

OCT 11 1988

Nova Scotia



**Solicitor General
Province of Nova Scotia**

Office of the Deputy Minister

PO Box 2599
Station 'M'
Halifax, Nova Scotia
B3J 3N5

902 424-7404

Our file no:

October 5, 1988

Mr. John E.F. 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:

As you know, I indicated to you at the Workshop on Public Policing that this Department would undertake to submit written comments regarding the research paper prepared by Richard Apostle and Phillip Stenning. The following is a summary of our response to specific recommendations /observations which are provided in the report. To facilitate review, the comments reference recommendations in the order in which they appear in the report.

Standardization of Municipal Police Salaries

The report recommends that "smaller MPD's with lower salary levels should move towards Halifax/Dartmouth pay standards with provincial support". There are a number of problems associated with this suggestion:

1. Salaries paid to police officers do not reflect the respective municipality's ability to pay (i.e. general financial position, tax base, etc.);
2. Institution of the practice of provincial support would be tantamount to reintroducing conditional grants, a policy which was soundly rejected by the municipalities in 1980;

.... /2

3. Provincial subsidization of police officers' salaries would create conflict on the part of other municipal employees not receiving such benefits (e.g., fire fighters)

Evaluations of MPD Performance

In the interests of standardizing MPD operations and improving their planning processes, the report recommends that the Nova Scotia Police Commission consider introducing a system of regular evaluations to monitor MPD performance. It should be noted that amendments to the Police Act (Section 7 (da)) provide for such reviews. However, the authors are correct in their assertion that regular comprehensive reviews will require additional resources.

Increased Representation of Visible Minorities

The report recommends that the representation of visible minority groups on police forces should be increased. Although one can hardly dispute the merits of such a recommendation, the absence of specific advice vis-a-vis improving such representation is disappointing. The authors acknowledge that a number of forces have attempted out-reach recruitment strategies, and yet the difficulty in attracting recruits (particularly native persons) remains as a significant problem for law enforcement in this Province.

Police Training

With respect to the Chapter dealing with training, we can appreciate that due to the lack of response on the part of the RCMP, and because of the time constraints to which the researchers were subjected, the original objectives of this study (contained in Appendix A) could not be achieved.

Alluding to these problems, the researchers state in the Introduction that "this study cannot evaluate the delivery of police training". It is our view that their affirmation of the need to continue utilizing the Atlantic Police Academy is not justified given their inability to conduct a comprehensive evaluation.

As you know, the Solicitor General's Task Force on Municipal Training is currently involved in a critical appraisal of the training provided by the Academy, precisely because of the criticisms of the program quality which have been levelled at this institution over the past number of years. It is our view that the data gathered by the researchers are insufficient to justify a recommendation for continued utilization of the Academy.

Regionalization of Policing Services

We concur with the recommendation relating to the need for a review of the feasibility of regionalization of police services. It is evident from their discussion of the subject in the text that the researchers are aware of the complexity of the regionalization issue, which extends beyond financial considerations. The scope of the "comprehensive review of policing services", referenced in the February 1988 Speech From the Throne, includes an examination of the benefits of regionalization.

Role of the Nova Scotia Police Commission

The report calls for the strengthening of the Nova Scotia Police Commission through the appointment of a full time Chairman and the addition of at least ten (10) new positions. The authors claim that it is the only agency with the "potential for performing a research, planning and policy development function with respect to policing in the province". Within the Department of Solicitor General, the researchers recommend the establishment of a position of Assistant Deputy Minister, Policing - to perform a "co-ordinating, synthesizing and leadership role", with regard to policing. In our view, the arguments for recommending this particular organizational configuration are not persuasive. The researchers are critical of the Provincial Government's failure to undertake coherent and rational policy planning and recommend that government assert a leadership role. In view of the obvious difficulties which would inevitably arise from the fragmentation of the policy-setting role (between the Department of Solicitor General and the Nova Scotia Police Commission), it is not clear why the authors gave no consideration to centralizing this function within the Department of Solicitor General.

In acknowledging the necessity of separating the advisory and investigatory functions of the Police Commission, the Province, through amendments to the Police Act, established the Police Review Board. It could be argued that, with the establishment of this independent body to handle public complaints and matters of internal discipline against police officers, all other functions of the NSPC could be administered by the Department of Solicitor General. Given the Department's role vis-a-vis the negotiation and administration of the RCMP policing agreements, the advantages of a centralized locus for province-wide policy formulation in the area of law enforcement are compelling. Although we have not based our criticism of the report's recommendation on fiscal grounds, it does seem that the significant increase in staff called for by the researchers (for the NSPC, Department of Solicitor General and Police Review Board) is outside the bounds of what is reasonable for a small province to contemplate.

Role of Police Unions

It is our perception that the increasingly powerful role of police unions has had a major impact on law enforcement operations, both within this province and nationally. Given the importance of this issue, we were disappointed by its superficial treatment in the report. We would have been interested in the authors' views of the effect on policing operations of the involvement of union representatives on promotional boards and in training selection.

Policing of Suburban Communities

One major issue that has emerged within the past five years concerns the continued viability of existing Provincial Policing Agreements to provide effective law enforcement services to unincorporated suburban communities. The demand for enhanced, urbanized policing is being voiced by an increasing number of these communities, underscoring

.... /5

the deficiencies in the existing provincial policing structure. Coincidentally, cities and towns who must bear the financial burden for the operation of their own police forces, have become increasingly critical of a provincial policy which provides rural municipalities policing, at no charge. Because of the importance of this issue to the future of policing in Nova Scotia, we believe that it should have been addressed by the researchers. Accordingly, we view the absence of any such discussion as a major weakness of the report.

Provincial Role With Respect to R.C.M.P.

The report is critical of the province's reluctance to play a more active role in influencing the nature and scope of provincial policing services provided by the R.C.M.P. As the researchers themselves conclude from an examination of the provisions of the Nova Scotia Police Act, the R.C.M.P. Act and the Provincial Policing Agreement, there exists a "potential for great legal uncertainty as to the constitutional relationship between the Attorney General (now Solicitor General) and the RCMP... created by these various dubiously compatible legislative and contractual provisions". A more active provincial role would hardly seem justified, however, on the basis of the recent caselaw cited in Appendix 'E' of the report; these decisions reflecting a narrow, pro-federal interpretation of Section 92 (14) of the Constitution Act.

We would certainly agree with the researchers assertion that "it can hardly be regarded as in the public interest that such a fundamental issue as to the locus of legal authority over the RCMP when providing provincial policing services to the province should be the subject of such great uncertainty". It is our view that the Province should assert its role with respect to policy formulation, planning and priority setting for provincial policing services. It is only through the adoption of a pro-active stance that the Province will be able to ensure a uniform standard of law enforcement.

Police Minority Relations

We question the relevance of the lengthy passage which deals with the Charter project. The researchers themselves indicate that there were not sufficient cases to undertake a meaningful analysis of the situation in Nova Scotia. It may well have been the case that Professors Apostle and Stenning felt that this subject would be covered more thoroughly in other research commissioned by the Inquiry.

We would suggest, in the absence of primary data relating to Nova Scotia, that this section of the report be deleted.

Respective Roles of Attorney General/Solicitor General in Policing

The rationale for establishing the Department of Solicitor General was to ensure the separation of the functions of enforcement of the criminal law from the prosecution of criminal offences. This restructuring of the justice ministries has resulted in the transfer of the majority of law enforcement responsibilities, previously borne by the Department of Attorney General, to the newly created Department. Due to the Attorney General's responsibilities for the administration of justice generally, and in directing prosecutions specifically, it is evident that there is a residual role for the Department of Attorney General in providing legal advice to law enforcement agencies in matters such as the nature of charges to be laid, the sufficiency/admissibility of evidence, etc. Further, we would agree with the researchers that the Attorney General should retain some specific responsibilities under the Police Act (e.g. Section 31).

The majority of the interactions between the RCMP and the Department of Attorney General would obviously relate to the Crown providing legal advice to police officers at the local level. Only infrequently can we see the need for officials at the local level to seek advice/input from their superiors, certainly not to the extent which would justify weekly meetings between senior officials. The researchers have indicated that at the weekly meetings attended by senior officials of the RCMP and the Department

of Attorney General, issues related to law enforcement policy were frequently discussed. In our view, it now falls to the Department of Solicitor General to meet on a regular basis with senior officials of the RCMP to discuss matters related to both policing policy and operations.

We hope that these comments will be of some assistance to the researchers as they undertake the task of finalizing their report. I would like to express my appreciation to the Commission for affording this Department an opportunity to discuss the report with the researchers and other interested parties. The discussion at the Workshop was most interesting and will be of considerable assistance as we in this Department continue to work toward the goal of improving law enforcement services in this Province.

Yours truly,



Nadine Cooper Mont
Deputy Solicitor General

c.c. Darrel Pink

OCT 11 1988

365 Wright Street
Fredericton, New Brunswick
E3B 2E3

October 6, 1988

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

Attention: Mr. John E.S. Briggs

Dear Mr. Briggs:

I enclose a copy of my commentary on the opinion papers prepared by Professor John Edwards for the Royal Commission.

I believe the discussions held on September 29, 1988 in Halifax should be invaluable to the Commissioners in approaching the final chapter of the Inquiry, and I was pleased to have the opportunity to participate. If I can be of further assistance, don't hesitate to contact me.

My expenses are as follows:

Taxis	\$ 56.00
Gratuities	4.00
Typing	50.00
Total	<u>\$110.00</u>

Since dictating this letter I have received yours of October 3, 1988 with a copy of the Grant Report -- many thanks. I have not yet had an opportunity to read Prof. Stenning's paper. As requested, I will forward supplementary comments relating to that as well as the draft proposal for legislation establishing the office of DPP.

Yours very truly,



Gordon F. Gregory

GFG/t
enc.

*John Briggs
new commentary.*

OCT 7 1988

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.
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Fax.: (902) 465-2313

October 5, 1988

File #1085-01

ROYAL COMMISSION ON
DONALD MARSHALL, JR. PROSECUTION
Suite 1026 Maritime Centre
1505 Barrington Street
Halifax, NS
B3J 3K5

Attention: Susan M. Ashley

Dear Susan:

Re: Daily Transcripts

Although I do not think that the daily transcripts will be "necessary" in the submission stage, recognizing that it will hardly increase the overall cost of the inquiry, for completeness if for nothing else, I think that daily transcripts should be made available to all council. Of course, if this represents only a minority view, then by all means, ignore it.

Yours very truly,

SMITH, GAY, EVANS & ROSS

PER:



E. ANTHONY ROSS

EAR/ceb

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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S. RAYMOND MORSE
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ALSO OFFICES AT
TRURO, NOVA SCOTIA
BEDFORD, NOVA SCOTIA

September 30, 1988

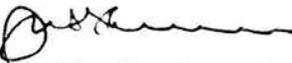
Ms. Susan Ashley
Royal Commission on the
Donald Marshall, Jr., Prosecution
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Dear Susan:

Marshall Inquiry
Daily Transcripts for Oral Argument
Our File 9201/1

Thank you for your memorandum dated September 26. I can see no good reason why we require daily transcripts and I concur with your decision that they are not necessary.

Yours very truly,


Jamie W. S. Saunders

JWSS/gmm

BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

OCT 7 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
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(902) 422-7411

September 30, 1988

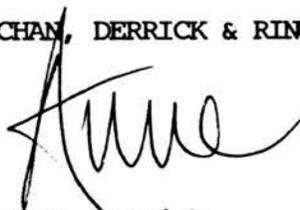
Ms. Susan Ashley
Executive Secretary
Royal Commission on the Donald
Marshall, Jr., Prosecution
Maritime Centre, Suite 1026
1505 Barrington St.
Halifax, N.S.
B3J 3K5

Dear Susan:

Thank you for your memorandum of September 26, 1988. I have considered carefully the question of whether we do require daily transcripts of the oral argument in Sydney and I have concluded that we do. Please advise me if the Commission does not intend to provide daily transcripts. I do not think we can depend on counsel simply and only addressing material in their written argument, there is bound to be some deviation from that and we will want to have a record of proceedings.

Yours sincerely,

BUCHAN, DERRICK & RING



Anne S. Derrick

ASD/har
Ashley
ASD 4A

OCT 6 1988



CITY OF SYDNEY
P.O. BOX 730
SYDNEY, NOVA SCOTIA
B1P 6H7

October 4, 1988

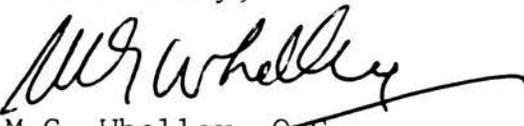
Royal Commission on the Donald
Marshall, Jr., Prosecution,
Maritime Centre, Suite 1026,
1505 Barrington Street,
Halifax, N.S.
B3J 3K5

Attention: Susan Ashley

Dear Susan:

I do not require a daily transcript of the
oral argument.

Yours truly,


M.G. Whalley, Q.C.

MGW/r



OCT 6 1988

CITY OF SYDNEY
P.O. BOX 730
SYDNEY, NOVA SCOTIA
B1P 6H7

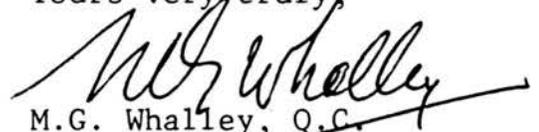
October 4, 1988

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

Dear Mr. MacDonald:

Please be advised that I do not intend to make any submission to the Commission on behalf of the City of Sydney Police Commission.

Yours very truly,


M.G. Whalley, Q.C.

MGW/r



Department of Justice
Canada

Ministère de la Justice
Canada

OCT 6 1988

Halifax Regional
Office
FAX # (902) 426-2329

Bureau Régional de
Halifax

Our file: AR-21,613
Notre dossier:

426-7592

Your file:
Votre dossier:

October 3, 1988

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

Dear Mr. ^{George} MacDonald:

RE: Royal Commission, Donald Marshall, Jr.

I acknowledge receipt of your letter of September 23, 1988,
addressed to all counsel.

On behalf of both Al Pringle and myself, I would advise
that we do not anticipate our oral submissions to exceed
two hours on behalf of all Government of Canada interests.

Yours very truly,

James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc

Bruce P. Archibald

OCT 6 1988

DALHOUSIE LAW SCHOOL
6061 University Avenue
Halifax, N. S., Canada B3H 4H9
Telephone (902) 424-1015
Telecopier (902) 424-1316

October 6, 1988

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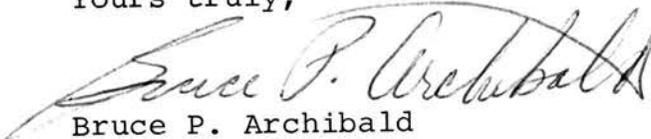
John E. S. Briggs, Esq.
Research Director
Royal Commission on the Donald Marshall Jr.,
Prosecution
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Dear John:

Please find enclosed the second and final (?) draft
of the research study entitled "Prosecuting Officers
and the Administration of Criminal Justice in Nova
Scotia".

I have also enclosed my statement of account in rela-
tion to the preparation of this second draft.

Yours truly,


Bruce P. Archibald

BPA/m

encs.

*John has
MATERIAL.*

BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

OCT 5 1988

Flora I. Buchan, B.A., LL.B.
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Dawna J. Ring, B.A. (Hons.), LL.B.

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October 5, 1988

DELIVERED BY HAND

Mr. James MacPherson
1505 Barrington Street
Suite 1026
Halifax, NS

Mr. Jamie W. S. Saunders
Suite 1700
5151 George Street
Halifax, NS

Mr. Ronald J. Downie
Suite 1100
1959 Upper Water Street
Halifax, NS

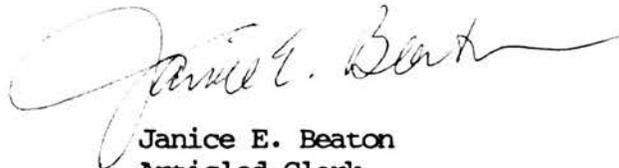
Dear Sirs:

RE: MacKeigan et al. v. Hickman et al. - S.C.A. Nos. 02004/01991

Enclosed please find the Casebook of Authorities of the
Intervenor/Appellant, Donald Marshall, Jr.

Yours very truly,

BUCHAN, DERRICK & RING



Janice E. Beaton
Articled Clerk

JEB/arm

Enclosure

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

October 4, 1988

BY HAND

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

Dear John:

Further to your request regarding background papers on the position of Director of Public Prosecutions, I can confirm that no such documents exist in the Department of the Attorney General, either than the one produced by Mr. MacDonald last week at our September 29 seminar.

I am not aware of any other background material produced by the Progressive Conservative party prior to the release of their policy paper during the election campaign.

Yours truly,



Darrel I. Pink

DIP/ec

OCT 5 1988

BOYNE CLARKE
Barristers & Solicitors

JOHN A. YOUNG, Q.C.
THOMAS O. BOYNE, Q.C.
DAVID J. BRIGHT
W. RICHEY CLARKE
A. LAWRENCE GRAHAM
GORDON F. PROUDFOOT
CYRIL J. RANDALL
JAMES L. CONNORS
PETER A. McINROY
PATRICIA A. DAVIS
MATTHEW W. NAPIER
BRUCE V. McLAUGHLIN
DEBORAH CONRAD
SANDRA B. MacPHERSON
DAVID G. COLES
LINDA L. ZAMBOLIN

SUITE 700
BELMONT HOUSE
33 ALDERNEY DRIVE
DARTMOUTH, NOVA SCOTIA
CANADA

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DARTMOUTH, NOVA SCOTIA
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TELECOPIER: (902) 468-3800
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GFP

October 3, 1988

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

Dear Ms. Ashley:

Thank you very much for your correspondence and all of my questions for the moment are answered.

Yours sincerely,

BOYNE CLARKE

Kelly J. Josey
FOR: Gordon F. Proudfoot

GFP/ktj

OCT 5 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

2100 CENTRAL TRUST TOWER
1801 HOLLIS STREET
HALIFAX, NOVA SCOTIA

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

COUNSEL
W. J. MacINNES, Q.C.

