. MacIntyre's position, I would strongly urge that no decision be taken until the Commission makes it report.

I think it it noteworthy that no representations were made by the

solicitors acting on behalf of the Department that charges be laid against Mr. MacIntyre.

Yours respectfully,



Ronald N. Pugsley

RNP:dk

c: John MacIntyre
c: George W. MacDonald, Q.C.
c: Jamie W.S. Saunders, Q.C.

N0184693

PATTERSON KITZ
BARRISTERS & SOLICITORS

NOV 16 1988

LEONARD A. KITZ, Q.C., D.C.L.
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DOUGLAS A. CALDWELL, Q.C.
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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

November 15, 1988

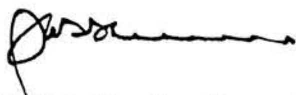
Ms. Susan M. Ashley
Commission Executive Secretary
Royal Commission on the
Donald Marshall, Jr., Prosecution
Suite 1026 - Maritime Centre
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear Susan:

Marshall Inquiry
Our File 9201/1

Thank you very much for your letter dated November 10 enclosing a tentative agenda for the Consultation planned for November 24-26.

Yours very truly,



Jamie W. S. Saunders

JWSS/gmm

NOV 16 1988

Ruby & Edwardh
barristers

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

November 9, 1988

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

Dear Wiley:

I had an opportunity to meet with Doug Hunt, Deputy Attorney General in Ontario to discuss with him our disclosure provisions. You will undoubtedly recall that he participated in one of the workshops. I thought there might well be a working paper that I had not made privy to that dealt specifically with proposals for disclosure and Doug suggested you would be very interested if there was one.

Would you, if there is such a document available, please forward it to Mr. Doug Hunt. His address in Ontario is:

Ministry of the Attorney General
18 King Street East
18th Floor
Toronto, Ontario
M5C 1C5

I am sure if you simply indicate to Doug that the matter should be viewed as confidential at this time, he would keep it as such.

Sincerely,

Marlys Edwardh

ME:jp

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.

NOV 16 1988

STEWART MACKEEN & COVERT

BARRISTERS AND SOLICITORS SINCE 1867

J. WILLIAM E. MINGO, Q.C.
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BARBARA S. PENICK
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GLEN V. DEXTER
ELIZABETH M. HALDANE
JOHN MACL. ROGERS
RICHARD A. HIRSCH
JAMES M. DICKSON
ELIZABETH JOLLIMORE

COUNSEL

DONALD A. KERR, Q.C.
BRIAN FLEMMING, Q.C.
HUGH K. SMITH, Q.C.

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

CORRESPONDENCE
P.O. BOX 997
HALIFAX, CANADA B3J 2X2

TELEPHONE (902) 420-3200
TELECOPIER (902) 420-1417
TELEX 019-22593

DIRECT DIAL (902) 420-

OUR FILE REFERENCE:

November 15, 1988

DELIVERED

Ms. Susan Ashley,
Royal Commission on the
Donald Marshall, Jr. Prosecution,
Maritime Centre, Suite 1080,
1505 Barrington Street,
Halifax, Nova Scotia

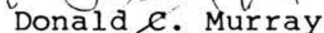
Dear Ms. Ashley:

RE: William Urquhart

At the conclusion of the hearings in Sydney in early November, the Commissioners indicated that it was their hope to be able to file a final Report in mid-1989. I appreciate that this is not a fixed deadline. I also appreciate that the Commissioners by their mandate report to the Lieutenant-Governor in Council. However, in view of Mr. Urquhart's age and health and the public nature of this matter, would it be possible to arrange to review or be given advice as to the conclusions reached by the Commissioners a week or two prior to general public release so that neither Mr. Urquhart nor myself are caught completely off-guard? I would, of course, treat such an opportunity to review such conclusions in the strictest confidence limited to myself and my client.

I would appreciate your thoughts.

Yours very truly,
STEWART, MACKEEN & COVERT
Per:



Donald C. Murray

DCM/dmb
N2062366

NOV 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.
Jacqueline L. Mullenger, B.H.Ec., 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

November 15, 1988

BY COURIER

Mr. James MacPherson, Counsel
Royal Commission on the
Donald Marshall, Jr., Prosecution
1505 Barrington Street, Suite 1026
Halifax, N.S.

Dear Mr. MacPherson:

RE: T. Alexander Hickman et. al. and Ian M. MacKeigan et. al.
S.C.A. Nos. 02004/01991

Please find enclosed our factum with respect to the above mentioned matter.

I trust everything is in order.

Yours sincerely,

BUCHAN, DERRICK & RING

For: Anne S. Derrick

JLM/har
MacPherson
JLM #2

Enclosure

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
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, Q.C.
NANCY J. BATEMAN
R. MALCOLM MACLEOD
ALAN C. MacLEAN
DENNIS ASHWORTH
WENDY J. JOHNSTON
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FRED J. DICKSON, Q.C.
DAVID R. HUBLEY, Q.C.
GERALD J. McCONNELL, Q.C.
RONALD A. PINK
LOGAN E. BARNHILL
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
DARA 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

NOV 14 1988

COPY

November 14, 1988

BY HAND

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

Dear Sir:

Hickman et al v. MacKeigan
S.C.A. No. 02004
S.C.A. No. 01991
Our File No. 9201/1

I enclose for filing, five copies of the Supplementary Factum of the Intervenor, the Attorney General of Nova Scotia reference the above.

Yours truly,

Darrel I. Pink

DIP/jl

c.c. Mr. James MacPherson
Mr. Clayton Ruby
Ms. Anne Derrick
Mr. Ronald J. Downie, Q.C.

uby & Edwardh
barristers

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

NOV 1 4 1988

COPY

November 8, 1988

Chief Justice T. Alexander Hickman
Chairman
Royal Commission on the Donald
Marshall, Jr., Prosecution
Maritime Centre
Suite 1026
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

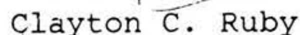
Dear Justice Hickman:

Upon our return to Toronto we recalled that in our oral submissions we had failed to endorse two recommendations made in the written argument filed by counsel for the Attorney General of Nova Scotia and the Department of the Attorney General. In particular these recommendations relate first to the improvement in the swearing in process which should occur with respect to child witnesses (described in pages 41 through 45) and secondly the duty of Crown Counsel to raise errors which occurred at trial which might reasonably result in the appeal being allowed (which is described at page 99).

These recommendations address matters of real concern to counsel for Donald Marshall and we wish formally to endorse them.

Sincerely,

Marlys Edwardh



Clayton C. Ruby

ME:jp

cc: All Counsel

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.

Ruby & Edwardh
barristers

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

NOV 1 0 1988

November 3, 1988

The Honourable Mr. Justice Gregory Thomas Evans
Royal Commission on the Donald
Marshall, Jr. Prosecution
Maritime Centre
Suite 1026
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear Justice Evans:

Upon my return to Toronto I had occasion to peruse some of the old Codes in search of the provision you so accurately recalled. Please find enclosed section 604 of the 1975 Criminal Code which does indeed place upon the Court the duty in a capital case to consider any other grounds upon which the conviction ought to be set aside or the sentence varied in a case where a person has been sentenced to death.

I hope the foregoing is useful to you and to the other Commissioners in their deliberations.

Sincerely,

Marlys Edwardh

ME:jp

In *BROSSEAU v. THE QUEEN*, [1969] 3 C.C.C.129, 5 C.R.N.S.331 (S.C.C.), it was held (4:1) that where an accused who is represented by counsel pleads guilty the trial Judge is not bound as a matter of law to ascertain whether the accused fully appreciates the nature of the charge and the effect of his plea.

The heavy onus upon an appellant seeking leave to change his plea and requesting a new trial was met where it was shown that after arrest and during investigation legal advice was actively and deliberately denied to him by the police: *R. v. BALLEGEER*, [1969] 3 C.C.C.353, 1 D.L.R. (3d) 74 (Man. C.A.).

