

FEB 08 1990



Direction de la bibliothèque

Québec, February 5, 1990.

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

Object: Royal Commission on  
Donald Marshall Jr.

Dear Mrs Ashley,

I acknowledge with thanks the copy of  
the Report concerning the above mentioned object.

The subject of this report has raised  
a certain interest across the country and these documents  
will be most valuable to our collection.

We are most grateful for all the docu-  
mentation which your government sends from time to time.

With me best personal regards, I remain,

Sincerely yours,

  
Jacques Prémont, Q.C.  
Director

JP/jb

Édifice Pamphile-Le May  
Québec (Québec)  
G1A 1A5  
(418) 643-4408

FEB 08 1990

OFFICE OF THE PRESIDENT, THE UNIVERSITY OF LETHBRIDGE

1990 02 02

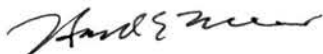
Ms. Susan M. Ashley  
Executive Secretary  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Maritime Centre, Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Ms. Ashley:

This will acknowledge with thanks your letter of January 29, 1990 and the enclosed complimentary copy of the Report of the Royal Commission on the Donald Marshall, Jr. Prosecution.

This Report will be placed in our Library as you suggest, and I am confident that it will benefit our students and the academic community. On behalf of the University of Lethbridge, I extend sincere thanks to the Government of Nova Scotia in making this document available to us.

Sincerely,



Howard E. Tennant, Ph.D.  
President and Vice-Chancellor

HET/sr  
cc: H. Fry  
900202.1/g/1000-16  
RC-Marshall

FEB 08 1990

# Department of Justice and Attorney General

## Office of the Deputy Minister



PRINCE EDWARD ISLAND

P.O. BOX 2000  
CHARLOTTETOWN  
C1A 7N8  
TEL. (902) 368-4570  
TELEX 014-44154

February 6, 1990

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

Dear Ms Ashley:

On behalf of the Honourable Joseph A. Ghiz, Minister of Justice of Prince Edward Island, I wish to acknowledge receipt of your letter dated January 29, 1990 in which you enclosed a copy of the Report of the Royal Commission on the Donald Marshall, Jr., Prosecution.

Your courtesy in this matter is appreciated.

Yours truly,

A handwritten signature in cursive script, appearing to read 'Arthur J. Currie'.

Arthur J. Currie, Q.C.  
Deputy Minister

FEB 06 1990



# Native Law Centre

University of Saskatchewan

1 February 1990

Royal Commission on the Donald Marshall Jr. Prosecution,  
Maritime Centre,  
Ste. 1206,  
1505 Barrington St.,  
Halifax, N.S.

Attention : Ms. Susan Ashley

Dear Ms. Ashley,

I am writing to inquire whether it would be possible to obtain a copy of the Report of the Commission for the Library of the Native Law Centre, and if so, what the cost of same would be. I am also interested in acquiring a list of the studies that were commissioned and the research papers which were prepared during the life of the Commission. If this information is available, would you please forward the particulars to me, as some of the material may be of use to our patrons.

Thank you very much for your anticipated cooperation.

Yours sincerely,

*M. Tastad*

Mary Tastad  
Research Officer (Librarian)

*sent Henry  
Bookstore  
full  
soft-  
set*



COLCHESTER-EAST HANTS  
REGIONAL LIBRARY

754 PRINCE STREET  
TRURO, NOVA SCOTIA B2N 1G9

FEB 07 1990

February 5, 1990

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

Dear Ms. Ashley:

On behalf of the Colchester-East Hants Regional Library I would like to thank the government of Nova Scotia for sending us the copy of the Report of the Royal Commission on the Donald Marshall, Jr., Prosecution.

We are particularly grateful for the prompt arrival of this work. It is not often that we offer our readers the official report on a topic within a day or two of the media announcing the news. I hope you will convey to whoever facilitated this speedy arrival, our most sincere appreciation.

Yours truly,

Reay Frève, Chief Librarian



Nova Scotia

FEB 05 1990

**Office of the  
Ombudsman**

Ombudsman

Lord Nelson Building  
Suite 300  
5675 Spring Garden Road  
PO Box 2152  
Halifax, Nova Scotia  
B3J 3B7

902 424-6780

Feb. 2/90

Dear Susan,

Thank you for the copy of the  
Royal Commission Report — I expect  
you are very pleased at the public  
reaction. Thanks.

Yours sincerely,  
Guy (Macbean).

FEB 05 1990

# Metro Community Law Clinic

2830 Agricola Street  
Halifax, Nova Scotia B3K 4E4  
Tel: 420-3450  
FAX: 420-2873

DIRECT DIAL 420-3464

February 2, 1990

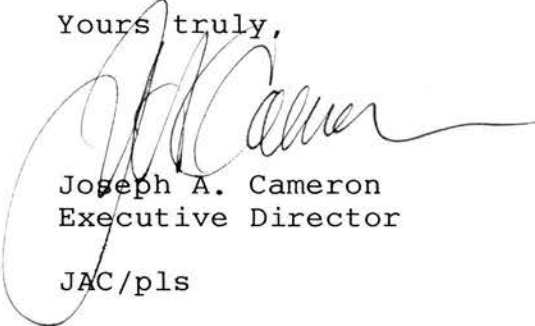
Ms. Susan M. Ashley  
Executive Secretary  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
Maritime Centre  
Suite 1026  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3K5

Dear Ms. Ashley:

**Re: Royal Commission Report on the Donald Marshall  
Jr., Prosecution**

On behalf of Mr. Haynes, Chairman of the Board of Directors, and the staff of the Metro Community Law Clinic, we thank you for the complimentary copy of the Royal Commission Report.

Yours truly,



Joseph A. Cameron  
Executive Director

JAC/pls



FEB 05 1990

UNIVERSITÉ DE MONCTON

CENTRE UNIVERSITAIRE DE MONCTON  
MONCTON, NOUVEAU-BRUNSWICK, CANADA E1A 3E9

Bibliothèque de droit  
1990 01 02

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

Dear Ms. Ashley:

Ms. Carmel Allain has forwarded to my office the Report of the Royal Commission on the Donald Marshall Prosecution as well as your letter of January 29th for further attention.

I wish to thank you for donating a copy of this very important report to our library. This gift will be most useful for our library patrons - law students, law teachers as well as legal researchers. Your generosity is greatly appreciated.

Yours truly,

Simonne Clermont  
Law Librarian

SC:lc



The Supreme Court of Newfoundland  
The Honourable T. Alex Hickman  
Chief Justice of the Trial Division



Chief Justice's Chambers  
Court House, Duckworth Street  
St. John's, Newfoundland A1C 5M3

0661 9 0 834

January 30, 1990

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

Dear Laurie:

I enclose copy of article of Michael Harris, etc.  
which appeared in the January 28 issue of the Sunday  
Express. Will you please send a copy of same to Ian  
Frazer, George and Wylie?

Sincerely,

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

TAH:hdh  
Enclosures

## NEWSMAKER OF THE WEEK



### T. Alexander Hickman

It's an understatement to say many Nova Scotians don't like T. Alexander Hickman, the Newfoundland judge whose royal commission last week completely cleared Donald Marshall Jr. of any wrongdoing in the events surrounding Sandy Seale's murder in 1971.

The Marshall case has been a difficult one for Nova Scotia to accept, and the verdict of the Hickman Commission will be hard to swallow. Concluding that virtually every part of the justice system failed Mr. Marshall, and by declaring the system has been both racist and incompetent, Mr. Hickman has stuck his neck out in a decision that is both brave and honorable.

The timing of the commission's ruling didn't make it any easier for Hickman, who is currently under a cloud of suspicion of his own part, if any, in the Mount Cashel affair. Opposition politicians, in an unfortunate attempt to generate some publicity, attempted to portray a leaked page of the report as an indicator that the whole seven-page document would whitewash the truth.

It didn't. In consideration of that fact, we choose T. Alexander Hickman as newsmaker of the week.

*The Sunday Express - January 28, 1990*

*St John's*

**Doyle C. Roberts**  
Chairman

**Michael Harris**  
Publisher, Editor-in-Chief

**Geoff Meeker**  
Managing Editor

**Carolyn Ryan**  
Production Manager

**"Treat with respect the power you have  
to form an opinion." - Marcus Aurelius**



# The Hickman Commission: a bargain at any price

By MICHAEL HARRIS

Publisher, Editor-in-Chief

There was a message this week for those who would conduct royal commissions under the shadow of an egg-timer.

After two years of work, the Royal Commission on the Donald Marshall Jr. Prosecution reported its findings to the government of Nova Scotia. The commission was set up to answer one basic question: was Donald Marshall Jr. the author of his own misfortune when he was sent to prison for life in 1971 for a murder he didn't commit, or was Nova Scotia's legal system itself responsible for a sickening miscarriage of justice?

In 1983, the court that acquitted Donald Marshall of the 1971 murder of Sandy Seale — the Nova Scotia Supreme Court Appeals Division — decided that Donald Marshall himself, and not the process that convicted him, was chiefly to blame for his wrongful imprisonment. Any miscarriage of justice, the five judges found, was more apparent than real.

Armed with that ruling, the government of Nova Scotia entered negotiations with Donald Marshall's lawyer to decide what compensation he should receive for the 11 years that were stolen from him. The court ruling gave the government the perfect excuse to be niggardly with the long-suffering Micmac Indian. The negotiations were conducted on the government's side as if they were haggling over the price of a used car. They were graceless, wrongheaded, and inhuman. And now they, and the process that made them possible, have been crushingly denounced by three of Canada's most eminent jurists — Chief Justice T. Alex Hickman of the Newfoundland Supreme Court, Associate Chief Justice Lawrence A. Poitras of the Quebec Superior Court, and retired chief justice Gregory S. Evans of the Ontario Supreme Court. Three jurists, dear readers, not one.

Aided by the superb work of commission co-counsels George MacDonald, David Orsborn, and Wylie Spicer, the commissioners poured through 16,000 pages of testimony from 112 witnesses before fighting what is surely one of the most terrible wrongs in Canadian jurisprudence. The most stunning finding they reached is that no one in the Nova Scotia justice system can hold his head up in relation to his work in this prosecution.

The police investigation led by then Sgt. of Detectives John MacIntyre of the Sydney city police looked like it was conducted by security guards with guns, badges, and a healthy dislike of Indians. The prosecution by then Crown prosecutor Donald C. MacNeil was lazy and unethical; he never interviewed witnesses who supported Marshall's story and failed to fully disclose the Crown's case to the defence. Marshall's own defence lawyers of the day, Moe Rosenblum and Simon Khattar, were suspicious of their client and never bothered to independently investigate the true story Donald Marshall told them. The trial judge, Louis Dubinsky, made "several" errors in law in the speedy three-day trial that featured a parade of perjured evidence from highly questionable Crown witnesses who were little more than children. RCMP Insp. Alan Marshall conducted an incompetent and incomplete re-investigation of the Seale murder, after an eyewitness came forward and fingered the real killer a mere 10 days after Marshall was convicted. His unprofessional conduct was the final guarantee that Marshall would languish behind bars for something he hadn't done until his mind nearly snapped in this Kafkaesque nightmare.

When Marshall was released in 1982, the litany of incompetence continued as the powers of the Nova Scotia justice system decided to circle the wagons and protect that system at Marshall's expense, rather than own up to their monumental and ignominious past blundering that cost a poor and uneducated man the better part of his adult life. The Hickman Commission blasted the Nova Scotia Court of Appeal for trying to shift the blame for the justice system's mistakes to Marshall himself — despite "overwhelming evidence to the contrary." They cited Mr. Justice Leonard Pace for being a member of that Appeal Court in the first place, a gross conflict of interest considering he had been Attorney General of the day when the Marshall case initially careened through the justice system of Nova Scotia. They slammed Chief Justice Ian McKiegan of the Nova Scotia Supreme Court, for influencing the terms of Marshall's appeal and thereby narrowing the investigation. Finally, they harshly criticized Gordon Coles, Nova Scotia's former deputy attorney general,

for treating the Marshall case with cavalier disrespect and a slothful sense of unfairness.

If Nova Scotia's politicians have learned anything in the eight years this sorry case has been festering away at the heart of the province's justice system, they should act with empathy, dispatch and humility in implementing the key recommendations of Mr. Hickman's commission. For starters, they should immediately reimburse Mr. Marshall the \$105,000 he had to spend for legal fees out of his paltry \$270,000 compensation settlement. That settlement was inadequate then and patently ridiculous now, and must be re-negotiated. Remember, not one penny of Marshall's *ex gratia* payment (a payment which admits no liability) was for damages, a notion that is built on the ludicrous proposition that being imprisoned for life for something you didn't do doesn't create a damages.

As someone who knows a little bit about this case and the personality of Donald Marshall, I would also strongly suggest that the five judges of Nova Scotia's Supreme Court who found that Marshall was the author of his own misfortune should either immediately resign from the bench or quickly issue an apology to the man they have so grievously and gratuitously maligned with their self-serving and demonstrably false 1983 ruling. Other apologies are owed; from Crown prosecutor Frank Edwards who argued in his 1983 *factum* that Marshall, and not Nova Scotia's justice system, was responsible for the course of justice in 1971; from John MacIntyre, who is the Keystone Kop of this sorry episode, a figure who would be comical if his incompetence hadn't led to such dire consequences. He is the cartoon character of a Shakespearean tragedy and has much to answer for.

Despite the tremendous importance of the Hickman Commission, there are people who are more interested in the price of the Chairman's deliberations than in the quality and importance of his findings and recommendations. I would refer such people to a favorite epigram of Oscar Wilde — a time will come when people will know the price of everything and the value of nothing. The Hickman Commission may cost Nova Scotians \$7 million. And some people may say that is too much. I say it is cheap at any price. It is cheap if only one person is saved from suffering what happened to a poor Indian boy. It is cheap if Nova Scotia decides to rethink Donald Marshall's compensation. It is cheap if Nova Scotia gets a committee on race relations that would help the attorney general and the solicitor general to do their jobs with greater fairness. It is cheap if more minorities make their way onto the police forces of that province. It is cheap if it leads to the implementation of a native-controlled criminal court system. It is cheap if it leads to an amendment of the Criminal Code of Canada which would guarantee accused people the right of full disclosure to the prosecution's case against them.

The message of the Hickman Commission is undoubtedly first and foremost a message to Nova Scotians. But there is also a very important application of this heroic royal commission's work to Newfoundland. The Hughes Commission is delving into a situation every bit as tragic and important to society as the Donald Marshall case. It was wrong to set Mr. Justice Hughes to work under the shadow of an egg-timer. No royal commission should have to cut corners to do its work. If the truth is worth discovering, then it is priceless beyond all other things. And this truth is worth discovering, no matter what it takes. Newfoundland's children demand that we find out what happened at Mount Cashel so many years ago, and what has been happening over the years in this province's social services system. If we can piss away more than \$20 million on a nonsensical greenhouse project, surely we should be able to find the time and the money to discover why children were so wantonly abused at a public institution 15 years ago.

Truth, Mr. Premier, is not a luxury item. It is a staple of a democratic society and not to pay the price that will guarantee it is the gravest moral failure imaginable. If there is concern that the commission's work may impair certain individuals' rights to a fair trial, then adjourn the inquiry until those cases are through the courts. But take the stopwatch off the Hughes Inquiry and allow messieurs Hughes, Day, and Powell to bring this atrocity to as satisfying a conclusion as T. Alex Hickman was able to do in the Donald Marshall case.