October 3, 1988

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

Dear Susan:

RE: Daily Transcripts for Oral Argument

This will acknowledge receipt of your memo of September 26th. We certainly do not require any daily transcripts of the oral argument.

Yours truly,

MacINNES WILSON
FLINN WICKWIRE



John P. Merrick

JPM/ers



OCT 5 1988

COUNTY COURT
JUDGE'S CHAMBERS
1815 UPPER WATER STREET
HALIFAX, NOVA SCOTIA
B3J 1S7

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:

Enclosed please find a self-explanatory letter addressed to me which I feel should have been more properly addressed to you.

Should you have any questions please do not hesitate to contact me.

Yours very truly,

A handwritten signature in cursive script that reads 'Felix A. Cacchione'.

Felix A. Cacchione,
Judge

FAC:ps

Encl.



Department of Justice
Canada

Ministère de la Justice
Canada

OCT 5 1988

Halifax Regional
Office
FAX # (902) 426-2329

Bureau Régional de
Halifax

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

426-7592

Your file:
Votre dossier:

October 3, 1988

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

Dear Ms. Ashley:

RE: Donald Marshall Inquiry

Please be advised that we will not require the transcript
of oral argument.

Yours very truly,

James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc

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

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5 1988

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OUR FILE REFERENCE:

October 4, 1988

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

Dear George:

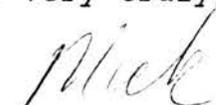
Re: Royal Commission, Donald Marshall, Jr.

I thank you for your letter of September 23rd, 1988.

It is not my intention to make either a written or oral submission on behalf of Aldophus Evers, Richard McAlpine or Gary Green.

Many thanks for your assistance and cooperation.

Yours very truly,


William L. Ryan

WLR:lc

C0547832

OCT 4 1988

LEONARD A. KITZ, Q.C., D.C.L.
JOHN D. MacISAAC, Q.C.
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October 4, 1988

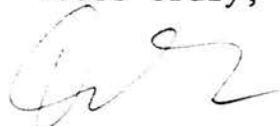
BY HAND

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

Dear John:

After last Thursday's session, I briefly discussed with Bruce Archibald the status of his revised paper. It would be very helpful if we could have a copy of that paper prior to the argument in early November. Because we will be making recommendations in our argument, it would be helpful to know what advice is being given by the research staff so that, where possible, our recommendations can coincide. Of course, we would also like to have copies of the other research papers, if they are completed.

Yours truly,



Darrel I. Pink

DIP/ec

OCT 4 1988



UNION OF NEW BRUNSWICK INDIANS

35 DEHAM ST., FREDERICTON, N.B. E2A 2V2 TELEPHONE 456-9444 TELEX 014-46185

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ORGANIZATION: Marshall Inquiry

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CRAYDON Nicholas
24 1000 St.
Frederickton, N.B.
E3B 2Y7 1-506-454-1981

YES, I am able to attend.

I will make my own travel arrangements,
and I will send you the bill;

or

Please make flight arrangements for me.
I will advise you of my requirements.

Once you have advised that you will be attending the meetings from out of town, we will reserve a room for you at a local hotel. If you prefer to make your own arrangements, please let us know.

I am unable to attend the Consultation.

PLEASE REPLY BY FRIDAY, OCTOBER 7, 1988

067 3 1988

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Barristers & Solicitors

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Guy LaFosse A. Peter Ross
J. Michael MacDonald Patrick J. Murray

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Our File Ref.:

September 29, 1988

George W. MacDonald
Commission Counsel
Royal Commission
Maritime Centre
Suite 1026
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear Mr. MacDonald:

RE: Royal Commission, Donald Marshall, Jr.

Thank you for your letter of September 23, 1988.

As I indicated in my previous correspondence, it will be my intention to file a short written submission on behalf of Sgt. Davies. I also anticipate that we will be making an oral presentation to the Commission as well. The length of the oral presentation certainly should not exceed fifteen minutes.

I trust that this is satisfactory for your purposes.

Yours truly,

BOUDREAU, BEATON & LaFOSSE



PER: Guy LaFosse

GLF/cmp
cc Herb Davies



THE 28th OF September . 19 88

AT GOVERNMENT HOUSE,

VICTORIA, BRITISH COLUMBIA
V8S 1V9

The Lieutenant-Governor of British Columbia
and Mrs. David C. Lam

request the pleasure of the company of

Mr. John E.S. Briggs

at Dinner in Government House, Victoria, B.C.
in honour of the Law Reform Commission of Canada
on Thursday, 20 October, 1988 at 7.00 p.m.

An answer is requested to:
The Social Secretary, Government House,
1401 Rockland Avenue, Victoria, B.C.
V8S 1V9 Tel. No. (604) 387-2080

Dress: Lounge suit

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

September 30, 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 received from the Attorney General's
Department for insertion in the Advice to Prosecutors
binder.

Yours truly,



Darrel I. Pink

DIP/jl
B:14B
Enc.

J. Briggs has
material referred
to:

STEWART MacKEEN & COVERT

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OCT 3 1988

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September 30, 1988

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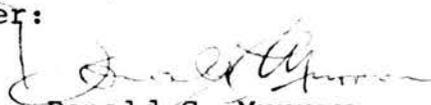
Ms. Susan Ashley,
Royal Commission on the
Donald Marshall, Jr. Prosecution,
Maritime Centre, Suite 1026,
1505 Barrington St.,
Halifax, Nova Scotia,
B3J 3K5

Dear Susan:

RE: Daily Transcripts for Oral Argument

Thank you for your memo of September 26, 1988. I don't believe that I will require a daily transcript of the oral argument for myself, but I would appreciate it if there were two or three copies available to which we could refer if necessary. I also expect that if there is a matter of some debate, that a copy of any relevant portions of the transcript could be taken. On the basis of these understandings, I can say on behalf of William Urquhart that I will not require copies of the daily transcripts.

Yours very truly,
STEWART, MACKEN & COVERT
Per:


Donald C. Murray

DCM/dmb
N2062237

SEP 29 1988

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12679GFP

September 26, 1988

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

Dear George:

Re: Closing Hearing

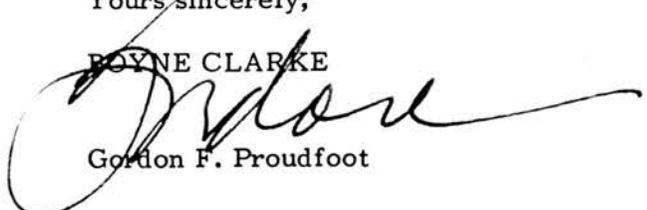
The Canadian Bar Association wishes to address the Commission. We take notice of the filing deadlines.

We estimate that we will require 30 to 45 minutes to properly present our submission.

The specific day or an estimate of when we may be called upon would be useful. Perhaps when you have everyone's time estimates you would let me know which you might think we'll be heard.

Yours sincerely,

BOYNE CLARKE


Gordon F. Proudfoot

GFP/ktj

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

September 28, 1988

BY HAND

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

Dear Susan:

Marshall Inquiry
Our File 9201/1

Thank you very much for your letter dated September 22 with enclosure.

From previous discussions you have our suggestions for people whom we think ought to be invited to the Consultation in November. Any one or more of those persons would be an experienced representative of the Crown at least from the provincial perspective. I should think that Julius Irving would be an obvious person from the federal side.

In our view these individuals ought to be panelists who are asked to comment on the presentation given by the session speaker. I guess I would not be enthusiastic about having academics involved in the panel discussion process. If you need any help in contacting these individuals please let us know.

Darrel and I have considered the kinds of things that should be addressed in any discussion of the Special Prosecutor or D.P.P. models. The issues should include:

- Ministerial Responsibility
- Ministerial Accountability
- Statutory Definition of Roles and Responsibilities

- Reporting Requirements: How often, by Whom and What Gets Published
- Responsibility for Supervision/Control
- Decision Making: With or Without Consultation; and With Whom
- Public Disclosure: of Instructions, Guidelines, Directions or Other Positions/Decisions
- Assignment of Special Cases to Responsible Prosecutors: Who Decides
- If a conflict develops between the Minister and Special Prosecutor and/or D.P.P.: How is it resolved
- Who has responsibility for liaison with the investigating police, what record is kept and by whom
- How "active" is the Prosecutor to be in the police investigation
- Who is responsible for budgetary and resource management concern: What impact does that have on "independence" of Special Prosecutor or D.P.P.
- Are there lessons to be learned from recent cases: For example, the decision not to prosecute Francis Fox
- Who made that decision: With or without consultation; were there problems in accountability; how/why would a Special Prosecutor or D.P.P. have made a difference
- What is the proposed structure, within Nova Scotia, if a Special Prosecutor or D.P.P. model were instituted
- Is there a role for regional Crown Prosecutors in Nova Scotia to recognize seniority, expertise, etc.

These then are some of the concerns which we would hope to be addressed by the main speaker, and commented upon by at

September 28, 1988
Ms. Susan Ashley
Marshall Inquiry
Page 3

least two panelists who ought to have considerable
experience in the exercise of prosecutorial discretion
either federally or provincially.

Yours very truly,



Jamie W. S. Saunders

JWSS/gmm

SEP 28 1988

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

BY HAND

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

Dear Mr. Briggs:

Marshall Inquiry
Our File No. 9201/1

Unfortunately, the Deputy Solicitor General will not be able to attend the seminar on Thursday due to other commitments. She has therefore requested the Department's solicitor, Ms. Christine Mosher, to attend in her stead.

As well, Mr. Bruce Davidson, the Director of Solicitor Services, of the Attorney General's Department, will not be in attendance because the report of Professor Edwards does not focus upon his areas of responsibility. In his stead, Gordon Gale and Assistant Prosecuting Officer, John Wade will be present.

Yours truly,


Darrel I. Pink

DIP/jl
B:11B

c.c. Mr. R. Gerald Conrad, Q.C.
Mr. D. William MacDonald, Q.C.
Ms. Nadine Cooper Mont

SEP 28 1988

STEWART MacKEEN & COVERT
BARRISTERS AND SOLICITORS

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September 27, 1988

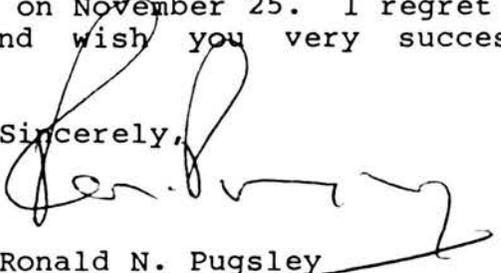
Chief Justice T. Alexander Hickman
Chairman
Royal Commission on the
Donald Marshall, Jr., Prosecution
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, Nova Scotia
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Dear Chief Justice Hickman:

Thank you for your letter of September 26.

Unfortunately, I have a six week trial commencing on November 7 as well as an Appeal Court hearing on November 25. I regret very much my inability to attend and wish you very successful deliberations.

Sincerely,


Ronald N. Pugsley

RNP:dk

N0184438

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Dear George:

Marshall Inquiry
Our File 9201/1

Thank you very much for your letter dated September 23 with enclosure.

As I have previously confirmed by letter we do intend to present oral submissions to the Commission in Sydney. I will let you know by October 7 how long we expect to take in that presentation.

Yours very truly,



Jamie W. S. Saunders

JWSS/gmm

THE OFFICE OF THE ATTORNEY GENERAL:

Critique by [unclear]

It hardly needs to be said that the papers which have been prepared by Professor Edwards represent another very important contribution to the development of and understanding of the constitutional context in which the office of the Attorney General in Canada. The work which he has done may very well pave the way to creation of the first statutory office of Director of Public Prosecutions in Canada, which I think on the whole will be a positive step forward in the administration of criminal justice in this country. The comments which follow are primarily concerned with the decision by Professor Edwards to choose, as the appropriate model for reforming the office of the Attorney General in Nova Scotia, the independent Director of Public Prosecutions and I have chosen to make these comments from the point of view of a practitioner who, however, has had an opportunity to do some research in the field of the powers of the Attorney General. Thus my approach to some of the issues raised by Professor Edwards' work may be somewhat more practical than theoretical and from the point of view of impact on the ordinary case and the day to day functioning of the prosecutive service.

1. Transferrability of the Australian system

In his final paper Professor Edwards makes the case for adoption by Nova Scotia of the independent Director of Public Prosecutions and he attempts to define the relationship between that office and the Attorney General. To a large extent this choice appears to be dictated by Professor Edwards' assessment of the success of the Director of Public Prosecutions in Australia, the perils of choosing any other model, and the perceived failures of the present office of the Attorney General as it exists in Nova Scotia and most other provinces. Under this heading I wish to raise some questions concerning the transferrability of the Australian experience to Canada and Nova Scotia in particular.

i. The transfer of power to the Director of Public Prosecutions

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One of the most important issues which I believe must be faced in determining whether there should be a large scale reform of the Attorney General's department is the scope of the transfer of power from the Attorney General and the civil servants directly responsible to him, such as the deputy Attorney General and the Director of Prosecutions, to the independent Director of Public Prosecutions. This requires identification of the important decisions which the Attorney General and his staff make in the day to day administration of the criminal justice system. As I will further elaborate upon under heading (4) infra, this requires consideration of the model from more perspectives than the particular problem of political interference represented by the McLean and Thornhill cases. Some of the decisions which the Attorney General's department is called upon to make are the following:

- a. the decision to launch appeals in indictable matters;
- b. guidelines for the launching of appeals in summary conviction matters;
- c. guidelines for the termination of charges laid by police and private citizens;
- d. guidelines for the assumption of prosecutions launched by private citizens;
- e. the decision to exercise the nolle prosequi power;
- f. guidelines for the giving of advice to the police;
- g. guidelines respecting the relationship between the prosecutor and the police generally;
- h. the decision to directly indict under section 507 of the Criminal Code;
- i. the decision to consent to prosecution where such consent is required by the Criminal Code [e.g. hate literature, public nudity];
- j. guidelines for referral of types of prosecution to the Attorney General's department;

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- k. guidelines for the exercise of the Crown immunity power;
- l. guidelines for the conduct of prosecutions generally.

This may only be a partial list of the type of work performed by the Attorney General and his deputy and the crown law office and no doubt overlooks some important decisions. It also completely ignores the purely administrative side of the office, which as Professor Archibald demonstrated is a cause for concern [i.e. lack of adequate facilities; lack of proper continuing education; continued use of per diem agents etc.] and which would be expected to be part of any reform package suggested by this Commission.

The point of this list is however that the problem of political intermeddling, or resort to improper "political" considerations, if that be the case, in the McLean and Thornhill cases represent only the very smallest quantity of work performed by the Attorney General's department and represent justification for a transfer of power to the Director of Public Prosecutions only as they may be symptomatic of more serious problems within the department. I address this issue more fully under heading (4) infra, my only point here is that of the list of 12 functions above only "(f) giving advice to the police", appears to be directly in issue in the McLean and Thornhill cases.¹ In my view what must be considered is which of the functions of the Attorney General, his deputy and the crown law office² it is contemplated should be transferred to the Director of Public Prosecutions. It may be that the discussion by Professor Edwards in his last paper is in fact premised on the view that responsibility for all of these functions would now reside with the Director of Public Prosecutions. If that be the case then perhaps this should be made explicit in the paper so that the practical ramifications of the institution of the D.P.P. model can be fully exposed for debate.

1 At least from this vantage point where my knowledge of those cases is largely dictated by what I have been able to glean from the reports of the testimony and I apologize if this is an over simplification of other issues.

2 I use this term loosely to describe those members of the Attorney General's department which are involved in the prosecution of offences but are not the field Crown counsel.

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I appreciate that Professor Edwards' model does not contemplate the totally independent Director of Public Prosecutions along the lines of the Jamaican Director of Public Prosecutions, but in effect, and practically speaking, the day to day running of the Crown law office functions would, it seems, be transferred out of the Attorney General's department. It would appear that the person most directly affected by this shift in power and of responsibility would be the Deputy Attorney General. A fair question that might be posed by the current deputy is why this transfer of power is necessary, and what positive difference it will make to the fair administration of criminal justice in the province. As I indicate *infra* under heading (4) I am concerned that the focus in these papers on the "political" cases may not have made the case for sweeping reform which would result from implementation of the Director of Public Prosecutions model. I think that to a certain extent the announcement made by the Attorney General, as noted in Professor Edwards' papers, for institution of what appears to be a special prosecutions section may be a response to a perception that the problems uncovered by this Commission reside primarily in the handling of high visibility cases and with no appreciation of the myriad of other functions which perhaps ought to be taken out of the direct control of the Attorney General and his staff.

Accordingly, I think that one thing that this Commission must address if it is persuaded by Professor Edwards' thesis is clarification of this transfer of power. For example, would it be the case that the Director of Public Prosecutions would himself exercise the *nolle prosequi* power, without reference to the Attorney General's department. Similarly would the important decision of Crown immunity be exercised only by the Director of Public Prosecutions. Where would the power to directly indict accused and to launch appeals in indictable matters lie?

As well the English and Australian experience may not be directly transferrable to Canada because of the lack until recently of a full-time prosecution service in both jurisdictions. It seems from the excerpt of the report of the English D.P.P. following the first year of operation of the prosecution service in that country that in effect many of the important and difficult cases are referred to him, although apparently this is not for prosecution by his staff in all cases, and sometimes may be only for advice

[page 237]. This is not to say that the same model should not be adopted in Nova Scotia, but the question must then be asked as to the terms of reference. I think that the members of the Attorney General's department and the line prosecutors would wish to know when and what cases the D.P.P. will require be referred to his office for prosecution.