A plea of "guilty with an explanation" should not be accepted until the Court has on due inquiry satisfied itself that this qualification does not derogate from the accused's intention to unequivocally plead guilty: *Re REGINA AND MANN et al.* (1971), 4 C.C.C. (2d) 319, [1971] 5 W.W.R. 84 (Sask. C.A.).

Subsec. (1) (*b*). In *R. v. CLIFFORD*, [1969] 2 C.C.C.363, [1969] 1 O.R. 76 (C.A.), it was held that an appellant may abandon his appeal before it comes on for hearing and the Crown, although having submitted in its factum that the sentence should be varied upwards, not having proceeded by its own notice of appeal, cannot contest the abandonment, which prevented the hearing of the sentence appeal. However, in *R. v. MAHON*, [1969] 2 C.C.C.179 (B.C.C.A.), the accused appealed the quantum of a sentence illegally imposed as concurrent rather than consecutive to his unexpired parole term and the Court, holding that the disposition of a sentence appeal was in its hands, and not in the control of the appellant, refused to allow him to abandon and corrected the illegality of sentence.

As part of its jurisdiction over sentence appeals an appellate court has the power to adjudicate upon a trial Judge's decision either granting or refusing a discharge: *R. v. CHRISTMAN* (1973), 11 C.C.C. (2d) 245, [1973] 3 W.W.R.475 (Alta.S.C.App.Div.). Foll'd. *R. v. FALLOWFIELD* (1973), 22 C.R.N.S.342, [1973] 6 W.W.R.472 (B.C.C.A.).

Since a conviction includes an adjudication of guilt and sentence a Court's decision not to grant a discharge may be the subject of an appeal against sentence: *R. v. McINNIS* (1973), 13 C.C.C. (2d) 471, 23 C.R.N.S. 152 (Ont.C.A.).

RIGHT OF APPEAL OF PERSON SENTENCED TO DEATH—Notice deemed to have been given—Court of appeal may consider.

604. (1) Notwithstanding any other provision of this Act a person who has been sentenced to death may appeal to the court of appeal

(*a*) against his conviction on any ground of appeal that involves a question of law or fact or mixed law and fact; and

(*b*) against his sentence unless that sentence is one fixed by law.

(2) A person who has been sentenced to death shall, notwithstanding that he has not given notice pursuant to section 607, be deemed to have given such notice and to have appealed against his conviction and against his sentence unless that sentence is one fixed by law.

(3) The court of appeal. on an appeal pursuant to this section, shall

(*a*) consider any ground of appeal alleged in the notice of appeal, if any notice has been given, and

(*b*) consider the record to ascertain whether there are present any other grounds upon which the conviction ought to be set aside or the sentence varied, as the case may be. 1960-61, c. 44, s. 8.

Where the appeal court required by law to do so failed to consider all of the possible grounds of appeal, the Supreme Court of Canada may do so: *R. v. BORG*, [1969] 4 C.C.C.262, 7 C.R.N.S.85 (S.C.C.).

RIGHT OF ATTORNEY GENERAL TO APPEAL—Acquittal—Appeal against verdict of unfit.

605. (1) The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal

(*a*) against a judgment or verdict of acquittal of a trial court in proceedings by indictment on any ground of appeal that involves a question of law alone, or

(*b*) with leave of the court of appeal or a judge thereof, against the sentence passed by a trial court in proceedings by indictment, unless that sentence is one fixed by law.

(2) For the purposes of this section a judgment or verdict of acquittal includes an acquittal in respect of an offence specifically charged where the accused has on the trial thereof been convicted of an included or other offence.

(3) The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal against a verdict that an accused is unfit, on account of insanity, to stand his trial, on any ground of appeal that involves a question of law alone. 1953-54, c. 51, s. 584; 1960-61, c. 43, s. 25; 1968-69, c. 38, s. 56.

Subsec. (1). The initial instructions to institute proceedings does not include the power or right to enter an appeal. Furthermore, an appeal commenced by A representing B acting for or on behalf of the A-G (Can.) is outside this subsection: *MARTIN v. THE QUEEN* (1971), 13 C.R.N.S. 348, (P.E.I. S.C.); *R. v. GREEN* (1970), 1 C.C.C. (2d) 145, 2 N.B.R. (2d) 903 (N.B.S.C. App.Div.).

Since then in P.E.I. the Supreme Court has directed that counsel initiating an appeal must produce written instructions signed by the Attorney-General, or his deputy, or an official of his department authorized to give such instructions: *R. v. MARTIN (No. 2)* (1971), 4 C.C.C. (2d) 276, 14 C.R.N.S.272 (P.E.I.S.C.).

COX, DOWNIE & GOODFELLOW

BARRISTERS AND SOLICITORS

TELEPHONE (902) 421-6262
FACSIMILE (902) 421-3130
TELEX 019-22514

A. WILLIAM COX, Q.C.
W. R. E. GOODFELLOW, Q.C.
ROBERT G. MACKEIGAN, Q.C.
JOHN ARNOLD
DANIEL F. GALLIVAN
THOMAS P. DONOVAN
ANTHONY L. CHAPMAN
J. CRAIG McCREA
JAMIE S. CAMPBELL
LORRAINE P. LAFFERTY
A. JAMES MUSGRAVE
JOCELYN M. CAMPBELL
RONALD J. DOWNIE, Q.C.
DAVID McD. MANN, Q.C.
MICHAEL S. RYAN, Q.C.
GREGORY I. NORTH
PETER W. GURNHAM
FREDERICK P. CROOKS
PAUL C. MARTIN
LESLIE J. DELLAPINNA
ROBERT W. CARMICHAEL
JAN McK. SILLIKER
LES D. DOLL
JONATHAN R. GALE
GEORGE M. MITCHELL, Q.C.
JOHN M. BARKER, Q.C.
DANIEL M. CAMPBELL, Q.C.
DOUGLAS C. CAMPBELL
WARREN K. ZIMMER
TERRY L. ROANE
MICHAEL E. DUNPHY
BRIAN W. DOWNIE
ALAN J. DICKSON
D. KEVIN LATIMER
K. MICHAEL TWEEL
BRIAN A. TABOR

1100 PURDY'S WHARF TOWER
1959 UPPER WATER STREET
HALIFAX, CANADA

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

OUR FILE: 8118-1

NOV 09 1988

November 9, 1988

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

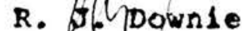
COPY

Dear Sir:

**RE: MacKeigan et al. v. Hickman et al.
S.C.A. Nos. 01991 and 02004**

Enclosed herewith are five (5) copies of a Combined Book of Authorities on behalf of the Respondents and the Attorney General of Nova Scotia. Copies of this letter and copies of the three volume cases are going to other counsel.

Yours very truly,



R. J. Downie

RJD:cmg
Enclosures
cc. Ms. Anne Derrick
Mr. Jamie Saunders
Mr. James MacPherson

NOV 08 1988

THE UNIVERSITY OF MANITOBA

FACULTY OF LAW

Robson Hall
Winnipeg, Manitoba
Canada R3T 2N2

October 28, 1988

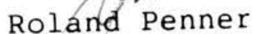
John S. Briggs
Director of Research
Marshall Commission
Maritime Centre, Suite 1026
1505 Barrington St.
Halifax, Nova Scotia
V3J 3K5

Sir:

Enclosed herewith please find an edited version of the paper I delivered (or spoke from) at the workshop in Halifax on Sept. 29, 1988. The editing includes additional comment on Gordon Gregory's and Philip Stenninger's papers. Since my original paper presented my views on such issues as appointment, salary, tenure and other aspects of the position of Director of Public Prosecution, I have not added anything by way of a direct comment on Bill MacDonald's draft proposal to the text. I have, however, added a one-page annex which contains brief comments on two or three specific issues.