**PATTERSON .ITZ**  
BARRISTERS & SOLICITORS

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
DENNIS ASHWORTH  
ROBERT M. PURDY  
NANCY J. BATEMAN  
S. RAYMOND MORSE  
DARRELL I. PINK  
JACK A. INNES, Q.C.  
RODNEY F. BURGAR  
JANICE A. STAIRS  
NEIL R. FERGUSON  
DONALD E. BUCKINGHAM  
D. ANNE JACKMAN

DONALD J. MACDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
JAMIE W.S. SAUNDERS  
J. RONALD CULLEY, Q.C.  
JOEL E. FICHAUD  
R. MALCOLM MACLEOD  
ALAN C. MACLEAN  
BRUCE A. MARCHAND  
JANET M. CHISHOLM  
ANTHONY M. TAM  
DENNIS J. JAMES  
KATHERINE F. CARRIGAN

FRED J. DICKSON, Q.C.  
DAVID R. HUBLEY, Q.C.  
GERALD J. MCCONNELL, Q.C.  
J. RONALD CREIGHTON  
LOGAN E. BARNHILL  
JOHN C. MACPHERSON  
J. MARK MCCREA  
D. SUZAN FRAZER  
WYMAN W. WEBB  
ROBERT K. DICKSON  
PETER M. ROGERS  
FERN M. MACADAM  
L. JEANNINE KURTZ

JAMES C. LEEFE, Q.C.  
FRANK J. POWELL, Q.C.  
CLARENCE A. BECKETT, Q.C.  
GEORGE L. WHITE  
DAVID R. FEINDEL  
A. DOUGLAS TUPPER  
DARA L. GORDON  
LORNE E. ROZOVSKY, Q.C.  
WENDY J. JOHNSTON  
JANET M. HOYT  
J. DENA BRYAN  
RONALD E. PIZZO  
DANIEL G. GRAHAM

BANK OF MONTREAL TOWER  
SUITE 3600, 5151 GEORGE STREET  
P.O. BOX 247  
HALIFAX, NOVA SCOTIA B3J 2N9  
TELEPHONE (902) 429-5050  
FAX (902) 429-5215

ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

January 17, 1990

BY HAND

Ms. Susan Ashley  
Executive Secretary  
Royal Commission on the Donald Marshall, Jr.  
Prosecution  
Maritime Centre  
Barrington Street  
Halifax, N.S.

Dear Ms. Ashley:

Royal Commission on the Donald Marshall, Jr.  
Prosecution  
Our File No. 9201/1

I have been instructed there have been some changes in the government's position with regard to release of the Marshall Commission Report.

The government does not wish to receive any advance copies of the report.

Rather, I have been asked to request the Commissioners to deliver the report to the Premier and his Executive Council on January 26, 1990, at 10 a.m. The Executive Council wishes an opportunity to be briefed by the Commissioners on their report.

On January 26, subsequent to delivery by the Commissioners, the report will be made public.

Ms. Susan Ashley  
January 17, 1990  
Page 2

We would ask the Commission to be responsible for distribution of the report to counsel for the parties. Distribution to the media will be undertaken on that day by government. To facilitate this, arrangements for delivery of a sufficient number of copies of the report will have to be made on Friday morning in advance of formal delivery to government.

I would like to hear from you with regard to these arrangements as soon as possible.

Yours truly,



Darrel I. Pink

DIP/jes

c.c. Mr. D. William MacDonald, Q.C.  
Mr. Douglas Keefe  
The Honourable Thomas J. McInnis

DEC 07 1989

SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION



THE LAW COURTS  
P.O. BOX 2314  
HALIFAX, NOVA SCOTIA  
B3J 3C8

December 5, 1989

The Honourable Mr. Justice Hickman,  
The Honourable Mr. Justice Poitras, and  
The Honourable Mr. Justice Evans  
c/o Ms. Susan C. M. Ashley  
Commission Executive Secretary  
Royal Commission on the  
Donald Marshall, Jr. Prosecution  
1505 Barrington Street, Suite 1026  
Halifax, Nova Scotia  
B3J 3K5

Dear Sirs:

I enclose, for your information, copy of letter I have written to your counsel, Messrs. MacDonald, Spicer and Orsborn.

Yours truly,

*Ian M. MacKeigan*  
Ian M. MacKeigan

Enc.

SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

THE LAW COURTS  
P. O. BOX 2314  
HALIFAX, NOVA SCOTIA  
B3J 3C8

December 5, 1989

Mr. George W. MacDonald, Q.C.  
McInnes, Cooper & Robertson  
Barristers and Solicitors  
P. O. Box 730  
1601 Lower Water Street  
Halifax, Nova Scotia  
B3J 2V1

Mr. W. Wylie Spicer  
McInnes, Cooper & Robertson  
Barristers and Solicitors  
P. O. Box 730  
1601 Lower Water Street  
Halifax, Nova Scotia  
B3J 2V1

Mr. David B. Orsborn  
Puddester, Orsborn  
Barristers and Solicitors  
Suite 900, Atlantic Place  
Box 1538  
St. John's, Newfoundland  
A1C 5N8

Dear Sirs:

Re: Donald Marshall, Jr.

Your brief to the Commissioners on the Marshall Inquiry maligns (at pp. 109-116) the Court which sat on the Reference in R. v. Marshall (the composite judgment of the Court of May 10, 1983 is reported in 57 N.S.R. (2d) pp. 286-322 which acquitted Marshall). That Court consisted of MacKeigan, C.J.N.S. (as I then was), Hart, Jones, Morrison and Macdonald, J.J.A. Mr. Justice Morrison retired for ill health and was replaced by Mr. Justice Pace, who was the only available replacement; Mr. Justice Pace has confirmed, under oath before the Commission, that he knew nothing of Marshall until the Reference.



The Court held that the evidence available in 1983 would not support Marshall's conviction. It accordingly quashed the conviction and directed his acquittal (decision, page 321).

You allege that the Court's finding (decision, page 322) that "Donald Marshall's untruthfulness throughout this whole affair contributed in large measure to his conviction" was "completely unsupported by the evidence", and that the Court had no evidence of Marshall's perjury at his 1971 trial and "absolutely no evidence" that Marshall misled his lawyers in 1971. These are serious but false allegations of judicial misconduct; a judge who makes findings without evidence would break his oath of office and commit a fundamental offence.

In 1971 Marshall testified that the men, now known to be Ebsary and James MacNeil, said they were priests from Manitoba and were in the park looking for women and bootleggers. In 1983 he testified that Ebsary "pointed to his house where he lived and he invited us to his house for a drink" (p. 315; also p. 316 and 318). Marshall in 1983 admitted that his 1971 counsel were not aware of this (p. 318).

The Court did not say that Marshall was "responsible for his own conviction" as alleged in the brief, pp. 116 and 155. What it did find on the evidence before it was that Marshall in 1971 planned with Seale to "roll" someone (Marshall's 1983 evidence, decision pp. 314 and 318) and that he and Seale approached Ebsary and James MacNeil with that intention (pp. 318 and 320). James MacNeil testified (decision pp. 305-307) that Marshall assaulted him and that Seale demanded money from Ebsary, whereupon Ebsary "slit up" Seale and attacked Marshall.

The Court found that Marshall in 1983 admitted lying at the 1971 trial and admitted (decision p. 318) that he did not tell his 1971 lawyers the true story.

The Court did not speculate why the witnesses, Chant, Pratico and Harris, lied in 1971 or why Marshall lied in 1971. It considered that the motives for the 1971 lies were irrelevant to the Court's assigned task of deciding whether evidence available in 1983 supported Marshall's conviction.

Your brief ignores and does not even mention Marshall's evidence in 1983 set forth in the decision (at pp. 314-320). That evidence contrasted with his 1971 evidence also quoted in the 1983 decision (pp. 291-294) is the principal basis of the findings which you criticize. You do not mention the other facts recited in the decision which support these findings.

You colour your allegations of judicial misconduct with other comments falsely implying that the Court, in its decision,

acted at least unjudicially. You state that the Court "ignored" evidence (brief p. 113); that the Court "elected" to find Marshall largely to blame (brief p. 157), and that the Court "blamed Marshall for having spent 11 years in jail" (brief p. 158).

Your allegations of judicial misconduct by the Court are false and malign the Court. Mr. MacDonald and Mr. Spicer, as members of the Nova Scotia Bar have, in my opinion, breached their duty as lawyers and violated Section 12 of Chapter 23 of the Professional Conduct Handbook which states:

"12. A lawyer, if asked, may comment on a specific case after the final determination of the matter and the case report has become a matter of public record. In doing so the lawyer has the duty not to malign the court or any officer of the court and to uphold the integrity of the administration and the system of justice."

You gave your brief wide publicity. I have not heard that you have withdrawn, corrected or apologized for your criticism of the Court.

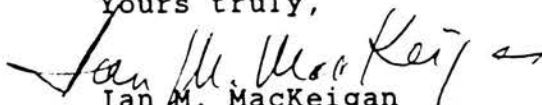
The November 1989 issue of the National of the Canadian Bar Association refers at p. 4 to your criticism of the Court and to criticisms of my role as Chief Justice in composing the Court and including Mr. Justice Pace on the panel, a matter dealt with in the lead paragraph of this letter.

I can no longer forbear responding to your libels of me as a Judge. I am sending a copy of this letter to the Nova Scotia Barristers' Society as my complaint of professional misconduct against Mr. MacDonald and Mr. Spicer (I understand Mr. Orsborn, co-author of your brief, is not a Nova Scotia barrister).

I am sending a copy of this letter to the Commissioners of the Marshall Inquiry for their information.

I am asking the editor of the National to publish this letter.

Yours truly,

  
Ian M. MacKeigan  
Supernumerary Judge

ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

---

MEMORANDUM

DATE

Dec. 7, 1989

MEMO

TO: Hon. Gregory Evans, Q.C.  
Assoc. Chief Justice Poitras

FROM: Chief Justice Hickman

---

I am meeting with George and Wylie  
on Tuesday morning, December 12th,  
and will call you as soon as we have  
finished up concerning the enclosed.

TAH

# GOWLING, STRATHY & HENDERSON

BARRISTERS & SOLICITORS • PATENT & TRADE MARK AGENTS

Suite 2600, 160 Elgin Street,  
Ottawa, Ontario, Canada K1N 8S3  
Tel: (613) 232-1781  
Fax: (613) 563-9869

HENRY S. BROWN

October 23, 1989

Mr. W. Wylie Spicer  
McInnes, Cooper & Robertson  
Barristers & Solicitors  
Cornwallis Place  
1601 Lower Water Street  
P.O. Box 730  
Halifax, Nova Scotia  
B3J 2V1

Dear Mr. Spicer:

Re: T. Alexander Hickman et al.  
v. Ian M. MacKeigan et al.

Please find enclosed copies of various material filed in the Supreme Court of Canada which we no longer require for our files.

Yours truly,



Henry S. Brown

HSB:md  
Enclosures

*filed  
away*

OCT 20 1989

Office of the Dean  
(416) 736-5199  
Associate Dean  
(416) 736-5031  
FAX (416) 736-5736



OSGOODE HALL LAW SCHOOL  
4700 KEELE STREET • NORTH YORK • ONTARIO • CANADA • M3J 1P3

October 17, 1989

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,

It was good to see you recently, albeit very briefly. It is too bad that the Supreme Court judgment went the way it did; however, I was very pleased with the strong reasoning in both the Wilson and Cory dissents.

In case you haven't seen it, I enclose a favourable editorial from last Tuesday's Toronto Star.

Finally, since the decision of the Supreme Court of Canada likely ends my involvement in the work of the Royal Commission, I enclose a statement of account for my legal work from April - October, 1989.

Yours sincerely,

A handwritten signature in black ink, appearing to read "J. C. MacPherson".

J. C. MacPherson  
Dean

Enc:

JCM/P



100  
YEARS

OSGOODE HALL  
LAW SCHOOL

OCT 12 1989

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
DENNIS ASHWORTH  
ROBERT M. PURDY  
NANCY J. BATEMAN  
R. MALCOLM MACLEOD  
ALAN C. MACLEAN  
BRUCE A. MARCHAND  
JANET M. CHISHOLM  
ANTHONY M. TAM  
DENNIS J. JAMES  
L. JEANNINE KURTZ

DONALD J. MACDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
JAMIE W.S. SAUNDERS  
J. RONALD CULLEY, Q.C.  
JOEL E. FICHAUD  
J. MARK MCCREA  
D. SUZAN FRAZER  
WYMAN W. WEBB  
ROBERT K. DICKSON  
PETER M. ROGERS  
RONALD E. PIZZO  
DANIEL G. GRAHAM

FRED J. DICKSON, Q.C.  
DAVID R. HUBLEY, Q.C.  
GERALD J. MCCONNELL, Q.C.  
J. RONALD CREIGHTON  
LOGAN E. BARNHILL  
A. DOUGLAS TUPPER  
DARA L. GORDON  
LORNE E. ROZOVSKY, Q.C.  
WENDY J. JOHNSTON  
JANET M. HOYT  
J. DENA BRYAN  
DONALD E. BUCKINGHAM  
D. ANNE JACKMAN

JAMES C. LEEFE, Q.C.  
FRANK J. POWELL, Q.C.  
CLARENCE A. BECKETT, Q.C.  
GEORGE L. WHITE  
DAVID R. FEINDEL  
S. RAYMOND MORSE  
DARREL I. PINK  
JACK A. INNES, Q.C.  
RODNEY F. BURGAR  
JANICE A. STAIRS  
FERN M. MACADAM  
KATHERINE F. CARRIGAN

BANK OF MONTREAL TOWER  
SUITE 1600, 5151 GEORGE STREET  
P.O. BOX 247  
HALIFAX, NOVA SCOTIA B3J 2M9  
TELEPHONE (902) 429-5050  
FAX (902) 429-5215

ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

October 11, 1989

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

Dear Susan:

Our File No. 9201/1

Enclosed is a copy of the Response Preparation Committee which has been established with respect to the Marshall Royal Commission.

The people who are listed are those to whom copies of the research may be circulated. It is obvious that not all on the Committee will be interested in all the research.

We may, as I indicated to you, wish to circulate beyond the Committee, should additional expertise be required. In that case we will advise you in advance and all the other conditions regarding confidentiality will be maintained.

I hope we will be able to meet next week to discuss distribution of the report.

Yours truly,



Darrel I. Pink

DIP/jl  
Enc.

c.c. Mr. Douglas J. Keefe

OCT 12 1989

Marshall Inquiry Report  
Response Preparation Committee

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

R. Gerald Conrad, Q.C.  
Executive Director, Legal Services  
Dept. of Attorney General

Gordon S. Gale, Q.C.  
Director, Criminal  
Dept. of Attorney General

Martin Herschorn, Q.C.  
Director, Prosecutions  
Dept. of Attorney General

Douglas J. Keefe  
Senior Advisor, Policy & Planning  
Dept. of Attorney General

Nadine Cooper Mont  
Deputy Solicitor General

Kit Waters  
Director, Policy Planning & Research  
Dept. of Solicitor General

Christine Mosher  
Solicitor  
Dept. of Solicitor General

Peter Fry  
Director of Budget  
Management Board

Jamie Saunders  
Patterson Kitz

Darrell Pink  
Patterson Kitz



PUBLIC INQUIRY INTO THE ADMINISTRATION OF JUSTICE AND ABORIGINAL PEOPLE

1760 — 155 Carlton Street, Winnipeg, Manitoba, R3C 3H8

ph. 945-5799, or 1-800-282-8069 (within Manitoba), or Fax Number 945-4246

Commissioners: Associate Chief Justice A.C. Hamilton, Associate Chief Judge C.M. Sinclair

SEP 25 1989

September 19, 1989

Hon. T. Alexander Hickman  
Chairman  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
Suite 1026 - 1505 Barrington St.  
Halifax, Nova Scotia  
B3J 3K5

Dear Chief Justice Hickman:

The Aboriginal Justice Inquiry is holding a Tribal Court Symposium, in Winnipeg on Friday, November 3 and Saturday, November 4. The purpose of the symposium is to have people working in a variety of tribal court systems advise the Commissioners about how those courts operate.

The Inquiry has invited tribal court judges, administrators, lawyers, and people familiar with state courts who can comment on tribal courts. We invite you to attend as we believe your attendance would be valuable to the symposium and that the program will be of significant interest to you.

As the symposium has limited space, if it is possible for you to attend please notify us as soon as possible. We regret that our resources do not enable us to cover any of your costs.

Symposium details will be communicated to delegates at a later date.

