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Our File Ref.:

April 30, 1987

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

Attention: Ms. Lois Dyer

Dear Ms. Dyer:

**Re: Royal Commission on the Donald
Marshall, Jr., Prosecution
Our File No. GLF/16,208**

Further to our telephone conversation on Tuesday, the 28th of April, 1987, I wish to acknowledge that on the 29th of April, 1987, I received from the Commission a copy of their correspondence which is dated the 14th of April, 1987. I wish to acknowledge that I recently received your letter of April 28, 1987 confirming the standing for Sergeant Herb Davies.

In reviewing the April 14, 1987 correspondence from George MacDonald, Commission Counsel, I note that all parties who have standing and wish to be heard on May 13th, are required to make submissions to the Commission by May 4th. On behalf of Sergeant Herb Davies, I wish to confirm that it is our intention to have Michael MacDonald from this firm present on the 13th of May to make application that funding of counsel for Sergeant Davies be provided through the Commission or, alternatively, that the Commission direct the Province of Nova Scotia to provide the required funding for Sergeant Davies.

Regrettably, since receiving your correspondence, I have been trying to obtain a copy of the Order in Council appointing the Commission so that I can be in a position to prepare a brief on the points raised in the letter of April 14, 1987. I hope to have that information made available to me within the next few days. After that, we will

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Royal Commission on the
Donald Marshall, Jr., Prosecution

Attention: Ms. Lois Dyer - 2 - April 30, 1987

have some materials forwarded to the Commission on the points raised in the letter of April 14, 1987 so that the Commission is aware that we will be seeking funding on behalf of our client.

I trust that this information is satisfactory for your purposes and I trust that the Commission will be able to understand that because of the time constraint and our late involvement in this matter, we are unable to have a written submission to you by the 4th of May, 1987.

Yours truly,

BOUDREAU, BEATON & LaFOSSE



Per: **Guy LaFosse**

GLF/sm
c.c.

Sergeant Herb Davies

On behalf of Mr. Herb Davies, the following submissions are made to this Honourable Commission:

- (a) **Whether the Commission has any jurisdiction to entertain an application for funding.**

It is submitted that the Commission has jurisdiction to entertain an application on behalf of Herb Davies (and others granted standing) seeking funding for legal counsel during the Inquiry. The Order-in-Council by The Honourable Allan R. Abraham, C.D., Lieutenant-Governor of Canada, dated the 20th day of October, 1986, empowers the Commission inter alia to:

- (a) inquire into the investigation of the death of Sanford William Seal;
- (b) report on the Commission's findings to the Governor-In-Council;
- (c) make recommendations to the Governor-In-Council respecting inter alia the investigation of the death of Sanford William Seal, on the 28th-29th day of May, 1980-1981; and such other related matters which the Commission considers relevant to the Inquiry.

Implicit in the power vested upon this Commission, it is submitted, must be the authority to consider all matters

relevant to the Inquiry, including the issue of funding for legal counsel to those granted standing.

Albeit the Order-In-Council specifically authorizes the hiring of Commission counsel only "who, in the opinion of the Commission, are required for the purposes of the Inquiry". Nonetheless, it is submitted that this specific reference to the Commission's authority to retain its own counsel is in addition to and further to the Commission's overall authority to conduct a complete investigation. From this general power flows the Commission's implicit authority to entertain such an application. It ought to be considered part of the Commission's overall mandate.

(b) The relief the Commission has jurisdiction to provide.

It is submitted that the Commission has jurisdiction to order that legal funding be provided for those persons granted standing. In order to fulfill its mandate, the Commission must make a complete and thorough investigation. It is empowered to investigate and recommend to the Governor-In-Council on all related matters that the Commission considers relevant to the Inquiry. Thus, the Commission has a discretion to determine what matters it considers relevant. If, in fulfilling its

mandate, the Commission deems it necessary that those with standing ought to be represented by counsel, then the Commission, it is submitted, has the discretion to order funding for such counsel. This flows from the Commission's overall authority to conduct a complete investigation. In the alternative, at least, it is submitted that the Commission may recommend to the Governor-In-Council that funding for legal counsel be granted to those with standing. This, it is submitted, is part and parcel of the Commission's authority to make recommendations on "such other related matters which the Commission considers relevant to the Inquiry."

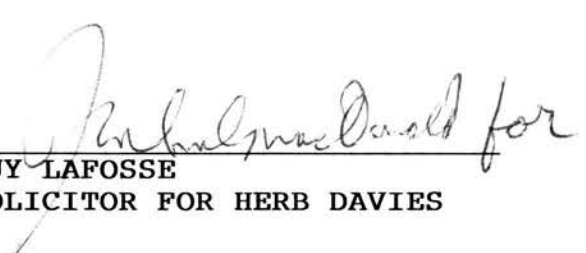
(c) The necessity for, and the extent of, funding required by Herb Davies from the Province of Nova Scotia.

Mr. Herb Davies has been granted standing before this Honourable Commission. It is expected that his testimony may very well be in conflict with testimony of other witnesses before the Commission. Mr. Davies was directly involved in the investigation which forms the basis of this Inquiry. The recommendations of the Commission may have a direct significance upon Mr. Davies personally. Mr. Davies' counsel must be able to completely assess all of the issues involving Mr. Davies, and to make complete and proper submissions to the Commission

on his behalf. In order to do so, counsel should be present throughout the entire Inquiry. Given the projected length of the Inquiry, it would be financially impossible for Mr. Davies to personally retain and instruct counsel to be present throughout the entire Inquiry. The Administrative Policy Manuals governing the Royal Canadian Mounted Police dictate that a member's legal fees for an ongoing Commission of Inquiry are payable by the Department of Justice only while the member is actually testifying and not otherwise. Thus, unless Mr. Davies' legal fees are paid by the Province, it would be impossible for him to have legal counsel represent him throughout the Inquiry. As previously stated, this failure may have direct and serious repercussions to Mr. Davies personally. The proper tariff for fees, it is submitted, should be equivalent to that applicable to Mr. Donald Marshall.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Sydney, Nova Scotia, this day of
May, A.D. 1987.



GUY LAFOSSE
SOLICITOR FOR HERB DAVIES