I attach an invoice for miscellaneous expenses.

Sincerely,



Roland Penner

RP/sf
attachs.

Original in file of workshops

BLANEY, Mc IURTRY, STAPELLS
BARRISTERS AND SOLICITORS

WILLIAM S. SEWELL, Q.C.
MURRAY A. THOMPSON, Q.C.
E. JOHN FREYSENG, Q.C.
ROONEY L.K. SMITH, Q.C.
ROBERT C. COHEN, Q.C.
ROBERT J. POTTS
SUSAN ENG
VIESTURS R. UPANS
DAVID S. WILSON
IAN S. EPSTEIN
WILLIAM L. NEVILLE
TERESA MONTI
ALLISON SMALL
RONNI A. LONDON
SUSAN DIMARCO
ROBERT L. BARLOW
DAVID N. KORNHAUSER
SUZANNE BAILEY

HUGH T. McGOVERN
WILLIAM R. McMURTRY, Q.C.
ALEXANDER A. MESBUR, Q.C.
ANDREW B. TULK, Q.C.
HOWARD L. FOX
JEFFERY L. FREELAN
WILLIAM A. CARAY
CRAWFORD W. SPRATT
GARY STEINHART
M. MARGARET E. HAIG
W. GRANT BUCHAN-TERRELL
KAREN A. HENEIN
SOPHIA DeJONGE
MINDY I. TAYAR
ROGER HORST
CHERYL M. ALLAIN-MEE
MIRILYN R. KOTT
TANYA LEEDALE

JAMES H. CLARKE, Q.C.
RICHARD H. KREMPULEC, Q.C.
LARRY A. ROWE, Q.C.
GLENN I. COOPER
JOHN S. KELLY
RODERICK S.W. WINSOR
W. ORMOND MURPHY
JOAN H. CARSON
MICHAEL J. BENNETT
MARY L. MacGREGOR
DELIA OPEKOKEW
JESS C. BUSH
DAVID W. HOWELL
TIMOTHY P. ALEXANDER
ROBERT K. O'TOOLE
CATHY CROSBY
CHRISTOPHER R.J. VAN LOAN
PERCY OSTROFF

JAMES W. BLANEY, Q.C.
STEPHEN H. AARONS, Q.C.
PHILIP SPENCER, Q.C.
BARRY T. GRANT
DOUGLAS C. LASH
GEZA R. BANFAI
WAYNE S. GRAY
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JOHN M. SCOTT
CLAUDIA M. LANG
SEAN DEWART
JOHN R. OWEN
ANTHONY FERRARA
ELIZABETH WILSON
BRETT J. TKATCH

COUNSEL: LIONEL S. FROST, Q.C.

TORONTO OFFICE

BY TELECOPIER

November 4, 1988

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION
Maritime Centre
Suite 1026
1505 Barrington Street
HALIFAX, Nova Scotia
B3J 3K5

Attention: Ms. Jan Cook

RE: CONSULTATION TO THE ROYAL COMMISSION

Dear Ms. Cook:

I regret to inform you that I will not be able to attend the meeting because of an emergency work situation which has arisen.

I suggest that you contact the Indigenous Bar Association. They should be able to provide you with a name of an Indian lawyer who could replace me.

Their address is:

INDIGENOUS BAR ASSOCIATION
c/o Mr. Roger Jones
NAHWEGAHBOW, JONES
Barristers & Solicitors
124 O'Connor Street
Suite 500
OTTAWA, Ontario
K1P 5M9

Telephone number: (613) 238-5424
Contact person: Mr. Roger Jones.

Thank you for your kind consideration.

THE CADILLAC FAIRVIEW TOWER
SUITE 1400, 20 QUEEN STREET WEST
TORONTO, CANADA M5H 2V3
TELEPHONE (416) 593-1221
FAX: (416) 593-5437, TELEX 06-22326
CABLE ADDRESS "BLANLAW" TORONTO

CARLING EXECUTIVE PARK
SUITE 600, 1545 CARLING AVENUE
OTTAWA, CANADA K1Z 8P9
TELEPHONE (613) 729-1171
FAX: (613) 729-3781

NOV 4 '88 17:07 FROM BLANEYMCMURTRY5931221 PAGE.002
RCV BY:XEROX TELECOPIER 7010 ;11- 4-88 7:04PM ; 4242709;# 2

Yours very truly,

BLANEY, McMURTRY, STAPELLS

per: [signature]

Delia Opekokew

DO/sw

NOV 4 '88 17:07 FROM BLANEYMCMURTY5931221 PAGE.003

RCV BY:XEROX TELECOPIER 7010 ;11- 4-88 7:04PM ; 4242709;# 3

Evans

Ruby & Edwardh
barristers

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

NOV 10 1988

November 3, 1988

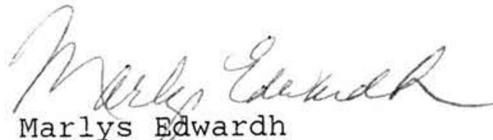
The Honourable Mr. Justice Gregory Thomas Evans
Royal Commission on the Donald
Marshall, Jr. Prosecution
Maritime Centre
Suite 1026
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear Justice Evans:

Upon my return to Toronto I had occasion to peruse some of the old Codes in search of the provision you so accurately recalled. Please find enclosed section 604 of the 1975 Criminal Code which does indeed place upon the Court the duty in a capital case to consider any other grounds upon which the conviction ought to be set aside or the sentence varied in a case where a person has been sentenced to death.

I hope the foregoing is useful to you and to the other Commissioners in their deliberations.

Sincerely,



Marlys Edwardh

ME:jp

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 *BROSSEAU v. THE QUEEN*, [1969] 3 C.C.C.129, 5 C.R.N.S.331 (S.C.C.), it was held (4:1) that where an accused who is represented by counsel pleads guilty the trial Judge is not bound as a matter of law to ascertain whether the accused fully appreciates the nature of the charge and the effect of his plea.

The heavy onus upon an appellant seeking leave to change his plea and requesting a new trial was met where it was shown that after arrest and during investigation legal advice was actively and deliberately denied to him by the police: *R. v. BALLEGEER*, [1969] 3 C.C.C.353, 1 D.L.R. (3d) 74 (Man. C.A.).

A plea of "guilty with an explanation" should not be accepted until the Court has on due inquiry satisfied itself that this qualification does not derogate from the accused's intention to unequivocally plead guilty: *Re REGINA AND MANN et al.* (1971), 4 C.C.C. (2d) 319, [1971] 5 W.W.R. 84 (Sask. C.A.).

Subsec. (1) (*b*). In *R. v. CLIFFORD*, [1969] 2 C.C.C.363, [1969] 1 O.R. 76 (C.A.), it was held that an appellant may abandon his appeal before it comes on for hearing and the Crown, although having submitted in its factum that the sentence should be varied upwards, not having proceeded by its own notice of appeal, cannot contest the abandonment, which prevented the hearing of the sentence appeal. However, in *R. v. MAHON*, [1969] 2 C.C.C.179 (B.C.C.A.), the accused appealed the quantum of a sentence illegally imposed as concurrent rather than consecutive to his unexpired parole term and the Court, holding that the disposition of a sentence appeal was in its hands, and not in the control of the appellant, refused to allow him to abandon and corrected the illegality of sentence.

As part of its jurisdiction over sentence appeals an appellate court has the power to adjudicate upon a trial Judge's decision either granting or refusing a discharge: *R. v. CHRISTMAN* (1973), 11 C.C.C. (2d) 245, [1973] 3 W.W.R.475 (Alta.S.C.App.Div.). Foll'd. *R. v. FALLOWFIELD* (1973), 22 C.R.N.S.342, [1973] 6 W.W.R.472 (B.C.C.A.).