Yours truly,

A. C. Hamilton  
Commissioner

C. M. Sinclair  
Commissioner



# McINNES COOPER & ROBERTSON

SEP 21 1989

## BARRISTERS & SOLICITORS

Donald McInnes, Q.C.  
Hector McInnes, Q.C.  
Joseph A.F. Macdonald, Q.C.  
Peter J.E. McDonough, Q.C.  
Eric Durnford, Q.C.  
W. Wylie Spicer  
Christopher C. Robinson  
Brian G. Johnston  
Marcia L. Brennan  
Fae J. Shaw  
Stephen J. Kingston  
John Kulik

Lewis A. Bell, Q.C.  
Harry E. Wrathall, Q.C.  
George T.H. Cooper, Q.C.  
James E. Gould, Q.C.  
Robert G. Belliveau, Q.C.  
F.V.W. Penick  
Harvey L. Morrison  
David A. Graves  
Scott C. Norton  
Maureen E. Reid  
Ian Holloway  
Alexander M. Cameron

Harold F. Jackson, Q.C.  
Hon. Stewart McInnes, P.C., Q.C.  
John G. Cooper, Q.C.  
David H. Reardon, Q.C.  
Michael I. King  
Linda Lee Oland  
Gregory J. Arsenault  
Peter M.S. Bryson  
John G. Robinson  
Roy F. Redgrave  
Eric LeDrew  
Andrew M. Munro

Reginald A. Cluney, Q.C.  
Lawrence J. Hayes, Q.C.  
David B. Ritcey, Q.C.  
George W. MacDonald, Q.C.  
Peter McLellan  
John D. Stringer  
Thomas E. Hart  
K. Sara Filbee  
Deborah K. Smith  
Karen Oldfield  
Carol T. Reardon

Cornwallis Place  
1601 Lower Water Street  
P.O. Box 730  
Halifax, Canada  
B3J 2V1

Telephone  
(902) 425-6500

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

### COUNSEL

John H. Dickey, Q.C.

George B. Robertson, Q.C.

September 19, 1989

Telex  
019-21859

Our File: I-1816

Dear Susan:

### Re: Disposition of Royal Commission Files

I have your Memo of September 7, 1989.

I certainly want to review the various materials that are in the files in the office that I occupied. In addition we taped many conversations with potential witnesses on the express understanding that the documents would be confidential. I understand Wylie and David are going to conduct a general review of the files and I will speak to them concerning anything which they identify as potentially confidential. I will conduct my review of my own files at the Commission offices as quickly as possible.

Yours very truly,

**McINNES COOPER & ROBERTSON**

*George W. MacDonald/fm*

George W. MacDonald

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

GWMacD/fm

**ORSBORN • BENSON • MYLES**  
**BARRISTERS AND SOLICITORS**

Suite 900, Atlantic Place  
Water Street, P. O. Box 2838  
St. John's, Newfoundland  
Canada A1C 8N8

Telephone (709) 579-2081  
Telecopier (709) 579-2647

1-902-424-2709

DAVID B ORSBORN, C.A.  
JEFFREY P. BENSON  
B. WAYNE MYLES  
PHILIP CHAPMAN, LL.M.  
AUGUSTINE F. BRUCE  
BARRY G. FLEMING, M.B.A.  
DENES S. BAZAK  
GARY F. PEDOLE, M.B.A.  
CHRISTOPHER D. G. PIKE, F.I.C.

Artists Studios  
SEAN MANSRAMAN  
SHEILA GREENE  
FRANCIS P. O'BRIEN

XEROX 295

TELECOPIER MESSAGE

COVER PAGE

The Royal Commission on the Prosecution

TO: of Donald Marshall, Jr.

ATTN: Ms. Susan Ashley

FROM: ORSBORN • BENSON • MYLES

PER: David B. Orsborn

DATE: September 19, 1989

NUMBER OF SHEETS: THIS COVER PAGE + 1

COMMENTS:

**DRAFT LETTER TO MANAGEMENT BOARD**

I am writing in connection with Susan Ashley's short-term contract with the Commission. As you may be aware, Ms. Ashley's term of full-time employment as Commission Secretary ended on \_\_\_\_\_ when she returned to Dalhousie Law School. However, it was not feasible for the Commission to retain a new Commission Secretary for the remaining few weeks, and accordingly the Commissioners agreed to retain Ms. Ashley on an as required contract basis at an hourly rate of \$125.00. This arrangement and rate was specifically approved by the Commissioners following careful consideration, and bearing in mind the sporadic and short-term nature of the work required. It was and remains the Commissioners' view that the contract is consistent with other commitments made and honoured by the Commission during its term, and I would be most grateful if you would kindly ensure that invoices submitted in accordance with this contract are processed for payment.

If there is any further clarification required, please do not hesitate to contact me.

-----  
T. ALEXANDER HICKMAN, CHAIRMAN



**YORK**  
UNIVERSITY

LAW LIBRARY

JUL 31 1989

- 416-736-5205

4700 KEELE STREET, NORTH YORK, ONTARIO M3J 1P3

July 27, 1989

Marshall Inquiry  
Suite 1026  
Maritime Centre  
1505 Barrington St.  
Halifax, Nova Scotia  
B3J 3K5

Dear Sir or Madam:

Our library is interested in obtaining copies of submissions that have been made to you by native groups. We will pay any costs involved.

If you can not provide us with copies of submissions made by native groups, could you please send us a list of those who have made submissions, so that we may contact them directly.

Any information you can provide, would be greatly appreciated.

Yours sincerely,

*Maureen Boyce*

Maureen Boyce  
Law Library

*Sent copy to  
UNSI writer  
Submission  
on Sept 18/89  
by reg mail  
attn: Maureen  
Boyce*

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

**MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5**

**902-424-4800  
Telecopier: 902-424-2709**

**CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN**

**ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER**

**THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER**

**XEROX 7010**

**TELECOPIER MESSAGE**

**COVER PAGE**

**TO:**

COMMISSION ON CONFLICTS OF INTEREST  
CHIEF JUSTICE T.A. HICKMAN

**ATTN:**

**FROM:**

ROYAL COMMISSION ON THE DONALD MARSHALL, JR.  
PROSECUTION

**Per:**

DAVID ORSBORN

**DATE:**

SEPTEMBER 12/89

**NUMBER OF SHEETS: THIS COVER PAGE**

5

**COMMENTS:**

ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

---

MEMORANDUM

DATE

September 12/89

Chief Justice Hickman:

These are the only references to the  
Appeal Court, in the Briefs. (Comm. counsel &  
Ruby)

If you can think of any others, please  
let us know.

David Orsborn

WITNESSES WILLIAM S. MURPHY

then Deputy Attorney General Innes MacLeod was of the view that information brought forward by Jimmy MacNeil should have been disclosed to defence counsel by persons in the Halifax office of the Attorney General's Department (7347).

It is our conclusion that [REDACTED]

[REDACTED]

THE NOVA SCOTIA COURT OF APPEAL - 1972

It was suggested during the Hearings that there was a duty on the Appeal Court which heard the Appeal from Marshall's conviction, on its own initiative to direct counsel to the misinterpretation of s.11 of the Canada Evidence Act by the Judge. Although the Appeal Court has directed counsel by then [REDACTED]

[REDACTED]

[REDACTED]

CORRECTIONAL SERVICES CANADA

The only substantial issue concerning the Correctional Services of Canada which we intend to address is the policy contained in Exhibit 150, the operative portion of which reads as follows in 5.7.2:

"Inmates sometimes state their innocence at the panel hearing but the Board's policy is to advise them that the Board must accept the verdict of the Court and that their guilt or innocence is not a factor to be considered at the hearing. Therefore, a claim of innocence does not rule out a favourable decision."

Ms. Diahann McConkey, currently an employee of the National Parole Board and previously employed by Correction Services Canada as a Parole Officer, gave testimony concerning the effect of this policy on whether or not a person would have a favourable hearing in order to get parole.

[REDACTED]



~~SECRET~~

entirely unlikely that information of this sort would remain with the R.C.M.P. and the local prosecutors. It would have been a subject of great importance, and of great gossip interest, amongst those in the Attorney General's office who were familiar with the case. It was an extremely unusual occurrence. Indeed, there is no suggestion in the evidence that anyone had ever before come forward after a serious trial and offered to prove that the wrong person had been convicted. The lie detector itself was new then, and would have been a subject of keen interest. No, it must have been communicated to the Attorney General's office.

7. What is startling is that it remained there, and was not passed on as it ought to have been. The difficulty with the state of the evidence is that it is now impossible to tell "with any degree of certainty" which of the present day judges and senior officials of the Attorney General's department are lying under oath when they say they didn't know about it. Quite clearly someone in high position has committed perjury in his own self interest; but it is impossible now to discern which of the present and former officials has done so.

8. Commission counsel "do not support the view that there is a duty on the Appeal Court to identify and refer names of those in violation and accordingly, to do so would be to open the door to an appeal for failing to identify names of those in violation of the view of the Appeal Court which would be to open the door to the friends of those in violation to bring an appeal. In the view of the Bench which is a democratic process, the names and

sense of duty of Appellate Court judges.

9. Examples are legion of courts including the Supreme Court of Canada, doing just this. But one crack case is cited in the report of the Panel. In R. v. Irwin (1977), 36 C.C.R. 244 (1977), the appellant was convicted before it an appellant who had not had any counsel at trial, nor had he been instructed counsel at trial, nor had he been given any advice by counsel -- I was counsel at trial -- followed her through the trial and she was convicted of murder. The Court of Appeal suspected that there might be evidence of insanity, and notwithstanding the instructions of the Appellant to the contrary, it directed a psychiatric examination, heard the resulting psychiatric evidence, and then set aside the a tused conviction and found her not guilty by reason of insanity.

10. More usually, the court will find or hope that it thinks ought to be argued, lest there be a failure of justice, and will allow the case and direct that counsel present argue the case. The court then concerns them. They do not do it, they do not do it, they do not do it. In those cases where the court is not satisfied with the evidence of the appellant, the court will direct that the appellant be examined by a psychiatrist, and if the psychiatrist reports that the appellant is not sane, the court will set aside the conviction of

al,  
 ess  
 eel  
 ke  
 or

**PATTERSON<sup>M</sup> KITZ**  
BARRISTERS & SOLICITORS

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MacISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
DENNIS ASHWORTH  
ROBERT M. PURDY  
NANCY J. BATEMAN  
R. MALCOLM MACLEOD  
ALAN C. MacLEAN  
BRUCE A. MARCHAND  
JANET M. CHISHOLM  
ANTHONY M. TAM  
DENNIS J. JAMES

DONALD J. MacDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
JAMIE W.S. SAUNDERS  
J. RONALD CULLEY, Q.C.  
JOEL E. FICHAUD  
J. MARK McCREA  
D. SUZAN FRAZER  
WYMAN W. WEBB  
ROBERT K. DICKSON  
PETER M. ROGERS  
RONALD E. PIZZO

FRED J. DICKSON, Q.C.  
DAVID R. HUBLEY, Q.C.  
GERALD J. McCONNELL, Q.C.  
J. RONALD CREIGHTON  
LOGAN E. BARNHILL  
A. DOUGLAS TUPPER  
DARA L. GORDON  
LORNE E. ROZOVSKY, Q.C.  
WENDY J. JOHNSTON  
JANET M. HOYT  
J. DENA BRYAN  
DONALD E. BUCKINGHAM

JAMES C. LEEFE, Q.C.  
FRANK J. POWELL, Q.C.  
CLARENCE A. BECKETT, Q.C.  
GEORGE L. WHITE  
DAVID R. FEINDEL  
S. RAYMOND MORSE  
DARREL I. PINK  
JACK A. INNES, Q.C.  
RODNEY F. BURGAR  
JANICE A. STAIRS  
FERN M. MacADAM  
KATHERINE F. CARRIGAN

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

ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

AUG 10 1989

August 9, 1989

**BY HAND**

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

Dear Ms. Ashley:

Our File No. 9201/1

This is further to our conversation of August 8, 1989, and an earlier conversation of May 23, 1989.

I have been asked to confirm the Commission's position regarding release of the report. From earlier conversations, it is my recollection that upon receipt of confirmation from the Government of Nova Scotia that the report will be made public on a date certain, the Commission will provide the report to the Lieutenant Governor in Council as it is mandated by the Order in Council establishing it.

Could you kindly confirm this so the necessary commitments can be made. At present, I anticipate the Government would require seven days between receipt of the report and release to the public.

You asked about early release of the report to Counsel who appeared before the Commission. At this point, I can advise that that does not seem terribly practical because of the problems of confidentiality which will be impossible to adequately enforce. It is felt that once the report is made public, Counsel who appeared before the Commission will have an adequate opportunity to respond to both the report and the Government's position.

Ms. Susan Ashley  
August 9, 1989  
Page 2

I look forward to receiving the confirmation referred to  
above.

Yours truly,

A handwritten signature in cursive script, appearing to read 'Darrel I. Pink', written in black ink.

Darrel I. Pink

DIP/hf

dipaug9e

JUL 31 1989



LAW LIBRARY

4700 KEELE STREET, NORTH YORK, ONTARIO M3J 1P3

July 27, 1989

Marshall Inquiry  
Suite 1026  
Maritime Centre  
1505 Barrington St.  
Halifax, Nova Scotia  
B3J 3K5

Dear Sir or Madam:

Our library is interested in obtaining copies of submissions that have been made to you by native groups. We will pay any costs involved.

If you can not provide us with copies of submissions made by native groups, could you please send us a list of those who have made submissions, so that we may contact them directly.

Any information you can provide, would be greatly appreciated.

Yours sincerely,

Maureen Boyce  
Law Library

JUL 18 1989

Nova Scotia



**Department of  
Attorney General**

PO Box 7  
Halifax, Nova Scotia  
B3J 2L6

Fax No: 902-424-4556

Our phone no:

Our file no:  
**09-89-0058-01**

July 10, 1989

Mr. S.M. Rector  
Office of the Speaker  
7th Floor, One Government Place  
1700 Granville Street  
Halifax, Nova Scotia

Dear Myles:

Attached for your information is a copy of my correspondence  
with Alick G. Anderson.

Yours very truly,

A handwritten signature in cursive script, appearing to read 'R. Gerald Conrad'.

R. Gerald Conrad  
Executive Director (Legal Services)

attachment

Susan

Perhaps you  
should reply to this

Myles

Nova Scotia

**Department of  
Attorney General**PO Box 7  
Halifax, Nova Scotia  
B3J 2L6

Fax No: 902-424-4556

Our phone no:

Our file no:

July 10, 1989

09-89-0058-01

Mr. Alick G. Anderson  
2614 Windsor St.  
Halifax, Nova Scotia  
B3K 5C8

Dear Alick:

*This is in reply to your letter dated June 28, 1989.*

*The Department of Attorney General has had no authority or responsibility for the funding of the Donald Marshall, Jr. Inquiry Commission or for the expenditure of funds by the Commission. The responsibility for that funding was given to the Office of the Speaker when the Commission was first established.*

*Since the Commission is not accountable to this Department for the expenditure of its funds, it follows that the Department is not answerable to the public for such expenditure. In the result, requests for information about Commission expenditures should not be directed to the Department of Attorney General.*

*For personal reasons I decided to assist you in obtaining answers to your original questions, however, in view of the comments contained in the last paragraph of your letter dated June 28th, it appears that I should have advised you then, what I am about to advise you now.*

*The Department of Attorney General does not have answers to the questions raised in your letter dated June 28th and since we have no responsibility or authority over the Commission's*

*expenditures, it would be inappropriate for us to pursue your requests for further information. It may be possible for you to obtain answers to your questions either by writing direct to Ms. Ashley, whose address you have, or to the Office of the Speaker at the following address:*

*Mr. S.M. Rector  
Office of the Speaker  
7th Floor, One Government Place  
1700 Granville Street, Halifax, N.S.*

*I hope that these comments will be helpful.*

*Yours very truly,*



*R. Gerald Conrad  
Executive Director (Legal Services)*





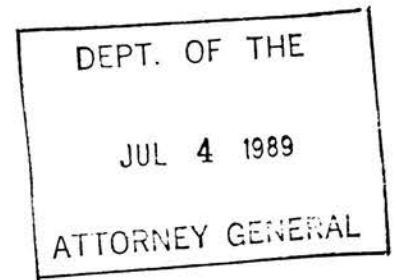
# A.G. ANDERSON & ASSOCIATES LIMITED

INSURANCE AND FINANCIAL CONSULTANTS

2614 WINDSOR ST., HALIFAX, NOVA SCOTIA B3K 5C8 (902) 454-7338

June 28, 1989

Mr R Gerald Conrad  
Executive Director  
Dept. of Attorney General  
P.O. Box 7  
Halifax, NS  
B3J 2L6



Dear Gerry:

Thank you for your letter of April 18, 1989 with a copy of Susan M Ashley's letter to you of April 5, 1989.

