

*Elman, Kuna & Hannem*  
*Attorneys at Law*

FRANK L. ELMAN, Q.C.  
 MICHAEL KUNA, B.A., LL.B.  
 MURRAY F. HANNEM, B.A., LL.B.

*327 Charlotte Street*  
*Sydney, Nova Scotia*  
 B1P 6G2

OUR FILE NO.:

April 20, 1987

**RECEIVED**  
 MAY 1 1987

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

McINNES COOPER & ROBERTSON

Dear Mr. MacDonald:

Re: The Estate of Donald C. MacNeil, Q.C.

I have your letter of April 14, 1987, with reference to the hearing to take place on May 13, 1987, in Halifax.

As you are aware, I have been contacted by Cameron MacNeil, son of the late Donald C. MacNeil, and applied for and received standing at the inquiry.

As you can appreciate, any funds that may have been in the estate of the late Donald C. MacNeil have long since been distributed and there is currently no source from which funding can be obtained to properly represent the estate at the hearing.

I was not in attendance at the last meeting of Monday, April 13, 1987, as funding for my travel to Halifax was unavailable, and as a result, Mr. Cameron MacNeil attended that meeting. Again, for the same reasons, I doubt my ability to attend at the scheduled meeting for May 13, 1987.

At the present time I have discussed with Mr. MacNeil the various alternatives available to him, in the event that funding is not available:

.../2

(a) Cameron MacNeil, himself, will attend at the hearing to represent his late father as best as he can.

(b) No one attends at the hearing on behalf of the late Donald C. MacNeil or;

(c) Withdraw standing.

With reference to the various points which you put forward in your letter of April 14, I will deal with them briefly.

(a) Pursuant to the terms of reference of the Commission, they have, by authority, the right to retain the services of legal counsel and such other technical, secretarial, etc. at a remuneration as approved by Management Board. It follows, therefore, that if the Commission recognizes that certain individuals or groups are entitled to have standing before them, that those persons or groups, "are required for the purposes of the inquiry" and, therefore, come within the jurisdiction of the Commission. It may be, however, that the Commission may adopt rules and practices of procedure which do not require the services of counsel, and if such be the case, those with standing may not need to be represented at the hearing. Since the Commission has already engaged three counsel to represent itself, it is obvious that the rules which they will adopt will necessitate representation for all of those with standing.

(b) It would appear, that in order for the Commission to properly complete its task, they would have the authority to recommend that those with standing be represented by counsel. However, they have no authority to determine how much should be paid in that regard.

(c) The estate of the late Donald C. MacNeil is without funds and, therefore, full funding is required.

It would appear that the Attorney General for the Province has established the precedent by hiring not one, but two counsel to represent his department. All others must support their own cause.

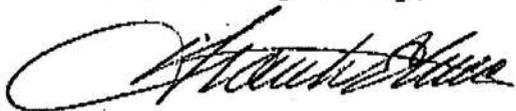
As a matter of note, I find it ironic that the office for the Commission has been located in Halifax and that not one of those persons hired, either by the Commission or by the Attorney General's Department, are from the area where this event took

.../3

place. Further, it is my understanding, that only part of these hearings will be held in Sydney, and I question why all the hearings should not be held here.

It would appear to me that at least a part of the inquiry will not involve the late Donald C. MacNeil who died in October, 1978. I feel certain that my involvement on behalf of the estate will only require my attendance during those periods when evidence is being brought forward which might have a direct relation to the conduct of Mr. MacNeil. For that reason, I would foresee that my legal fees for time expended will be less than the norm.

Yours very truly,



Frank L. Elman, Q.C.

FLE:nml

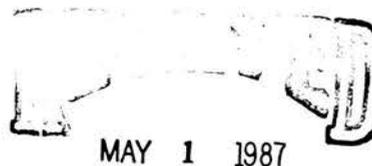
*Elman, Kuna & Hannem*  
*Charlottetown, P.E.I.*

FRANK L. ELMAN, Q.C.  
 J. MICHAEL KUNA, B.A., LL.B.  
 MURRAY F. HANNEM, B.A., LL.B.

*327 Charlotte Street*  
*Sydney, Nova Scotia*  
 B1P 6G9

OUR FILE NO.:

April 20, 1987



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

McINNES COOPER &amp; ROBERTSON

Dear Mr. MacDonald:

Re: The Estate of Donald C. MacNeil, Q.C.