Since a conviction includes an adjudication of guilt and sentence a Court's decision not to grant a discharge may be the subject of an appeal against sentence: *R. v. McINNIS* (1973), 13 C.C.C. (2d) 471, 23 C.R.N.S. 152 (Ont.C.A.).

RIGHT OF APPEAL OF PERSON SENTENCED TO DEATH—Notice deemed to have been given—Court of appeal may consider.

604. (1) Notwithstanding any other provision of this Act a person who has been sentenced to death may appeal to the court of appeal

(*a*) against his conviction on any ground of appeal that involves a question of law or fact or mixed law and fact; and

(*b*) against his sentence unless that sentence is one fixed by law.

(2) A person who has been sentenced to death shall, notwithstanding that he has not given notice pursuant to section 607, be deemed to have given such notice and to have appealed against his conviction and against his sentence unless that sentence is one fixed by law.

(3) The court of appeal. on an appeal pursuant to this section, shall

(*a*) consider any ground of appeal alleged in the notice of appeal, if any notice has been given, and

(*b*) consider the record to ascertain whether there are present any other grounds upon which the conviction ought to be set aside or the sentence varied, as the case may be. 1960-61, c. 44, s. 8.

Where the appeal court required by law to do so failed to consider all of the possible grounds of appeal, the Supreme Court of Canada may do so: *R. v. BORG*, [1969] 4 C.C.C.262, 7 C.R.N.S.85 (S.C.C.).

RIGHT OF ATTORNEY GENERAL TO APPEAL—Acquittal—Appeal against verdict of unfit.

605. (1) The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal

(*a*) against a judgment or verdict of acquittal of a trial court in proceedings by indictment on any ground of appeal that involves a question of law alone, or

(*b*) with leave of the court of appeal or a judge thereof, against the sentence passed by a trial court in proceedings by indictment, unless that sentence is one fixed by law.

(2) For the purposes of this section a judgment or verdict of acquittal includes an acquittal in respect of an offence specifically charged where the accused has on the trial thereof been convicted of an included or other offence.

(3) The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal against a verdict that an accused is unfit, on account of insanity, to stand his trial, on any ground of appeal that involves a question of law alone. 1953-54, c. 51, s. 584; 1960-61, c. 43, s. 25; 1968-69, c. 38, s. 56.

Subsec. (1). The initial instructions to institute proceedings does not include the power or right to enter an appeal. Furthermore, an appeal commenced by A representing B acting for or on behalf of the A-G (Can.) is outside this subsection: *MARTIN v. THE QUEEN* (1971), 13 C.R.N.S. 348, (P.E.I. S.C.); *R. v. GREEN* (1970), 1 C.C.C. (2d) 145, 2 N.B.R. (2d) 903 (N.B.S.C. App.Div.).

Since then in P.E.I. the Supreme Court has directed that counsel initiating an appeal must produce written instructions signed by the Attorney-General, or his deputy, or an official of his department authorized to give such instructions: *R. v. MARTIN (No. 2)* (1971), 4 C.C.C. (2d) 276, 14 C.R.N.S.272 (P.E.I.S.C.).

November 1, 1988

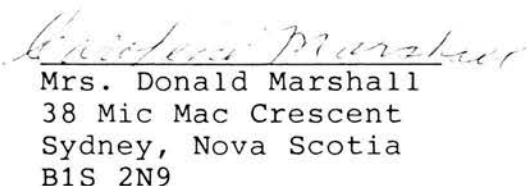
THE ROYAL INQUIRY COMMISSION

Dear Sirs,

I would like to take this opportunity to express my heartful thanks to the Royal Inquiry for the tremendous and positive outcome from the Inquiry. My family, especially my son, Donald Marshall Jr. have survived and will try to continue to resume our lives as normally as possibly despite the years we have lost with our son.

On 1978-79, I can honestly believe that if Mr. John MacIntyre listened for our plea for help, this terrible incident would not have taken place today. After two weeks after my son was convicted, I also approached Mr. Lou Maddison, Assistant Crown Prosecutor at that time, and was told he too cannot help my son. I was on my hands and knees begging for his help. Nothing was done.
My family sincerely believes and expresses the sincere gratitude to those people involved on the Royal Inquiry.

Sincerely yours,



Mrs. Donald Marshall
38 Mic Mac Crescent
Sydney, Nova Scotia
B1S 2N9

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.
Jacqueline L. Mullenger, B.H.Ec., 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

October 28, 1988

Chief Justice Alexander Hickman
Commissioner
Royal Commission on the Donald
Marshall, Jr. Prosecution
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, NS
B3J 3K5

Dear Chief Justice:

Thank you for your letter of September 26, 1988, inviting me to a consultation to be held in Halifax on Thursday, November 24, to Saturday, November 26. I think the idea of this consultation is an excellent one, and I am looking forward to seeing a detailed agenda for it.

The only aspect of this to which I take exception is your stated position that no professional or other fees will be paid. I am therefore taking the liberty to write to you concerning this and to ask you to reconsider this position.

Aside from any personal interest I feel in attending such consultation, it is my considered opinion that I should be there as Donald Marshall, Jr.'s counsel. I recognize that the purpose of the consultation is not to advocate a particular client's interest, and I assume my participation will be similar to my involvement in the five workshops that I have attended.

The effect of the Commission not paying for counsel to attend the consultation is unequal treatment of counsel and hardship to counsel like myself who practice in small firms and for whom daily billings are essential. I do not have information concerning this, but I expect that Commission counsel and counsel for the Attorney General will not be forfeiting any fees.

It was the position of the Commission prior to the workshops that counsel should not be paid to attend, but in light of representation of such counsel as ourselves, this position was abandoned. It was agreed that our time would be paid for attendance at the workshops on the basis of a maximum allowable limit. I am quite prepared to accept a maximum allowable limit for fees for this consultation as well. Such a restriction would be reasonable in light of the Commission's commitment to fiscal responsibility and yet is fair to counsel.

I know you will give my representation serious consideration, and I appreciate the opportunity to write to you about my concerns.

Yours sincerely,

BUCHAN, DERRICK & RING

Anne S. Derrick

ASD/arm
Hickman
ASD #7

SMITH, GAY, EVANS & ROSS
BARRISTERS AND SOLICITORS

604 Queen Square
45 Alderney Drive
Dartmouth, Nova Scotia

BRUCE W. EVANS
(Also of the Alberta Bar)
JEREMY GAY
E. ANTHONY ROSS, M.Eng., P.Eng.
W. BRIAN SMITH

CORRESPONDENCE:
P.O. Box 852
Dartmouth, N.S.
B2Y 3Z5
Tel.: (902) 463-8100
Fax.: (902) 465-2313

October 28, 1988

File #1077-01
1085-01

VIA COURIER

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR. PROSECUTION
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, NS

Attention: Ms. Susan Ashley

Dear Ms. Ashley:

Re: Brief of Argument

Enclosed herewith please find three copies of the briefs submitted on behalf of Oscar Seale and The Black United Front for your use and that of your counsel.

By way of copy of this letter, I am also forwarding one copy of our briefs to the counsel listed in your letter of September 23, 1988.

Yours very truly,

SMITH, GAY, EVANS & ROSS

PER: E. ANTHONY ROSS

EAR/lms
Encl.

STEWART MACKEEN & COVERT

BARRISTERS AND SOLICITORS SINCE 1867

J. WILLIAM E. MINGO, Q.C.
J. THOMAS MACQUARRIE, Q.C.
DONALD H. OLIVER, Q.C.
DONALD H. McDOUGALL, Q.C.
JOHN S. McFARLANE, Q.C.
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DAVID A. STEWART, Q.C.
G. DAVID N. COVERT, Q.C.
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WILLIAM L. RYAN, Q.C.
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BARBARA S. PENICK
MARK E. MACDONALD
GLEN V. DEXTER
ELIZABETH M. HALDANE
JOHN MacL. ROGERS
RICHARD A. HIRSCH
JAMES M. DICKSON
ELIZABETH JOLLIMORE

COUNSEL
DONALD A. KERR, Q.C.
BRIAN FLEMMING, Q.C.
HUGH K. SMITH, Q.C.

