

25 1987

BLOIS, NICKERSON, PALMETER & BRYSON
BARRISTERS AND SOLICITORS

Telephone: (902) 425-6000
Telecopier: (902) 429-7343
1568 Hollis Street
Halifax, Nova Scotia

S. DAVID BRYSON, Q.C.
ALAN J. STERN, Q.C.
S. BRUCE OUTHOUSE, Q.C.
JANE E. HOLMES
MICHAEL B. SHERAR
THOMAS M. MACDONALD
KAY L. RHODENIZER

FRANKLYN W. CORDON, Q.C.
WILLARD STRUG, Q.C.
LAWRENCE A. FREEMAN
ROBERTA J. CLARKE
GORDON R. KELLY
COLIN D. BRYSON

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

OUR FILE REFERENCE:
SB0/31907-001

May 5, 1987

HAND DELIVERED

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

Attention: George MacDonald, Q.C.,
Commission Counsel

Dear Sir:

**Re: Application for Funding - Inspector Donald B. Scott
and Staff Sergeant Harry F. Wheaton**

As you are aware, Inspector Scott and Staff Sergeant Wheaton have been granted standing at the Inquiry and I will be representing their interests.

I am sure that you are familiar with the involvement of my clients in the 1982 R.C.M.P. investigation which ultimately led to the acquittal and release of Mr. Marshall and the conviction of Mr. Ebsary. Inspector Scott was the officer in charge of the Sydney subdivision at the time the investigation was conducted. He assigned the investigation to Staff Sergeant Wheaton and handled all communications concerning same with his superiors in Halifax. Staff Sergeant Wheaton was directly in charge of the 1982 investigation and carried out the great majority of it himself, accompanied from time to time by other members of the force. Given the nature and degree of their involvement, it would seem virtually certain at this stage that both Inspector Scott and Staff Sergeant Wheaton will be key participants in the Inquiry.

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When I was first retained in this matter, my clients were under the impression that they would be fully reimbursed for all legal expenses. Subsequently, however, they have been advised that this is not the case. I have been attempting, so far without much success, to clarify with the Department of Justice precisely what costs the Federal Government will cover. In this regard, I am enclosing for your information a copy of Mr. Bissell's letter to me dated April 28, 1987. As you can see from that letter, the approach being taken to reimbursement of legal expenses is very restrictive and could well compromise meaningful participation in the Inquiry. In order to preclude this possibility, my clients have instructed me to apply to the Commission for partial funding of their legal expenses.

Given the strictures of time, I do not propose to address issues (a) and (b) identified in your letter to counsel dated April 14, 1987. I am content to rely on the submissions made with respect to those issues by other applicants for funding and will, therefore, confine my remarks to issue (c) -- namely, the necessity for, and the extent of, funding required by my clients from the Province of Nova Scotia.

As to the element of necessity, my clients are career R.C.M.P. officers and their salaries are a matter of public record. They both enjoy a modest standard of living but are certainly not in the position where they either can or should be required to incur substantial legal expenses on their own account in connection with the proceedings of the Inquiry. Their involvement in matters touching upon the Inquiry arose out of the performance of their public duties. They will be examined and cross-examined in minute detail with respect to that involvement and, no doubt, there will be some at the Inquiry who will wish to make them the object of criticism or ridicule. Moreover, there is always the prospect, albeit a slight one, of exposure to civil liability. Consequently, it is imperative that my clients have full access to counsel in connection with this matter and that neither they nor counsel should be constrained from full participation in the Inquiry by lack of funding for legal expenses.

Lest my intentions or those of my clients be misunderstood, I hasten to add that "full participation" shouldn't, in this context, be equated with full time attendance at the Inquiry. At present, I only plan to attend at the Inquiry during the examination and cross-examination of my clients and, possibly, one or two other potential witnesses whose

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evidence I expect to be rather closely related to my clients' involvement in the matter.