A further question then is, if all of these decisions are to be made by the Director, then how is this to be accomplished within the present constitutional framework. As Professor Edwards points out, when the Australian states implemented a Director of Public Prosecutions model this had the effect of "significantly altering the constitutional relationship between the pertinent Attorney General and the Director of Public Prosecutions."

ii. The constitutional problems

Professor Edwards points out [at page 216] that it "is quite apparent that, subject to any constitutional limitations that obtain in the criminal law field, the Nova Scotia Legislature is empowered to expand or restrict the particular powers and duties of its Attorney General." This statement I think may fail to fully recognize the problems presented by the division of responsibility in the Constitution over criminal law and procedure and administration of criminal justice. It is not my purpose to attempt to resolve this problem, which is discussed at some length in Dr. Stenning's book ³ However, this bifurcation of constitutional responsibility for the administration of criminal justice may pose problems in Nova Scotia and Canada for implementing a system developed in a different constitutional setting. Professor Edwards has already pointed out the ramifications of an apparently innocuous choice in many provinces, including Nova Scotia, of naming the Solicitor General as the Minister responsible for police and corrections. While the provinces have gone about transferring Minister of Justice functions to the Solicitor General so as to isolate the policing decisions and functions from the prosecution function, Parliament has not recognized, in the Criminal Code, the affect of this change and continues to define the Attorney General as including the Solicitor General, as if he still performed his traditional functions as the second Law

³ Appearing For the Crown, chapter 10

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Officer. I think even more significant difficulties can be expected from fundamental reforms.

Since Professor Edward's main source for his proposed model is the Australian experience, the constitutional differences should be noted. As I understand it the Australian federal system is closer to the United States system, than to the Canadian system in that criminal law is primarily a matter for the states. As a result the Australian states have complete jurisdiction not only over administration of criminal justice, but criminal procedure. Thus it is open to the state, without consultation with the Commonwealth, to transfer directly to the Director of Public Prosecutions responsibility for such matters as exercise of the nolle prosequi power or the responsibility for consenting to prosecutions, where such consent is required by the statute. I am not sure that this is so readily accomplished in the Canadian system. For example, sections 11 and 12 of the Victoria Director of Public Prosecutions Act allow for implementation of a system whereby the Director can require that the police and other persons refer certain classes of cases [which the Director defines] to him for the institution and conduct of proceedings.⁴ I think that legitimate questions might be raised as to the constitutionality of such legislation in a Canadian province, notwithstanding the Quebec and New Brunswick experience.⁵ It may be that Professor Edwards would not favour this type of system, but it appears to be an important part of the role performed by the Director of Public Prosecutions both in Australia and in Great Britain. Further, I am not sure that this is an issue which can be wholly resolved through cooperative federalism. If it were thought that certain powers which the Director of Public Prosecutions ought to have can only be described in federal legislation such as the Criminal Code, it remains to be seen whether Parliament would be willing to take the necessary legislative initiatives. Further, because the criminal law and procedure is a federal responsibility, Parliament must proceed very carefully when it makes distinctions in

⁴ Similar provision is found in the Commonwealth legislation reproduced in part at pages 240 and 241 of the papers. Professor Edwards appears to favour this model over the state model, but both legislative schemes envisage the Director imposing guidelines on the police and others requiring, in effect, his consent to the institution of certain types of proceedings, as he may determine.

⁵ Where, as I understand the police may not lay charges, in most cases, without the consent of Crown counsel.

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procedure solely on the basis of provincial boundaries, in light of the equality provisions of section 15 of the Charter. ⁶

It may be that certain changes could be implemented with some ease. For example, the power to directly indict and to stay proceedings could be given by Parliament to the Director as well as the Attorney General.⁷ However, the necessity to resort to this type of legislative arrangement reduces the scope of direct control that the Legislature can exercise in defining the role of the Director of Public Prosecutions. It may as well reduce some of the symbolic value which lies in being able to enact and implement a statute which fully describes the role and responsibility of the Director of Public Prosecutions and his relationship to the Attorney General and the Legislature.

This constitutional issue may also have ramifications for definition of the relationship between the Director of Public Prosecutions and the field Crown counsel. For example, while Professor Edwards favours a model close to that of the Commonwealth of Australia model which provides a legislative base for intervention by the Director of Public Prosecutions in individual cases as well as issuing of broad guidelines, it is not entirely clear to me that provincial legislation can fully provide this power to the Director of Public Prosecutions, if the individual Crown counsel continue to derive their powers as delegates of the Attorney General. For example, at present the Attorney General or the deputy Attorney General could release to the field Crown counsel directives requiring referral to him of all cases involving prosecution of physicians for abortion charges, or the decision to grant Crown immunity to any witness. At present it is unnecessary to inquire where the Attorney General or his deputy obtain the authority to issue such guidelines since Crown counsel are merely the agents of the Attorney General in the exercise of both his federal and provincial powers and responsibilities. However, where it is sought in legislation to give to some other official, who is relatively independent of the

⁶ See for example: *R. v. Hardiman* (1987), 35 C.C.C. (3d) 226 (N.S.C.A.) [non-universal implementation of A.L.E.R.T. testing procedure.]
⁷ And one would hope removed from the Solicitor General in those provinces where he has lost his functions as the deputy law officer and assumed Minister of Justice functions.

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Attorney General, the same powers, then I think the constitutional basis for that legislation has to be considered. Conversely, it would seem doubtful that the Attorney General's right to intervene directly with Crown counsel, rather than through the Director of Public Prosecutions, can be taken away by provincial legislation, and yet I expect that this is contemplated by the proposed scheme.⁸

To conclude, it may be that the constitutional problems are not insurmountable, but it seems to me that they may have to be addressed once it is recognized that what is contemplated by creation of the office of a relatively independent Director of Public Prosecutions is a substantial transfer of power and responsibility over administration of a federal code of laws and procedure from the Attorney General.

2. Attributes of the independent Director of Public Prosecutions

Under this heading I wish to briefly touch upon some of the decisions which I think this Commission must make in its choice of recommendations with respect to the office of the independent Director of Public Prosecutions. Specifically, I think some attention ought to be given to what I would call the attributes of the Director of Public Prosecutions over and above the issue fully dealt with by Professor Edwards concerning the choice of wording for defining the relationship of the Director of Public Prosecutions to the Attorney General. I expect that the substantial work already done by Professor Edwards as displayed in the many papers simply did not permit him the opportunity to fully flesh out the attributes of the office of the Director of Public Prosecutions. However, I think it important that the Commission at least be aware of some of the issues that may arise if the decision is made in

⁸ In this respect Professor Edwards notes [at page 232] his own skepticism respecting removal by the Legislature of certain of the traditional prerogatives of the Attorney General. While, it may be that an attempt by the Attorney General to intervene directly in a case would spark a constitutional crisis if it became known, the point is that creation of the office of Director of Public Prosecutions should have as one of its goals avoidance of such problems by reference to clear legislation. If the province is constitutionally unable to implement this division of responsibilities through its own legislation then a weakness in the proposal may have been uncovered.

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favour of Professor Edwards' model. Many of these issues are addressed in the legislation from other jurisdictions as reviewed in the background papers.

For example, Professor Edwards notes the special status of the holder of the office of Director of Public Prosecutions in Victoria, who has the status of a Supreme Court Judge. The current holder of this office considers this of considerable importance. In legislative terms it requires that the statute provide that the Director of Public Prosecutions hold office essentially on the same terms as does a superior court judge. He would have security of tenure and could only be removed by the legislature. His salary and benefits would also be commensurate with that of a superior court judge, removing the temptation for the office holder to see it as a stepping stone to some higher civil service post.⁹ The Director of Public Prosecutions would have to be clearly independent of the normal civil service legislation. It may be that he should be entitled to appoint staff who are not members of the public service and governed by the public service legislation. Questions would also have to be addressed respecting such mundane matters as responsibility for his budget. I expect that any conflict of interest legislation would have to specifically take his office into account. All of these matters go to the de facto independence of the Director in the same way that they affect the perceived independence of the judiciary. The reason that they must be addressed is that, unlike our history of an independent judiciary in Canada, we have no history of a prosecution official independent from the Attorney General and even the history of the independence of the Attorney General from the government is not wholly accepted in Canada, except, perhaps, in the very recent past.

The point is that even the "relatively" independent Director of Public Prosecutions must be seen as something different from a deputy Attorney General. Both he and his office must be more visible and open to scrutiny, while more "judicial" and independent, having regard to the important functions which would be delegated to him.

Finally, perhaps some consideration has to be given to the manner of selection of the Director. Obviously, he would have to be accepted as a leading, if not the leading, criminal practitioner in the province. Again, the problem

9 See the discussion at pages 65 to 67.

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of transferring the Australian experience to Canada may be troublesome. In Australia, at least in Victoria, most barristers do Crown and defence work and so a practitioner could more easily be recognized as an appropriate candidate for the office, although previously not associated with the Attorney General's office. Whoever were to be chosen in Nova Scotia would have to enjoy the respect of both the defence and Crown prosecutors as well as the confidence of the Legislature and the members of the public. It would seem to me that he would not necessarily be found in the ranks of the present Attorney General's department as a result.

3. Relationship of the Independent Director of Public Prosecutions to the Legislature

A cornerstone of Professor Edward's proposal, and perhaps even the foundation of that proposal is the acceptance of the proposition that the Attorney General is accountable to Parliament or the Legislature as the case may be and that this accountability can safeguard the public interest against improper [I use the term loosely] conduct on the part of the Attorney General and those who derive their authority from him. A concern, which Stenning has addressed in his book Appearing for the Crown, is whether too much faith is placed in this constitutional convention and whether alternative models can offer more rigorous accountability. I am concerned with Professor Edwards' own acknowledgment that [page 207] "If at other times, the doctrine of accountability is quiescent or appears to have been neglected, the fault should not be laid at the door of this vital principle of our constitution but to whatever combination of personal and political factors that regulate the daily conduct of M.P.s and M.L.A.s." Stenning in his text [at pages 303-4] notes that a series of factors "tend to ensure that parliamentary control over his discretion in this area can only be less than adequate". Those factors which principally spring from the *ex post facto* characteristic of the Attorney General's accountability to Parliament or the Legislature¹⁰ are as follows:

- i. the volume and low visibility of the run-of-the mill criminal prosecutions [which I suggest the Marshall case would have been at the time];

10 That is the constitutional convention that the Attorney General can only be called upon to account for a prosecutorial decision after it is made and the proceedings terminated either by a stay or the completion of the prosecution.

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- ii. the pressure of business in the Legislature itself; and
- iii. the *sub judice* rule which prevents comment on a case until it is completed.

It is because of these practical rather than theoretical barriers to accountability in the Legislature that Stenning rightly or wrongly asserts that ultimate control lies with the Premier "who alone has the real authority to call upon him to resign or to dismiss him from office".

It seems to me that a restructuring of the Attorney General's department along the lines suggested by Professor Edwards must therefore address two quite different problems:

1. The problem of political interference in prosecutorial decisions; and
2. The problem of abuse or misconduct in relation to an individual prosecution.

The creation of a relatively independent D.P.P. as suggested by Professor Edwards would in theory reduce the likelihood of improper political interference in a prosecution. In particular the requirement of written and published directives from the Attorney General to the D.P.P. and from the D.P.P. to the line prosecutors would make this process so visible as to practically eliminate the risk of such abuse. A question which I have however is whether the proposed scheme adequately safeguards the public interest from abuse of the prosecution power in relation to the more mundane prosecutions. If on the one hand Dr. Stenning is right and the accountability to the Legislature is a somewhat illusory protection, yet the Commission finds convincing the argument from Professor Edwards that ministerial accountability is the only reliable safeguard then consideration ought to be given to strengthening the Director of Public Prosecution's responsibility to account to the Legislature.

Put another way, it seems to me that Professor Edwards demonstrates two fundamental sources of protection for the public interest. One lies in the independence of the Attorney General from the dictates of the cabinet and the government. While the Attorney General of the day can take refuge in the

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vitality of the constitutional convention in that respect, to a large extent the protection of the public interest lies in the "personal integrity and understanding of what the office demands of its incumbent than a derivation from any particular constitutional model."¹¹ If that is so then similar considerations must apply in understanding the independence of the proposed Director of Public Prosecutions. It is for that reason that the trappings or what I have earlier termed, the attributes of the office are important. So far as possible the Legislature should seek to institutionalize the Director's independence in ways additional to the definition of his relationship to the Attorney General.

Further, I think that some consideration should be given to a more direct relationship between the Director and the Legislature. In addition to the question of tenure and removal from office, the Commission may want to flesh out the circumstances in which the Director reports to the Legislature. The suggestions by Professor Edwards, particularly respecting tabling in the Legislature of the directives by the Director and the Attorney General would be of supreme importance in this respect. However, perhaps consideration should be given to a more direct accountability to the Legislature, without necessarily removing the Ministerial responsibility. Thus the Australian models appear to contemplate an annual report by the Director to the Legislature. Perhaps a similar mechanism for accountability would be appropriate in Nova Scotia. This would also help to strengthen the independence of the Director, since he would have a forum, independent of the Attorney General, for detailing the operation of his office and exposing any improper interference. It would also be an opportunity for the Legislature to examine the Director's office and raise any issues which the Members feel were not properly dealt with. Perhaps the Director should be required to appear before a Legislative committee on an annual basis, so that he might be examined on the directives he has issued, his relationship with the police and the line prosecutors and so on. I make these suggestions, not because I am convinced that they are necessarily practical but because they seem to be the natural extension of the concepts of independence and accountability to the Legislature.

11 From page 213

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Finally, I am not sure that a case cannot be made out for recommending that the Attorney General not be a member of the Cabinet. It may be that much of what Professor Edwards hopes to accomplish in terms of perception of independence of the prosecution function can be fulfilled by creation of the relatively independent D.P.P. However, might there not still be concern over the independence of the Attorney General as regards his other functions as guardian of the public interest and principal legal advisor to the government if he is bound by cabinet solidarity. Can it be assumed that all Attorneys General will have the strength of character of Ian Scott, who in a recent article asserted the right to not only disagree with his cabinet colleagues over application of the Charter but to instruct counsel to support the accused or plaintiff against the position of another government department. It seems to me that some of Stenning's criticisms of the weakness of the constitutional convention of the Attorney General's independence from the cabinet are well-taken and I wonder what factors led Professor Edwards to recommend against this more fundamental change. I do not think that the alternatives are either full cabinet status or mere civil service appointment as they appear to be presented in some of Professor Edwards' papers.

4. Relevancy of the Director of Public Prosecutions model to the Marshall case

I have already noted my concern that the McLean and Thornhill cases may not on their own be sufficient justification for the sweeping changes which adoption of the independent Director of Public Prosecutions model would [should?] entail. Under this heading I wish to discuss this issue in the context of the Marshall case itself.¹² I would suggest that at its inception the Marshall case was a run-of-the-mill prosecution. While murder cases are not every day happenings anywhere in Canada, no prosecution system would contemplate that they be handled differently than most other serious indictable cases.¹³

12 With the same caveat that unfortunately I do not have first hand knowledge of all that has gone on before the Commission and therefore I may not fully understand the problems in the system which this Commission has uncovered.

13 Especially with the abolition of the death penalty.

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What then of the prosecution of the run-of-the-mill cases. Professor Edwards states [page 260] that "Fundamental changes are called for in Nova Scotia and these cannot begin to be realized if the Attorney General, and the Department for which he is responsible, are permitted to resume functioning in the same old ways that contributed to the errors and faults documented before this Commission." While I appreciate that it would not have been Professor Edwards' mandate to document all those errors and faults it would help in an understanding of the impact of the proposed changes if he could have pointed out how the structure of the Department contributed to those problems and how the proposed changes would ensure that the same problems do not recur. Put bluntly, the McLean and Thornhill cases aside, would an independent Director of Public Prosecutions have led to any different result in the Marshall case at any stage of the proceedings. Let me attempt to pose some of the questions which I think arise from the Marshall case itself or other similar prosecutions, for which it is not self-evident that the Director of Public Prosecutions model is the answer:

1. Control over the police investigation--to what extent did the lack of prosecutorial control over the police investigation in the Marshall case contribute to the failure of the authorities to disclose to either the Crown or the defence or both evidence which might have raised a reasonable doubt at the original trial. Is it a sufficient safeguard that the traditional constitutional independence of the police from direction by the Attorney General be maintained or is this only of importance in the "political" cases. While I accept the argument that the Attorney General should not be responsible for, in the sense of accountable to, the Legislature for the conduct of the police and that these Minister of Justice functions should be given to some other Minister it does not follow that the relationship between the Attorney General and the police after a charge has been laid should not be explored. Accordingly, what would the relationship be between the Director of Public Prosecutions and the police. For example, would the Director of Public Prosecutions be entitled to give directions to the police concerning the conduct of the investigation and the referral of cases.

2. Adherence to guidelines: Would publication of directives and guidelines ensure that, for example, adequate and full disclosure was made to the defence.

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Does it matter that primary responsibility for such directives would lie with the D.P.P. rather than with the Attorney General's department or is the point simply that of publication of such guidelines.

3. Abuse of process and oppression: Because of the failures of those responsible for prosecution policy to adequately deal with allegations of abuse of process and oppressive prosecution, by default the courts have developed an abuse of process doctrine. Professor Edwards points out that particularly in the Charter era the Attorney General is the guardian of the public interest and this may require him to intervene to prevent oppression or unconstitutional conduct by other government departments. Is there not a danger that the increased independence to be accorded the line prosecutors will lead to more abusive conduct in the low visibility run of the mill cases. Further, where does the Director of Public Prosecutions fit in to this scheme. Is he too a guardian of the public interest, perhaps required to take a position contrary to the Attorney General as regards legislation which the Attorney General, as a member of the government, may have supported.¹⁴ Professor Edwards, for example, points out that in New Zealand it is not inevitable that such a clash occur between the Solicitor General and the Attorney General in "highly contentious situations". Why would [or should] the case be different under the Director of Public Prosecutions model.