I would just like to make a couple of comments and would like the answers to a couple more questions. In her letter, I would draw Miss Ashley's attention to her first paragraph where she is trying to justify that economies of scale were in motion in the manner the dinner was carried out. When the menu was printed in the newspaper - I can assure you that the majority of people attending the conference if they had eaten out privately, would not have engaged in the luxurious items listed. If they had indulged - their expense account should have been over-ruled in any event. This is not only my opinion but the opinion of many others that the whole affair was an unwarranted extravaganza with taxpayers' money. That is the message that I am trying to get across. As one taxpayer, I do not appreciate tax dollars being spent in that fashion, especially when there are budget deficits everywhere.

In the second paragraph - page 2 - Miss Ashley makes the statement that the Commissioners are not paid. Could someone please explain who the Commissioners are and what she means by that statement that they are not paid? Also in the same paragraph she indicates that the spouses in Baddeck picked up their own tab for expenses. Is she saying that at breakfast the bills were paid by the Crown for the Commissioners, Council and Commission staff - and that the spouses picked up their own tab?

Is she also stating that all travel expenses were paid separately by the spouses for that weekend?

If you would clarify these matters I would appreciate it. We can then get on with other matters at hand. Thank you for your attention to this matter. I have also learned that my first letter was discussed at the highest level of the political party - with members present - outside of the Attorney General's Dept. I feel this is totally unfair, unacceptable and when the contents of my letter comes back to me from a person with no connection with Government whatsoever, then I am shocked. If you or Miss Ashley think that people have confidence in the Attorney General's Dept, I think you are sadly mistaken.

Kindest regards,

Alick G. Anderson

AGA:mb

JUL 07 1989

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MacISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
DENNIS ASHWORTH  
ROBERT M. PURDY  
NANCY J. BATEMAN  
R. MALCOLM MACLEOD  
ALAN C. MacLEAN  
BRUCE A. MARCHAND  
JANET M. CHISHOLM  
ANTHONY M. TAM  
DENNIS J. JAMES

DONALD J. MacDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
JAMIE W.S. SAUNDERS  
J. RONALD CULLEY, Q.C.  
JOEL E. FICHAUD  
J. MARK McCREA  
D. SUZAN FRAZER  
WYMAN W. WEBB  
ROBERT K. DICKSON  
PETER M. ROGERS  
RONALD E. PIZZO

FRED J. DICKSON, Q.C.  
DAVID R. HUBLEY, Q.C.  
GERALD J. McCONNELL, Q.C.  
J. RONALD CREIGHTON  
LOGAN E. BARNHILL  
A. DOUGLAS TUPPER  
DARA L. GORDON  
LORNE E. ROZOVSKY, Q.C.  
WENDY J. JOHNSTON  
JANET M. HOYT  
J. DENA BRYAN  
DONALD E. BUCKINGHAM

JAMES C. LEEFE, Q.C.  
FRANK J. POWELL, Q.C.  
CLARENCE A. BECKETT, Q.C.  
GEORGE L. WHITE  
DAVID R. FEINDEL  
S. RAYMOND MORSE  
DARREL I. PINK  
JACK A. INNES, Q.C.  
RODNEY F. BURGAR  
JANICE A. STAIRS  
FERN M. MACADAM  
KATHERINE F. CARRIGAN

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

ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

July 6, 1989

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

Dear Ms. Ashley:

Our File No. 9201/1

This is further to mine of May 12, 1989, and our conversation of May 23, 1989, regarding files of the Royal Commission and publication and distribution of the Commission's report.

We have given further consideration to the issue of the Commission's files. We believe that certain files, as noted below, should be handled in a particular manner.

Those files provided by departments of government, whether the Department of the Attorney General, the Department of the Solicitor General or any other government department, should be returned to that department for filing, retention and destruction in accordance to government records retention and destruction policies. You will recall that files from the Attorney General's Department were given to the Commission in response to subpoenas and with agreed stipulations as to their use. Accordingly, we cannot agree to them going into the public domain through storage at the Public Archives.

Ms. Fran Ashley  
July 6, 1989  
Page 2

With regard to the financial records of the Commission, it is our view that since it has been the Speaker's office who has been responsible for all financial matters pertaining to the Royal Commission, all these files should be delivered to the Speaker's office, again to be dealt with in accordance with the Speaker's Office's retention and destruction schedule.

With regard to other files of the Commission, we understand there is no problem placing restrictions upon access if documents are placed in the Public Archives.

Accordingly, we request that prior to any files being placed for storage, a list of the Commission's files be provided to us so that proper procedures for their transfer can be put in place.

When I wrote to you earlier and when we subsequently spoke, we discussed provision of the published research papers to us prior to the other portions of the report. I understand these may now be reaching completion and we would like an opportunity to have them for confidential review as early a time as possible. There is no doubt the more time there is for thorough review of this material, the better prepared we will be to respond to the Commission's report. Accordingly, I would ask that you provide me with an indication of when this material might be available.

I look forward to hearing from you.

Yours truly,

  
for Darrel I. Pink

DIP/jl

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

# McINNES COOPER & ROBERTSON

JUN 28 1989

## BARRISTERS & SOLICITORS

Donald McInnes, Q.C.	Lewis A. Bell, Q.C.	Harold F. Jackson, Q.C.	Reginald A. Cluney, Q.C.
Hector McInnes, Q.C.	Harry E. Wrathall, Q.C.	Hon. Stewart McInnes, P.C., Q.C.	Lawrence J. Hayes, Q.C.
Joseph A.F. Macdonald, Q.C.	George T.H. Cooper, Q.C.	John G. Cooper, Q.C.	David B. Ritcey, Q.C.
Peter J.E. McDonough, Q.C.	James E. Gould, Q.C.	David H. Reardon, Q.C.	George W. MacDonald, Q.C.
Eric Durnford, Q.C.	Robert G. Belliveau, Q.C.	Michael I. King	Peter McLellan
W. Wylie Spicer	F.V.W. Penick	Linda Lee Oland	John D. Stringer
Christopher C. Robinson	Harvey L. Morrison	Gregory J. Arsenaault	Thomas E. Hart
Brian G. Johnston	David A. Graves	Peter M.S. Bryson	K. Sara Filbee
Marcia L. Brennan	Scott C. Norton	John G. Robinson	Deborah K. Smith
Fae J. Shaw	Maureen E. Reid	Roy F. Redgrave	Karen Oldfield
Stephen J. Kingston	Ian Holloway	Eric LeDrew	Carol T. Reardon
John Kulik	Alexander M. Cameron	Andrew J.M. Munro	

COUNSEL  
John H. Dickey, Q.C.

George B. Robertson, Q.C.

Cornwallis Place  
1601 Lower Water Street  
P.O. Box 730  
Halifax, Canada  
B3J 2V1

Telephone  
(902) 425-6500

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

Telex  
019-21859

Our File: **WWS**

June 27, 1989

Dear Bruce:

### Re: Marshall Inquiry Report

I am writing just to confirm my interest in assisting the Bar in whatever way I can with respect to the Bar's response to the Report of the Marshall Inquiry. In my position as Commission Counsel to the Inquiry, I do not think it would be appropriate for me to do anything until the Report has been handed over to Government, but once that has been done, I am keen to provide whatever input I can.

Kind regards,

Yours very truly,

McINNES COOPER & ROBERTSON

W. Wylie Spicer

Bruce T. MacIntosh, Esq.  
MacIntosh, MacDonnell & MacDonald  
Barristers & Solicitors  
P. O. Box 368  
New Glasgow, Nova Scotia  
B2H 5E5

✓ BCC Chief Justice T. Alexander Hickman

JUN 21 1989

Jackie R. Brown  
Christopher E. Mathews  
LaVeeda Garlington-Mathews  
Deryl June Brown-Jackson  
Raymond A. Connell

500 Court in the Square  
401 Second Avenue South  
Seattle, Washington 98104

Telephone (206) 621-7557  
Facsimile (206) 621-9494

June 6, 1989

Susan M. Ashley, Executive Director  
Royal Commission on the Donald  
Marshall, Jr., Prosecution  
1505 Barrington Street  
Halifax, Nova Scotia B3J-3K5

Dear Ms. Ashley:

Eric Gordy of the New York State Judicial Commission on Minorities suggested that we send you the enclosed material outlining the program established between Brown Mathews and Karr Tuttle Campbell. We hope by sharing the information it may assist you in your efforts on behalf of minorities in the legal profession.

Please don't hesitate to contact me if you have any questions.

Very truly yours,

BROWN MATHEWS



Christopher E. Mathews

CEM/MLP:jl  
Enclosure

MAY 15 1989

LEONARD A. KITZ, Q.C., D.C.L.  
JOHN D. MACISAAC, Q.C.  
DOUGLAS A. CALDWELL, Q.C.  
DENNIS ASHWORTH  
GEORGE L. WHITE  
DAVID R. FEINDEL  
A. DOUGLAS TUPPER  
DARA L. GORDON  
LORNE E. ROZOVSKY, Q.C.  
DIANNE POTHIER  
JANET M. CHISHOLM  
KIMBERLEY H.W. TURNER  
FERN M. MACADAM  
KATHERINE F. CARRIGAN

DONALD J. MACDONALD, Q.C.  
PAUL M. MURPHY, Q.C.  
RICHARD N. RAFUSE, Q.C.  
JAMIE W.S. SAUNDERS  
ROBERT M. PURDY  
RAYMOND F. LARKIN  
S. RAYMOND MORSE  
DARREL I. PINK  
JACK A. INNES, Q.C.  
WENDY J. JOHNSTON  
ROBERT K. DICKSON  
ANTHONY M. TAM  
DENNIS J. JAMES  
KATHRYN M. MORRISON

FRED J. DICKSON, Q.C.  
DAVID R. HUBLEY, Q.C.  
GERALD J. MCCONNELL, Q.C.  
J. RONALD CREIGHTON  
J. RONALD CULLEY, Q.C.  
NANCY J. BATEMAN  
R. MALCOLM MACLEOD  
ALAN C. MACLEAN  
BRUCE A. MARCHAND  
RODNEY F. BURGAR  
JANET M. HOYT  
PETER M. ROGERS  
RONALD E. PIZZO

JAMES C. LEEFE, Q.C.  
FRANK J. POWELL, Q.C.  
CLARENCE A. BECKETT, Q.C.  
RONALD A. PINK  
LOGAN E. BARNHILL  
JOEL E. FICHAUD  
J. MARK MCCREA  
D. SUZAN FRAZER  
WYMAN W. WEBB  
GORDON N. FORSYTH  
JANICE A. STAIRS  
J. DENA BRYAN  
DONALD E. BUCKINGHAM

BANK OF MONTREAL TOWER  
SUITE 1600, 5151 GEORGE STREET  
P.O. BOX 247  
HALIFAX, NOVA SCOTIA B3J 2N9  
TELEPHONE (902) 429-5050  
FAX (902) 429-5215  
  
ALSO OFFICES AT  
TRURO, NOVA SCOTIA  
BEDFORD, NOVA SCOTIA

May 12, 1989

BY HAND

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

Dear Ms. Ashley:

Marshall Inquiry  
Our File No. 9201/1

As we prepare for the receipt of the Report of the Royal Commission on the Donald Marshall, Jr. Prosecution, there are number of questions we have on behalf of our client regarding administrative matters.

Has a firm date been set for completion of the Report? If no date has been fixed, is it anticipated one will be and how far in advance of release?

What do the Commisssioners intend to file with the Lieutenant Governor-in-Council - one or multiple copies of the Report? Will there be support volumes of documents as part of the Report or does the Commission not intend to reproduce the final research material and opinions? If this material is to be part of the Report and is now complete, would the Commissioners consider releasing it confidentially in advance of the Report itself so that a thorough review can be undertaken to allow a full response when the Report itself is delivered.

Ms. Susan Ashley  
May 10, 1989  
Page 2

Does the Commission anticipate distributing the report itself or does it have a recommendation to government regarding this?


Is the Commission arranging for printing of the Report and if so, how many copies will be produced? Is there a plan of recommended distribution? I assume a number of copies will be provided for free (to participants, the media and beyond) but after initial distribution, will there be a charge for the Report?

Do the Commissioners intend to avail themselves to the media for comment after the report is made public by the Lieutenant Governor-in-Council?

Does the Commission have any plans for its files and archives? We believe other Commissions have requested amendments to their Orders-in-Council mandating long-term storage and access to the Commission's files. Given the nature of the material which has been provided to the Commission, we are interested in determining the Commission's views on this.

A meeting to discuss these requests may be beneficial. We look forward to hearing from you once you have had an opportunity to consider the type of information we desire.

Yours truly,

*for*   
Darrel I. Pink

DIP/jl

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

MEMORANDUM

TO: George W. MacDonald  
David B. Orsborn

FROM: Wylie Spicer

DATE: May 11, 1989

-----

I attach notes of my first run-through of Kimber's draft of the factual material. In addition to the comments that I have made, Steve has made a number of comments throughout where he thinks material should be added or where the text is not clear, pretty well all of which I agree with.

There are some areas which are left out entirely and they include:

1. Marshall's prison experience, or at least a chronology of it to keep the story going.
2. Some comment on his time at the Carleton House (the half-way house in Halifax).
3. Some comment on the Corrections stuff on parole and guilt.
4. Some commentary in the Introduction as to why we are not recommending charges, since reading the MacIntyre material, you really do have to wonder why we are not doing anything about it. I prepared something earlier on this and I will put something together for our consideration.

I will also take a run at these areas.



NOTES RE STEVE KIMBER'S DRAFT OF THE FACTS

- 2           Should we refer to the fact that Ebsary has died?
- 3           The appointment was in October, 1986.
- 4           Should we mention the poor handling of Marshall's initial Appeal in this chronology?
- Do we consistently say that "Marshall was convicted and sent to prison, in part at least, because he was poor and an Indian"?

The Incident

- 2           Marshall was not at the dance.
- 2           "No-criminal" should be presumably "non-criminal".
- 3           The Decision of the Court of Appeal was in 1983. The Appeal Court also does not use the phrase "author of his own misfortune". Perhaps we should change this to "being substantially responsible for his own conviction".
- 9           Where we say that the Inquiry was Ebsary's only sworn testimony, we should explain this statement.
- 14          Was the video Ebsary made "for R.C.M.P. investigators"?
- 15          Reference to the "third Ebsary Trial". We said earlier on page 2 of the Introduction that Ebsary was "eventually convicted of manslaughter" but there is no explanation for the three Ebsary Trials.
- 21          Did Ebsary have two knife-related convictions in 1971?
- 28          Is it clear when we say with reference to Deborah Timmons that she had not "previously given evidence" that that is in relation to the Marshall Trial, etc., or do we need to clarify?

- 2 -

The Police Response

1 The last point at the bottom of the page does not end properly.

I don't know what "It does not require a suspect to be valid" means.

17 I really have some trouble with the sincerity of MacIntyre's belief of Marshall's guilt particularly since we then say that it was erroneous and totally unfounded. Given what we have said in the preceding few pages that there was absolutely no evidence at all to suggest Marshall was guilty and further that MacIntyre must have made up the suggestion in Wood's notes that there had been an altercation between Marshall and Seale, how could he possibly have done this "sincerely"? How can this original "theory" of his be a belief honestly held?

19 Is this is the first reference to GIS and R.C.M.P. "H" Division? If so, shouldn't we explain it?

21 In referring to the detailed physical examination of Seale, do we want to say something about the fact that if that had been done, whether or not Seale had any money would have been known?

22 In the period May 30 to June 4, is it correct that the most "relevant statement" was the joint statement from George and Sandy MacNeil? I would have thought that the Chant, Pratico and Harriss statements were more relevant, although looking at the reference to the MacNeil statements being "relevent", our text doesn't say relevant to what.

28 When we get to the Chant re-interview, it occurs to me that we really haven't said much about Chant's first statement and I found that when I got to the bottom of page 28, I was a little lost as to how Chant really fitted into the scene.

- 30 The first short paragraph at the top of the page is a bit clumsy.
- 36 Can we think of another word besides "reprehensible" which we keep using over and over again? I checked, and we use this word at least nine times in referring to MacIntyre.
- 68 There is a word missing in the second line.
- 69 It does seem a bit peculiar after having raised the Patterson business that we concluded with saying that "we are unable to speculate on why both MacIntyre and Urquhart deny this".

