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May 4, 1987

File#1077-01

VIA COURIER

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

Attention: M. Lois Dyer (Ms) - Commission Executive Secretary

Dear Ms Dyer:

Re: Funding for Oscar N. Seale

The scope of activities of the Commission encompass both procedural or substantive matters.

The substantive aspects of the activities of the Commission will be the actual conducting of the inquiry proceedings, i.e. calling witnesses, taking testimony, reviewing documents etc., the compiling and reporting of the findings of the Commission and the filing of its recommendations.

Preliminary to addressing the matters of substance, and consistent with its terms of reference, the Commission invited

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applications for standing, which application required inter alia, "3. Full statement of reasons for application for standing." Of the applicants, 11 were granted full standing and two were granted observer status.

Those who have been granted standing will have the right to be present, cross-examine witnesses, and present a final submission.

Those who have been granted observer status will have the right to be present, to ask Commission Counsel to direct questions to witnesses, and to make oral and/or written submission to the Commission at the conclusion of the hearings.

All others are entitled to attend the public hearings.

The distinctions given above are contained in the release issued by the Commission on March 13, 1987.

The rights of those who have been granted standing are further addressed in the **PRACTICE AND PROCEDURE RULES** as developed by the Commission.

The powers and jurisdiction of the Commission are as given in the Public Inquiries Act and the Terms of Reference and are indeed very broad, particularly with respects to the scope

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of the Inquiry. An example of this is the exercised jurisdiction of the Commission to determine its own rules of procedure and practice to the same extent as the Supreme Court, which, in the absence of specific rules, has the inherent jurisdiction to address matters of procedure.

The specific question of jurisdiction of the Commission to entertain an application for funding is in fact and in substance no different to any question of practice and/or procedure which can be advanced to the Commission. All that there is to support the apparent jurisdiction to address the question of funding is precedent and practice, and in this regard, reference could be made to the Berger Commission, the Grange Commission and Parker Commission. In all three cases, the Commission set its own rules relating to practice and procedure and entertained applications for funding, and in all three cases, it appeared to rest with the discretion of the Commission whether or not to recommend to the government that funding be provided to the applicants. There is thus no barrier or impediments to prevent this Commission from hearing applications for funding.

It cannot be overlooked that of those who have been granted standing, the R.C.M.P. has been provided with counsel independent of the Commission Counsel, as has Correctional Services of

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Canada, City of Sydney Police Commission, the Attorney General of Nova Scotia and the Department of the Attorney General, Donald Marshall, Jr., all paid from the public purse, directly or indirectly, and all consistent with the reported statement of the Attorney General that "All lawyers representing clients who get standing at the inquiry - including Ruby and lawyers for other parties such as the Sydney police and Giffins own department - will be paid the same hourly rate by the provincial government..." (Toronto Star - Jan. 16/87)

As to relief that the Commission has jurisdiction to provide, reference must again be made to its Terms of Reference, and that the Commissioners are directed to retain the services of legal counsel etc.. As such, in the event that the Commission considers it necessary for the proper conduct of the Inquiry that any party with standing and who has retained counsel in the absence of a positive response by government to a recommendation by the Commission, there is nothing in the Terms of Reference to prevent such costs be included in the budgets of the Commission.

to allow?

As to the appropriate level of funding required by Oscar Seale, recognizing that the Province has apparently worked out terms

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of remuneration for counsel for Donald Marshall Jr. and the employees of the department of the Attorney General, it seems prima facie unfair to ask those who are now applying for funding to meet any test which was not even considered when others were given "gavel to gavel" funding.

However, on behalf of Mr. Seale, the following is advanced:

- a. That there is a clearly ascertainable interest of Oscar Nathaniel Seale that ought to be presented to the inquiry, and in fact, subsequent to a preliminary set of meetings between the solicitors for the Commission and Mr. Seale, he was, on March 13, 1987, granted full standing.

- b. That inherent in the granting by the Commission of full standing to Mr. Seale confirms the acceptance by the Commission that separate and adequate representation of the interests of Mr. Seale will

make a necessary and substantial contribution to the inquiry.

- c. That Mr. Seale, by remaining involved in this matter and in contract with all the authorities everytime it has raised its head, has established a record of concern for, and a demonstrated commitment to, the interests he seeks to present.
- d. That Mr. Seale does not have sufficient financial resources to enable him to adequately present his interests and will require funds to do so.
- e. That Mr. Seale has a clear proposal as to the use he intends to make off the funds, and is sufficiently well organized to account for the funds.

If required, and if this is consistent with other funded interests, Mr. Seale will attempt to prepare a budget indicating the purposes (as closely as can now be indentified) for which the funds are required, how the funds will be disbursed and how they will be accounted for, in the event that there will be any difference in funding between that which is committed

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for the involvement of Donald Marshall Jr. and/or the Department
of the Attorney General of Nova Scotia.

Yours truly,

SMITH, GAY EVANS & ROSS

PER:


E. ANTHONY ROSS

EAR/lmb
cc: O. Seale