4. Poor decision making: The Deputy Attorney General and the Crown law office make a myriad of decisions some of which are outlined above. If there is a perception that, for example, Crown appeals are improperly launched,

14 For example, in Ontario an issue arose [in *R. v. S.* (1988), 63 C.R. (3d) 64 (Ont. C.A.)] as to the constitutionality of the conduct of the Attorney General in refusing to implement alternative measures as required by the Young Offenders Act. The Attorney General for policy reasons which seemed sufficient to him argued that this did not offend section 15 of the Charter and so opposed the position of the accused, as supported by the federal Attorney General. In effect the Attorney General of Ontario as both prosecutor and the member of the government charged by the statute with implementing it disagreed with the policy as contained in the federal legislation. What if there had been an independent Director of Public Prosecutions who as prosecutor disagreed with the policy underlying the decision of the Attorney General. Would he, as guardian of the public interest, be required to take a position contrary to the Attorney General, and if so what kind of constitutional crisis would this provoke. Could the Attorney General, in the end, dictate by a directive that the Director of Public Prosecutions support his view of the matter and of the Charter of Rights.

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positions on accused appeals are poorly considered, charges are not adequately screened, etc., what difference would it make to transfer responsibility for those decisions from the Deputy or the Director of Prosecutions to the Director of Public Prosecutions. How can the case be made out for a wholly different system - why would the decisions taken be any better.

5. The choice of the special prosecutor office

It seems to me that the greatest threat to acceptance of the work of the Commission, should it choose to recommend a Director of Public Prosecutions along the lines suggested by Professor Edwards, is the announced intention of the Attorney General to create an office of special prosecutor to handle allegations of wrongdoing by members of the government and public officials. This would seem to constitute a suitable alternative to full scale reform if the perception is that the creation of the office of the Director of Public Prosecutions is a response to the McLean and Thornhill type problems. While Professor Edwards has demonstrated that this model inevitably led to adoption of the full Director of Public Prosecutions model in Australia, the special prosecution model seems to be accepted as the only alternative in the United States. The question may therefore have to be asked why the special prosecutor model is not sufficient in Nova Scotia. It seems to me that the answer to that question lies in an explanation of the other things the Director of Public Prosecutions does, besides serve as a shield against political interference in isolated, high profile prosecutions. Accordingly, these perhaps have to be spelled out and the case for the Director of Public Prosecutions made on this basis.

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J. MARK MCCREA
D. SUZAN FRAZER
BRUCE A. MARCHAND
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GEORGE L. WHITE
DAVID R. FEINDEL
A. DOUGLAS TUPPER
DARA L. GORDON
LORNE E. ROZOVSKY, Q.C.
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ALSO OFFICES AT
TRURO, NOVA SCOTIA
BEDFORD, NOVA SCOTIA

September 26, 1988

BY HAND

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

Dear Mr. MacDonald:

Our File No. 9201/1

You will recall you had requested confirmation that no files existed in the office of the Premier relating to Roland Thornhill and Billy Joe MacLean. We have received that confirmation by letter from Premier Buchanan to the Attorney General and therefore pass that along to you.

Yours truly,



Darrel I. Pink

DIP/jl
B:10B

c.c. Mr. R. Gerald Conrad, Q.C.
Mr. D. William MacDonald, Q.C.
Honourable T.R. B Donahoe

BUCHAN, DERRICK & RING

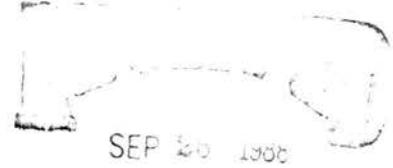
BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.
Patricia Lawton Day, B.Sc., LL.B.
Anne S. Derrick, B.A. (Hons.), LL.B.
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Sovereign Building, Suite 205,
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September 26, 1988

Mr. George MacDonald, Q.C.
Barrister & Solicitor
MacInnes, Cooper & Robertson
Cornwallis Place
1601 Lower Water St.
Halifax, N.S.
B3J 2V1



McINNES COOPER & ROBERTSON

Dear George:

RE: Oral Submissions

Thank you for your letter of September 23, 1988.

This will confirm that we will be making oral submissions in Sydney on behalf of Donald Marshall, Jr.

You also wanted to know by October 7, 1988 an estimate of the time we require to make our submissions. Clayton will be doing the oral argument and I do not know how long he intends to take but he will be out of the country from September 30th to October 15th so I suggest you call him in Toronto before he leaves to get this information.

Yours sincerely,

BUCHAN, DERRICK & RING

Anne S. Derrick

ASD/har
MacDonald
ASD #5

SEP 27 1988

STEWART MacKEEN & COVERT

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DONALD A. KERR, Q.C.

COUNSEL
BRIAN FLEMMING, Q.C.

HUGH K. SMITH, Q.C.

RNP
2076-2

September 26, 1988

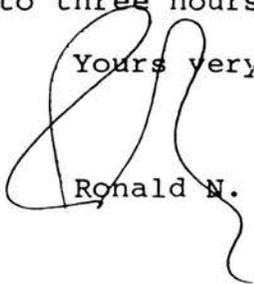
George W. MacDonald, Q.C.
Commission Counsel
Royal Commission on the
Donald Marshall, Jr., Prosecution
Suite 1026, Maritime Centre
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Dear Mr. MacDonald:

Final Argument - Marshall Commission

Thank you for your letter of September 23. I do plan to make oral argument on behalf of John MacIntyre. I would anticipate that I would take between two to three hours.

Yours very truly,


Ronald N. Pugsley

RNP:dk

N0184421

SEP 27 1988

STEWART MacKEEN & COVERT
BARRISTERS AND SOLICITORS

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OUR FILE REFERENCE:

DELIVERED

September 26, 1988

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

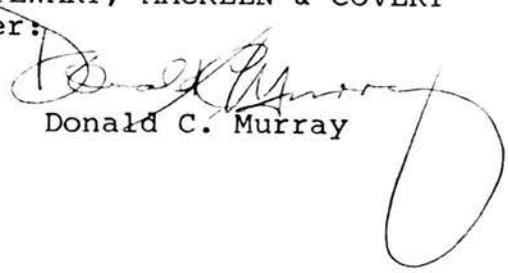
Dear Mr. MacDonald:

RE: Final Submission - William Urquhart

Further to your letter of September 23, 1988, I wish to advise that I intend to make a final submission on behalf of William Urquhart both in writing and orally. I would anticipate that any oral submission on the part of Mr. Urquhart would not exceed 90 minutes.

Yours very truly,
STEWART, MACKEEEN & COVERT

Per:


Donald C. Murray

DCM/dmb
N2062217

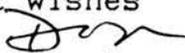
SEP 26 1988

John Briggs
Research Director
Royal Commission on the Donald Marshall Jr. Prosecution
September 21, 1988
Maritime Centre, Suite 1026
1505 Barrington street Halifax
B3J, 3K5

Dear John

Enclosed please find the final form of the coding sheet (front and back) used in the assault sentencing project. We are going through files and coding at this time. There seems to be little problem in obtaining an adequate proportion of Blacks in the convicted male subcategory of assault offenders; the proportion of blacks to whites thus far is running about 1 to 2. Unfortunately we still don't know how many overall usable cases in the subcategory we will be able to work with. When one discards those found not guilty, those guilty of offenses involving children and female offenders, the number of cases drops off. We should know fully in about a week what coded, usable data can be utilized in analysis.

I have enclosed also an invoice for two bills that arrived unexpectedly -but legitimately- on my desk. One deals with the laser printing paper supplied by Dalhousie and the other with the secretarial work carried out by the secretary in the education department on the appendices (not-laser-printed). I apologize for not thinking about them earlier.

best wishes

Don Clairmont

SEP 26 1988

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TIMOTHY N TAYLOR
ELIZABETH R TEIXEIRA

COUNSEL
H SANFORD RILEY

September 22, 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

Dear Mr. Briggs:

RE: Comments/Critique - Study of Dr. Scott Clark
"The Mi'kmaq and Criminal Justice in
Nova Scotia"

I understand that the Commission has begun its final hearings. I hope that my written comments, however belated, will be of some assistance or value to the Commission in completing its difficult but important task. I would like to take this opportunity to provide a brief summary of my comments at the workshop held on June 16, 1988 and perhaps expand on certain elements of those comments based on further reflection on the subject. Dr. Clark's study (at least in its working form as considered and reviewed by the workshop participants) was completed over a brief period of time, with relatively limited resources and therefore necessarily "superficial" in nature due to those reasons and the lack of statistical data/information available upon which to base certain of his conclusions. The following comments should be qualified accordingly.

Much more significant time, expense and resources are required to adequately address this issue and apparent conceptual inadequacy of the study approach itself. Dr. Clark's approach to the study proceeded on the basis that it would seek to "identify" adverse effects of the justice system on the Indian and Metis population but attempt to "explain the underlying causes" of those effects. It is respectfully suggested that the study is much stronger

its effort to "identify" adverse affects in spite of the incomplete data base available than in its explanation of the causes of these effects. The identification methodology, to the extent that it contained or somehow restricted the conceptualization of the causes of the adverse effects or trends identified is in itself a problem. In my opinion, the fundamental difficulty with the approach taken is that it fails to adequately reflect the fact that:

- i) The Canadian justice system is but one part of a legal system based upon values and concepts derived from Anglo/European society; and,
- ii) The standards of conduct and the means and methods of dispute resolution which have developed in Canada have largely evolved from the English common law and French civil law systems; and,
- iii) Aboriginal values, concepts, standards of conduct and systems of dispute resolution existed throughout the process of evolution of the Canadian legal and justice systems and continue to exist to this day; and,
- iv) The aboriginal viewpoint does not appear to have been considered in the evolution of Canadian legal and justice systems, at least to the extent that these systems have interacted with the aboriginal community; and,

This fundamental failing has arguably shaped the issue before the Commission. Many aboriginal organizations assert that unless and until the Government of Canada, its provinces and territories acknowledge and accept this fundamental failing, to the extent that it may be valid, the inadvertent "oppression" of aboriginal people of Canada reflected in the apparent conflict between general Canadian and aboriginal values and concepts of justice will continue to exist. The "adverse" effects of this structural lack of communication and understanding of the inherent conflict between the values and concepts of justice existing as between general Canadian and aboriginal societies in Canada as reflected in the statistics shown in Dr. Clark's report will persist and become even further exaggerated over the next decade. Contrary to general Canadian population trends, the majority of Indian and Metis are under 30 years of age. This is the principal age group which is likely to be in increasing conflict with the Canadian justice system without a rather abrupt change in how it operates in the Indian and Metis community.

I am a member of the Northwest Angle Band of the Saulteaux Tribe of Ojibway Indians. At the risk of over personalizing my comments, I would like to relate those

things I have been taught which bear upon the conceptual basis and possible structural framework of a justice system suitable for the aboriginal community. Most Indian people, myself included, are taught by our parents and elders that everything in life is based on a continuum, that everything is in balance and is seeking balance. The Ojibway word I used in addressing this concept was "Ke-Ka-Mien-Whi". This philosophy has been conceptualized as a circle - the circle of life as a thing having no end and no beginning, no greater or lesser, no higher or lower, no stronger or weaker - continuity and equalness. The energy of the "circle of life" is respect for life itself and everything that is living. As Indian people we are taught to have reverence for life, all that is living and to respect one another because we are all part of the circle of life. This philosophical and spiritual concept of Indian existence shapes our concept of society, our values and standards of conduct just as the English and French systems have developed based upon moral concepts of right and wrong and fundamental procedural fairness within the concept of "natural justice". Therefore, there is the fundamental conceptual difference in viewpoints to be appreciated.

The aboriginal dispute resolution process is focused upon an intent to seek equalization and compromise. This approach further seeks to ensure that a person's identity, as determined by the level of respect in which he/she is held in the community is maintained. The aboriginal concept of justice seeks consensus not conflict, seeks resolution not the determination of right or wrong. The historic and present day process in seeking such an equilibrium in the aboriginal community is more like one of conciliation and arbitration. On the other hand, the general Canadian justice system is focused on the protection of persons and property and the determination of guilt or innocence by conflict and advocacy.

It was suggested in my earlier comments that Dr. Clark's examination of "adverse effects" in the Canadian justice system as a means of identifying points of discrimination is perhaps flawed in that it fails to appreciate the conceptual differences in the aboriginal and general Canadian justice systems. If it is accepted that the "problem" is more fundamental than a "social or economic" problem, but more squarely based upon a clear difference in primary concepts, it is suggested that the cause of the adverse effects identified might be more appropriately explained.

The Aboriginal Justice Inquiry in Manitoba began its hearings on September 13, 1988. A similar viewpoint has been expressed directly and indirectly by participants in their various submissions.

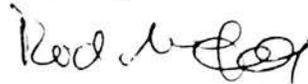
TAYLOR
McCAFFREY
CHAPMAN

- 4 -

Finally, it is not likely that the conceptual differences between aboriginal and general Canadian societies can be easily accomodated within one system. On a practical level, conflicts will only be effectively resolved when the machinery of dispute resolution is locally based and controlled. I will not repeat the many arguments in favour of or against the establishment of an aboriginal justice system. Suffice it to say that I recommend that such aboriginal justice system be recognized and established with a well-defined jurisdiction as a separate and distinct entity.

Thank you for the opportunity to participate in this matter.

Yours truly

A handwritten signature in cursive script, appearing to read "Rod McLeod".

ROD McLEOD

RM:mcb

SEP 21 1988



Manitoba

**Attorney General
Chief Medical Examiner**

Room 120
770 Bannatyne Ave.
Winnipeg, Manitoba, CANADA
R3E 0W3
(204) 945-2088

September 13, 1988

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:

Please find a copy of a letter from Dr. Perry which I found on my desk on returning from vacation. Dr. Perry, obviously, is not impressed with my involvement in this matter.

I feel no purpose would be served by my responding to Dr. Perry.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. Markesteyn". The signature is written in a cursive style with a large initial "P" and a horizontal line at the end.

Peter H. Markesteyn, M.D., F.C.A.P.
Chief Medical Examiner

PHM/cr

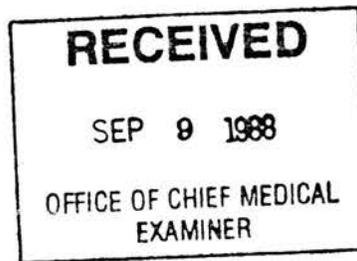
Enc.



DEPARTMENT
OF
ATTORNEY GENERAL
NOVA SCOTIA

5788 UNIVERSITY AVENUE
HALIFAX, NOVA SCOTIA
B3H 1V8

September 6, 1988



Dr. Peter Markesteyn
Chief Medical Examiner
for Manitoba
120-770 Bannatyne Avenue
Winnipeg, Manitoba
R3E 0W3

Dear Dr. Markesteyn:

I received a copy of a report which you made to Mr. John E. S. Briggs, Director of Research of the Royal Commission on the Donald Marshall Jr. Prosecution. I have three basic comments concerning your report.

First: I think it was most discourteous of you to make a report involving a medical legal case in Nova Scotia without at least informing me, as the Chief Medical Examiner of Nova Scotia, of that request to comment. I find it difficult to conceive of a Chief Coroner or Chief Medical Examiner in one province commenting on a case in another province without at least informing that particular Chief of this request, especially when as members of the Chief Coroners and Chief Medical Examiners of Canada who meet yearly, we are acquaintances or friends.

Second: Your remarks that the failure to perform an autopsy failed to show the presence or absence of any contributing disease; of the possibility of a morphologically recognizable altered mental state of the brain; or the presence or absence of ulcers or gastritis which may have been exacerbated by a pre-existing condition; the failure to examine all the organs microscopically for presence of disease; the failure to examine the body for the presence of other injuries consistent with blunt trauma; or the failure to examine the body for defense wounds; of the failure to establish the number of bleeding points in the aorta; and finally, the failure to examine the aorta microscopically failed to establish the presence or absence of any disease process in the aorta which may have contribute to the bleeding in the surrounding space, lead me to the conclusion that you must have made a very cursory review of the information you received.

I also was asked to review the information surrounding the death of Sandy Seale which also included the hospital records and Dr. Nagvi's transcripts of evidence. As was obvious from the records, the deceased lived for approximately 20 hours after admission to the hospital and was operated on twice during that time. Disregarding the obvious conclusion that the aorta should have been the first priority to repair when the first operation was performed and that when all was done and finished Dr. Naqvi should have at least diagramed the abdominal surface wound, his comments indicated without any doubt that Seale suffered a single stab wound which was approximately 2-3 inches long and in a vertical plane and that it perforated the aorta just below the origin of the renal artery. Surface anatomy clearly indicates that the stab wound was in an upward direction. The first operation also used the stab wound as a starting point for the operative incision, it being extended upwards and downwards thus altering its appearance in any subsequent examination. The fact that Seale was in the hospital for 20 hours gave ample opportunity to observe and note any other injuries. None were noted either by the Medical nor Nursing staff. I would think that it would be obvious that the most important information to be gained about Seale's injuries was when he was in the hospital. The body in the morgue was obviously greatly altered not only by operative procedures but also by the usual post mortem changes. To come to the conclusion that because an autopsy was not done on Sandy Seale, death was only established with reasonable medical possibility on the basis of a "reasonable medical possibility" and your final paragraph, In summary the failure to perform a post mortem examination on the body of Mr. Seale failed to assist in the determination of the manner of death", is a most arcane conclusion to make. To suggest that a failure to perform an autopsy on a 16-year-old who was a well-known local athlete and had in fact only the previous Christmas in an Amateur Tournament been selected the Tournament's Most Valuable Player, could not settle the question of whether or not he was, apart from the injuries, otherwise healthy is unbelievable.

Your comments about "reasonable medical possibility, etc., on page nine of your report is completely mystifying to me. I enclose a copy of the Virginia Medico-Legal Bulletin, Nov.-Dec./87 concerning standards for expert testimony with regards to reasonable degrees of possibility, probability, certainty, etc. I would be interested in how you reconcile your statements with those of the Medico-Legal Bulletin.

Third: I find gratuitous your inclusion of Appendix A, Standards for Inspection and Accreditation of a Modern Medicolegal Investigative System. To be as charitable as possible, how you set standards for Medical legal investigation

in Manitoba is your business. How it is done or should be done in Nova Scotia is not. I have had a copy of those standards for years. I presume that the fact that the date that those standards were first produced (October 1974) but was deleted from the copy in your report, had nothing to do with the appearance that a 14-year-old document may appear quite dated. I also enclose a copy of that for your perusal.