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

CORRESPONDENCE
P.O. BOX 997
HALIFAX, CANADA B3J 2X2

TELEPHONE (902) 420-3200
TELECOPIER (902) 420-1417
TELEX 019-22593

DIRECT DIAL (902) 420-

OUR FILE REFERENCE:

October 28, 1988

DELIVERED

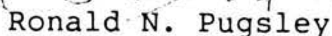
George W. MacDonald, Q.C.
Commission Counsel
Royal Commission on the
Donald Marshall, Jr. Prosecution
Suite 1026, Maritime Centre
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Dear Mr. MacDonald:

RE: Final Brief On Behalf of John MacIntyre

Please find enclosed ~~five~~ fourteen original copies of the Final Brief on behalf of John MacIntyre. I intend one each for the Commissoners, one for the Commission files, and one for the Commission Counsel in order to keep reproduction costs to a minimum.

Yours very truly,
STEWART, MACKEEN & COVERT
Per:



for Ronald N. Pugsley

RNP/sls
N20624563
cc: John MacIntyre

STEWART MacKEEN & COVERT

BARRISTERS AND SOLICITORS SINCE 1867

J. WILLIAM E. MINGO, Q.C.
J. THOMAS MacQUARRIE, Q.C.
DONALD H. OLIVER, Q.C.
DONALD H. McDOUGALL, Q.C.
JOHN S. McFARLANE, Q.C.
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GLEN V. DEXTER
ELIZABETH M. HALDANE
JOHN MacL. ROGERS
RICHARD A. HIRSCH
JAMES M. DICKSON
ELIZABETH JOLLIMORE

COUNSEL

DONALD A. KERR, Q.C.
BRIAN FLEMMING, Q.C.
HUGH K. SMITH, Q.C.

NOV 04 1988

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

CORRESPONDENCE
P.O. BOX 997
HALIFAX, CANADA B3J 2X2

TELEPHONE (902) 420-3200
TELECOPIER (902) 420-1417
TELEX 019-22593

DIRECT DIAL (902) 420 -

OUR FILE REFERENCE:

November 3, 1988

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

Dear George:

Re: Brief

As you probably anticipated, I will not be submitting either an oral or written brief on behalf of any of the individuals I represented.

Yours very truly,

Mick per L.C.

William L. Ryan

WLR:lc
N0544893

Nova Scotia

Department of Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Fax No 902-424-4556

Our phone no 424-4032

Our file no 09-88-0423-01

October 28, 1988

Dr. Richard Apostle
c/o Royal Commission on the
Donald Marshall, Jr., Prosecution
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, Nova Scotia B3J 3K5

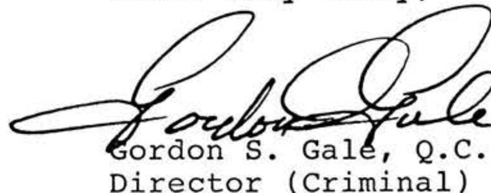
Dear Dr. Apostle:

In the course of your telephone call on October 27th you asked if it would be possible to get some idea as to the numbers of complaints this Department had received in regard to the R.C.M.P. In response I asked my secretary to look at the files for 1985, 1986 and 1987 and provide me with the numbers in each of those years. The numbers that I am given are as follows:

1985 - 23
1986 - 18
1987 - 33.

I trust that this information will be of some use to you however, if you require a more detailed analysis the files are available in the Department for your persual.

Yours very truly,



Gordon S. Gale, Q.C.
Director (Criminal)

GSG:jd

cc: Darrel I. Pink, Q.C.
Patterson, Kitz

R. Gerald Conrad, Q.C.
Executive Director

OCT 28 1988

MacINNES WILSON
FLINN WICKWIRE
Barristers and Solicitors

KENNETH G. WILSON, Q.C.
FREDERICK B. WICKWIRE, Q.C.
ROBIN N. CALDER
BRIAN MacLELLAN
MICHAEL M. KENNEDY
GEOFFREY SAUNDERS
JAMES B. ISNOR
TREVOR I. HUGHES
LYNN M. CONNORS

E. J. FLINN, Q.C.
JOHN P. MERRICK, Q.C.
JOHN W. CHANDLER
R. J. ROSS STINSON
C. JAMES ENMAN
JAMES P. BOUDREAU
GUY C. SPAVOLD
GILLIAN S. ALLEN
SUSAN HAYES

COUNSEL
W. J. MacINNES, Q.C.

2100 CENTRAL TRUST TOWER
1801 HOLLIS STREET
HALIFAX, NOVA SCOTIA

CORRESPONDENCE

P.O. BOX 1054
HALIFAX, NOVA SCOTIA
B3J 2X6

TELEPHONE (902) 429-4111
TELECOPIER (902) 429-8215
(902) 429-5645

October 28, 1988

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

ATTENTION: SUSAN ASHLEY

Dear Susan:

I am enclosing herewith eleven copies of the submission on behalf of Mr. Thornhill together with six additional copies for the purposes of the media. I would ask that you see they are distributed appropriately.

I am as well delivering one copy of the submission to each of the various parties.

Yours truly,

MacINNES WILSON
FLINN WICKWIRE

John P. Merrick

JPM/ers

Enclosures

BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

OCT 28 1988

Flora I. Buchan, B.A., LL.B.
Patricia Lawton Day, B.Sc., LL.B.
Anne S. Derrick, B.A. (Hons.), LL.B.
Jacqueline L. Mullenger, B.H.Ec., 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

October 28, 1988

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

Dear Susan:

RE: Final Argument - Donald Marshall, Jr.

Please find enclosed fourteen copies of the final written argument submitted on Donald Marshall, Jr.'s behalf for distribution to the Commissioners, Registrar, Court Reporter, Media, yourself and Commission Counsel.

Yours sincerely,

BUCHAN, DERRICK & RING

Anne S. Derrick

ASD/har
Ashely
ASD 6A

Enclosure

Department of Justice Canada
Ministère de la Justice Canada

Halifax Regional Office
Bureau Régional de Halifax

FAX # (902) 426-2329
Telephone (902)426-7592

OCT 28 1988

Our file: / Notre dossier: AR-21,613

Your file: / Votre dossier:

October 28, 1988

BY COURIER

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

Attn: Mr. George MacDonald

Dear Sir:

Re: Brief of Argument

I enclose herewith three copies of the brief submitted on behalf of the Royal Canadian Mounted Police, the Correctional Service of Canada, and the National Parole Board for your use and that of your co-counsel.

By way of copy of this letter, I am also forwarding one copy of our brief to the counsel listed in your letter of September 23, 1988.

Yours very truly,

[signature]

James D. Bissell
General Counsel
Director, Atlantic Region

JDB/wm

Encls.

cc: All Counsel

Department o, stice Canada

Ministère de la Justice Canada

Halifax Regional Office

Bureau Régional de Halifax

FAX # (902) 426-2329
Telephone (902)426-7592

OCT 28 1988

Our file: AR-21,613
Notre dossier:

Your file:
Votre dossier:

October 28, 1988

BY COURIER

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

Attn: Ms. Susan Ashley

Dear Ms. Ashley:

Re: Brief of Argument

I enclose herewith three copies of the brief submitted on behalf of the Royal Canadian Mounted Police, the Correctional Service of Canada, and the National Parole Board for the use of the three Commissioners.

We have, today, forwarded copies of our brief to all counsel with standing as noted on Mr. MacDonald's letter of September 23, 1988.