As to the extent of funding required, it is quite clear, of course, that my clients will not need full funding. To an extent which is yet undetermined, their legal fees will be paid by the Federal Government. My clients' application for funding, therefore, relates solely to the difference, if any, between their actual legal costs incurred and the amount paid on account thereof by the Federal Government. It is very difficult, of course, to predict at this stage what the differential will be. Assuming the Federal Government eventually decides that it will cover a reasonable amount for preparation, then the differential will probably be quite modest and, indeed, may disappear altogether. If, on the other hand, the Federal Government doesn't provide funding for any preparation, then the differential could prove to be very substantial indeed.

In light of the foregoing, I respectfully request on behalf of my clients that the Commission direct that they be reimbursed by the Province of Nova Scotia for any legal fees incurred by them in connection with this matter, over and above such fees as are properly recoverable from the Federal Government. Should the Commission find that it lacks the jurisdiction to so direct, then I would request that it make an appropriate recommendation to the Province in this regard.

Please be advised that I have previous commitments at another hearing on May 13th and 14th and will not, therefore, be appearing in support of this application on May 13th. Given the number of counsel involved, I doubt that I will be conspicuous by my absence. In any event, my clients are content to stand on the foregoing written submission and waive their right to oral argument.

Yours very truly,

BLOIS, NICKERSON, PALMETER & BRYSON



S. Bruce Outhouse

SBO:sw
Enclosure

Department of Justice
Canada

Ministère de la Justice
Canada

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

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

426-7592

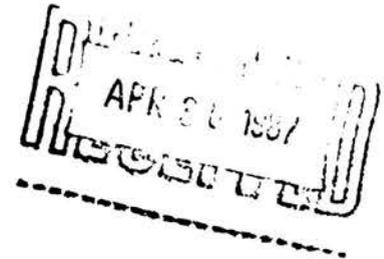
Our file
Notre dossier

AR-21,613

April 28, 1987

Your file
Votre dossier

Mr. R. Bruce Outhouse
Blois, Nickerson, Palmeter & Bryson
Barristers and Solicitors
P. O. Box 2147
Halifax, Nova Scotia
B3J 3B7



Dear Mr. Outhouse:

RE: Marshall Inquiry - Representation of Members
of Royal Canadian Mounted Police

This letter is further to our telephone conversation of April 13, 1987, and subsequent dates.

I understand that you are representing Harry F. Wheaton and Donald B. Scott, members of the Royal Canadian Mounted Police.

I wish to draw to your attention the provisions of the Administrative Policy Manuals of the Royal Canadian Mounted Police respecting payment of legal fees incurred by members out of the Public Treasury, which policy is based upon directive from Treasury Board. Under the terms of this policy, payment of members' legal fees at public expense before ongoing commissions of inquiry are payable only when:

- (1) they are required to appear and testify before a commission of inquiry;
- (2) they are requested to meet informally with the commission of inquiry; or
- (3) they are requested to be interviewed by commission counsel or commission investigators, on any matter arising out of the performance of their duties.

There is no scope for either the Department of Justice or the Royal Canadian Mounted Police to go beyond this and authorize payment of legal expenses of members at ongoing commissions of inquiry from the Public Treasury. Therefore, the legal

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expenses of members will not be paid for services rendered before the Commission of Inquiry on behalf of the member when the member is not a witness on the stand or otherwise as outlined above.

The appropriate tariff, which includes a daily maximum, has been forwarded to the individual members involved by Inspector H. E. Murphy and you will be able to obtain a copy of it from your client. I would also point out that the Treasury Board requires all accounts to be taxed in advance of payment by the Department of Justice. I would, therefore, ask that you forward your account to my attention for taxation.

We envisage that claims for reasonable time spent for instructing counsel for any of the three above-noted purposes will be allowed. However, I am presently seeking instructions from our headquarters respecting this item.

There is no authority for any further reimbursement of the legal expenses of members at ongoing commissions of inquiry in the absence of specific authority from the Treasury Board of Canada. I thought it prudent to draw these terms to your attention so that there could be no misunderstanding at a later date. Those members who have opted to be represented by their counsel have again been reminded of the limits of this policy by Inspector H. E. Murphy.

Yours very truly,



James D. Bissell
General Counsel
Director, Atlantic Region

JDB/vpc