I'm sorry that the very cordial relations that we have had over the years had to be put in jeopardy as a result of the way you handled the request to assist the Royal Commission.

Yours truly,



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

RAP/ljm
Encls.

SEP 21 1988

DAVID G. BARRETT

Barrister & Solicitor

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

September 20, 1988

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

Attention: Mr. George W. MacDonald

Dear Sirs:

Re: Royal Commission, Donald Marshall, Jr.

Further to your letter of September 1, 1988, this letter will confirm that it is my intention to make final submissions to the Commissioners.

Yours truly,

A handwritten signature in cursive script, appearing to read 'D. Barrett', written in dark ink.

David G. Barrett

DGB/beb

SEP 21 1988

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

September 19, 1988

BY HAND

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

Dear Winston:

Assault Study
Our File No. 9201/1

When you finish with the Halifax file, you should contact Fran Stoneman at the Dartmouth Prosecutors' office and Elaine Hartlin at the Bedford office, should you wish to see files of those locations.

Yours truly,



Darrel I. Pink

DIP/jl
B:4B

LEONARD A. KITZ, Q.C., D.C.L.
JOHN D. MACISAAC, Q.C.
DOUGLAS A. CALDWELL, Q.C.
JAMIE W.S. SALUNDERS
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ALSO OFFICES AT
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September 19, 1988

BY HAND

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

Dear Philip:

Marshall Inquiry
Our File No. 9201/1

You will recall you requested a response to correspondence dated November 26, 1980, from Carman Moir to Jack MacIsaac with regard to a request for input from the Department of Municipal Affairs on municipal police training.

I have been advised by the Deputy Solicitor General that a thorough review of files has not revealed a response to that letter. I think we can assume one was not received.

Yours truly,



Darrel I. Pink

DIP/jl
B:4B

c.c. Ms. Nadine Cooper Mont

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

September 19th, 1988

Ms. Susan Ashley
Commission Executive Secretary
Royal Commission on the Donald
Marshall, Jr. Prosecution
1205 - 1505 Barrington Street
HALIFAX, Nova Scotia
B3J 3K5

Dear Susan:

I have made inquiries about some of the Toronto persons we spoke of:

Judge Maurice Charles is a scholarly, principled person, with a penchant for controversy.

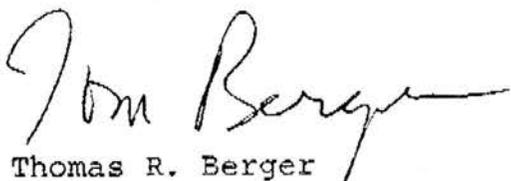
Bert Rosemay is a very conservative, soft-spoken man, quite conservative, well thought of.

George Carter is a large, affable man.

Charles Roach is an old line Marxist, but competent lawyer. Blacks don't use him a great deal.

I hope all of the above is useful.

Yours sincerely,


Thomas R. Berger

TRB:VC

Ruby & Edwardh
barristers

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

September 16, 1988

VIA FAX 902-424-2709

Mr. George MacDonald
Royal Commission on the Donald
Marshall, Jr., Prosecution
McInnes, Cooper & Robertson
Barristers & Solicitors
1602 Lower Water Street
P.O. Box 730
Halifax, Ontario
B3J 2V1

Dear Mr. MacDonald:

I have had a chance to read the MacLean materials that you are posing to release shortly. In the letter to the Speaker dated April 18, 1984 at p. 3, there is a reference to "some of the other particulars in the supporting statements may raise questions as to their need for the purpose intended".

In light of that, it is important for me to have the supporting statements that are referred to in that letter. May I have copies of them please?

The Chronicle Herald article of April 4 would seem to indicate that Malcolm MacKay also engaged in a deliberate fraud. Was he prosecuted? Was there an RCMP investigation in connection with him? What material do you have regarding Malcolm MacKay, and may I see it?

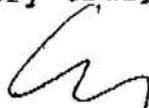
The crucial memo from Mr. Gale to Mr. Coles of April 2, 1984 at p. 3 attaches a file which I have not seen. I would like to see it. And in particular, Mr. Gale relies upon "the information we have" for his conclusion. The conclusion appears erroneous, but it is impossible for me and other commission counsel to evaluate that issue without knowing exactly

Ruby & Edwardh

what information was before Mr. Gale. May I have a copy of it?

The Attorney General decided that a fine in the range of \$5,000 to \$10,000 would be a fit and proper disposition in a case like this. We do not have the benefit of the legal research that he had before him. Was there any legal research in the file, or any assessment of the case law in this regard? If there was, can I have a copy of it?

Yours very truly,



Clayton C. Ruby

/lr

SEP 16 1988

Nicole et Jean-Paul Brodeur
1227 Sherbrooke ouest
App. 93, Montréal, Qc, H3G 1G1

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

Montreal, September 3rd, 1988

Dear John,

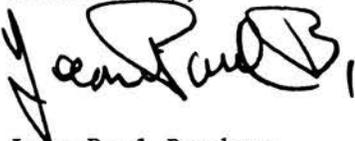
I decided to write my review while it was still fresh into my mind. You should receive it after it has been edited by a native speaker of English. As you know, my papers have to be edited, because English is not my mother tongue. You should receive the paper before September 15.

I hope the paper will be useful and that we will have an occasion to collaborate on the forthcoming report of your commission. Directors of research ought to exchange on their experience (not to say that they should stick together).

I enclose a copy, in French, of a report of a Québec Committee on police and visible minorities relations which might be of some use to the Commissioners who, like judge Poiras, can read French and understand it.

There are also copies of four taxi receipts. (famous last words).

Yours truly,



Jean-Paul Brodeur

SEP 16 1988

BOYNE CLARKE

Barristers & Solicitors

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THOMAS O. BOYNE, Q.C.
DAVID J. BRIGHT
W. RICHEY CLARKE
A. LAWRENCE GRAHAM
GORDON F. PROUDFOOT
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GFP

September 14, 1988

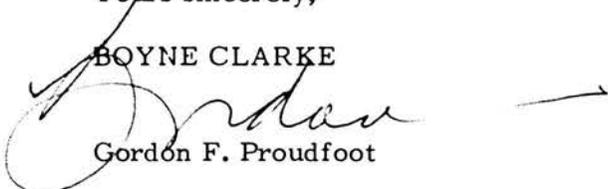
Ms. Susan Ashley
Royal Commission on the Donald
Marshall, Jr., Prosecution
Suite 1026, Maritime Centre
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Dear Ms. Ashley:

As you know, we intend to prepare a brief on behalf of the Canadian Bar Association. We are now working hard on it and it looks like it is going to be a two volume set and we will have 100 printed. Could you please make some estimate when we would be making our oral submission and when we are expected to circulate our written submission. I see in George MacDonald's letter of September 1, 1988, he's indicating written submissions be October 19, 1988. Would this include us as well? Please advise.

Yours sincerely,

BOYNE CLARKE


Gordon F. Proudfoot

GFP/ktj



SEP 14 1988

OSGOODE HALL LAW SCHOOL

4700 KEELE STREET, DOWNSVIEW, ONTARIO M3J 2R5

September 13, 1988

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

Dear Wylie,

I enclose a copy of our Factum in the Judicial Immunity Appeal. I have tried to prepare the title page in the proper form, but perhaps you could take a close look at it and change it if required.

Yours sincerely,

James C. MacPherson
Dean

Enc: P.S. - I also enclose 10 copies of
a signed last part.

JCM/P

P.P.S. - Good luck on the Cabinet
appeal!

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

BY HAND

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

Dear John:

Marshall Inquiry
Our File No. 9201/1

Nadine Cooper Mont and Kit Waters will attend the September 29, 1988, seminar to review Professor Edward's paper.

Yours truly,



Darrel I. Pink

DIP/jl
B:16A
c.c. Ms. Nadine Cooper Mont



Department of Justice
Canada

Ministère de la Justice
Canada

SEP 13 1988

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

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

426-7592

Your file
votre dossier

September 8, 1988

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

Dear Mr. MacDonald:

RE: Royal Commission-Donald Marshall, Jr.

Thank you for your letter of September 1, 1988.

Please be advised that it is our intention to make final submission to the Commissioners on behalf of the clients we represent.

Yours very truly,

James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc

Canada

BOUDREAU, BEATON & LaFOSSE

Barristers & Solicitors

J. Bernard Boudreau, Q.C. G. Wayne Beaton
Guy LaFosse A. Peter Ross
J. Michael MacDonald Patrick J. Murray

SEP 12 1988

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Our File Ref.:

September 8, 1988

Mr. George W. MacDonald
Commission Counsel
Royal Commission
Maritime Centre
Suite 1026
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear Mr. MacDonald:

RE: Royal Commission, Donald Marshall, Jr. Inquiry

Thank you for your letter of September 1, 1988.

On behalf of Staff Sgt. Davies, I intend to submit a very short written memorandum and possibly will make an oral presentation to the Commission as well. In the event that an oral presentation is made on behalf of Staff Sgt. Davies, I would anticipate that the oral presentation will not require any more than ten minutes.

Yours truly,

BOUDREAU, BEATON & LaFOSSE



PER: Guy LaFosse

GLF/cmp
cc Herb Davies

SEP 09 1988

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

BY HAND

September 9, 1988

Mr. Winston Barnwell
Royal Commission on the
Donald Marshall, Jr. Prosecution
Suite 1026
1505 Barrington Street
Halifax, Nova Scotia

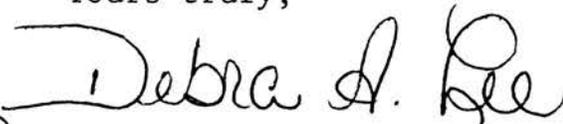
Dear Winston:

Marshall Inquiry
Our File No. 9201/1

Further to our meeting on Friday morning, I have written to John Wade at the Prosecutor's Office regarding arrangements for this additional research.

You should contact Alfreda on the first of the week when you wish to commence this research and make arrangements directly with her.

Yours truly,



for Darrel I. Pink

DIP/dal

cc: Mr. John Wade

STEWART MACKEEN & COVERT
BARRISTERS AND SOLICITORS

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J. THOMAS MacQUARRIE, Q.C.
DONALD H. OLIVER, Q.C.
DONALD H. McDOUGALL, Q.C.
JOHN S. McFARLANE, Q.C.
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JOHN MacL. ROGERS
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ROBERT G. GRANT
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OUR FILE REFERENCE:

BY FAX

RNP

835-1524

September 9, 1988

George W. MacDonald, Q.C.
McInnes, Cooper & Robertson
Barristers & Solicitors
P.O. Box 730
Halifax, Nova Scotia
B3J 2V1

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

Gentlemen:

Marshall Inquiry - Roland J. Thornhill

In the Agreed Statement of Facts with respect to the "Thornhill" case that was delivered with Mr. Spicer's letter to the Bank on July 25, 1988, the impression is created that the ultimate recommendation of the R.C.M.P. was that charges be laid against the Banks. I draw your attention, in particular, to Item 17 on the fourth page.

On reviewing the file material that was distributed last Friday, it appears to me that this was not indeed the recommendation of the R.C.M.P.

Certainly, documentation exists that indicates that some members of the R.C.M.P. were of the opinion that charges should be laid

September 6, 1988
Page 2

against Mr. Thornhill, but I suggest to both of you that no such opinion was held with respect to laying charges against the Bank.

I refer to the following:

1. Deputy Commissioner Quintal's Memorandum of 80.12.17 (page 2)
- found on page 94 of the Case Book, which provides, in part:

"Turning to the material provided to you by Mr. Coles in the seven page memorandum to the Attorney General, I must agree that while it makes some relevant points with respect to the position of the Banks, and the effect of Section 110(b) of the Criminal Code ..."

2. Superintendent Feagan's letter of December 22, 1980 to Mr. Coles (page 98 of the Case Book):

"As explained to you during our meeting, I feel some reasonable and probable grounds to lay a charge under Section 110(1)(c) c.c. against Mr. Thornhill are present. While I agree the material provided in your memorandum to the Attorney General makes relevant points with respect to the position of the Banks and the effect of Section 110(1)(b), it does not address in a convincing fashion the position of Mr. Thornhill vis-a-vis the unique requirements of Section 110(1)(c). It is our view that deliberate differences exist between those two subsections and the reasons for those differences are set out in jurisprudence."

Item 17, according to the Agreed Statement of Facts, consists of a "final report" forwarded to Mr. Gale's attention by covering letter dated September 11, 1980.

In the Case Book you have provided, the letter of September 9, 1980 is, in fact, included, but the report is not.

I suggest that the failure to include the conclusions reached by Deputy Commissioner Quintal as well as Superintendent Faegan will create in the minds of the public when the Statement of Facts is released on Monday, that it was the recommendation of the R.C.M.P. that charges be laid against the Bank. Such is not, according to my reading of the documents, the case, and, therefore, is both unfair and prejudicial to the position of the Banks.

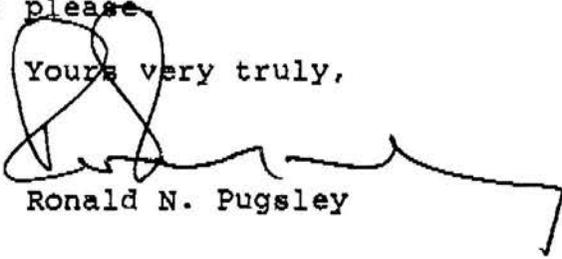
It is of particular importance that the conclusions reached at the meeting of November 5, 1980 did not support a prima facie

September 6, 1988
Page 3

case against the Banks but only against Mr. Thornhill.

I submit that the Agreed Statement of Facts should be amended either to delete Item 17 or, alternatively, if it is to be included, that the subsequent conclusions of November 5 and the memorandum of 80.12.17, and the letter of December 22, 1980 be included.

May I hear from you this morning, please.

Yours very truly,

Ronald N. Pugsley

RNP:dk
c: John P. Merrick, Q.C.
N0184229

LEONARD A. KITZ, Q.C., D.C.L.
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September 7, 1988

BY HAND

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

My Lords:

Her Majesty the Queen in right of the Province of
Nova Scotia, as represented by the Attorney General
of Nova Scotia v. The Royal Commission into the Donald
Marshall, Jr. Prosecution and Donald Marshall, Jr.
S.C.A. No. 01908
Our File No. 9201/1

This letter states the position of the Appellant, Her
Majesty the Queen ("Crown) in response to the letter of
August 31, 1988 from the solicitor for the Royal Commission
into the Donald Marshall, Jr. Prosecution ("Commission").
The Commission has asked that the Court strike grounds 1, 2
and 3 of the Notice of Appeal and certain passages from the
factum of the Crown.

(1) Summary

The Commission's argument is that the Crown seeks to
challenge the mandate of the Commission to consider certain
issues such as the compensation to Mr. Marshall, and that
such a challenge was not made before Chief Justice Glube.

The Commission's premise is mistaken.

The Crown's factum seeks only to challenge the right of the
Commission to ask questions to members of Cabinet respecting
discussions which occurred in Cabinet. Subject only to
this, the Crown's factum and argument does not challenge the
right of the Commission to consider any issue and hear

any evidence respecting any issue. This includes the the compensation to Mr. Marshall and any other issues of which the Commission has to date notified the Crown.

(2) Grounds 1-3 of Notice of Appeal

The Notice of Appeal is dated June 15, 1988. Paragraphs 1-3 of the Notice of Appeal did challenge the mandate of the Commission to consider certain issues, such as compensation to Mr. Marshall.

There followed discussions between counsel for the Commission and counsel for the Crown. These resulted in a statement read onto the record of the Proceedings of the Commission by Mr. MacDonald, solicitor for the Commission, on June 28, 1988. A copy of this statement is not included in the appeal book, but is relevant to this application and is attached to this letter. Pages 14472-73 of this transcript of June 28 include the following statement by Mr. MacDonald:

"We have had discussions with counsel for the Attorney General and we are assured that it is not the Government's intention to question the jurisdiction of this Commission to consider such other cases either before this Commission or before the Appeal Division of the Supreme Court of Nova Scotia. The only issue to be argued on behalf of the Attorney General in the Appeal Division on September 14th relates to the right of this Commission to question members of the provincial cabinet concerning the details of discussions with occurred in cabinet on any topic whatsoever." [emphasis added]

Also on page 14473 of this transcript, there occurred the following exchange between the Chairman of the Commission and the solicitor for the Crown:

"MR. CHAIRMAN

Simply for the record, Mr. Saunders, I understand you and Mr. MacDonald have been carrying out some negotiations to clarify the position. Will you confirm that the position put by Mr. MacDonald is accurate and correct?

MR. SAUNDERS

Yes, My Lord, I do, in fact. We conferred today and exchanged correspondence yesterday and conferred on the content of the statement which my friend has just read."

By this agreement the parties have narrowed the issues in grounds 1-3 of the Notice of Appeal.

Further to this agreement, the argument of the Crown to this court relates only "to the right of this Commission to question members of the provincial Cabinet concerning the details of discussions which occurred in the Cabinet on any topic whatsoever". With respect to anything else, the Crown does not ask this court to make any ruling which would limit the powers of the Commission.

(3) Factum

The factum of the Crown and the argument which the Crown proposes to make on September 14 complies with this agreement in the quoted passage. The factum of the Crown deals only with whether the Commission can require members of Cabinet to testify respecting conversations which occurred in Cabinet. Subject to that, the factum of the Crown does not challenge the powers of the Commission and does not request that this court challenge the powers of the Commission.

Paragraph 9 of the Crown's factum states:

"the issue raised by the Crown is the propriety of questions to members of the Cabinet concerning details of discussions which occurred in Cabinet. The Crown has never waived its right to make this argument. The Crown does not ask this Court to make any ruling respecting any other evidence, matter or topic before the Commission."

Paragraph 89 of the Crown's factum ("Order Requested") asks only that this Court make orders respecting questions to members of the Cabinet respecting discussions in Cabinet.