I have your letter of April 14, 1987, with reference to the hearing to take place on May 13, 1987, in Halifax.

As you are aware, I have been contacted by Cameron MacNeil, son of the late Donald C. MacNeil, and applied for and received standing at the inquiry.

As you can appreciate, any funds that may have been in the estate of the late Donald C. MacNeil have long since been distributed and there is currently no source from which funding can be obtained to properly represent the estate at the hearing.

I was not in attendance at the last meeting of Monday, April 13, 1987, as funding for my travel to Halifax was unavailable, and as a result, Mr. Cameron MacNeil attended that meeting. Again, for the same reasons, I doubt my ability to attend at the scheduled meeting for May 13, 1987.

At the present time I have discussed with Mr. MacNeil the various alternatives available to him, in the event that funding is not available:

.../2

(a) Cameron MacNeil, himself, will attend at the hearing to represent his late father as best as he can.

(b) No one attends at the hearing on behalf of the late Donald C. MacNeil or;

(c) Withdraw standing.

With reference to the various points which you put forward in your letter of April 14, I will deal with them briefly.

(a) Pursuant to the terms of reference of the Commission, they have, by authority, the right to retain the services of legal counsel and such other technical, secretarial, etc. at a remuneration as approved by Management Board. It follows, therefore, that if the Commission recognizes that certain individuals or groups are entitled to have standing before them, that those persons or groups, "are required for the purposes of the inquiry" and, therefore, come within the jurisdiction of the Commission. It may be, however, that the Commission may adopt rules and practices of procedure which do not require the services of counsel, and if such be the case, those with standing may not need to be represented at the hearing. Since the Commission has already engaged three counsel to represent itself, it is obvious that the rules which they will adopt will necessitate representation for all of those with standing.

(b) It would appear, that in order for the Commission to properly complete its task, they would have the authority to recommend that those with standing be represented by counsel. However, they have no authority to determine how much should be paid in that regard.

(c) The estate of the late Donald C. MacNeil is without funds and, therefore, full funding is required.

It would appear that the Attorney General for the Province has established the precedent by hiring not one, but two counsel to represent his department. —All others must support their own cause.

As a matter of note, I find it ironic that the office for the Commission has been located in Halifax and that not one of those persons hired, either by the Commission or by the Attorney General's Department, are from the area where this event took

- 3 -

place. Further, it is my understanding, that only part of these hearings will be held in Sydney, and I question why all the hearings should not be held here.

It would appear to me that at least a part of the inquiry will not involve the late Donald C. MacNeil who died in October, 1978. I feel certain that my involvement on behalf of the estate will only require my attendance during those periods when evidence is being brought forward which might have a direct relation to the conduct of Mr. MacNeil. For that reason, I would foresee that my legal fees for time expended will be less than the norm.

Yours very truly,



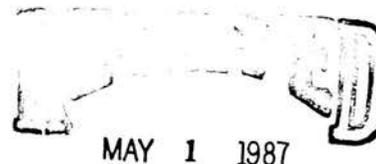
Frank L. Elman, Q.C.

FLE:nml

*Elman, Kuna & Hannem**Rechtsanwälte in Nova Scotia*FRANK L. ELMAN, Q.C.  
J. MICHAEL KUNA, B.A., LL.B.  
MURRAY F. HANNEM, B.A., LL.B.327 Charlotte Street  
Sydney, Nova Scotia  
B1P 6G9

OUR FILE NO.:

April 20, 1987

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

McINNES COOPER &amp; ROBERTSON

Dear Mr. MacDonald:

Re: The Estate of Donald C. MacNeil, Q.C.

I have your letter of April 14, 1987, with reference to the hearing to take place on May 13, 1987, in Halifax.

As you are aware, I have been contacted by Cameron MacNeil, son of the late Donald C. MacNeil, and applied for and received standing at the inquiry.

As you can appreciate, any funds that may have been in the estate of the late Donald C. MacNeil have long since been distributed and there is currently no source from which funding can be obtained to properly represent the estate at the hearing.

I was not in attendance at the last meeting of Monday, April 13, 1987, as funding for my travel to Halifax was unavailable, and as a result, Mr. Cameron MacNeil attended that meeting. Again, for the same reasons, I doubt my ability to attend at the scheduled meeting for May 13, 1987.