The Trial Process

- 7 In the fourth line from the bottom, there is a word missing which I think should be "state".
- 8 I don't understand the reference to Matheson's not having any "responsibility to deal with representatives of Donald Marshall, Jr.".
- 9 When we get into disclosure, I think it would be useful for us to review, starting in 1961 the actual law on this issue. At this page, there is reference to Malachi Jones' letter of March 23, 1961 (Exhibit 81).
- 10 It is not clear from this narrative whether MacNeil failed to disclose the prior inconsistent statements only or all of the statements of the witnesses. We should clean this up.
- 11 We need some transcript references in quotes to flush out this material a bit. It is radically different from the extensive transcript references in the early chapters.
- 12 We might consider inserting the timing of the call from Barbara Floyd in terms of what was happening in the court room at that time. We do have the times on the transcript of the Trial, so we could intersperse it with Floyd's testimony quite effectively, I think.

- 13-14 I think it is a bit confusing to introduce the Anderson theory of how you represent poor people with the failures of Khattar and Rosenblum. I think we should deal with them directly rather than bringing up Anderson at this point.
- 16 Generally, this Trial stuff is not dramatic enough.
- 19 Only lawyers are going to understand what all this stuff about prior inconsistent statements and impeachment is all about.

Marshall Reinvestigation

- 6 We need to check this suggestion of inconsistency that Kimber makes concerning interviewing MacNeil.

The Appeal Process

- 11 We should say what the date of the Notice of Appeal from the conviction was.
- 13 Should we say that a Factum is a Brief of Argument.
- 14 Do we deal with the question of who handles Appeals anywhere in the chapter on the Attorney General.
- 14-15 I am not sure that Veniot's testimony referred to here had to do with Dubinsky's rulings concerning the limitation of cross-examination. My recollection is that it had more to do with not being able to refer to testimony given where the accused was not present.
- 16 When we refer to this Decision of the Ontario Court of Appeal, I think we should say that it is a Decision of the Ontario Court of Appeal.
- 19 Referring to getting to the Supreme Court of Canada, I think we should explain a little bit more what we are talking about.

20 We might say that Marshall had already been in custody since June of 1971 by the time the Appeal Court Decision was rendered in (whenever it was).

The 1975 Reinvestigation

22 I agree with Kimber's comment that we need some material about prison. I will put something together on this.

22 In the third last line, I think the word "been" should be before the word "questioned".

The 1982 Reinvestigation

6 How did Marshall know that Ebsary had told a story about a robbery?

32 Discussion of the factors influencing the 1982 reinvestigation, can probably be used in the preamble to the Police Chapter.

34 The comments about the reinvestigation being influenced by the person being investigated can cross-over into the discussion in the Attorney General's Department Chapter concerning Thornhill and MacLean.

Setting Up Reference

Generally, I think this section needs some meat on the bones.

6 The last paragraph, I think, leaves the reader dangling. "Perhaps if the Reference had proceeded under 617(c), this Commission would not have been necessary." - Why?

mm-10/2

RE-DRAFT OF BLACKS SECTION OF CHAPTER

We have interpreted our mandate as including an examination of the question of whether the race of either Sandy Seale or Donald Marshall, Jr., was a factor in the way the Marshall case was handled. We concluded early in our work that to look at this one case which happened many years ago would be insufficient to determine whether race is relevant in the treatment of individual cases in the justice system. We needed to examine the present reality of Blacks in the administration of justice to see the extent of the current problem. Rather than proceeding by way of direct evidence in this matter, we commissioned a research report entitled "Discrimination Against Blacks in the Criminal Justice System in Nova Scotia" (Volume 4 of this Report). By means of a variety of research instruments (a survey, focus group interviews, individual interviews), this study attempted to measure the perception of Black people of problems in the system. Panelists at the Consultative Conference from Nova Scotia, Toronto and Montreal gave us further important information on the reality of racism in the lives of Black people, and advice on how these problems should be dealt with (Volume 7 of this Report).

While we cannot conclude 18 years after the event that the race of Sandy Seale was a factor in producing this miscarriage of justice, we can say on the basis of what we have heard that there is a clear and disturbing perception among Nova Scotians, both Black and White, that the criminal justice system discriminates against Blacks at all levels. There

- 2 -

is no reason to believe that this perception is unique to Nova Scotia.

### III The Black Community in Nova Scotia

It is necessary to put the present condition of the Black community in Nova Scotia in context. In order to do that, a brief history of the community in Nova Scotia is required.

Blacks are not newcomers to Nova Scotia. Many Black families can trace their roots in this province to the late 1700's and early 1800's. The first major influx of Blacks to Nova Scotia occurred following the American Revolution. At that time about 1,000 slaves accompanied the loyalists to Nova Scotia, along with more than 2,000 former slaves, and several hundred free Blacks. It should be noted that the loyalists brought with them vestiges of the attitudes that had evolved in the slave society which they were fleeing. The Blacks who came to Nova Scotia at that time were promised suitable land by the British, while in reality they were given only small plots of rocky, infertile land on which they could not survive. Many left the land and migrated to the towns, where they became at best a cheap source of labour in a time when manpower needs were high. The poverty and isolation of the Black community led in 1790 to an exodus of Blacks from the province to the more hospitable land of the west African country of Sierra Leone.

The second large migration of Blacks to Nova Scotia occurred following the War of 1812. About 3,000 Black refugees fled from the United States to make

- 3 -

their homes in Nova Scotia and other parts of the Maritimes. However, at that time lack of employment and a poor harvest resulted in a downturn in the economy, unemployment and shortages of food, making conditions very difficult for the Black refugees. After these two large migrant waves the Black population received only modest infusion. Black communities grew up near small towns and on the fringes of more urban centres. Many of these communities still exist.

The economic and living conditions in these communities have been harsh. The level of underdevelopment in Nova Scotia has affected all of its population but especially Blacks who had the additional burden of discrimination and neglect. Physical isolation and alienation were characteristic of the communities. While the urban areas of Halifax and Dartmouth provided more favourable economic and social climates, here too prejudice and discrimination were encountered when Blacks attempted to improve their economic and social conditions, particularly in periods of high unemployment.

The largest migration of Blacks to Canada occurred between 1820 and 1860 during the period leading up to the American Civil War. Largely through the efforts of the underground railroad, about 50,000 Blacks made their way to Canada. Most of these escaping slaves settled in southwestern Ontario, rather than on the east coast.

It was the Black church more than any other institution which provided support and leadership during hard times. Its influence remains, although perhaps in a more limited way, to the present. Initially,



Blacks attempted to become members of White congregations, but when they found that they were not welcome, they established their own churches. Many historians and other writers stress the importance of the Black church in the widely scattered communities in rural Nova Scotia. They produced, even under difficult circumstances, extremely effective leaders as well as providing the glue which kept the communities together.

Many Blacks have been recognized for their important contributions to the province, but these are usually seen as individual achievements. Blacks as a group, for the most part, have not been in a position to have an impact on government or social policy issues. Part of the reason for this may be that they have not had the benefit of an effective "political" organization which could give them some clout when lobbying for change. Many feel that the history of Black struggles to improve their conditions have continuously been thwarted by government refusals to heed their pleas for help, and use the destruction of Africville in the early 1960s as a classic example.

There are a number of reasons why organizing the Black community around political or social issues is a difficult task. For example, the relatively small number of Blacks in the province and the fact that many of the communities are widely scattered, combined with the urban/rural mix mean that it is not always possible to have one group address all needs, as can be seen in the unfortunate recent history of the Black United Front. Also, problems of funding and organization can sometimes appear insurmountable. However, it is important that such organizations have the support

necessary to provide an effective community leadership role, and that their please be taken seriously. Funding and support given by government must not result in an organization which has no independence.

This brief overview of the historical context should not lead one to conclude that racism against Black people in Nova Scotia is a thing of the past. Racism is not just an historical legacy. Because so little has been done on an institutional level to combat this problem, it continues to permeate our social structures - sometimes overtly and sometimes very subtly. The effects of the legal, political and social disadvantages from which Blacks in Nova Scotia have suffered over the past two centuries are obvious even today: in the lack of representation of Blacks in the mainstream at all levels; in the tensions that still exist in various settings between Blacks and Whites; in the lower living and educational standards; in the lack of opportunities; in the high unemployment and incarceration rates; and in the general alienation of Black people from the mainstream. This alienation was made apparent to us in the course of the work of the Royal Commission.

77      Blacks in the Criminal Justice System

The history of the Black community in Nova Scotia has not been a happy one. Although there is now a legal framework to protect Blacks from the effects of racism, this framework has not solved the problem. Racism still exists - in the school system, in housing and services, in employment and, most importantly for our purposes, in the criminal justice system.



**Department of  
Attorney General**

PO Box 7  
Halifax, Nova Scotia  
B3J 2L6

Fax No: 902-424-4556

Our phone no:

Our file no:  
**09-89-0058-01**

*April 18, 1989*

*Mr. A.G. Anderson  
A.G. Anderson & Associates Limited  
2614 Windsor Street  
Halifax, Nova Scotia  
B3K 5C8*

*Dear Mr. Anderson:*

*Further to my letter of April 3, 1989, I enclose a copy of a letter dated April 5, 1989 from the Royal Commission on the Donald Marshall, Jr., Prosecution. I trust this explains the matter to your satisfaction.*

*Yours very truly,*

A handwritten signature in cursive script, appearing to read "R. Gerald Conrad".

*R. Gerald Conrad  
Executive Director (Legal Services)*

*encl.*

*cc Susan Ashley*

APR 11 1989

# McINNES COOPER & ROBERTSON

## BARRISTERS & SOLICITORS

Donald McInnes, Q.C.  
 Hector McInnes, Q.C.  
 Joseph A.F. Macdonald, Q.C.  
 Peter J.E. McDonough, Q.C.  
 Eric Durnford, Q.C.  
 W. Wylie Spicer  
 Christopher C. Robinson  
 Brian G. Johnston  
 Marcia L. Brennan  
 Fae J. Shaw  
 Stephen J. Kingston  
 John Kulik

Lewis A. Bell, Q.C.  
 Harry E. Wrathall, Q.C.  
 George T.H. Cooper, Q.C.  
 James E. Gould, Q.C.  
 Robert G. Bellevue, Q.C.  
 F.V.W. Penick  
 Harvey L. Morrison  
 David A. Graves  
 Scott C. Norton  
 Maureen E. Reid  
 Ian Holloway

Harold F. Jackson, Q.C.  
 Hon. Stewart McInnes, P.C., Q.C.  
 John G. Cooper, Q.C.  
 David H. Reardon, Q.C.  
 Michael I. King  
 Linda Lee Oland  
 Gregory J. Arsenault  
 Peter M.S. Bryson  
 John G. Robinson  
 Roy F. Redgrave  
 Eric LeDrew

Reginald A. Cluney, Q.C.  
 Lawrence J. Hayes, Q.C.  
 David B. Ritey, Q.C.  
 George W. MacDonald, Q.C.  
 Peter McLellan  
 John D. Stringer  
 Thomas E. Hart  
 K. Sara Filbee  
 Deborah K. Smith  
 Karen Oldfield  
 Carol T. Reardon

Cornwallis Place  
 1601 Lower Water Street  
 P.O. Box 730  
**Halifax, Canada**  
 B3J 2V1

**Telephone**  
 (902) 425-6500

**Fax**  
 (902) 425-6386  
 (902) 425-6350

**Telex**  
 019-21859

**Our File:** I-1816

### COUNSEL

John H. Dickey, Q.C.

George B. Robertson, Q.C.

April 12, 1989

Dear Susan:

**Re: Cabinet Confidentiality**

I enclose two copies of the Crown's Factum in the "cabinet privilege" case. I expect that the Commissioners will want to review this document and perhaps you could see that they get copies.

Kind regards,

Yours very truly,

McINNES COOPER & ROBERTSON



W. Wylie Spicer

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

Enclosures

BY COURIER

# McINNES COOPER & ROBERTSON

BARRISTERS & SOLICITORS

Cornwallis Place  
1601 Lower Water Street  
P.O. Box 730  
**Halifax, Canada**  
B3J 2V1

Telephone  
(902) 425-6500

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

Telex  
019-21859

## FAX COVER SHEET

DATE: April 3, 1989

OUR FILE: I-1816

TO: (Name) Mr. David Orsborn  
(Firm) Royal Commission  
(City) Halifax  
(Telecopier) 424-2709

FROM: Wylie Spicer

---

---

COMMENTS:

---

---

We are transmitting 7 pages (including this cover sheet).

If you do not receive all pages, PLEASE CALL \_\_\_\_\_ AS SOON AS POSSIBLE.  
Telephone (902) 425-6500. Thank you.

Respondent Royal Commission's Factum Brief of Argument

---

In the submission of the Respondent Royal Commission (the "Commission"), the decision to hear evidence from Cabinet Ministers as to the nature of Cabinet discussions only was a decision within the jurisdiction of the Commission to make and is not subject to review by certiorari.

The Terms of Reference of the Commission make it clear that the Commission is the decision-maker as to the matters it will hear, assuming always that such matters are within its Terms of Reference:

"...with power to inquire into, report their findings and make recommendations to the Governor-in-Council respecting the investigation of the death of Sandford William Seale on the 28th-29th day of May, A.D., 1971, the charging and prosecution of Donald Marshall, Jr., with the death; the subsequent conviction and sentencing of Donald Marshall, Jr., for the non-capital murder of Sandford William Seale for which he was subsequently found to be not guilty; and such other related matters which the Commissioners consider relevant to the Inquiry;" (emphasis added)

Case on Appeal, Order-in-Council - Exhibit "A" to Donahoe Affidavit, p.24

There is no challenge in this Court to the authority of the Commission to hear evidence from Cabinet Ministers respecting the Donald Marshall case. The evidence is, in general terms, a "related matter" and unarguably one of the areas which the Commission is entitled to investigate.

- 2 -

The Commission is an investigative body with its own Terms of Reference to interpret and is unlike a court or an administrative tribunal where the parties appearing define the nature of the dispute between them. It is the parties' case and the court has no interest in it other than to apply the law to the relevant facts put in evidence by the litigants. The Commission, however, does not decide disputes between adverse parties. The groups represented before the Commission are not litigating "their dispute" but rather are presenting their points of view on issues defined by the Commission and considered to be relevant by it in fulfilling its mandate as set out in the Terms of Reference. There is no lis to be decided by the Commission and the parties appearing before the Commission cannot be heard to say that a certain class of evidence is relevant to their dispute and must be heard by the Commission. If that were the case, then clearly the Commission would have to hear such evidence in order to decide whether it was relevant to the resolution of the parties' dispute. That is not the case. Here, it is the Commission's mandate not that of the parties appearing before it which determines the relevance of facts sought to be introduced as evidence.

The Commission stated its interest in Cabinet discussions in the argument before the Trial Division and the Appeal Court. Both Courts commented on this interest:

"The Commission's concern in the present case is whether there is a 'why' to the various decisions and documents revealed and it wants to know if there was a consensus that can

- 3 -

be articulated."

Case on Appeal, Judgment, Trial Division,  
p.948

"The Commission's ruling went on to state that it would only require disclosure of the general nature of Cabinet discussions as they relate to matters within the scope of its inquiry. They apparently are concerned only with why certain acts of Cabinet, as disclosed in the documents they have received, were done. They are not interested in knowing who in Cabinet said what."

Case on Appeal, Judgment, Appeal Court, p.989

Having defined its interest in Cabinet discussions, it is not surprising that the Commission ruled on the relevance of the views of individual Cabinet Ministers without hearing what that evidence might be. This class of evidence does not interest the Commission. By way of example, could the Appellant force the Commission to hear evidence concerning Donald Marshall's shoe sizes as he grew up or is the Commission permitted to say, "Whatever the nature of that evidence might be, we are not interested".