The letter of August 31 from the solicitor for the Commission states (page 2) that paragraphs 47-59 of the

Crown's factum challenge the mandate of the Commission further to grounds 1-3 of the Notice of Appeal.

This is incorrect.

Paragraphs 47-59 of the Crown's factum make the following points:

(a) Compellability of testimony respecting Cabinet discussions depends on a determination of the "public interest" which, according to Chief Justice Glube, involves the balancing of factors for and against disclosure.

(b) If anything is to be balanced against a "public interest favouring joint cabinet responsibility", then the balancing factor is the subject matter of the inquiry derived from the terms of the Order in Council which established the Commission.

(c) The Order in Council states that the Commission is to inquire into the "investigation" of the death of Mr. Seale, the "charging and prosecution" of Mr. Marshall, the "conviction and sentencing" of Mr. Marshall, and "such other related matters which the Commissioners consider relevant to the inquiry."

(d) Of those items, only the words "such other related matters which the Commissioners consider relevant to the inquiry" cover the period after the sentencing of Mr. Marshall in 1971, i.e. the period covered by the questions posed to Mr. Giffin which give rise to this application.

(e) The Crown does not dispute that the subject matter of the questions posed to Mr. Giffin is within the words "such other related matters which the

Commissioners consider relevant to the inquiry". There is no challenge to the jurisdiction of the Commission to consider these issues. The Crown submits that the topic, though within the mandate, is remote from the central issues of the mandate.

(f) For any witnesses other than Cabinet Ministers, testifying respecting Cabinet discussions, this would be enough. Evidence on any topic within the mandate, however remote, is admissible.

(g) For Cabinet Ministers, the Supreme Supreme Court of Canada has stated "a public interest" test which, according to Chief Justice Glube, involves weighing of interests. So it is important to determine the weight to attach to each factor. The Crown submits that questions respecting what occurred in 1978 and the following years are (though within the boundaries of the mandate) remote from the central issues in the mandate. Therefore, they should receive correspondingly less weight in any balancing against the public interest favoring joint cabinet responsibility.

This argument relates only to the issue of whether Cabinet Ministers should testify respecting Cabinet discussions. The argument does not implicate the testimony of any other witness on any topic.

(4) Does the Crown Raise a New Issue?

The letter of August 31 from the solicitor for the Commission states that the challenge to the mandate or jurisdiction of the Commission was not made before Chief Justice Glube and therefore, should not be made in the Appeal Division.

Before Chief Justice Glube, the Crown asked the court to rule respecting the propriety of questions to members of cabinet respecting discussions in cabinet. Other than that,

the Crown did not challenge the powers of the Commission before Chief Justice Glube.

In this Court the Crown asks only for a ruling on the propriety of questions to members of Cabinet respecting discussions which occurred in Cabinet, and otherwise does not challenge the powers of the Commission. There is no "new" issue which challenges the Commission's mandate.

(5) Order Requested

The Crown submits that the application of the Commission to strike portions of the factum of the Crown be dismissed.

The scope of grounds 1-3 of the Notice of Appeal already is narrowed by agreement on June 28, and the Crown's argument complies with the agreement.

Yours respectfully,



Jamie W.S. Saunders
JWSS/pmr/H142
cc: Wylie W. Spicer
Anne Derrick

**ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION**

Volume 82

Held: June 28, 1988, in the World Trade and Convention
Center, Halifax, Nova Scotia

Before: Chief Justice T.A. Hickman, Chairman
Assoc. Chief Justice L.A. Poitras and
The Honourable G. T. Evans, Q.C., Commissioners

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David
Orsborn: Commission counsel

Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:
Counsel for Donald Marshall, Jr.

Mr. Ronald N. Pugsley, Q.C.: Counsel for Mr. John F. MacIntyre

Mr. Donald C. Murray: Counsel for Mr. William Urquhart

Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for
Donald MacNeil estate

Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the
Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.
and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
MacAlpine

Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
for Staff Sgt. Wheaton and Insp. Scott

Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for
the Union of Nova Scotia Indians

Mr. E. Anthony Ross: Counsel for Oscar N. Seale

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black
United Front

Court Reporting: Margaret E. Graham, OCR, RPR

MR. MACDONALD - STATEMENT

1 of reference when you made a statement at the opening of the
2 funding application hearings and again when the full hearings
3 opened in September, 1987. That statement was a clear
4 acknowledgement at those times of your intention to look at cases
5 other than the Donald Marshall, Jr. incident and we have
6 proceeded to obtain evidence and identify witnesses to be called
7 in such other cases.

8 We did not wish to assemble counsel, witnesses, and Your
9 Lordships on September 12th, 1988 only to have the Attorney
10 General take the position that Your Lordships could not proceed
11 because you were acting outside your terms of reference. Neither
12 would it have been appropriate to be proceeding with the hearing
13 of evidence in such other cases if on September 14th, the date set
14 for the appeal, the Attorney General was asking the Appeal
15 Division of our Supreme Court to limit the scope of the Inquiry
16 which can be conducted by Your Lordships.

17 We have had discussions with counsel for the Attorney
18 General and we are assured that it is not the government's
19 intention to question the jurisdiction of this Commission to
20 consider such other cases either before this commission or before
21 the Appeal Division of the Supreme Court of Nova Scotia. The only
22 issue to be argued on behalf of the Attorney General in the Appeal
23 Division on September 14th relates to the right of this Commission
24 to question members of the provincial Cabinet concerning the
25 details of discussions which occurred in Cabinet on any topic

MR. MACDONALD - STATEMENT

1 | whatsoever.

2 | Accordingly, we do recommend that these hearings resume
3 | on September the 12th, 1988 as expected, or as originally
4 | planned.

5 | Finally, My Lords, we have been together now with counsel
6 | for all other parties granted standing for many days. As we
7 | proceed in September, it is expected that only a few of those
8 | counsel will continue to be present during the hearings. I would
9 | like to take this opportunity, therefore, to express our
10 | appreciation to all counsel for the cooperation we have received
11 | throughout and, in particular, for their assistance in making their
12 | clients available to us in order that we could prepare to present
13 | their evidence.

14 | Thank you.

15 | MR. CHAIRMAN

16 | Simply for the record, Mr. Saunders, I understand you and
17 | Mr. MacDonald have been carrying out some negotiations to
18 | clarify the position. Will you confirm that the position put by Mr.
19 | MacDonald is accurate and correct?

20 | MR. SAUNDERS

21 | Yes, My Lord, I do, in fact. We conferred today and
22 | exchanged correspondence yesterday and conferred on the
23 | content of the statement which my friend has just read.

24 | MR. CHAIRMAN

25 | To date, the Commission has held 82 days of Public Hearings,

SEP 08 1988

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September 7, 1988

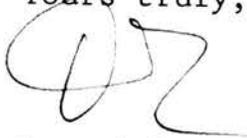
BY HAND

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

Marshall Inquiry
Our File No. 9201/1

I enclose an update to be placed in the Advice to
Prosecutors manual.

Yours truly,



Darrel I. Pink

DIP/jl
B:13A
Enc.

John Briggs has
material
referred to.

SEP 08 1988

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TRURO, NOVA SCOTIA
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September 7, 1988

BY HAND

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

Dear John:

Marshall Inquiry
Our File No. 9201/1

I have yours of today's date with enclosures.

Because I will be distributing one copy to the Deputy Solicitor General, I would appreciate receiving an additional copy of Professor Edward's papers, if one is available. If not, please advise and I shall copy mine.

Yours truly,



Darrel I. Pink

DIP/jl
B:12A



Department of Justice
Canada

Ministère de la Justice
Canada



SEP 06 1988

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

Your file:
Votre dossier:

426-7592

September 1, 1988

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

Attention: George W. MacDonald

Dear Mr. MacDonald:

RE: MacLean - Port Hawkesbury Fire

Thank you for your letter of August 29, 1988, and thank you for bringing Mr. Ruby's request to our attention.

We appreciate the review process which you have undertaken with respect to this file and the decision which you have made. It is our view that Mr. Ruby should be satisfied with your representations with respect to the file. We are, therefore, not in a position to consent to Mr. Ruby reviewing the file on any basis.

Yours very truly,

James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc

c.c. Mr. Jamie Saunders
Patterson, Kitz
P. O. Box 247
Halifax, Nova Scotia
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Who Judges the Judges?

A Comment on the Marshall Inquiry

"Justice," John Galsworthy once remarked, "is a machine that when some one has once given it the starting push, rolls on of itself." In the case of Donald Marshall Jr., "injustice" would be the more appropriate word. By any yardstick imaginable, the justice system in Nova Scotia failed him miserably.

The reasons offered for the system's failure are as varied as the witnesses — 103 to date — who have appeared before the "Royal Commission on the Donald Marshall Jr. Prosecution." Every part of the justice system stands accused of having a hand in putting the sixteen-year-old Micmac youth behind penitentiary bars for a crime he did not commit, and keeping him there for eleven long years.

And when Marshall was finally released from prison, the machinery of injustice just kept rolling. The Nova Scotia Court of Appeals ruled Marshall was "not guilty" but added that Marshall, not the system, was to blame for his conviction and imprisonment. Ruling that "any miscarriage of justice is more apparent than real," the learned judges condemned Marshall for untruthfulness and cited him as the cause of his own misfortune.

The comments blaming Marshall for his own predicament became ammunition for the province's negotiator, who was intent on paying the least compensation possible for wrongful imprisonment. Adding even more insult to injury, former Deputy Attorney General Gordon Coles testified at the Royal Commission's hearings that Marshall's ultimate acquittal after eleven years in jail was evidence that the justice system was in good working order.

The irony of blaming the victim while praising the system was heightened by the presence of Justice Leonard Pace on the appeal court panel.

Robert Wall

Pace was Attorney General (and therefore chief law officer) of the province when Marshall was convicted and sentenced in 1971. One witness testified that he was "99 percent sure" that Pace was aware, within a week of Marshall's conviction, of new evidence that could have won him a new trial. The testimony raises doubts about the impartiality of the panel that found that the system was blameless.

In addition, the decision of the court appears to be based in part on witnesses' affidavits which were never, according to the official transcript, presented to the court for their consideration.

Judicial decisions are supposed to define the issue being considered, assess the applicable law and demonstrate the process by which the findings were made. But the appeal court decision in the Marshall case was like a road map with half the lines left out.

The Royal Commission, in following the tortured path of Donald Marshall Jr. through the Nova Scotia justice system, decided that the appeal court judges were the only ones who could clarify the apparent incongruities in their decision. When the Judges declined to come voluntarily a subpoena was issued to compel their attendance. There then erupted a major battle between the Commissioners and the Court of Appeals, which Chief Justice Constance Glube of the Trial Division of the Supreme Court was eventually asked to referee. (A few weeks before, Glube had ruled that Cabinet ministers could be compelled to violate their solemn oath and answer questions about secret cabinet conversations if the Marshall matter was the

subject of these discussions). Glube was in an unenviable position. The Judges of the Court of Appeals are, in effect, her bosses. They could make her life as a Judge quite uncomfortable if they chose to look closely at any of her cases coming before them on appeal. But to rule against the Royal Commission was to invite public clamour by appearing to shield her fellow judges from scrutiny.

Glube's decision was a masterstroke of the judicial art of balancing. Not only did she quash the subpoena issued by the Commission, she said it would "be wrong" for a judge to testify voluntarily. She added: "A judge must not (my emphasis) testify before a commission or court on matters which came before the judge in his or her judicial capacity, even if the judge would like to respect to one or more of the questions which have been publicly raised."

Having ruled in favour of the higher court judges, Glube balanced the scales by asserting that immunity is not a personal privilege, "it is for the benefit of the public."

Cynical commentators laughed that it didn't matter what Glube said. The question would be appealed up the ladder to a higher court. And so it will, although in August the lawyers representing the five appeal court judges refused a request by the Marshall Commission to take this very thorny issue to the Supreme Court of Canada. Instead, the appeal against Glube's decision will be heard in the Nova Scotia Court of Appeals — the very same court in which the five judges sat when they decided Marshall's fate!

The foundation on which Glube built her decision is the Principle of Judicial Independence. Constructing the foundation was easy for her. All parties in the dispute — the Court of

Appeals, the Royal Commission, the Attorney General who supported the appeal court's position, and Marshall's lawyers — agreed that judges need to be free from political, governmental and other entanglements that might affect the exercise of judicial functions. All parties agreed that to safeguard their independence, judges should be immune from law suits against them for actions performed and decisions rendered in the performance of their judicial duties. A judge can't be truly independent if he has to worry that he might be dragged into court by disgruntled claimants or, worse, a governmental body upset by a decision. There is a long tradition of common law holding that judges are immune from such treatment. There seems to be a definable public interest in keeping judges above or apart from unwarranted or improper interference with their judicial duties.

But is it in the public interest to say that judges can never be called to account for their action or decisions while on the bench, that judges should be cloaked in total immunity?

In fact and in practice, judges are not totally immune. Decisions can be appealed. Appeal courts can and do overturn lower court judgements for a variety of reasons. Higher court decisions are full of sharp comments (expressed with polite legalistic venom) directed at the inadequacy of lower court judges. And if a judge's personal conduct on the bench, as opposed to the logic of the decision itself, is questioned, the Canadian Judicial Council can be asked to investigate and censure the unseemly behaviour. The Council would of course call the judge to appear and has the authority to subpoena a recalcitrant witness.

Glube suggested that questions which Marshall's lawyers wanted to ask "appear to allege impropriety on the part of some or all of the plaintiffs" (the Appeal Court judges). "If that is the case, the place to deal with such allegations of impropriety is the Canadian Judicial Council established under the *Judges Act*."

Despite Glube's assertion to the contrary, this means that judges are not totally immune. They are only immune from anyone except other judges looking at their behaviour.

Glube's reasoning on behalf of total judicial immunity is contradictory and circular. The Marshall Inquiry was established because of years of public outcry about the apparent miscarriage of justice in the Marshall case. The Commission's job is to find out why the system went wrong and recommend ways to keep it from happening again. The public has been copiously supplied with insights into the workings of all levels of the criminal justice system of Nova Scotia. The public has heard allegations that improprieties also occurred in the Court of Appeals.

And then Glube, citing a 1985 precedent, argues that this very same public is served by judicial immunity: "For this immunity, in the performance of judicial duties, is not for a judge personally, it is for the benefit of the public 'to protect the judicial system against interference or influence which might pervert the course of justice.'"

As a member of the public, neither a lawyer or a judge, my concerns would be alleviated and I would benefit if either: (a) the judges appear and dispel the appearance of impropriety, or (b) the judges appear, are found wanting and actions are taken to protect me and the rest of the public in the future. I see no "interference or influence which might pervert the course of justice" in either of these alternatives.

The appearance of perverse justice arises when a needless barrier of "total immunity" prohibits judges from answering the allegations of impropriety. The entire legal profession is fond of quoting, "Justice must not only be done, but be seen to be done." Then can justice be seen to be done if judges are unseen?

The Marshall Commission is precisely the kind of forum which can examine the questions raised about the decision of the judges of the Court of Appeals without "denigrating the dignity of their office or impeding their future effectiveness."

The Commissioners given the thankless task of unravelling the twisted fabric of the Nova Scotia justice system have demonstrated admirably their ability to handle sensitive issues with competence, integrity and, where necessary, discretion. But, they cannot look at all the factors which caused the

Marshall travesty if the Appeal Court judges remain in the status of legal limbo.

We began with Galsworthy; let us end with Dickens. The courts, with their mysterious pomp and pageantry, reduce the general public to the status of an awestruck child. And as Dickens wrote in *Great Expectations*, "In the little world in which children have their existence, there is nothing so finely perceived as injustice." •

Robert Wall, formerly a researcher with the Marshall Inquiry, is writing a major study of the impact of the Marshall case on Nova Scotia.

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TELEX 019-22593

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DONALD A. KERR, Q.C.

COUNSEL
BRIAN FLEMMING, Q.C.

HUGH K. SMITH, Q.C.

OUR FILE REFERENCE:

September 2, 1988

DELIVERED

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

Dear Mr. MacDonald:

RE: Harris and Final Submission Issues

As counsel for William Urquhart I have no interest in the evidence of Michael Harris, nor with respect to Mr. Ross' application - on which I take no position.

I intend to present written and oral submissions to the Commissioners as to the interests of Mr. Urquhart. I would appreciate further advice from you as to the rough time estimates for the Commission Counsel's final submission.

Yours very truly,
STEWART, MACKEN & COVERT
Per:


Donald C. Murray

DCM/dmb
c.c. All other counsel
N2062104

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

September 2, 1988

BY COURIER

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

Dear George:

MacLean - Port Hawkesbury Fire
Our File 9201/1

Thank you for your letter to me and Jim Bissell dated August 29. I only received it as it was mailed to my office in Truro. Kindly ensure that correspondence is directed to me in Halifax.

We cannot accede to Mr. Ruby's request. Commission Counsel have thoroughly reviewed this subject and reached a conclusion which we share.

Thank you for your inquiry.

Yours very truly,



Jamie W. S. Saunders

JWSS/gmm

cc. James D. Bissell
cc. Clayton Ruby, c/o Anne Derrick

SEP 02 1988

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

August 30, 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

I have been considering your letter of August 3 in response to the questions I raised in my letter of June 23.

With respect I do not think the authorities you have cited support the position you espouse, that being to continue the:

". . . involvement of counsel in providing advice as required by the Commissioners."

I think there is a clear distinction between final submissions by all counsel on the one hand and subsequent representations/advice/submissions/interpretations by Commission counsel at a later date. It is this latter proposition to which I take exception.

And I think this is the point addressed by Anthony Lucas when they state (as quoted on page three of your letter):

"There was the problem of ensuring that the Inquiry staff are not allowed to put their arguments privately to the Commission or to the Inquiry. I have sought to overcome this by laying down a ruling that the recommendations that the Inquiry staff wish to develop should be presented to the Inquiry by Commission counsel at the formal hearings."

I have now received a copy of Ron Pugsley's letter to you of August 24 and it is clear that he and I hold the same view.