At the present time I have discussed with Mr. MacNeil the various alternatives available to him, in the event that funding is not available:

.../2

(a) Cameron MacNeil, himself, will attend at the hearing to represent his late father as best as he can.

(b) No one attends at the hearing on behalf of the late Donald C. MacNeil or;

(c) Withdraw standing.

With reference to the various points which you put forward in your letter of April 14, I will deal with them briefly.

(a) Pursuant to the terms of reference of the Commission, they have, by authority, the right to retain the services of legal counsel and such other technical, secretarial, etc. at a remuneration as approved by Management Board. It follows, therefore, that if the Commission recognizes that certain individuals or groups are entitled to have standing before them, that those persons or groups, "are required for the purposes of the inquiry" and, therefore, come within the jurisdiction of the Commission. It may be, however, that the Commission may adopt rules and practices of procedure which do not require the services of counsel, and if such be the case, those with standing may not need to be represented at the hearing. Since the Commission has already engaged three counsel to represent itself, it is obvious that the rules which they will adopt will necessitate representation for all of those with standing.

(b) It would appear, that in order for the Commission to properly complete its task, they would have the authority to recommend that those with standing be represented by counsel. However, they have no authority to determine how much should be paid in that regard.

(c) The estate of the late Donald C. MacNeil is without funds and, therefore, full funding is required.

It would appear that the Attorney General for the Province has established the precedent by hiring not one, but two counsel to represent his department. All others must support their own cause.

As a matter of note, I find it ironic that the office for the Commission has been located in Halifax and that not one of those persons hired, either by the Commission or by the Attorney General's Department, are from the area where this event took

place. Further, it is my understanding, that only part of these hearings will be held in Sydney, and I question why all the hearings should not be held here.

It would appear to me that at least a part of the inquiry will not involve the late Donald C. MacNeil who died in October, 1978. I feel certain that my involvement on behalf of the estate will only require my attendance during those periods when evidence is being brought forward which might have a direct relation to the conduct of Mr. MacNeil. For that reason, I would foresee that my legal fees for time expended will be less than the norm.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Frank L. Elman". The signature is written in dark ink and is positioned above the typed name.

Frank L. Elman, Q.C.

FLE:nml

# BLACK UNITED FRONT

OF

## NOVA SCOTIA

8 EDWARD STREET, DARTMOUTH, NOVA SCOTIA B2Y 2P1

PHONE: (902) 465-4010

### MEMO

**TO:** DONALD MARSHALL JR. PROSECUTION

**FROM:** THE BLACK UNITED FRONT OF NOVA SCOTIA

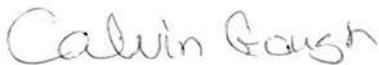
**DATE:** MAY 4, 1987

**RE:** DONALD MARSHALL INQUIRY

Accept this as our formal request to participate in the hearing on May 13, 14, 1987, to hear submissions on the question of funding for legal counsel for the duration of the Donald Marshall Jr., Prosecution.

On May 13, 14, 1987, Randy Johnson will be our representative.

Sincerely,



Calvin Gough  
2nd Vice President

# BLACK UNITED FRONT

OF

## NOVA SCOTIA

8 EDWARD STREET, DARTMOUTH, NOVA SCOTIA B2Y 2P1

PHONE: (902) 465-4010

### M E M O R A N D U M

TO:

FROM: THE BLACK UNITED FRONT OF NOVA SCOTIA

DATE: MAY 4, 1987

RE: SUBMISSION ON THE QUESTION OF FUNDING FOR LEGAL  
COUNSEL

---

On March 9, 1987, **THE BLACK UNITED FRONT OF NOVA SCOTIA** made a formal request to obtain full standing before the Royal Commission on the Donald Marshall Jr. Prosecution. **THE BLACK UNITED FRONT** was granted standing by the Commissions representatives. **THE BLACK UNITED FRONT**, therefore submitting the following statement about funding or other arrangements that might allow legal counsel to be provided for the duration of the Royal Commission on the Donald Marshall Jr. Prosecution.

According to article (2) of the Commission Terms of Reference of the Order In Council appointing the Royal Commission, it appears that the Inquiry can retain the services of legal counsel at "remuneration", as shall be approved by the Management Board.