Yours very truly,

James D. Bissell
General Counsel
Director, Atlantic Region

JDB/wm

Encls.

Canada

4th Floor, Royal Bank Bldg., 5161 George St., Halifax, N.S., B3J 1M7
4ième étage, Imm. Banque Royale, 5161 rue George, Halifax, N.-É., B3J 1M7

OCT 28 1988

DAVID G. BARRETT

Barrister & Solicitor

P.O. Box 616
Bedford, N.S. B4A 3H4
Telephone: (902) 835-1624

BY COURIER

October 27, 1988

Royal Commission on the
Donald Marshall, Jr. Prosecution
Maritime Centre, Suite 1026
1505 Barrington St.
HALIFAX, N.S.

Dear Sir:

Re: Marshall Inquiry

Enclosed are the Submissions on behalf of the Estate of Donald C. MacNeil, Q.C.

Yours truly,

David G. Barrett

DGB/beb

Enc.

OCT 2 8 1988

STEWART MacKEEN & COVERT

BARRISTERS AND SOLICITORS SINCE 1867

J. WILLIAM E. MINGO, Q.C.
J. THOMAS MacQUARRIE, Q.C.
DONALD H. OLIVER, Q.C.
DONALD H. McDOUGALL, Q.C.
JOHN S. McFARLANE, Q.C.
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GLEN V. DEXTER
ELIZABETH M. HALDANE
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COUNSEL
DONALD A. KERR, Q.C.
BRIAN FLEMMING, Q.C.
HUGH K. SMITH, Q.C.

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

CORRESPONDENCE
P.O. BOX 997
HALIFAX, CANADA B3J 2X2

TELEPHONE (902) 420-3200
TELECOPIER (902) 420-1417
TELEX 019-22593

DIRECT DIAL (902) 420-

OUR FILE REFERENCE:

October 28, 1988

DELIVERED

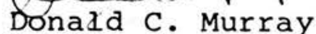
George W. MacDonald, Q.C.
Commission Counsel
Royal Commission on the
Donald Marshall, Jr. Prosecution
Suite 1026, Maritime Centre
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Dear Mr. MacDonald:

RE: Final Brief On Behalf of William Urquhart

Please find enclosed five original copies of the Final Brief on behalf of William Alexander Urquhart. I intend one each for the Commissoners, one for the Commission files, and one for the Commission Counsel in order to keep reproduction costs to a minimum.

Yours very truly,
STEWART, MACKEEN & COVERT
Per:



Donald C. Murray

DCM/sls
N20624562
cc: William Urquhart

OCT 28 1988

ATTORNEY GENERAL

Office of the Assistant Deputy Minister
(Criminal)

9833 - 109 Street, Edmonton, Alberta, Canada T5K 2E8 403/427-9616 Telex 037-3019, TWX 610-831-1167

October 24, 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 Sir:

Thank you very much for your letter of October 11, 1988 and the attached material.

I do hope that we will be able to get together sometime in November at a mutually convenient time and place to review our thoughts on this very important issue.

Thank you for your courtesy and patience.

Yours sincerely,

Neil McCrank
Assistant Deputy Minister
(Criminal Justice)

NMcC/lan

PATTERSON KITZ
BARRISTERS & SOLICITORS

OCT 28 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
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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

October 27, 1988

Ms. Susan Ashley
Royal Commission on the
Donald Marshall, Jr. Prosecution
Suite 1026
1505 Barrington Street
Halifax, N.S.

Dear Ms. Ashley:

Our File No. 9201/1

Enclosed are 12 copies of our submissions on behalf of the Attorney General for distribution to the Commission, Commission counsel and one to be filed as an exhibit. The remaining five copies are for the press.

Yours truly,

Darrel I. Pink

DIP/jl
Enc.
B:27ca

PATTERSON KITZ
BARRISTERS & SOLIC S

LEONARD A. KITZ, Q.C., D.C.L.
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FAX (902) 429-5215
TELEX 019-22893

ALSO OFFICES AT
TRURO, NOVA SCOTIA
BEDFORD, NOVA SCOTIA

OCT 27 1988

October 26, 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 enclose material for insertion in the Advice to Prosecutors' binder.

Yours truly,

Darrel I. Pink

DIP/jl
B:26ca

John Briggs
has material.

BOUDREAU, BEATON & LaFOSSE

Barristers & Solicitors

J. Bernard Boudreau, Q.C.
Guy LaFosse
J. Michael MacDonald

G. Wayne Beaton
A. Peter Ross
Patrick J. Murray

P.O. Box 755
50 Dorchester Street
Sydney, Nova Scotia
Canada B1P 6J1

Telephone (902) 539-5135
Fax (902) 539-8256

OCT 26 1988

VIA COURIER

Our File Ref.:

October 25, 1988

Ms. Susan Ashley
Royal Commission
Maritime Centre
Suite 1026
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear Ms. Ashley:

RE: Donald Marshall, Jr. Inquiry

I am pleased to enclose herewith 3 copies of the brief which I am filing on behalf of Sgt. Herb Davies. I also wish to advise you that I will not be making an oral presentation in Sydney, but instead, will rely on my brief.

Yours truly,

BOUDREAU, BEATON & LaFOSSE

PER: Guy LaFosse

GLF/cmp
Enclosures
cc All Counsel
cc Herb Davies

OCT 25 1988

Department of Justice Canada / Ministère de la Justice Canada

Halifax Regional Office / Bureau Régional de Halifax

FAX # (902) 426-2329

Our file: / Notre dossier: AR-21,613

Your file: / Votre dossier:

426-7592

October 24, 1988

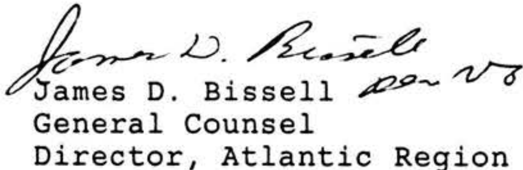
Mr. John E.S. Briggs
Director of Research
Royal Commission on the
Donald Marshall, Jr. Prosecution
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Dear Mr. Briggs:

RE: THE MI'KMAQ AND CRIMINAL JUSTICE IN NOVA SCOTIA - RESEARCH REPORT BY DR. SCOTT CLARK - SECOND DRAFT (SEPTEMBER, 1988)

I acknowledge with thanks receipt of your letter dated October 17, 1988, concerning the above noted matter.

Yours very truly,



James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc

OCT 25 1988

Department of Ju ɜ Canada
Ministère de la Justice Canada

Halifax Regional Office
Bureau Régional de Halifax

FAX # (902) 426-2329

Our file: / Notre dossier: AR-21,613

Your file: / Votre dossier:

426-7592

October 24, 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 MI'KMAQ AND CRIMINAL JUSTICE IN NOVA SCOTIA - RESEARCH REPORT BY DR. SCOTT CLARK - SECOND DRAFT (SEPTEMBER, 1988)

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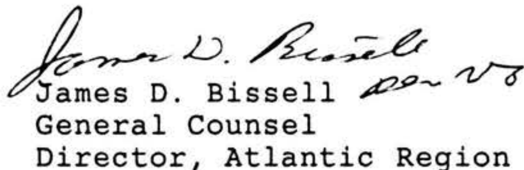
Yours very truly,



James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc

McINNES COOPER & ROBERTSON

BARRISTERS & SOLICITORS

Donald McInnes, Q.C. · Hector McInnes, Q.C. · George T.H. [illegible] · James E. [illegible] · Robert G. [illegible] · F.V.W. [illegible] · Harvey L. [illegible] · David A. Graves · Scott C. Norton · Maureen E. Reid · Ian Holloway
[illegible] Bell, Q.C. · [illegible], Q.C. · [illegible], Q.C. · [illegible], Q.C.
Harold F. Jackson, Q.C. · Lawrence J. Hayes, Q.C. · David [illegible], Q.C. · George W. MacDonald, Q.C. · [illegible] · Thomas [illegible] Hart · [illegible] · [illegible] K. Smith · Karen Oldfield · Carol T. Reardon
Reginald A. Cluney, Q.C. · Joseph A.F. Macdonald, Q.C. · Peter J.E. McDonough, Q.C. · Eric Durnford, Q.C. · W. Wylie Spicer · Christopher C. Robinson · Brian G. [illegible] · Marcia L. [illegible] · [illegible] · Stephen J. [illegible] · John K[illegible]

COUNSEL
John H. Dickey, Q.C. · George B. Robertson, Q.C.