August 30, 1988
George W. MacDonald, Esq., Q.C.
Marshall Inquiry
Page 2

I will look forward to hearing from you how best we may have
this issue resolved.

Yours very truly,


Jamie W. S. Saunders

JWSS/gmm

cc. W. Wylie Spicer
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



Department of Justice
Canada

Ministère de la Justice
Canada

SEP 02 1988

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Halifax, Nouvelle-Écosse
B3J 1M7

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

426-7592

Your file
Votre dossier

August 31, 1988

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

Dear Mr. Spicer:

RE: Billy Joe MacLean Documents

We acknowledge receipt of your letter dated August 30, 1988.

We have no problem with adding the sentencing representations.

Yours very truly,

James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc



Department of Justice
Canada

Ministère de la Justice
Canada

SEP 02 1988

4th Floor
Royal Bank Building
5161 George Street
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Halifax, Nouvelle-Écosse
B3J 1M7

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

426-7592

Your file
Votre dossier

August 29, 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: Public Policing in Nova Scotia - Research Report
by Dr. Richard Apostle and Dr. Philip Stenning

I acknowledge receipt with thanks of your letter dated
August 25, 1988.

Yours very truly,

James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc

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

August 31, 1988

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

Dear Wylie:

Her Majesty the Queen
v. The Royal Commission into the
Donald Marshall, Jr., Prosecution
1988 S. C. A. No. 01908

Thank you for your letter of August 23 with enclosures.

I will enquire of Mr. Donahoe and get back to you shortly.

Yours very truly,



Jamie W. S. Saunders

JWSS/ksd

SEP 02 1988

LEONARD A. KITZ, Q.C., D.C.L.
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August 31, 1988

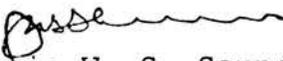
George W. MacDonald
Commission Counsel
Royal Commission on the Donald
Marshall Jr., Prosecution
Maritime Centre, Suite 1026
1505 Barrington Street
Halifax, N.S.
B3J 3K5

Dear George:

Hickman et al v. MacKeigan et al

Thank you for the copy of your letter to Ron Downie dated August 19, 1988, enclosing a copy of your notice of appeal.

Yours very truly,


Jamie W. S. Saunders

JWSS/ksd
cc. Mr. Ron Downie
Ms. Anne Derrick

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

September 1, 1988

BY HAND

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

Dear George:

Marshall Inquiry
Our File No. 9201/1

You will recall we had some earlier correspondence regarding Rhodenizer.

We have come across some additional material relating to that matter, copies of which are enclosed.

We had this material in our office but were not able to locate it when you made your earlier request.

Yours truly,



Darrel I. Pink

DIP/jl
B:9A
Enc.

c.c. Mr. D. William MacDonald, Q.C.

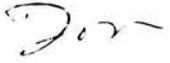


John Briggs
Research Director
Royal Commission on the Donald
Marshall Jr. Prosecution

August 28, 1988

Dear John:

Enclosed please find my report on the feasibility of further study in sentencing disparities and discrimination. The considered proposal is laid out on page 5. I look forward to your assessment. As agreed I am billing you \$500. for the work (expenses) involved.


Don Clairmont
Pilot Research

SEP 01 1988

THOMAS R. BERGER

Barrister & Solicitor

Thomas R. Berger
Gary A. Nelson

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

August 30th, 1988

Telephone: (604) 684-1311

VIA COURIER

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:

I had a meeting with Michael Jackson and Sam Stevens last week.

Michael gave me a copy of the recent report he did for the Canadian Bar Association. I have copies it for you and enclose it herewith.

Michael and Sam had some suggestions about the Indian part of the consultation.

They felt that it would not be useful to invite George Erasmus or Smokey Bruyere to lead off the discussion. George and Smokey are important Indian politicians, but their contribution to the specific problems the consultation is to deal with would be limited.

Sam suggested that you might consider inviting Joe Norton, Grand Chief of the Mohawks, of the Kahnawahe (formerly Caughnawaga) Reserve to come. There is a Section 107 court operating on the reserve, as well as a traditional court. Joe apparently spoke very well in Montreal last week.

I think you might consider asking Michael Jackson to lead off the discussion, since his paper has certainly provided a focus for the consideration of the problem.

. . . 2

Ms. Susan Ashley

August 30th, 1988

Michael suggested that it would be useful to invite as panelists some people who are dealing with the problems on the ground. He suggested the following:

Chester Cunningham, Executive Director
Native Counselling Services, Province of Alberta

This, according to Michael, is the most developed organization of its kind in Canada, engaged in training Native people as counsellors and in corrections.

Tom Sampson of the Tsarlip Band, Victoria, B.C.
who is running the programme established by the
First Nations of South (Vancouver) Island Tribal
Council, Victoria, B.C.

They are involving the elders in cases where young persons have been charged with a crime.

Judge J.C. Coutu, a judge who is responsible
for the Northern Quebec Circuit.

Judge Coutu could also provide you with information regarding other persons in the province of Quebec who could contribute.

I have been in touch with Rosemary Brown. She feels that she might not be useful to us, since she feels she is not closely in touch with developments. She has given me the names of one or two young black lawyers here in Vancouver. I will talk to them and see what comes of it.

Yours sincerely,


Thomas R. Berger

TRB:VC

Encl.

McINNES COOPER & ROBERTSON

BARRISTERS & SOLICITORS

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(902) 425-6500

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(902) 425-6386
(902) 425-6350

Telex
019-21859

DATE: August 23/88

OUR FILE: I-1816

SENT: AUG 23 1988

TIME: 9:48

BY: Sharon

Please deliver the following 1 pages.

TO: (Name) Mr David Osborn

(Firm) Buddester/Osborn

(City) St John's, Nfld

(Telecopier) (709) 579-2647

FROM: (Name) W. Wylie Spicer

McInnes, Cooper & Robertson
1601 Lower Water Street
P.O. Box 730
Halifax, Nova Scotia B3J 2V1

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COMMENTS

M E M O R A N D U M

TO: David Orsborn and George MacDonald
FROM: Wylie Spicer
DATE: August 22, 1988

I have arranged to see Quintal and Venner
on Friday, September 2, at 2:00 p.m. Can either of
you be there?

1988

AUG 30 1988
S.C.A. No. 02004

IN THE SUPREME COURT OF NOVA SCOTIA
APPEAL DIVISION

BETWEEN:

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

APPELLANTS

- and -

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

RESPONDENTS

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA

INTERVENOR

- and -

DONALD MARSHALL, Jr.

INTERVENOR

NOTICE OF CONTENTION

TAKE NOTICE that the Intervenor, the Attorney General of Nova Scotia, intends to contend on this appeal that the judgment of Chief Justice Constance Glube dated June 22, 1988 wherein she held that the Respondents were entitled to assert judicial immunity and were not compellable to testify on matters which came before them in their judicial capacity, and

wherein she further held that the Orders to Attend were ultra vires and beyond the authority of the Appellants, should be affirmed:

1. For the reasons and on the grounds given by Chief Justice Glube; and,
2. Alternatively on the grounds that even if the Respondents do not have a "total" judicial immunity (as found by Glube, C.J.T.D.) but only a "relative" immunity, or privilege, nevertheless they are not compellable in the circumstances; and,
3. Alternatively on the grounds that even if at common law or by statute, the Respondents would be compellable in the circumstances, the constitutional status of the principle of the independence of the judiciary supercedes the common law and/or statute law and dictates that the Respondents are not compellable.

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

JAMIE W. S. SAUNDERS
Patterson Kits
5151 George Street
Halifax, Nova Scotia
Solicitor for the Intervenor,
The Attorney General of Nova
Scotia

TO: The Registrar

AND TO: George MacDonald, Q.C.
McInnes, Cooper & Robertson
Barristers & Solicitors
1673 Bedford Row
Halifax, Nova Scotia
Solicitor for the Appellants

AND TO: R. J. Downie, Q.C.
Cox, Downie & Goodfellow
Barristers & Solicitors
1100, 1959 Upper Water Street
Halifax, Nova Scotia
Solicitor for the Respondents

AND TO: James D. Bissell
Regional Director
Department of Justice
4th Floor, Royal Bank Building
5161 George Street
Halifax, Nova Scotia
Solicitor for the Attorney General of Canada

AND TO: Ms. Anne S. Derrick
Buchan, Derrick & Ring
Barristers & Solicitors
205-5516 Spring Garden Road
Halifax, Nova Scotia
Solicitor for the Intervenor,
Donald Marshall, Jr.

1988

S.C.A. No. 0200

IN THE SUPREME COURT OF
NOVA SCOTIA, APPEAL DIVISION

BETWEEN:

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

APPELLANTS

- and -

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

RESPONDENTS

- and -

THE ATTORNEY GENERAL OF NOVA
SCOTIA

INTERVENOR

- and -

DONALD MARSHALL, Jr.

INTERVENOR

NOTICE OF CONTENTION

H613:9201/1

RETURN TO:

PATTERSON KITZ
BARRISTERS & SOLICITORS

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COX, DOWNIE & GOODFELLOW

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A. WILLIAM COX, Q.C.
W. R. E. GOODFELLOW, Q.C.
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DANIEL F. GALLIVAN
THOMAS P. DONOVAN
ANTHONY L. CHAPMAN
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JOCELYN M. CAMPBELL

RONALD J. DOWNIE, Q.C.
DAVID MCD. MANN, Q.C.
MICHAEL S. RYAN, Q.C.
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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**

August 24, 1988

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

Dear Sir:

**RE: Hickman et al. v. MacKeigan et al.
S.C.A. No. 02004**

I enclose herewith for filing in the normal way Notice of Contention with respect to this Appeal.

Copies of this letter and copies of the Notice of Contention are going to Messrs. James Bissell, Jamie Saunders, and Wylie Spicer and Ms. Anne Derrick.

Yours very truly,

Carla Gilles
for **R. J. Downie**

**RJD:cmg
Enclosure**

**cc. Mr. James Bissell
Mr. Jamie Saunders
Mr. Wylie Spicer
Ms. Anne Derrick**

AUG 30 1988

MURRANT BROWN
Barristers & Solicitors

SUITE 401
PURDY'S WHARF
P.O. BOX 2626
HALIFAX, CANADA
B3J 3P7

SUSAN ALLEN

TELEPHONE (902) 421-2121
XEROX-FAX (902) 421-2125

August 24, 1988

The Honourable Chief Justice
Constance R. Glube
Supreme Court of Nova Scotia
Trial Division
The Law Courts Building
1815 Upper Water Street
HALIFAX, Nova Scotia
B3J 1S7

COPY FOR YOUR INFORMATION

Dear Madam Justice Glube:

RE: Harris v. Hickman, Poitras & Evans
S. H. No. 65032

This is to inform Your Ladyship that given recent developments proceedings before the Court, as scheduled for September 8, 1988, will not be necessary. The parties have resolved their differences and expect Mr. Harris will testify before the Inquiry as requested.

We appreciate Your Ladyship's cooperation throughout.

Yours truly,

Susan Allen

SA*dm

cc. David B. Orsborn
cc. Allison R. Pringle
cc. Thomas M. Macdonald
cc. Anne Derrick
cc. Jamie W. S. Saunders
cc. Ronald N. Pugsley, Q.C.
cc. E. Anthony Ross
cc. Bruce H. Wildsmith
cc. Crier's Office

August 23, 1988

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

Dear Ms. Derrick:

Re: Her Majesty the Queen
v. The Royal Commission into the
Donald Marshall, Jr., Prosecution
1988 S. C. A. No. 01908

I enclose copies of a Notice and supporting Affidavit in connection with an Application to be made by the Commission to the Appeal Court on September 14, 1988. I have asked Mr. Saunders to ensure that Mr. Donahoe is present.

Yours very truly,

W. Wylie Spicer
Commission Counsel

/mm

Enclosures

DELIVERED

August 23, 1988

The Prothonotary
The Law Courts
1815 Upper Water Street
Halifax, Nova Scotia

Dear Sirs:

Re: Her Majesty the Queen
v. The Royal Commission into the
Donald Marshall, Jr., Prosecution
1988 S. C.A. No. 01908

I enclose for filing a Notice and supporting
Affidavit for an Application to be made to the Appeal
Court in connection with this matter on September 14,
1988.

Yours very truly,

W. Wylie Spicer
Commission Counsel

/mm

Enclosures

BY HAND

August 23, 1988

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

Dear Mr. Saunders:

Re: Her Majesty the Queen
v. The Royal Commission into the
Donald Marshall, Jr., Prosecution
1988 S. C. A. No. 01908

I enclose a Notice and supporting Affidavit in connection with the Application to be made by the Commission on September 14, 1988. It would be our intention to examine Mr. Donahoe on that date and I would appreciate it if you would take steps to ensure his attendance and I would appreciate your confirmation in that respect.

Yours very truly,

W. Wylie Spicer
Commission Counsel

/mm

Enclosures

BY HAND

I-1816

August 23, 1988

Dear Susan:

I would appreciate it if you would swear the enclosed Affidavits and return them to me ASAP.

I also enclose a copy of the Notice and a copy of the relevant Civil Procedure Rules.

Kind regards,

Yours very truly,

McINNES, COOPER & ROBERTSON

W. Wylie Spicer

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

/mm

Enclosures

BY COURIER

~~1988~~
~~AUG 31 1988~~

Ottawa,
August 28/88

John:

I'm very sorry for the further delay. I hope it didn't inconvenience you and the meeting.

This is just about it, except for

- Executive Summary
- completion of 3 community crime rate tables (police data are still fuzzy)
- page numbers 54 to 65 are duplicated
- Table of Contents needs to be numbered

While you are reading over the report, I'll clean these things up and send a clean copy.

Note: 2 volumes -- 1. text
 2. appendices

Thanks for your patience.

SO

1988

S.H. No. 63241

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

Ian M. MacKeigan, Gordon L.S. Hart,
Malachi C. Jones, Angus L. MacDonald
and Leonard L. Pace

PLAINTIFFS

-and-

T. Alexander Hickman, Lawrence A.
Poitras and Gregory Thomas Evans

DEFENDANTS

-and-

The Attorney General of Nova Scotia

INTERVENOR

-and-

Donald Marshall Jr.

INTERVENOR



Sgd
CRG

ORDER

BEFORE: Constance R. Glube, C.J.T.D.

WHEREAS by Originating Notice (Application Inter
Partes) dated and issued January 25, 1988, the Plaintiffs
applied to this Honourable Court for relief with respect
to certain Orders of the Defendants dated January 13,

- 2 -

1988, (the "Orders to Attend") which Orders required the Plaintiffs to attend before the Defendants for the purpose of giving evidence respecting their participation as Justices of the Appeal Division of the Supreme Court of Nova Scotia on and with respect to the Donald Marshall, Jr. Reference;

AND WHEREAS evidence was adduced in support of the Application by way of the affidavit of R.J. Downie, Q.C., sworn and filed with this Honourable Court on January 25, 1988, with evidence being adduced on behalf of the Defendants by way of the affidavit of David B. Orsborn sworn and filed on April 21, 1988;

AND WHEREAS written Memoranda of Argument were filed with the Court on behalf of each of the Parties;

AND WHEREAS the Application came on for hearing on May 24 and 25, 1988 with oral argument being heard from counsel for each of the Parties;

AND WHEREAS at the conclusion of oral argument, her Ladyship was pleased to reserve her Decision;

AND WHEREAS her Ladyship did subsequently file a written Decision dated June 22, 1988 (the "Decision") wherein she found that the Plaintiffs are entitled to total judicial immunity and that they are neither competent nor compellable to testify on matters which came before

- 3 -

them in their judicial capacity, specifically the Reference 1982/83. She further found that the Orders to Attend were ultra vires and beyond the authority of the Commission and the Commissioners (the Defendants);

NOW UPON MOTION of R.J. Downie, Q.C., counsel to the Plaintiffs with counsel to the Defendants, counsel to the Intervenor the Attorney General of Nova Scotia, and counsel to the Intervenor Donald Marshall, Jr. consenting hereto as to form;

IT IS ORDERED, ADJUDGED AND DECLARED that:

1. The Plaintiffs are neither competent nor compellable to appear before the Defendants to testify concerning matters which had come before them in their capacity as Judges of the Appeal Division of the Supreme Court of Nova Scotia and specifically, matters which came before them respecting the Section 617(b) Criminal Code Reference relating to Donald Marshall, Jr. all for the reasons and to the extent set forth in the Decision.
2. The Orders to Appear are ultra vires the Defendants

- 4 -

and unenforceable, and they are hereby quashed and set aside.

DATED this 9th day of August, 1988.

G. Martin

PROTHONOTARY

CONSENTED TO AS TO FORM:

(sgd) *Nylie Spicer*
Solicitor for the Defendants

(sgd) *Donel I Pent*
for Jamie W.S. Saunders
Solicitor for the Intervenor, the
Attorney General of Nova Scotia

(sgd) *Anne S. Desnick*
Solicitor for the Intervenor,
Donald Marshall, Jr.

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.

I hereby certify that the foregoing document,
identified by the Seal of the Court, is a true
copy of the original document on file herein.

Dated the 9 day of August AD. 1988

G. Martin
Prothonotary

1988

S.C.A. No. 02004

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

BETWEEN:

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

APPELLANTS

- and -

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

RESPONDENTS

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA

INTERVENOR

- and -

DONALD MARSHALL, JR.

INTERVENOR

NOTICE OF APPEAL

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

AND THAT the grounds of the appeal are:

- 2 -

THAT the learned Chief Justice erred in law:

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

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

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



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

TO: The Respondents,
their solicitors
or agents

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

1988

S.C.A. No. 02004

IN THE SUPREME COURT OF NOVA SCOTIA
APPEAL DIVISION

BETWEEN:

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

APPELLANTS

- and -

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

RESPONDENTS

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA

INTERVENOR

- and -

DONALD MARSHALL, Jr.