The Commission has jurisdiction, or is able to order or recommend fees for Counsel being provided. The issue is the Commissions agreement on remuneration in conjunction with, and approved by, the Management Board as required by, and incurred by the Commission to carry out its mandate.

**THE BLACK UNITED FRONT OF NOVA SCOTIA** would support the Commissions efforts to retain the services of legal counsel on our behalf. However, as a condition, **B.U.F.** reserves the right to choose the legal counsel the Commission will retain to act as our legal representative during said inquiry.

As to the other concerns such as jurisdiction, recommendations, and cost of legal fees, which the Commission requested, **B.U.F.** addresses in this submission, we are unable to respond. These are legal questions, and a lawyer would have had to be retained or assist **B.U.F.** to provide a legal position on such a submission. Funds to pay for legal fees, even at this preliminary stage of the Donald Marshall Jr. Inquiry, do not exist in the organizations budget.

Without proper legal representation it becomes impossible to adequately respond to the commissions' request for a submission with respect to funding for legal counsel.

May 4, 1987

Page 2

**THE BLACK UNITED FRONT OF NOVA SCOTIA** is therefore placed at a major disadvantage when compared to other parties who will participate in this hearing, and have legal fees paid.

Representatives of **THE BLACK UNITED FRONT OF NOVA SCOTIA** do not have the skills, training or experience to demonstrate from a legal standpoint why funding for legal counsel must be provided. As a Black organization we are under no illusions about the criminal justice system in Nova Scotia. It has been our experience that justice exist for those who have the capital and can afford an experienced lawyer.

The Commission has the responsibility of seeing to it that all parties with full standing have the best legal counsel possible. As a Black organization we do not expect the Attorney Generals Department to provide the financial assistance required for our participation in this Inquiry.

Just last year the Attorney Generals' Department demonstrated its' ethnic insensitivity by neglecting its' responsibility to seeing that justice was done by rejecting the appeal into the murder of Graham Cromwell-Jarvis, who was also slain by a White man.

**THE BLACK UNITED FRONT** commends the Commission for its' efforts, and will provide whatever moral support is necessary in our attempt to obtain legal counsel to participate in the inquiry.

Sincerely,



Calvin Gough  
2nd Vice President

MAY 04 1987

**SMITH, GAY, EVANS & ROSS**  
BARRISTERS & SOLICITORS

BRUCE W. EVANS  
(Also of the Alberta bar)  
JEREMY GAY  
E. ANTHONY ROSS, M.Eng., P.Eng.  
W. BRIAN SMITH

604 QUEEN SQUARE  
P.O. BOX 852  
DARTMOUTH, NOVA SCOTIA  
B2Y-3Z5  
Telephone  
(902) 463-8100

May 4, 1987

File#1077-01

VIA COURIER

jb

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

.../2

M. Lois Dyer (Ms)  
Page 2  
May 4, 1987  
File #1077-01

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

M. Lois Dyer (Ms)  
Page 3  
May 4, 1987  
File #1077-01

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

M. Lois Dyer (Ms)  
Page 4  
May 4, 1987  
File #1077-01

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.

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

.../5

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

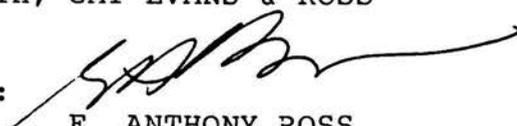
M. Lois Dyer (Ms)  
Page 7  
May 4, 1987  
File #1077-01

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

1987 5 5 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.

Royal Commission on the Donald  
Marshall, Jr., Prosecution,  
Page 2,  
May 5, 1987.

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

Royal Commission on the Donald  
Marshall, Jr., Prosecution,  
Page 3,  
May 5, 1987.