Cornwallis Place
1601 Lower Water Street
P.O. Box 730
Halifax, Canada
B3J 2V1

Telephone
(902) 425-6500

Fax
(902) 425-6386
(902) 425-6350

Telex
019-21859

Our File: I-1816

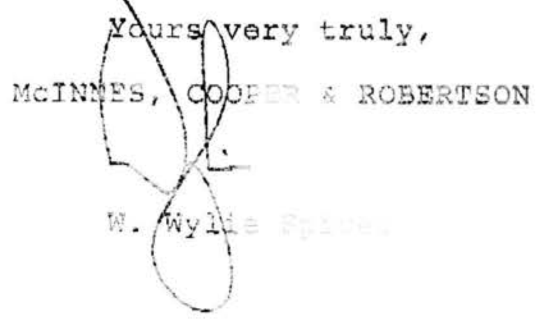
October 21, 1988

Dear Susan:

I enclose a letter to all counsel plus the missing information. Could you make sure that it gets out to everybody, including David and the Judges. Thanks!

Yours very truly,

McINNES, COOPER & ROBERTSON



W. Wylie Spicer

Ms. Susan Ashley
Royal Commission on the
Donald Marshall, Jr., Prosecution

BY FAX

RCV BY:XEROX TELECOPIER 7010 ;10-21-88 3:18PM ; 9024256500→ 4242709;# 3
SENT BY:Xerox Telecopier 702" '10-21-88 ; 15:23 ; 902⁄⁻⁻6500→ 4242709;# 3

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

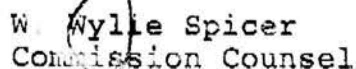
October 21, 1988

TO: All Counsel

RE: Commission Counsel Submission

When our submission was being printed, for some reason a portion of our conclusion concerning the R.C.M.P. 1971 investigation did not print. I enclose a page containing that conclusion. It should be inserted on page 86 immediately following the paragraph that ends "not 11 years".

Yours very truly,



W. Wylie Spicer
Commission Counsel

Enclosure

SENT BY:Xerox Telecopier 702ᴾ '10-21-88 ; 15:24 ; 9024ᐧᐧ6500→ 4242709;# 4

extent of other investigative techniques.

What is disturbing about the manner in which Inspector Marshall carried out his review is that if, by his own admission he had carried out his job properly, Donald Marshall, Jr., might only have spent a couple of weeks in jail and not 11 years (5705).

<u>It is our conclusion that the investigation carried out by Inspector Marshall was done incompetently.</u>

Why did this happen? The threads which run through the testimony of Inspector Marshall are that:

1. He assumed that the work done by Sergeant MacIntyre had been done properly. As Marshall testified:

   Q. Is it fair to say, sir, that you just -- you assumed that because of your knowledge of John MacIntyre that any investigation he would have carried out would have been an intensive investigation?

   A. From my knowledge and my experience with the man and his aggressiveness, I'd have to say that is the case (5687).

2. He relied completely on the polygraph results to the exclusion of any other investigative technique.

OCT 21 1988

LEONARD A. KITZ, Q.C., D.C.L.
JOHN D. MacISAAC, Q.C.
DOUGLAS A. CALDWELL, Q.C.
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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

October 21, 1988

BY HAND

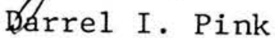
Mr. John Briggs
Director of Research
Royal Commission on the
Donald Marshall, Jr. Prosecution
Suite 1026
1505 Barrington Street
Halifax, N.S.

Dear Mr. Briggs:

Marshall Inquiry
Our File No. 9201/1

I acknowledge your letters of October 17, 1988, enclosing the reports of Dr. Scott Clark and Dr. Wilson Head.

Yours truly,



for Darrel I. Pink

DIP/jl
B:26c

Department of Jus
Canada

Halifax Regional
Office

FAX # (902) 426-2329

Ministère de la Justice
Canada

Bureau Régional de
Halifax

OCT 20 1988

Our file: AR-21,613
Notre dossier:

Your file:
Votre dossier:

426-7038

October 19, 1988

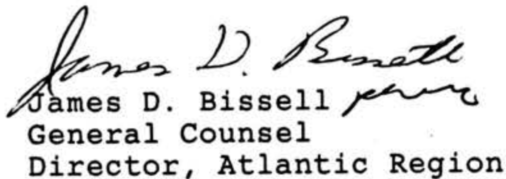
Mr. John E.S. Briggs
Director of Research
Royal Commission on the
Donald Marshall, Jr. Prosecution
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Dear Mr. Briggs:

RE: Professor Archibald's Study - Prosecuting Officers and the Administration of Criminal Justice in Nova Scotia - Second Draft, September, 1988

I acknowledge with thanks receipt of your letter dated October 11, 1988, together with enclosures.

Yours very truly,



James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc

OCT 20 1988

STEWART MacKEEN & COVERT

BARRISTERS AND SOLICITORS SINCE 1867

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

CORRESPONDENCE
P.O. BOX 997
HALIFAX, CANADA B3J 2X2

TELEPHONE (902) 420-3200
TELECOPIER (902) 420-1417
TELEX 019-22593

DIRECT DIAL (902) 420-

OUR FILE REFERENCE:

J. WILLIAM E. MINGO, Q.C.
J. THOMAS MacQUARRIE, Q.C.
DONALD H. OLIVER, Q.C.
DONALD H. McDOUGALL, Q.C.
JOHN S. McFARLANE, Q.C.
CARMAN G. McCORMICK, Q.C.
JOHN D. MURPHY
ROBERT P. DEXTER
KARIN A. McCASKILL
R. CAMILLE CAMERON
NANCY I. MURRAY
D. GEOFFREY MACHUM
DONALD C. MURRAY
JAMES B. WOODER
DAVID P.S. FARRAR
KEVIN A. MacDONALD
JOHN D. MOORE, Q.C.
DAVID A. STEWART, Q.C.
G. DAVID N. COVERT, Q.C.
J. GERALD GODSOE, Q.C.
WILLIAM L. RYAN, Q.C.
DAVID MILLER
JOHN D. PLOWMAN
TIMOTHY C. MATTHEWS
ROBERT G. GRANT
MICHAEL T. PUGSLEY
CHARLES S. REAGH
ERIC L. BURTON
LAWRENCE J. STORDY
R. BLOIS COLPITTS
PAUL W. FESTERYGA
RONALD N. PUGSLEY, Q.C.
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JAMES S. COWAN, Q.C.
JOEL E. PINK, Q.C.
RICHARD K. JONES, Q.C.
DOUGLAS J. MATHEWS
JONATHAN C.K. STOBIE
BARBARA S. PENICK
MARK E. MacDONALD
GLEN V. DEXTER
ELIZABETH M. HALDANE
JOHN MacL. ROGERS
RICHARD A. HIRSCH
JAMES M. DICKSON
ELIZABETH JOLLIMORE

COUNSEL

DONALD A. KERR, Q.C.
BRIAN FLEMMING, Q.C.
HUGH K. SMITH, Q.C.

RNP:2076-2
October 18, 1988

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:

Role of Commission Counsel

Thank you for a copy of your letter of October 17 addressed to Mr. Saunders.