INTERVENOR

NOTICE OF CONTENTION

TAKE NOTICE that the Intervenor, the Attorney
General of Nova Scotia, intends to contend on this
appeal that the judgment of Chief Justice Constance
Glube dated June 22, 1988 wherein she held that the
Respondents were entitled to assert judicial immunity
and were not compellable to testify on matters which
came before them in their judicial capacity, and

- 2 -

wherein she further held that the Orders to Attend were ultra vires and beyond the authority of the Appellants, should be affirmed:

1. For the reasons and on the grounds given by Chief Justice Glube; and,
2. Alternatively on the grounds that even if the Respondents do not have a "total" judicial immunity (as found by Glube, C.J.T.D.) but only a "relative" immunity, or privilege, nevertheless they are not compellable in the circumstances; and,
3. Alternatively on the grounds that even if at common law or by statute, the Respondents would be compellable in the circumstances, the constitutional status of the principle of the independence of the judiciary supercedes the common law and/or statute law and dictates that the Respondents are not compellable.

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

JAMIE W. S. SAUNDERS
Patterson Kitz
5151 George Street
Halifax, Nova Scotia
Solicitor for the Intervenor,
The Attorney General of Nova
Scotia

- 3 -

TO: The Registrar

AND TO: George MacDonald, Q.C.
McInnes, Cooper & Robertson
Barristers & Solicitors
1673 Bedford Row
Halifax, Nova Scotia
Solicitor for the Appellants

AND TO: R. J. Downie, Q.C.
Cox, Downie & Goodfellow
Barristers & Solicitors
1100, 1959 Upper Water Street
Halifax, Nova Scotia
Solicitor for the Respondents

AND TO: James D. Bissell
Regional Director
Department of Justice
4th Floor, Royal Bank Building
5161 George Street
Halifax, Nova Scotia
Solicitor for the Attorney General of Canada

AND TO: Ms. Anne S. Derrick
Buchan, Derrick & Ring
Barristers & Solicitors
205-5516 Spring Garden Road
Halifax, Nova Scotia
Solicitor for the Intervenor,
Donald Marshall, Jr.

1988

S.C.A. No. 02004

IN THE SUPREME COURT OF
NOVA SCOTIA, APPEAL DIVISION

BETWEEN:

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

APPELLANTS

- and -

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

RESPONDENTS

- and -

THE ATTORNEY GENERAL OF NOVA
SCOTIA

INTERVENOR

- and -

DONALD MARSHALL, Jr.

INTERVENOR

NOTICE OF CONTENTION

H613:9201/1

RETURN TO:

PATTERSON KITZ
BARRISTERS & SOLICITORS

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

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

MURRANT BROWN
Barristers & Solicitors

SUITE 401
PURDY'S WHARF
P.O. BOX 2626
HALIFAX, CANADA
B3J 3P7

GAVIN GILES

TELEPHONE (902) 421-2121

XEROX-FAX (902) 421-2125

August 26, 1988

VIA TELECOPIER

Mr. W. Wylie Spicer
McINNES COOPER & ROBERTSON
Barristers and Solicitors
Cornwallis Place
1601 Lower Water Street
HALIFAX, Nova Scotia

Dear Wylie:

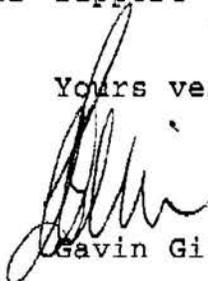
RE: Marshall Inquiry

Susan Allen's letter to Chief Justice Glube (a copy of which is on its way to you), makes it clear that our application scheduled for September 8th will not be necessary.

Our decision not to proceed is based upon our agreements with all counsel (save Mr. Ross) that they will not question Mr. Harris beyond the limits already stated by the Commissioners.

We will be taking our chances with Mr. Ross and assume that Commission Counsel will support our position should his questions go too far afield.

Yours very truly,



Gavin Giles

GG*dm

cc. Susan Ashley
(By Telecopier)



YORK
UNIVERSITY

AUG 29 1988

OSGOODE HALL LAW SCHOOL

4700 KEELE STREET, DOWNSVIEW, ONTARIO M3J 2R5

August 26, 1988

Dear John,

Here is a copy of my N.B. Policing Study which, I think, takes a different approach to policing from that currently being used on your Commission.

In due course, when recovered, I hope to be able to contribute to the debate.

John Briggs

has material
REFERRED TO:

Warm personal regards

Alan

AUG 26 1988

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

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

FRED J. DICKSON, Q.C.
DAVID R. HUBLEY, Q.C.
GERALD J. 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.
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CLARENCE A. BECKETT, Q.C.
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GORDON N. FORSYTH
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TELEX 019-22893

ALSO OFFICES AT
TRURO, NOVA SCOTIA
BEDFORD, NOVA SCOTIA

August 26, 1988

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

Dear John:

Our File No. 9201/1

Further to our conversation of August 24 and completion of our review of the Apostle/Stenning Report, we would request the following individuals from the Attorney General's Department be added to the list of participants at the Seminar; namely:

1. R. Gerald Conrad, Executive Director
2. Bruce E. Davidson, Director, Solicitor Services
3. Martin Herschorn, Director - Prosecutions.

I know the numbers are growing but the nature and extent of this report and the matters dealt with necessitate a broad representation of views from all areas of government affected by the Report.

Yours truly,



Darrel I. Pink

DIP/sm

cc: Mr. William MacDonald, Q.C.
Mr. Gerald Conrad

AUG 26 1988



DALHOUSIE UNIVERSITY
HALIFAX, N.S.
B3H 1T2

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

August 25, 1988

Mr. John Briggs
Director of Research
Royal Commission on the Donald Marshall
Jr. Prosecution.
Maritime Centre, Suite 1028
1505 Barrington St.
Halifax, N.S. B3J3K5

Dear John:

Please find enclosed a copy of my comments on the research report by Richard Apostle and Philip Stenning on, Public Policing in Nova Scotia. In general I found the report competent, informative and provocative. For more specific comments please see attached. I look forward to having an opportunity to discuss the report with the authors and hearing the reactions of the participants in the upcoming workshop.

I will be able to join you for dinner on Tuesday evening and of course will attend the Workshop on Wednesday.

Sincerely

Christopher Murphy
Dept. of Sociology and Soc. Anthropology
Dalhousie University.

A Review of the research report on " Public Policing in Nova Scotia", by Apostle R and Stenning P ,Submitted to the Royal Commission on the Donald. Marshall,Jr.,Prosecution by Dr. Christopher Murphy, Kings College, Dalhousie University. August 25th 1988.

First let me congratulate the authors on producing under difficult circumstances a highly informative and provocative report. I generally endorse the recommendations of the report and find them to be both supportable on the basis of the data gathered and sensitive to the political and practical realities of policing in Nova Scotia.The report meets the terms of reference outlined in the appendix as it provides a reasonably complete, factual and descriptive account of the organization and structure of policing in Nova Scotia. Though clearly limited by time and resources in its collection of primary data , the report would appear to provide a sound basis for further research, discussion, debate and hopefully the eventual development of sound policing policy and legislation.

There are large sections of the report which are either of a factual nature or are about events or organizations on which I have no basis either to question the information or no experience upon which I can form an alternative opinion. Therefore the following comments are limited to those parts of the report which my experience or research allows me to offer an informed response.

Text Comments:

The following are specific comments or, observations on material in the text, identified by relevant page numbers.

25 -29, Municipal and R.C.M.P. comparisons: this material is important , (not just because its based on my work) as it should establish for the reader the key philosophical and organizational differences between the two models . While the report attempts this, I found its description of the two models to be unclear and incomplete especially concerning their very distinctive relationships with community governments. A little more emphasis and clarity here would make the implications of some of your recommendations regarding alternative models of policing, training and the ongoing presence of the R.C. M.P. more significant.

30 -32. Union Representation. Given the significance and impact of Unionization on policing in Nova Scotia, this section seems inadequate. The increasing power of Police associations to influence and some would argue control various occupational aspects of street policing, is missed entirely by this description. While I understand that the authors were not in a position to do the necessary research to deal with this issue completely, the report should at least raise the issue of police association power and the implications this power has for managerial authority

(see comments later),policing costs, provincial involvement , municipal government authority and the police assoc.union role in the development of future policing policy in the Nova Scotia.

32- 36, perhaps it would be useful to include some historical data on the rising cost of policing and its increasing share of Municipal budgets should be included as there are some long term implications of this growth for policing in Nova Scotia.(higher police per capita ratios, need to reduce some services etc.)

37 to 44 ,Regionalization: while I have some serious reservation about the promised benefits of Regionalization, the report correctly identifies it as an important issue However I would emphasize that there has been little conclusive research to demonstrate that regional policing is necessarily more cost efficient or service effective. Prov. and Mun.Gov. would be well advised to do some serious research before developing policy on this issue as increasingly regional police depts. are reintroducing various community based policing elements into their model.

45-79, A.G. Dept.: this is a very informative and important section,the reports documentation of events, policies, responsibilities etc., supports their conclusions regarding the obvious policy and management vacuum in the dept.

86-. Police Commission, the analysis of the rather passive and supportive role adopted by the commission is consistent with my observation over the years and helps explain in part the ad hoc nature of the development of policing in Nova Scotia.

145- my research supports the perception of municipal governors that they police a much larger pop. than municipal residents. An analysis of Jail Admission forms in two small towns reveals that approximately 1/3 were from the local municipality, 1/3 from the surrounding county and 1/3 from elsewhere.

147- I wonder if those municipal officials who are supportive a more aggressive and interventionist provincial role also realize that they will lose some of their own authority to influence local policing. More systematic research on this issue is needed before it would be appropriate to redefine the exciting relationship.

152. The role and actual exercise of municipal authority and political influence over local policing needs more primary research attention than the report has been able to provide, Given that municipal police gov. have so much power and authority over police and are alleged to be a major source of many of the problems of municipal policing, more research on how this relationship actually works and weather it needs to changed ,

improved ,limited etc is required before any policy should be recommended or adopted.

178- this observation regarding the implications of a external review board and the issue of internal discipline and control, should be expanded to address the general issue of internal discipline and control in Municipal policing. At the time of my research 1980 -81, this issue was particularly problematic for a variety of reasons. Chiefs at that time seemed to lack formal and effective authoritative power and felt constrained by pressures to maintain internal harmony and solidarity within the small dept.I would be surprised if the situation had changed much. This would seem to be another area in need of more research ?.

202- recruitment\minorities; The issue of minority representation is of relevance in larger urban centers. Perhaps a more pervasive form of discrimination in the recruitment phase, is the exclusion of women. Some data and analysis of this issue should be included or given more prominence in the report

209- management courses at the C.P.C.: while these are currently the best available , it should be noted that these courses are not competitive nor are senior candidates marked on their performance. There has been considerable dissatisfaction expressed in policing circles with these courses and they cannot be relied

on to produce good police managers. Perhaps the A.P.C in conjunction with some University should be developing an alternative management

218- Atlantic Police College: My analysis of the college may be out of date, given recent staff and curriculum changes. However in the past the college curriculum failed to recognize the unique nature of Maritime policing (small town, rural low crime high service) and instead promoted an urban model of policing and training. This emphasis was evident in the course work and the attitudes of the candidates who when joining a small police force often displayed inappropriate urban policing attitudes and lacked traditional small town policing skills.

233-236 Criminal investigation, small police depts are limited by seize and training resources so that the investigation of serious crimes may be compromised. However more support for specialized training and a provincial policy on the investigation of serious crimes would ensure that the relatively few serious crimes that these departments investigate would either receive investigative support or external scrutiny.

237 - Police_Minority Relations: The report rather painfully makes the point (240 to 250 should be in an appendix as it is far too long, academic and in some cases only marginally relevant), that police officers have conservative or prejudicial

attitudes towards minorities which are similar to the bulk of the population. This may be true, but what is the relevance of this finding for this report ?. What may be more usefull are studies which demonstrate the link between attitude and police behaviour, or studies of routine police and minority interactions which do not necessarily result in arrest, and minority perceptions of police actions etc. I found this section to be inconclusive and somewhat confusing. I am not sure what the section was trying to say and was puzzled by much of what it did say . It needs editing , more clarity and unfortunately more data.

RECOMMENDATIONS:

Unless otherwise indicated I concur with the recommendations listed in the report.

272. would it be feasible to advocate that all homicide investigations be automatically reviewed by the police commission or an investigative task force to insure that all standards were followed.

273 police minority relations: while training and recruitment go part of the way to address this issue, the need for more aggressive management disapproval of police cultural racism endemic in most departments would also be helpful .In addition the development of ongoing institutional linkages with minority communities as a basis for dialogue ,consultation and interaction have proven to be useful in other jurisdictions.

280. Association of Municipal Governing Authorities, I concur with this recommendation as it provides a focus for the development of more sophisticated and professional municipal police management and a counterbalance to the increasing powers and capacities of the police and provincial gov.

281.- is this necessary as it seems already clear that local governing authorities can not do this formally and this recommendation may without clarification inhibit legitimate municipal input which in many communities is minimal already.

The following are some general comments which in various ways were raised by the report or were not and might have been.

Mission Statement/Policing Philosophy

The report chronical the ad-hoc evolution of municipal policing in Nova Scotia indicating the absence of a coherent and consistent philosophy of policing. At present there would appear to be number of conflicting principles behind various provincial policing policies and some of the recommendations of this report. Thus the report/province advocates strengthening provincial influence over municipal policing but somehow wishes to protects municipal powers at the same time, regionalization is periodically considered while more small municipal depts. are created, enhanced political accountability is supported but so to

is the independence of police chiefs from political interference, the community responsiveness of small municipal police forces is praised but so are the R.C.M.P. and recruiting , training and organizational policies that may diminish community responsiveness. These inconsistencies flow from a failure to distinguish between the two distinct philosophies of policing present in the province: a community based model of policing which places the locus of power and responsibility to shape policing in the hands of the local chief and municipality \ community and a more centralised bureaucratic model which emphasizes central power (provincial \ federal) and influence over policing policy and a more impersonal style of bureaucratic legalistic policing. (R.C.M.P. and Regional Policing)

Consequently there would appear to be a need to develop or at least identify a policing philosophy or mandate for Nova Scotia that would more clearly delineate the central principals and values that will guide the development of police policy. This is an essential first step in the process of providing a rational basis for policing policy and should help in dealing with the complex decisions that are recommended in this report. For example , without such a philosophy on what basis should the following decisions be made, the allocation of limited training resources , regionalization , the expansion of R.C.M.P. municipal policing, the increase or decrease municipal policing powers, etc. The decision to become a more centralized , bureaucratic, rational- legal. provincially controlled policing system

(implicit in this report) should be made explicit and debated, as there are alternative philosophies and strategies (community based) which might suggest different policies and development patterns.

The R.C.M.P. Presence in Municipal Policing.

The continuing presence and possible expansion of R.C.M.P. municipal policing needs to be justified on some other basis than historical accident, financial utility or municipal power. As the report documents, the R.C.M.P. are a distinctive form of municipal policing which remains essentially independent and beyond municipal and provincial control. How is it possible for a provincial government to develop a rational provincial policing policy when a large portion of its citizens are policed by a federal police force over which they have no formal control and to which provincial standards etc would not apply.. As the report suggests, mechanisms should be further developed which would insure that R.C.M.P policing priorities are consistent and supportive of provincial policies. However the report fails to raise the serious question, about the long term presence or expansion of R.C.M.P policing. Irrespective of the excellence of R.C M.P. policing ,is it possible or desirable to develop either a provincial or municipality based policing system through a national police force ?. Given the expected and the reports proposed, increase in municipal policing costs, it is predictable

that there will be growing demands to replace more small municipal police departments with R.C.M.P. detachments. Until now these cases appear to have been considered on a case by case basis , without reference to any provincial policy.. However the long term effect of expanding R.C.M.P. presence has clear implications for the development of a provincially based policing policy. This issue further emphasizes the need to develop a philosophy of policing in Nova Scotia.

Police Accountability and Police Independence

The report would appear to have a consistent and central theme ,the need to make police more accountable to provincial standards.commissions and review boards etc., while at the same time supporting a clarified and more independent relationship between police and local government officials. Implicit in this relationship is a" professional management" model of managerial accountability and control. This model of police accountability, advocates that police chiefs as professional managers ,should be left alone to manage their departments free from external political influence and control,especially on internal management matters. In return for operational autonomy the chief must insure that the organization is effectively managed and controlled and therefore accountable to the Chief. Independence from political control is thus premised on the mangers ability to provide an

acceptable level of internal control and effective management. This is essentially the current R.C.M.P. model when operating in Municipalities.

Any recommendation that would diminish local political control of policing should be able to provide assurances that this managerial control and accountability can be delivered. Can Municipal Policing as it now operates provide this?

To answer this question , it would seem the report needs to address the issue of managerial competence in municipal policing and the adequacy of managerial power in unionized small police depts. The need for managerial training and upgrading is correctly identified in the report. However not addressed in the report is the issue of management - labour relation in municipal policing. While this is too broad and complex an issue to address adequately here, I wish to at least draw the attention of the researcher to the "problematic" nature of management authority in municipal policing. In short my own research suggest that municipal police chiefs, as opposed to Detachment Commanders ,have far more restricted formal and informal authority to manage their organizations. Limited by a tenuous and unpredictable relationship with municipal councils, constrained by contracts negotiated between strong police associations and often uninformed local governments and confronted with the realities of managing an occupationally cohesive and organized line police officers, many police chiefs feel they have inadequate power and authority to manage their departments effectively, let alone

guarantee the higher standard of internally accountability demanded by the administrative model. There will no doubt be objections to this analysis and I am aware that effective management does exist under existing conditions. However if there is renewed emphasis on a more independent role for police management, it will be necessary to address more completely the issue of management authority and not just management training.

> In conclusion I support the general thrust of the recommendations in the report which are aimed at strengthening provincial involvement in the regulation and training of municipal police. This external and presumably impartial involvement would help insure that all Nova Scotia citizens would receive equitable and competent police service irrespective of the community in which they live in. While many of the issues raised and recommendations offered require more research and debate, I think this report offers a sound basis for the development of rational policing policy and practice in Nova Scotia, and may ensure that the events that precipitated the study will not be repeated.