Put at its best, the Appellant must argue that the decision of the Commission constituted a wrongful rejection of evidence. Even assuming that to be the case, the general rule is that wrongful rejection of evidence by inferior tribunals does not constitute a refusal or excess of jurisdiction and therefore does not render the decision subject to review by certiorari. There are three exceptions to this rule:



- 4 -

1. Where the refusal to admit evidence amounts to a refusal to hear a party before the tribunal, or to a refusal to accord a hearing that complies with the **audi alteram partem** rule of natural justice, in which case certiorari will issue to quash the decision.
2. Where the error as to admissibility is apparent on the record, in which case certiorari will issue to quash.
3. Where a refusal to admit evidence amounts to a refusal of jurisdiction. This situation arises where the tribunal's reason for rejecting the evidence is that it believes, erroneously, that it has no authority to determine the matter which the evidence is designed to prove.

de Smith's Judicial Review of Administrative Action  
(4th ed.).

It is submitted that the Commission committed no such reviewable error. In its decision, the Commission referred to its own Terms of Reference as the starting point for any determination as to whether or not it would admit oral evidence of Cabinet deliberations:

"In determining the relative immunity relating to Cabinet secrecy will be extended to the oral evidence requested in this case, we must first look to the Terms of Reference of this Commission. Our task is to look at matters relating to the wrongful conviction of Donald Marshall, Jr., and 'such other related matters which the Commissioners deem relevant to this Inquiry'.

Case on Appeal, Commission Decision, p.55.

It was only after a review of the Decisions of this Court in Carey and Smallwood that the Commission

- 5 -

concluded that it would not permit questions relating to the views of individual Cabinet Members. The Commission based this decision on two grounds. Firstly, the Commission stated that the individual views of Cabinet Ministers would be irrelevant and, secondly, the Commission ruled that in any event, to hear evidence of whatever nature concerning the individual views of Cabinet Members would not result in maintenance of the balance between Cabinet secrecy and the public interest in disclosure, as required by the Commission's analysis of the Decisions of this Court in Carey and Smallwood:

"Not only would such individual views be irrelevant to this Inquiry, but this process would so encumber this Commission as to lead to absurdity. Further, Cabinet members should be protected from public scrutiny in their discussions leading to the formulation of government policy and in other matters such as, for example, national security. In this case, the public interest argument is such that the limited protection granted should enable this Commission to hear evidence relating to what issues dealing directly with the Marshall case were discussed in Cabinet, and what views were considered in arriving at particular decisions or policies. We feel that this maintains the appropriate and necessary balance between the interests protected by Cabinet secrecy and our interest in the proper administration of justice."

Case on Appeal, Royal Commission Decision, p.58

In the event that the Commission decided to hear evidence concerning issues which are arguably outside its Terms of Reference, this would be subject to review by certiorari. In the Decision of this Court in Keable, commenting on the powers of Commissioners,

- 6 -

must be put in the framework in which it occurred, i.e., a constitutional challenge to the powers of a Provincial Royal Commission which it was argued was stepping outside its constitutional authority. It is in that sense that the comments of Mr. Justice Pigeon must be understood:

"His orders are not like those of a superior court which must be obeyed without question; his orders may be questioned on jurisdictional grounds because his authority is limited. Therefore his decisions as to the proper scope of his inquiry, the extent of the questioning permissible, and the documents that may be required be produced, are all open to attack, as was done before the Ontario Divisional Court in Re Royal Commission and Ashton."

A.G. of Quebec and Keable v. A.G. of Canada,  
[1979] 1 S.C.R. 218 at 249 per Pigeon, J.

MAR 30 1989

# BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Flora I. Buchan, B.A., LL.B.  
Anne S. Derrick, B.A. (Hons.), LL.B.  
Jacqueline L. Mullenger, B.H.Ec., LL.B.  
Dawna J. Ring, B.A. (Hons.), LL.B.

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

March 21, 1989

Chief Justice Alexander Hickman  
Chairman  
Royal Commission on the Donald  
Marshall, Jr. Prosecution  
Suite 1026, Maritime Centre  
1515 Barrington St.  
Halifax, N.S.

Dear Chief Justice Hickman:

Following the consultations which were held in Halifax by the Commission in November, 1988 to discuss, amongst other issues, racism in the administration of justice, you suggested to the participants that if we had any further information we thought might be of assistance to the Commission we could forward it directly to you.

I had occasion several weeks ago to attend a sentencing conference in Halifax put on by the Attorney General's Department at which a presentation was made by Rupert Ross, a Crown Attorney in Kenora, Ontario, who does extensive work in the North. Mr. Ross is apparently very experienced in cases with native Canadians as Defendants and the subject of his presentation to the sentencing conference related to visible minorities and the cultural differences which affect how Indians interact with the criminal justice system. After his presentation, I had the opportunity to speak with Mr. Ross who has written a paper based on his experiences and observations. I have not had an opportunity to read his paper but I asked him to send me a copy so that I could forward it to you in case it might be of some assistance to the work of the Commission. It is with Mr. Ross' full knowledge and consent that I am sending the enclosed copy of his paper to you.

I hope Mr. Ross' paper is of some assistance to you and that you will distribute it to your fellow Commissioners, Commission staff and other lawyers if you decide it is a useful piece. Mr. Ross advised me that he hopes to find a publisher for the final version of his paper which is close to completion in a book length form and reflects comments and suggestions received from other people.

Yours sincerely,

BUCHAN, DERRICK & RING

  
Anne S. Derrick

ASD/har

Enclosure

MAR 31 1989

## BARRISTERS & SOLICITORS

Donald McInnes, Q.C.	Lewis A. Bell, Q.C.	Harold F. Jackson, Q.C.	Reginald A. Cluney, Q.C.
Hector McInnes, Q.C.	Harry E. Wrathall, Q.C.	Hon. Stewart McInnes, P.C., Q.C.	Lawrence J. Hayes, Q.C.
Joseph A.F. Macdonald, Q.C.	George T.H. Cooper, Q.C.	John G. Cooper, Q.C.	David B. Ritey, Q.C.
Peter J.E. McDonough, Q.C.	James E. Gould, Q.C.	David H. Reardon, Q.C.	George W. MacDonald, Q.C.
Eric Durnford, Q.C.	Robert G. Belliveau, Q.C.	Michael I. King	Peter McLellan
W. Wylie Spicer	F.V.W. Penick	Linda Lee Oland	John D. Stringer
Christopher C. Robinson	Harvey L. Morrison	Gregory J. Arsenaault	Thomas E. Hart
Brian G. Johnston	David A. Graves	Peter M.S. Bryson	K. Sara Filbee
Marcia L. Brennan	Scott C. Norton	John G. Robinson	Deborah K. Smith
Fae J. Shaw	Maureen E. Reid	Roy F. Redgrave	Karen Oldfield
Stephen J. Kingston	Ian Holloway	Eric LeDrew	Carol T. Reardon
John Kulik			

COUNSEL  
John H. Dickey, Q.C.      George B. Robertson, Q.C.

Cornwallis Place  
1601 Lower Water Street  
P.O. Box 730  
Halifax, Canada  
B3J 2V1

Telephone  
(902) 425-6500

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

Telex  
019-21859

Our File: I-1816

March 30, 1989

Dear Susan:

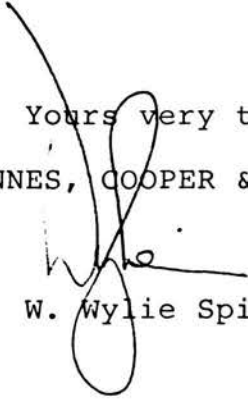
**Re: Supreme Court of Canada**

I enclose a copy of MacPherson's Factum in the Judges' case and a copy of Ruby's Factum in the same case.

Kind regards,

Yours very truly,

McINNES, COOPER & ROBERTSON

  
W. Wylie Spicer

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

Enclosures

BY COURIER



MAR 16 1989

House of Assembly  
Nova Scotia

P.O. Box 1617  
Sydney, Nova Scotia  
B3J 2Y3

March 14, 1989

Chief Justice T. Alexander Hickman  
Royal Commission on the Donald Marshall  
Junior Prosecution  
Suite 1026, Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 2K5

Dear Justice Hickman:

I am writing in my capacity as a Member of the Legislative Assembly, and more particularly as Chairman of the Justice Committee of the Liberal Caucus and Opposition Critic for the Attorney General.

From the outset of the Marshall Inquiry, we have operated on the belief that the Commission's Report would be given directly to the public. Some informal discussions with members of the media confirm a similar belief. For the Commission to simply deliver its Report to the Executive Council, leaving it to that group to decide what will be made public and when, seems entirely inappropriate in these circumstances. However, information reached our office that the Government was not operating under a similar assumption of public release.

After questioning the Attorney General and the Premier on the matter of the release of the Report, I am not reassured as to the Government's intentions. Their responses are inconsistent with the view current of the public who believe that you and the other Commission members will be responsible for details and timing of the publication of your findings. Indeed these comments, which I include for your perusal, do not even indicate an unequivocal commitment to full disclosure. Reference is made to the House of Assembly Debates, March 1, 1989.

On the following day, March 2, 1989, the Premier was given an opportunity to clarify his comments. I have also enclosed the transcript of his reply. He appears to confirm two (2) points - first, that the Commission will be reporting to the Cabinet and not to the public; second, that the Cabinet will decide what constitutes "a reasonable period of time" before it will then be made available to the public.

As official Opposition, we find this procedure unacceptable and inappropriate. We trust that a jurist of your stature and reputation, along with your fellow Commissioners, will agree that this Report belongs to the people - not the Executive Council.

Will you please confirm, either to us by return correspondence, or by way of a public statement, your method of release of your Report?

Please be advised that a copy of this letter has been released to the media.

Yours truly,



Bernie Boudreau, MLA  
Cape Breton The Lakes

Enclosure

did not even think there was going to be one in 1984 to tell you the truth and I had had three elections in four years. I would have been glad if it had been longer. But anyway the fact of the matter was that there was one. So I suppose you can build around that and you know it is easy to have rear view mirror vision. Rear view mirror vision in politics is the easiest one of all. We look into the future and if the member for Antigonish wants to have rear view mirror vision then he is on an impossible mission. (Laughter)

The honourable member for Cape Breton The Lakes.

**ATT. GEN. - MARSHALL INQUIRY: REPORT - RELEASE**

MR. BERNARD BOUDREAU: Thank you, Mr. Speaker. My question is for the Attorney General. The Marshall Commission of Inquiry after much time, effort and money is now in the final process of preparing its report. Will the Attorney General today commit to this House to release that report in full and immediately upon its receipt by this government?

HON. THOMAS MCINNIS: Well, Mr. Speaker, the commission will be reporting not just to the Attorney General but to the Executive Council, in fact. It will be up to the Executive Council to determine whether the report will be released to the public.

MR. BOUDREAU: Mr. Speaker, I am stunned by that reply.

MR. MACISAAC: Why don't you stop if you are stunned? (Laughter)

AN HON. MEMBER: Then he would be like the rest of them.

MR. SPEAKER: Order, please.

MR. MACISAAC: I didn't mean to say that.

MR. BOUDREAU: I accept your apology.

MR. BOUDREAU: Mr. Speaker, my question to the minister is, will he release the report and make it public as soon as it comes into his possession?

AN HON. MEMBER: He is reading the same paragraph again.

MR. SPEAKER: Order, please. Is that the question?

MR. BOUDREAU: Yes.

MR. THOMAS MCINNIS: Mr. Speaker, I have no doubt at all that the Executive Council, the Cabinet, will release the report. The point that I was making in response to the first question was this, the commission will be reporting to the Executive Council, to the Cabinet. The report will come to them. I have no doubt at all that the report will be made public and well it should.



MR. BOUDREAU: My final supplementary, Mr. Speaker, is to the Premier. I will ask the same question again. Will the Premier assure this House today that the report of the Marshall Commission of Inquiry will be made public, in full, immediately upon its receipt? Those are the elements. Thank you.

THE PREMIER: The answer to that question, Mr. Speaker, is as we have with every Royal Commission, with every inquiry, the matter, the report is filed, discussions are held with the chairman and the members of the commission of inquiry, and after that, 90 per cent of the time the documents are made public.

MR. VINCENT MACLEAN: Another laundering job.

MR. JOHN HOLM: Hopefully that will not be one of those 10 per cent.

THE PREMIER: Oh, Mr. Speaker, I resent that remark!

MR. SPEAKER: Order, please.

THE PREMIER: I really resent that remark from that . . .

MR. SPEAKER: Order, please.

THE PREMIER: . . . so-called honourable gentleman!

HON. DAVID NANTES: . . . unparliamentary. Withdraw it.

MR. SPEAKER: The honourable member for Sackville has the floor.

The honourable member for Sackville.

#### WCB - COKE OVENS WORKERS: DISEASES - RECOGNIZE

MR. JOHN HOLM: Thank you, Mr. Speaker, I would like to return to a previous topic . . .

THE PREMIER: Typical. He is getting back to his old style again.

MR. HOLM: . . . and direct my question . . . (Interruptions)

HON. ROGER BACON: They wasted all that money on him too. (Laughter)

MR. SPEAKER: Order, please.

MR. HOLM: Oh, I was going to wait until the government benches got back into order.

I would like to direct my question, through you, Mr. Speaker, to the Minister of Labour. I am wondering if the Minister of Labour, he has made some vague promises here today, if he can tell us when the new era will begin for coke ovens workers? Hopefully they will not have to wait for the PC 2000. I am wondering if the minister is prepared to state that the Workers' Compensation Board will now recognize the

THE PREMIER: Mr. Speaker, I am a very humble individual (Laughter) and when I am wrong I will admit it. I have misunderstood what the honourable Leader of the Opposition said. I thought he was just saying the opposite to what he has just clarified, or what was clarified for me, and without hesitation I would answer, yes, to that.

MR. MACLEAN: Thank you, Mr. Speaker, I certainly appreciate the confirmation of the Premier because certainly it has become not only a Nova Scotia issue but a national issue and I am sure that all of us would like to have the recommendations and deal with them as quickly as possible. Would the Premier as well give an undertaking that, subject to the confidentiality, if there is any requested by Chief Justice Hickman, would he see that the report is released immediately upon him assessing that request so that all of us can share as quickly as the government does in the recommendations of that inquiry?

THE PREMIER: Well, Mr. Speaker, the word immediately is a word that you have to be very careful with. If he is asking if immediately it is handed to the government

MR. MACLEAN: Within a week.

THE PREMIER: Oh certainly. I have no difficulty whatsoever in agreeing that within a certain reasonable period of time it would be made public.

MR. SPEAKER: The honourable member for Sackville.

#### HEALTH - HIV VIRUS: RESEARCH - REJECTED

MR. JOHN HOLM: Thank you, Mr. Speaker. Through you, sir, I would like to direct my question to the Minister of Health and Fitness. The Minister of Health and Fitness will know that last October there was a request made to the department by the National Health Research and Development Program aimed at trying to determine how widespread the HIV virus was throughout the general population of this province and that this study, of course, would have guaranteed that there would have been total confidentiality. The minister's department, obviously, and the government did not want to find out that information obviously, because they turned down that request. I am wondering if the minister could explain why his government, turned down the request for this very valuable research?

HON. DAVID NANTES: Mr. Speaker, I am not familiar with that request. I will take that question as notice and provide the answer on a future day.

MR. HOLM: Well I thank the minister for his answer and for his information. I will send him over a copy of the material that was sent to his department last October.

Of course the minister will be familiar with legislation that was passed in this Chamber last year enabling an AIDS Commission to be established and an executive secretary appointed. We have had approximately nine months go by, and if the government is as concerned as it pretends to be about this very serious illness and disease, could the minister explain why it has not yet been appointed and when it will be appointed?

# COX, DOWNIE & GOODFELLOW

BARRISTERS AND SOLICITORS

MAR 03 1989

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

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

RONALD J. DOWNIE, O.C.  
DAVID McD. MANN, O.C.  
MICHAEL S. RYAN, O.C.  
GREGORY I. NORTH  
PETER W. GURNHAM  
FREDERICK P. CROOKS  
PAUL C. MARTIN  
LESLIE J. DELLAPINNA  
ROBERT W. CARMICHAEL  
JAN McK. SILLIKER  
LES D. DOLL  
JONATHAN R. GALE

GEORGE M. MITCHELL, O.C.  
JOHN M. BARKER, O.C.  
DANIEL M. CAMPBELL, O.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

March 1, 1989

Mr. David Orsborn  
Royal Commission on the Donald  
Marshall, Jr. Prosecution  
Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia

Dear Mr. Orsborn:

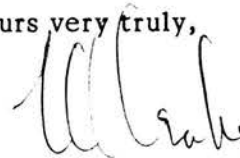
**RE: Appeal to the Supreme Court of Canada from the December 8, 1988  
Judgment of the Nova Scotia Supreme Court, Appeal Division (Hickman  
et al. v. MacKeigan et al.)**

I refer to our telephone conversation of earlier today respecting the dates for the hearing of the noted appeal by the Supreme Court of Canada.