Because of the position you have adopted with respect to the continuing involvement of Commission Counsel, and the consequent obligation that you identify "with as much precision as possible all of the conclusions which we consider the evidence supports" in the written brief, it is really necessary for those of us representing the various interested parties to have a copy of your brief as soon as possible, so that we can meaningfully focus on the position adapted by counsel.

It is implicit in your letter and I would ask you to confirm that once argument has been completed, that Commission Counsel would not in their meetings with the Commission, address further argument or submissions to the Commission with respect to the position Commission Counsel espouses.

Yours very truly,

Ronald N. Pugsley

RNP:dk

c: All Counsel

N0184485

PATTERSON KITZ
BARRISTERS & SOLICITORS

OCT 18 1988

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

October 17, 1988

BY HAND

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

Dear John:

Our File 9201/1

I enclose memorandum from Bob Lutz with a copy of the Decision of Chief Justice Glube for insertion in the Advice to Prosecutors Manual.

Yours truly,

Darrel I. Pink

/lesw

John Briggs
has enclosed
material.

OCT 17 1988

COX, DOWNIE & GOODFELLOW

BARRISTERS AND SOLICITORS

A. WILLIAM COX, Q.C.
W. R. E. GOODFELLOW, Q.C.
ROBERT G. MACKEIGAN, Q.C.
JOHN ARNOLD
DANIEL F. GALLIVAN
THOMAS P. DONOVAN
ANTHONY L. CHAPMAN
J. CRAIG McCREA
JAMIE S. CAMPBELL
LORRAINE P. LAFFERTY
A. JAMES MUSGRAVE
JOCELYN M. CAMPBELL
RONALD J. DOWNIE, Q.C.
DAVID McD. MANN, Q.C.
MICHAEL S. RYAN, Q.C.
GREGORY I. NORTH
PETER W. GURNHAM
FREDERICK P. CROOKS
PAUL C. MARTIN
LESLIE J. DELLAPINNA
ROBERT W. CARMICHAEL
JAN McK. SILLIKER
LES D. DOLL
JONATHAN R. GALE
GEORGE M. MITCHELL, Q.C.
JOHN M. BARKER, Q.C.
DANIEL M. CAMPBELL, Q.C.
DOUGLAS C. CAMPBELL
WARREN K. ZIMMER
TERRY L. ROANE
MICHAEL E. DUNPHY
BRIAN W. DOWNIE
ALAN J. DICKSON
D. KEVIN LATIMER
K. MICHAEL TWEEL
BRIAN A. TABOR

TELEPHONE (902) 421-6262
FACSIMILE (902) 421-3130
TELEX 019-22514

1100 PURDY'S WHARF TOWER
1959 UPPER WATER STREET
HALIFAX, CANADA

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

OUR FILE: 8118-1

October 17, 1988

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

Dear Mr. Spicer:

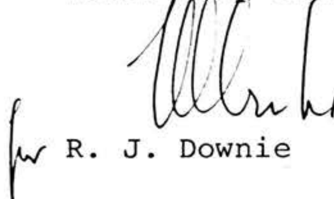
RE: Hickman et al. v. MacKeigan et al.
S.C.A. No. 02004 & 01991 - APPEAL

In the course of preparing written argument for this Appeal, we noted that your Appeal Book did not include a copy of the Affidavit of Anne S. Derrick which was filed in the Trial Division in connection with the application of Donald Marshall, Jr. for intervenor status (I can't tell the date on which the Affidavit was sworn from my file copy).

My recollection and file notes are to the effect that it was agreed that this Affidavit would be included. I assume it was inadvertently left out.

I suggest we simply proceed on the basis that the Affidavit is a part of the Appeal Book, is before the Court, and can be referred to by counsel in argument on the Appeal.

Yours very truly,



for R. J. Downie

RJD:cmg
cc. Mr. Jamie Saunders
Ms. Anne S. Derrick
Registrar of the Appeal Division

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BARRISTERS & SOLICITORS

LEONARD A. KITZ, Q.C., D.C.L.
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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

OCT 14 1988

October 7, 1988

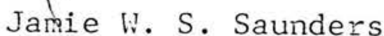
George W. MacDonald, Esq., Q.C.
Commission Counsel
Royal Commission on the Donald
Marshall, Jr., Prosecution
Suite 1026 - Maritime Centre
1505 Barrington Street
Halifax, Nova Scotia

Dear George:

Marshall Inquiry
Our File 9201/1

May I now please have a reply to my letter dated August 30 relating to the role of Commission Counsel following final argument in Sydney?

Yours very truly,



Jamie W. S. Saunders

JWSS/gmm

cc. Ronald N. Pugsley, Q.C.
Michael G. Whalley, Q.C.
Dave Barrett
James Bissell
Charles Broderick
S. Bruce Outhouse, Q.C.
Guy LaFosse
Bruce Wildsmith
E. Anthony Ross
Anne S. Derrick

REV. THOMAS G. WHENT, B.A., B.D:
PHONES: MANSE - 562-4905
STUDY - 564-4810

THE UNITED CHURCH OF CANADA
Saint Andrew's Church
SYDNEY, NOVA SCOTIA

OCT 12 1988

MAILING ADDRESS:
P. O. BOX 937
SYDNEY, N. S. B1P 6J4
PHONE 564-4810

October 7,1988

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

Dear Susan:

Everything is under control - don't you just love that expression!? October 31st to November 4th is fine. The ladies had their Annual Bazaar scheduled for November 5th but they thought the final arguements might run a little longer than expected so they rescheduled for October 29th. The hall is yours for the asking the month of November. Hopefully you will have your Christmas party in Halifax this year.

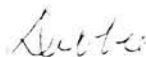
I've spoken with Everett and he would like a diagram - just in case he doesn't remember last year's set-up. He seems to feel there will be enough tables if the extra media people use card tables. We still have the skirt, podium (table top) and riser.

The UCW women have already ordered cups and stir sticks so they are ready when you are.

We have a new Hall Committee Chairman. If you can let me know the exact date you will be here in the last week of October, I'm sure he would like to meet you. His name is Roy Peddle.

I also plan to introduce you to another man in my life. He's only 8 months old but a real charmer. Looking forward to seeing all of you again,

Yours truly,



Debbie Glabay

OCT 12 1988

CHARLES BRODERICK B.A., LL.B.
BARRISTER & SOLICITOR

P.O. BOX 151
3316 PLUMMER AVE.
NEW WATERFORD N.S.
B1H - 4K4
TELEPHONE 862-6471

October 6, 1988

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

ATTENTION: Susan Ashley

Dear Susan:

I received correspondence from you quite some time ago asking whether or not it was necessary that I receive the remaining transcripts. I have them up to date as of Sgt. Wheaton's testimony. I advised you by letter at that time that I would need them in order to peruse to see if there would be any need of making any summations at the end of the hearing.

To date, I have not continued to receive them. I, as a solicitor of standing, do hereby once more request that I receive them. Please advise if you have any difficulities with this at your convenience.

I would appreciate receiving them as soon as possible so that I may peruse them prior to the reconvening of the summations.

Yours very truly,

Charles Broderick

CB/jla

Ruby & Edwardh
barristers

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

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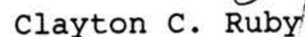
October 4, 1988

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

Dear Ms. Ashley:

In response to your memorandum of September 26, 1988, my position is that I require a daily transcript of the oral argument.

Yours very truly,



Clayton C. Ruby

/ms

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.

OCT 1 1 1988

Ruby & Edwardh
barristers

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

September 28, 1988

George 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:

Pursuant to your letter of September 23, 1988, would you please allot me four hours as my estimate of the time required for submissions. I would hope that I would not need all of that time.

Yours very truly,

Clayton C. Ruby

/ms

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.