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

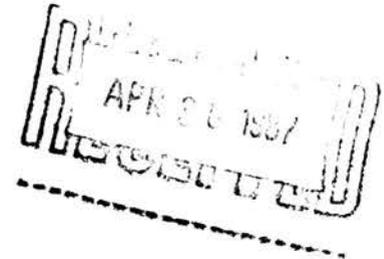
Our file:  
Notre dossier:

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

.../2

Canada

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

BRUCE H. WILDSMITH, B.Sc., L.I.B., L.I.M. (HARV.)  
BARRISTER & SOLICITOR

33 WALTON DRIVE  
HALIFAX, NOVA SCOTIA  
B3N 1X6

May 4, 1987

Chief Justice T. Alexander Hickman  
Associate Chief Justice Lawrence A. Poitras  
The Honourable

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

My Lords:

Re: The Funding of Participation  
by Union of Nova Scotia Indians

The Union of Nova Scotia Indians (UNSI) submits that the Commission as a whole, and each Commissioner individually, has an obligation not to proceed unless adequate and equitable funding arrangements are in place. Regardless of legalities over the power and jurisdiction of the Commission, the primary consideration for each Commissioner should be the integrity and credibility of the Inquiry itself. A public inquiry in which allegations of racial discrimination play a central role should not itself contribute to further discrimination by proceeding when racial minorities are denied the means of effective participation. The Commission must not be "colour blind" to the participants but rather ought, in our submission, to act affirmatively to ensure that racial minorities have proper representation. Otherwise any recommendations that the Commission may eventually make on the issue of discrimination will lack credibility in the eyes of those minorities. Thus, the question of funding should not be seen as purely a matter of law alone. Rather, the question is: for what values does this Commission stand.

With reference to the three matters specifically raised in George W. MacDonald's letter of April 14, 1987, the UNSI says:

(a) The Commission has jurisdiction to hear submissions on the question of funding. The Public Inquiries Act, R.S.N.S. 1967, c.250 is not helpful on this, but the Order-in-Council establishing the Commission does authorize an inquiry into "other related matters which the Commissioners consider relevant to the Inquiry". The parties who will participate and the terms and means of such participation seem clearly relevant.

(b) On the subject of relief, the Commission undoubtedly has the power to make recommendations concerning the issue of funding participation: this is a "related matter . . . relevant to the Inquiry". In the Sinclair Steven's Conflict of Interest Inquiry Mr. Justice Parker refused the Liberal Party of Canada's application for funding in these words (at p. 3748-49 of Transcript and p. 4 of "Ruling Regarding Funding of Parties, August 20, 1986"): ". . . the terms of reference themselves make no reference to public funding. It would, therefore, seem to be in my discretion whether or not I recommend to the government that funding be provided to the applicants." [Emphasis added] It is also our understanding that some Commissions of Inquiry have made recommendations that parties/participants/intervenors be funded. In the Inquiry by Mr. Justice Grange into the deaths at the Sick Children's Hospital in Toronto the parents of the babies that died were represented by four lawyers who were funded by the Inquiry (See Parents of Babies Gosselin v. Grange (1984), 8 Admin.L.R. 250). And Mr. Justice Berger in the Northern Pipeline Inquiry strongly endorsed participant funding and developed criteria to be applied to such funding. 11 Check

We are doubtful that the Commission has the formal power to order the government to provide funding. The capacity to make such an order appears inconsistent with the legal character of the Commission as part of the executive branch of government created by and subject to the direction of the Governor-in-Council. As Russell J. Anthony and Alastair R. Lucas point out in A Handbook on the Conduct of Public Inquiries in Canada (Toronto: Butterworths, 1985), at p. 3: "It is clear that inquiries are not courts; nor are they a branch of the judiciary . . . . Rather, they carry out executive or administrative functions . . . ." It is the government's money, after all.

However, these considerations ultimately miss the mark. The Commission, and each Commissioner, has the power, indeed the responsibility, in our submission, to comment, to recommend, to refuse to proceed and finally to resign if the inquiry cannot be conducted to appropriate standards of propriety. We believe that Mr. Justice Berger took such a stand on the Northern Pipeline Inquiry and refused to proceed without funding for, inter alia, native intervenors. [

(c) The UNSI needs funding to participate because it is a non-profit society incorporated under the Societies Act (N.S.) without a source of funding independent of government. The UNSI provides the corporate structure through which the Chiefs of all the Micmac Bands in Nova Scotia (13), elected under the Indian Act (Can.), collectively act.

The UNSI survives as a result of operating funds provided by the Department of the Secretary of State (Canada) through its Native Representative Organizations Funding Program. Salaries, office expenses, travel, annual and board meetings and general operational expenses are covered by this grant. There is some flexibility to the allocation of these funds to special projects, but nothing approaching the magnitude needed to participate in this Inquiry. Indeed, due to cash problems the UNSI laid off most of its staff for 3 1/2 weeks in March and is still experiencing cash flow problems. All of the other funds received by the UNSI are designated for identified programs and cannot be spent to participate in this Inquiry.