I confirm and hereby give notice that it is our intention to contend on the Appeal that the Judgment of the Appeal Division should be affirmed on the various grounds set out in the Respondents' Notice of Contention dated July 29, 1988, as well as on the grounds relied upon in the Reasons for Judgment of the Appeal Division.

As you know, the grounds cited in the Notice of Contention include the contention that some or all of the matters in respect of which the Commission seeks to examine the Respondents are matters which under the Constitution fall within the exclusive competence of the Parliament of Canada, and thus cannot be the subject of inquiry by a provincially appointed Commission of Inquiry.

Yours very truly,



Frederick P. Crooks

FPC:cmg



MAR 03 1989

The Honourable  
W.E.C. Colter  
Commissioner

W.A. (Tony) Kelly  
Counsel

Ron D. Collins  
Associate Counsel

Thomas B. Millar  
Administrator

L'honorable  
W.E.C. Colter  
Commissaire

W.A. (Tony) Kelly  
Avocat

Ron D. Collins  
Avocat adjoint

Thomas B. Millar  
Administrateur

Royal Commission of Inquiry Into  
Niagara Regional Police Force

Commission royale d'enquête sur  
la police régionale de Niagara

180 Dundas Street West  
22nd Floor  
Toronto, Ontario  
M5G 1Z8

180, rue Dundas ouest  
22<sup>e</sup> étage  
Toronto (Ontario)  
M5G 1Z8

416/965-2142

March 2, 1989

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

Dear Mr. Briggs:

As you may be aware, I have been appointed to inquire into, report upon and make recommendations with respect to the operation and administration of the Niagara Regional Police Force since its creation in 1971.

My mandate, in part, requires me to give regard to the hiring and promotional practices, the storage and disposal of property, morale and media relations, as well as the role of the Board of Commissioners of Police (see attached Terms of Reference).

I understand that as Director of Research for the Marshall Inquiry, you have contracted research touching upon many aspects of policing, some of which may be similar to our Terms of Reference. It would be helpful to our inquiry if you were able to provide a copy of the research material, the names and addresses of the researchers, and a list of those who critiqued the material.

.../2

Mr. John Briggs  
March 2, 1989  
Page 2

I offer my personal assurance that the material will not be disclosed to any person other than Commission staff.

Thank you in advance for your anticipated assistance.

Yours truly,

A handwritten signature in cursive script, appearing to read "W.E.C. Colter".

W.E.C. Colter  
Commissioner

WEC/RE/es  
Attachment

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

WHEREAS concern has been expressed in relation to the operation and administration of the Niagara Regional Police Force, and

WHEREAS the expression of such concerns may have resulted in a loss of public confidence in the ability of the Force to discharge its law enforcement responsibilities, and

WHEREAS the Niagara Regional Board of Commissioners of Police has asked the Government of Ontario to initiate a public inquiry into the operation and administration of the Force, and

WHEREAS the Government of Ontario is of the view that there is need for the public and members of the Force to have confidence in the operation and administration of the Force, and

WHEREAS it is considered desirable to cause an inquiry to be made of these matters which are matters of public concern,

NOW THEREFORE pursuant to the provisions of the Public Inquiries Act, R.S.O. 1980, c.411, a Commission be issued appointing the Honourable Judge W.E.C. Colter who is, without expressing any conclusion of law regarding the civil or criminal responsibility of any individual or organization, to inquire into, report upon and make recommendations with respect to the operation and

administration of the Niagara Regional Police Force since its creation in 1971, with particular regard to the following:

- (1) the hiring practices and promotional processes of the Force;
- (2) the storage and disposal of all property seized or otherwise coming into the possession of the Force during the discharge of its responsibilities, with particular emphasis on the storage and disposal of firearms;
- (3) the policy and practices of the Force with respect to the use of police or municipal resources and any use of those resources for private purposes;
- (4) any inappropriate practices or procedures with respect to the management of the Force which have been established either by the Niagara Regional Board of Commissioners of Police or by senior officers of the Force;
- (5) the state of existing relations between members of the Force and the Niagara Regional Board of Commissioners of Police;

- (6) the reporting relationships between the senior officers of the Force and the Niagara Regional Board of Commissioners of Police and internal reporting relationships within the Force;
- (7) the policies, practices and procedures of the Force and the Niagara Regional Board of Commissioners of Police respecting public complaints against members of the Force;
- (8) the matters disclosed by the Inquiry into the Drug Raid on the Landmark Hotel in 1974 and the propriety, efficiency and completeness of any other investigations into the activities of the Niagara Regional Police Force by other police forces or police agencies since the creation of the Niagara Regional Police Force and the action taken to correct identified problems and to implement recommendations resulting from such Inquiry and investigations;
- (9) the morale of members of the Force;



- (10) whether the amalgamation of the police forces which now constitute the Force has resulted in a cohesive police organization that permits orderly and appropriate functioning;
- (11) the policies and practices of the Force relating to release of information to the news media, and the state of existing relations between the Force and the news media; and
- (12) improprieties or misconduct on the part of members of the Force or any other police agencies arising out of the matters herein enumerated,

AND THAT Government Ministries, Boards, Agencies and Commissions shall assist the Commissioner to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, expert technical advisors, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet in order that a complete and comprehensive report may be prepared and submitted to the Solicitor General,

AND THAT the Ministry of the Attorney General will be responsible for providing administrative support to the Inquiry,

AND THAT Part III of the said Public Inquiries Act be declared to apply to the Inquiry,

AND THAT Order-in-Council numbered O.C. 429/88, dated the 18th day of February, 1988, be revoked.

Recommended *Jean Smith* Concurred *Murray Peterson*  
Solicitor General Chairman

Approved

and Ordered March 25, 1988

Date

*P. G. ...*

Lieutenant Governor



The Honourable  
W.F.G. Collier  
Commissioner  
  
W.A. (Tony) Kelly  
Counsel  
  
Ron D. Collins  
Associate Counsel  
  
Thomas B. Millar  
Administrator

Royal Commission of Inquiry into  
Niagara Regional Police Force

Commission royale d'enquête sur  
la police régionale de Niagara

180 Dundas Street West  
22nd Floor  
Toronto, Ontario  
M5G 1Z8  
  
180, rue Dundas ouest  
22<sup>e</sup> étage  
Toronto (Ontario)  
M5G 1Z8  
  
416/965-2142

March 2, 1989

L'honorable  
W.F.G. Collier  
Commissaire  
  
W.A. (Tony) Kelly  
Conseiller  
  
Ron D. Collins  
Avocat adjoint  
  
Thomas B. Millar  
Administrateur

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

Dear Mr. Briggs:

As you may be aware, I have been appointed to inquire into, report upon and make recommendations with respect to the operation and administration of the Niagara Regional Police Force since its creation in 1971.

My mandate, in part, requires me to give regard to the hiring and promotional practices, the storage and disposal of property, morale and media relations, as well as the role of the Board of Commissioners of Police (see attached Terms of Reference).

I understand that as Director of Research for the Marshall Inquiry, you have contracted research touching upon many aspects of policing, some of which may be similar to our Terms of Reference. It would be helpful to our inquiry if you were able to provide a copy of the research material, the names and addresses of the researchers, and a list of those who critiqued the material.

.../2

2

Mr. John Briggs  
March 2, 1989  
Page 2

I offer my personal assurance that the material will not be disclosed to any person other than Commission staff.

Thank you in advance for your anticipated assistance.

Yours truly,



W.E.C. Colter  
Commissioner

WEC/RE/es  
Attachment

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

WHEREAS concern has been expressed in relation to the operation and administration of the Niagara Regional Police Force, and

WHEREAS the expression of such concerns may have resulted in a loss of public confidence in the ability of the Force to discharge its law enforcement responsibilities, and

WHEREAS the Niagara Regional Board of Commissioners of Police has asked the Government of Ontario to initiate a public inquiry into the operation and administration of the Force, and

WHEREAS the Government of Ontario is of the view that there is need for the public and members of the Force to have confidence in the operation and administration of the Force, and

WHEREAS it is considered desirable to cause an inquiry to be made of these matters which are matters of public concern,

NOW THEREFORE pursuant to the provisions of the Public Inquiries Act, R.S.O. 1980, c.411, a Commission be issued appointing the Honourable Judge W.E.C. Colter who is, without expressing any conclusion of law regarding the civil or criminal responsibility of any individual or organization, to inquire into, report upon and make recommendations with respect to the operation and

administration of the Niagara Regional Police Force since its creation in 1971, with particular regard to the following:

- (1) the hiring practices and promotional processes of the Force;
- (2) the storage and disposal of all property seized or otherwise coming into the possession of the Force during the discharge of its responsibilities, with particular emphasis on the storage and disposal of firearms;
- (3) the policy and practices of the Force with respect to the use of police or municipal resources and any use of those resources for private purposes;
- (4) any inappropriate practices or procedures with respect to the management of the Force which have been established either by the Niagara Regional Board of Commissioners of Police or by senior officers of the Force;
- (5) the state of existing relations between members of the Force and the Niagara Regional Board of Commissioners of Police;

- (6) the reporting relationships between the senior officers of the Force and the Niagara Regional Board of Commissioners of Police and internal reporting relationships within the Force;
- (7) the policies, practices and procedures of the Force and the Niagara Regional Board of Commissioners of Police respecting public complaints against members of the Force;
- (8) the matters disclosed by the Inquiry into the Drug Raid on the Landmark Hotel in 1974 and the propriety, efficiency and completeness of any other investigations into the activities of the Niagara Regional Police Force by other police forces or police agencies since the creation of the Niagara Regional Police Force and the action taken to correct identified problems and to implement recommendations resulting from such Inquiry and investigations;
- (9) the morale of members of the Force;

- (10) whether the amalgamation of the police forces which now constitute the Force has resulted in a cohesive police organization that permits orderly and appropriate functioning;
- (11) the policies and practices of the Force relating to release of information to the news media, and the state of existing relations between the Force and the news media; and
- (12) improprieties or misconduct on the part of members of the Force or any other police agencies arising out of the matters herein enumerated,

AND THAT Government Ministries, Boards, Agencies and Commissions shall assist the Commissioner to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, expert technical advisors, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet in order that a complete and comprehensive report may be prepared and submitted to the Solicitor General,



AND THAT the Ministry of the Attorney General will be responsible for providing administrative support to the Inquiry,

AND THAT Part III of the said Public Inquiries Act be declared to apply to the Inquiry,

AND THAT Order-in-Council numbered O.C. 429/88, dated the 18th day of February, 1988, be revoked.

Recommended *J. G. Smith* Concurring *Henry J. Lester*  
Solicitor General Chairman

Approved and Ordered March 25, 1988 *Robert G. ...*  
Date Lieutenant Governor



FACULTY OF LAW,  
UNIVERSITY OF TORONTO

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

March 1, 1989

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

Dear John,

What better day - St. David's Day - in which to send you the preface to "Walking the Tightrope of Justice". I hope it measures up to your expectations.

I, too, was bothered by your latest report on what is going on in the corridors of power within the Nova Scotia Attorney General's Department. I cannot imagine the Government seeking to ensure the passage of any reform measure before the report of the Marshall Commission is made public. By the same token, I can readily envisage their introducing a Bill that, as part of their political programme, would neutralise the impact of the Commission's findings and recommendations.

What is fairly obvious, from this perspective, is the need to press forward with completing the final report and achieving the projected deadline of July 1, 1989. The enclosed will, I hope, contribute in a small way towards that end.

With warm regards,

Sincerely,

John L.J. Edwards  
Special Adviser to the Commission

/dw  
Encl.

## PREFACE

Many inherent qualities, it may be surmised, are essential if public confidence in the administration of justice is to be sustained. Nowhere is this more evident than in the institution and conduct of criminal prosecutions. Amongst the central criteria by which the justice system is publicly judged are fairness and even handedness in the handling of the criminal proceedings, the absence of any perception of bias or political interference on the part of those exercising police and prosecutorial authority, as well as professional competence and integrity throughout the system. Not infrequently, the public focus is directed towards the highest echelons in the system and this perforce includes the Attorney General and the senior public officials in the department of government responsible for the machinery of justice.

Such has been the experience in recent years of several of the Canadian provinces, from the east coast to the west coast, but none have had to endure the intensity and depth of the public inquest established by the Government of Nova Scotia into all the circumstances surrounding the Donald Marshall Jr. prosecution. This has led the present Royal Commission, very properly in my judgment, to expand the range of its inquiry into all facets of the current provincial justice system and, in particular, the handling of other cases involving prominent political figures. Whatever the outcome of this prolonged public examination may be, and whatever recommendations emanate from the Marshall Commission, it can be stated with total confidence that the ensuing implications will affect the future justice policies of every jurisdiction in Canada, federal as well as provincial.

The series of opinions contained in this volume represent my endeavours to assist the Commission of Inquiry in identifying the major points of weakness in the prevailing constitutional systems relating to the investigation and prosecution of crime. The opinions build upon my previous work as reflected in The Law Officers of the Crown (1964) and The Attorney General, Politics and the Public Interest (1984), both of which books centred, in the main, on the English offices of the Attorney General, Solicitor General and Director of Public Prosecutions. It is to be noted, however, that the direct historical lineage between the original office of the Attorney General in England and Wales and that of its Canadian counterparts is expressly acknowledged in every federal and provincial statute that defines the functions, powers and responsibilities of the Attorney General in our constitutional arrangements. Accordingly, much attention is devoted in the chapters that follow to assessing the experience of the wide range of countries, throughout the Commonwealth and in the United States of America, which have adapted the role of the Attorney General to meet their individual circumstances.

A short while before my present association with the Marshall Inquiry began, in the course of the Tenth Viscount Bennett Memorial Lecture at the University of New Brunswick in October 1986, I set forth some of the specific recommendations for change that I regarded as necessary conditions for the restoration of waning public confidence in the integrity of the justice system. Some of the provincial governments have seen fit to publicly adopt these suggestions for reform, or to indicate their intention

of so doing. I cannot help, however, harbouring reservations as to the level of understanding that accompany the proposed reforms. Among the major questions that need to be addressed in any restructuring of the machinery of government in the justice area is the separation of ministerial responsibility, respectively, for policing and prosecutions, and determining the parameters for the new alignments. This move, begun by the federal government in 1966, has now been implemented by the majority of the provinces.

Another, and perhaps more contentious issue, is the problem whether to transform the office of Attorney General into a non-political, public service appointment or to retain its traditional status, so far as Canadian history is concerned, as an elective member of the Government, with a seat in the Legislature and in the Cabinet. This subject, and the arguments that can be advanced in support of both sides of one of the central questions facing the Commission, viz., the future role of the Attorney General in Nova Scotia, are canvassed fully in the concluding chapters of the present study. At the end I come down in favour of retaining the status quo so far as the Attorney General's membership in the Cabinet and the Legislature is concerned. If the experience of a broad range of Commonwealth countries is reviewed, in which both the non-political and political models of the Attorney General's office are exemplified, the conclusion is inescapable that adherence to the fundamental qualities of independence and accountability are pre-eminently dependent upon the personal attributes and standards of the holder rather than adherence to an ostensibly non-partisan, non-political office of Attorney General. Even

were the latter option to attract favourable support, if we accept the doctrine of ministerial responsibility to the legislative body as the bedrock of our system of parliamentary democracy, another Minister of the Crown would have to be designated in place of the Attorney General with all the same fundamental issues of direction and control remaining to be determined.

Far from dismissing constitutional principles and legislative prescriptions as important safeguards against abuses in the administration of justice, I devote considerable time in the opinions that follow to an analysis of the office of Director of Public Prosecutions as it has evolved in Britain, its original home, in many of the newly independent countries of the Commonwealth, and, notably in more recent years, in Australia at both the federal and state levels. It is worth noting at once that, during the period in which the present inquiry has been engaged in fulfilling its mandate, both the Premier of Nova Scotia and its Attorney General have publicly stated their ideas as to what changes would be necessary to avoid a repetition of the allegations associated with a number of high profile prosecutions in that province. At different times the emphasis has inclined towards the setting up of an independent Director of Public Prosecutions who would "report directly to the Legislature and have the same independence as the Auditor General and the Ombudsman". An alternative proposal has envisaged the creation of a United States style Special Prosecutor's office - presently described as the office of Independent Counsel under U.S. federal laws - with more limited jurisdiction to handle politically sensitive prosecutions that involve senior officials in government. As will

5

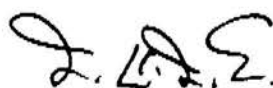
be seen in the ensuing series of opinions I reject both these proposed solutions as inadequate to the pressing problems portrayed in the evidence tendered before the Marshall Commission.

In my recommendations to the Royal Commission I have sought to adhere closely to the dual objectives of, first, ensuring ministerial accountability on the floor of the Legislature, and since the advent of the Charter in the courts, for the exercise of prosecutorial power, and, secondly, reinforcing the realities of independence with respect to the handling of individual cases by the creation of a statutory office of Director of Public Prosecutions. I emphasise the statutory nature of the proposed office to distinguish it from the existing office that, in various provinces across Canada, bears the same title but which is held by a public servant with no statutory authority or security of tenure in his own right. I reject the notion of a Director of Public Prosecutions who is absolutely independent operating outside the ambit of the principles of ministerial responsibility. In short, the Attorney General will remain as the Minister of the Crown ultimately responsible to the Legislature for the handling of every prosecution instituted or terminated at the instance of the State.

What is proposed is an office of Director of Public Prosecutions with functions, powers and lines of accountability spelt out in careful detail by way of a statutory enactment, and who will on a daily basis preside over the entire system of public prosecutions. Normally, the Attorney General should not be involved at all in the making of prosecutorial decisions. In the event, however, that extraordinary

6

considerations affecting the public interest induce the Attorney General to assume his ultimate authority, the governing statute will require the Attorney General to commit his directions to writing and then ensure that these instructions are promptly tabled both in the Legislature and in the most publicly accessible source of information as to the activities of the government, such as the Official Gazette. Parallel with this recommendation is the need to publish for general consumption the Attorney General's guidelines that spell out the policies and considerations governing prosecutorial discretion. An encouraging beginning in this direction, in some parts of Canada, has already taken place. Hopefully, more will follow as the philosophy of greater openness gains wider recognition. The statutory procedures outlined in the concluding parts of this study will ensure that there is the fullest measure of public accountability, the proper insulation of the Director of Public Prosecutions from potentially damaging political interference, and at the same time the safeguarding of the Attorney General's ultimate powers of direction consonant with his constitutional responsibilities for the administration of justice.



March 1, 1989

J.L.J. Edwards



# Gowling & Henderson

BARRISTERS & SOLICITORS  
PATENT & TRADE MARK AGENTS

SUITE 2600  
160 ELGIN STREET  
OTTAWA, ONTARIO  
CANADA K1N 8S3

TELEPHONE: (613) 282-1781  
TELEX: 083 4114 "HEHSON-OTT"  
XEROX-FAX: (613) 563-9668  
RAPICOM-FAX: (613) 563-7936

8 FIRST CANADIAN PLACE  
TORONTO, ONTARIO  
CANADA M5X 1A4  
80 QUEEN STREET NORTH  
KITCHENER, ONTARIO  
CANADA N2M 8M1  
18 THORNE STREET  
CAMBRIDGE, ONTARIO  
CANADA N1R 8W1

HENRY B. BROWN

March 1, 1989

**BY TELECOPIER - URGENT**

Mr. W. Wylie Spicer  
McInnes, Cooper & Robertson  
Barristers & Solicitors  
Cornwallis Place  
1601 Lower Water Street  
P.O. Box 730  
Halifax, Nova Scotia  
B3J 2V1

Dear Mr. Spicer:

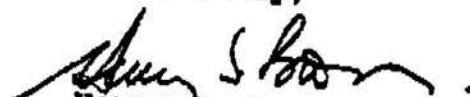
Re: Donald Marshall, Jr., Inquiry - Leave to Appeal

We have been served with the attached two notices of motion.

Counsel for the Judges and the Attorney General advise that May 23 is preferred as Mr. Downie is not available April 19 or 20, 1989.

I will contact you later today for instructions.

Yours truly,

  
Henry B. Brown

HSB:md  
Attachments

IN THE SUPREME COURT OF CANADA  
(On appeal from the Supreme Court of Nova Scotia)

BETWEEN:

DONALD MARSHALL JR.

(Appellant)

and

HER MAJESTY THE QUEEN in Right of Nova Scotia,  
as Represented by the Attorney General of Nova Scotia, and  
the ROYAL COMMISSION INTO THE DONALD MARSHALL JR. PROSECUTION

(Respondents)

NOTICE OF MOTION

TAKE NOTICE that an application will be made by counsel on behalf of the Appellant before the Chief Justice of Canada, on Thursday, the 2nd day of March, 1989 at the hour of 10:00 o'clock in the forenoon or so soon thereafter as the same may be heard for directions concerning the hearing of this appeal and the appeal by Donald Marshall Jr., in the same cause.

AND TAKE NOTICE that the following orders will be sought:

- (a) An order permitting this appeal be heard on April 18th and 20th, 1989 or, in the alternative, on May 23rd and May 26th, 1989;
- (b) An order permitting the filing of the case on appeal material four weeks prior to the date of the appeal;
- (c) An order that the Appellant's factum can be served and filed three weeks prior to the hearing of the appeal.

-2-

and such further or other orders as to the Right Honourable Chief Justice may deem just.

DATED at Ottawa, Ontario, this 28th day of February, 1989.

Shore, Davis & Malek  
Barristers and Solicitors  
800-200 Elgin Street  
Ottawa, Ontario  
K2P 1L5

(613) 233-7747  
Ottawa Agents for Solicitors  
for the Appellant

TO: The Registrar of this Honourable Court

AND

TO: Steven Grace,  
Grace, Neville & Hall  
Barristers and Solicitors  
500-77 Metcalfe Street  
Ottawa, Ontario

Ottawa Agents for Solicitors  
for the Respondents and for  
the Attorney General of Nova Scotia

AND

TO: Henry S. Brown  
Gowling & Henderson  
Barristers and Solicitors  
2600-160 Elgin Street  
Ottawa, Ontario

Ottawa Agents for Solicitors  
for the Marshall Inquiry.

IN THE SUPREME COURT OF CANADA  
(On appeal from the Supreme Court of Nova Scotia)

BETWEEN:

DONALD MARSHALL JR.

(Appellant)

and

IAN M. McKEIGAN, GORDON L. S. HART, MALACHI C. JONES, ANGUS L.  
MacDONALD and LEONARD L. PACE

(Respondents)

and

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

(Intervenor)

and

THE ATTORNEY-GENERAL OF NOVA SCOTIA

(Intervenor)

NOTICE OF MOTION

TAKE NOTICE that an application will be made by counsel on behalf of the Appellant before the Chief Justice of Canada, on Thursday, the 2nd day of March, 1989 at the hour of 10:00 o'clock in the forenoon or so soon thereafter as the same may be heard for directions concerning the hearing of this appeal and the appeal by Donald Marshall Jr., in the same cause.

AND TAKE NOTICE that the following orders will be sought:

(a) An order permitting this appeal be heard on April 19th and 20th, 1989 or, in the alternative, on May 23rd and May 26th, 1989;

(b) An order permitting the filing of the case on appeal material four weeks prior to the date of the appeal;

(c) An order that the Appellant's factum can be served and filed three weeks prior to the hearing of the appeal.

-2-

and such further or other orders as to the Right Honourable Chief Justice may deem just.

DATED at Ottawa, Ontario, this 28th day of February, 1989.

Shore, Davis & Malek  
Barristers and Solicitors  
500-200 Elgin Street  
Ottawa, Ontario  
K2P 1L8

(613) 233-7747  
Ottawa Agents for Solicitors  
for the Appellant

TO: The Registrar of this Honourable Court

AND

TO: Steven Grace,  
Grace, Neville & Hall  
Barristers and Solicitors  
500-77 Metcalfe Street  
Ottawa, Ontario

Ottawa Agents for Solicitors  
for the Respondents and for  
the Attorney General of Nova Scotia

AND

TO: Henry S. Brown  
Gowling & Henderson  
Barristers and Solicitors  
2800-100 Elgin Street  
Ottawa, Ontario

Ottawa Agents for Solicitors  
for the Marshall Inquiry.

# National Center for State Courts

FEB 28 1989

300 Newport Avenue  
Williamsburg, Virginia 23187-8798  
(804) 253-2000

Edward B. McConnell  
President

February 17, 1989

Dear Ms. Ashley:

You are cordially invited to attend the National Conference on Gender Bias in the Courts, sponsored by the National Center for State Courts and the National Association of Women Judges, with funding support from The William Bingham Foundation. This Conference, to be held in Williamsburg, Virginia, is scheduled to begin at 4:00 p.m. on Thursday, May 18, 1989, and adjourn at noon on Sunday, May 21, 1989. Most conference meetings will be held at the National Center for State Courts and the Marshall-Wythe Law School, located just across the walkway from the National Center. A draft program is enclosed. Most of the participants will be chairs and staff of state task forces on gender bias in the courts.

Although the Bingham Foundation has provided a grant to cover the planning of this conference, it does not cover other meeting expenses, such as participant travel and per diem expenses. Hotel accommodations are with the Fort Magruder Inn, located approximately 2 miles from the National Center. The hotel room rate, single or double, is \$72 per night. We will be mailing you registration cards shortly so that you can make room reservations with the hotel directly. Most of the meals will be group events coordinated by the National Center. The registration fee will be \$75. Additional information and registration for the Conference will be forthcoming.

Sincerely,

Susan M. Ashley  
Executive Director  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
1505 Barrington Street  
Halifax, Nova Scotia B3J-3K5



# National Center for State Courts

FEB 28 1989

300 Newport Avenue  
Williamsburg, Virginia 23187-8798  
(804) 253-2000

Edward B. McConnell  
President

February 22, 1989

Susan M. Ashley  
Executive Director  
Royal Commission on the  
Donald Marshall, Jr., Prosecution  
1505 Barrington Street  
Halifax, Nova Scotia B3J-3K5

Dear Ms. <sup>Susan</sup> Ashley:

Enclosed is copy of a draft program for the National Conference on Gender Bias in the Courts, May 18-21, 1989 that was inadvertently left out of your letter dated February 17 from Edward B. McConnell.

Sincerely,

*Marilyn*  
Marilyn McCoy Roberts  
Director  
Information and Secretariat Services

:CW

Enclosure

February 3, 1989

Tentative Draft

NATIONAL CONFERENCE ON GENDER BIAS  
IN THE COURTS

May 18 - 21, 1989

Thursday 4:00 PM - 6:30 PM OPENING SESSION

- 4:00 PM - 4:15 PM Opening Remarks - Edward B. McConnell, President  
National Center for State Courts
- 4:15 PM - 4:35 PM Robert N. Wilentz, Chief Justice,  
New Jersey Supreme Court
- 4:35 PM - 4:55 PM Representative of the Conference of State Court  
Administrators
- 4:55 PM - 5:15 PM Plan of the Conference - Marilyn McCoy Roberts,  
Conference Director
- 5:15 PM - 5:30 PM BREAK
- 5:30 PM - 6:30 PM Small groups by Task Force Phase
- Implementation
  - Report Writing
  - Data Collection
  - Early
  - Late
  - Start Up

Friday 8:30 AM - 12:00 PM DATA COLLECTION

- 8:30 AM - 9:30 AM Context and Social Change - Norma J. Wikler, Ph.D.  
Conference Special Advisor
- 9:30 AM - 9:50 AM Overview: Lynn Hecht Schafran, Director, National  
Judicial Education Program to Promote  
Equality for Women and Men in the Courts
- 9:50 AM - 10:00 AM BREAK
- 10:00 AM - 11:00 AM PANEL: METHODS
- Moderator:
  - Public Hearing
  - Regional Meetings
  - Surveys
  - Case Review
  - Other Projects



11:00 AM - 12:00 PM DISCUSSION

12:00 PM - 1:00 PM BOX LUNCH

1:00 PM - 6:00 PM THE REPORT AND ITS DISSEMINATION

1:00 PM - 3:15 PM THE REPORT: Drafting and Writing  
the Report, Achieving Consensus,  
Publication, and Dissemination

1:00 PM - 1:30 PM RECOMMENDATIONS - TECHNICAL ASPECTS

1:30 PM - 2:30 PM PANEL - WRITING AND DISEMINATING REPORTS  
Moderator:

Interim Reports

Sub Committee Reports  
Final Reports

Dissemination

2:30 PM - 3:15 PM DILEMMAS OF CONSENSUS AND TONE -  
Honorable Judith McConnell

3:15 PM - 3:30 PM BREAK

3:30 PM - 4:15 PM DIFFUSION INTO LEGAL AND LAY COMMUNITY  
Moderator:

Presentation to Bar Association

Law Schools

Lay Community and Investigatory  
Bodies, Citizens Commissions,  
Minority Task Forces

State Court Public Information Office Function

4:15 PM - 6:00 PM Press

PANEL - PROBLEM AND ANSWER SESSION

Moderator:

E.R. Shipp, New York Times  
Kathy Barrett Carter, Newark-Star Ledger

7:30 PM - 8:30 PM SPECIAL ISSUES FOR CHAIRS  
AND STAFF DIRECTORS

- Maintaining Participation of Task Force Members
- How to Deal With Denigration/Denial From Peers  
(Solicit from chairs and director other topics they  
want to discuss)

8:30 PM - 9:00 PM BUILDING A TEAM

## Saturday

8:30 AM - 12:30 PM INSTITUTIONALIZATION,  
IMPLEMENTATION, MONITORING AND EVALUATION

8:30 AM - 9:30 AM INSTITUTIONALIZATION  
Moderator:

The range of things that can be done

- Code of Conduct
- Conduct and Disciplinary Commission
- Legislation
- EEO Concerns - Court Administration
- Gender Neutral Language in court correspondence,  
Forms, Rules, Jury Charges (civil and criminal)

- National overview about court statistics  
what exists -national vs. state
- Data collection problems

How to address the statistics problems in  
collecting needed gender bias statistics

9:30 AM - 10:30 AM DISCUSSION

10:30 AM - 10:45 AM BREAK

10:45 AM - 11:30 AM IMPLEMENTATION: PANEL AND DISCUSSION  
Moderator:

11:30 AM - 12:30 PM ONGOING MONITORING AND EVALUATION

12:30 PM - 2:00 PM LUNCH

2:00 PM - 6:00 PM - JUDICIAL EDUCATION

2:00 PM - 2:15 PM Overview and Context of Judicial Education  
Norma J. Wikler, Ph.D.  
Conference Special Advisor

2:15 PM - 2:45 PM Special Problems for Women Judges in Judicial Education - Honorable Christine Durham

2:45 PM - 3:15 PM Issues in Judicial Education and Models - Lynn Hecht Schafran

3:15 PM - 4:15 PM PANEL - FORMATS

Moderator: Lynn Hecht Schafran

Orientation

Sexual Harrassment

The Necessity for Integrating Gender Bias Issues Throughout the Judicial Education Curriculum

Integration

4:15 PM - 4:30 PM BREAK

4:30 PM - 6:00 PM PANEL OF JUDICIAL EDUCATION PROVIDERS

Moderator:

National Council of Juvenile and Family Court Judges

National Judicial College

NASJE

SJI/Judicial Education Network

Federal Judicial Center

Sunday

8:30 AM - NOON PLANNING THE FUTURE

8:30 AM - 9:15 AM THE FUTURE - William E. Davis, Administrative Director of the California Courts

9:15 AM - 10:30 AM SMALL DISCUSSION GROUPS AND REPORT

NATIONAL CENTER - WRAP-UP AND CLEARINGHOUSE - Marilyn McCoy Roberts

10:30 AM - 10:45 AM BREAK

10:45 AM - 12:00 PM PROBLEM SOLVING SESSION FOR SPECIFIC STATES ISSUES