As to the extent of funding required, why should it be any different than that provided to other parties? The UNSI has an interest in any evidence of racial prejudice against Indians that may have been present in the events surrounding Donald Marshall, in any defects in the administration of justice which permitted it and in how the system may be changed to avoid discrimination in the future. Consideration of these matters will require relatively full participation in the Inquiry.

Several particular financial questions need resolution by the Commission:

1. Will transcripts of the evidence be provided by the Commission to each party without cost to the party? If not, this will be expensive and could be a considerable barrier to participation.
2. We feel that the Commission should Inquire into systemic discrimination in the administration of justice. This may require, for example, the examination by experts of the statistics kept by the government on the justice system, expert evidence on other studies done in other jurisdictions on this issue and on what information should be kept on these issues if such are not presently adequate. Will the Commission pay for these studies and these experts? Will the Commission take the responsibility and incur most of the expense of ferreting out such evidence?
3. The extent of travelling and therefore the need for accommodation away from home for counsel is unclear. There was some suggestion that some witnesses may be examined outside of Nova Scotia.

Having said all this, the UNSI is prepared to live within reasonable limits on the extent of government financing, provided others are under the same limitations. However, our impression is that the Province has written a blank cheque to the outside counsel retained to represent the Attorneys-General (past and present) and their people, and has done the same for Donald Marshall's counsel. While we do not expect to expend as much as these parties, on what basis can limitations on the UNSI different than that on others be justified?

The UNSI wishes as well to emphasize that its concern on the issue of funding is on behalf of all Indians in the Province of Nova Scotia. ~~All~~ *How* Indians and not ~~just Donald Marshall, Jr.~~ are affected by the administration of justice. The Board of the UNSI recognized this on April 22 and 23 when the Chiefs resolved that the UNSI continue in its efforts to participate in this Inquiry.

All of which is respectfully submitted,

Yours faithfully,



Bruce H. Wildsmith  
Counsel, Union of Nova Scotia

Indians

BHW/hmp

MAR 09 1987

March 9, 1987

BY HAND

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

Dear Commissioners:

RE: Proposed Intervention

The Union of Nova Scotia Indians hereby applies for standing before the Commission.

The Union of Nova Scotia Indians is an incorporated society founded in 1969. The mandate of the Union is the protection and preservation of the interests and rights of all Indian people in the Province of Nova Scotia.

The Board of Directors of the Union is comprised of the Chiefs of all Bands in the Province.

The Executive is elected by a ballot of all registered Indians in the Province.

The Union submits, that, the circumstances prior to the murder of Sandy Seale, the investigation of this murder, the prosecution of Donald Marshall, Jr., (including certain alleged irregularities in this process), the deliberations and conviction of Donald Marshall, Jr., and the suppression of fresh evidence *may be* consistent with an historic pattern of racial discrimination, past and present, in the administration of justice in Nova Scotia.

The Union requests standing to address this issue.

Condemnation of past practices and recommendations concerning the future administration of justice are of vital importance to the Union.

The Union wishes to be in a position to appoint counsel, to attend the Inquiry as is necessary, to cross-examine witnesses where appropriate, to adduce evidence from approximately five, or fewer, witnesses and the right to make a final submission.

The extent of the Union's participation, if granted

...../2

(R)

standing, will depend on its ability to secure special funding. The views and recommendations of the Commission in this regard would be appreciated.

UNION OF NOVA SCOTIA INDIANS

*Bruce H. Wildsmith*  
Bruce H. Wildsmith

Per:

ALEXANDER CHRISTMAS  
President

P.S. The Union wishes to emphasize that its prime concern on behalf of all Indians in Nova Scotia is over any evidence of racism in the events surrounding Donald Marshall, Jr. and on how Indians may be more fairly and equally treated in the administration of justice in N.S. in the future.

The Commission may until further notice communicate with the Union through Bruce H. Wildsmith, Barrister & Solicitor, 33 Walton Dr., Halifax, B3N 1X6 (477-2182) or at Dalhousie Law School (424-5100).