

RULES OF PRACTICE AND PROCEDURE

ROYAL COMMISSION ON THE DONALD
MARSHALL, JR., PROSECUTION

SHORT TITLE

1. These Rules may be cited as the Donald Marshall Inquiry Rules.

APPLICATION

2. These Rules apply to the Commission established under the Public Inquiries Act, R.S.N.S. 1967, c. 250., pursuant to Minute of Council dated the 28th day of October, 1986.

INTERPRETATION

3. In these Rules:

"Act" means the Public Inquiries Act, R.S.N.S. 1967, c. 250.

"Chairman" means the person appointed by the Governor in Council to be chairman of the Commission.

"Commission Counsel" means counsel appointed by the Commissioners to assist them in their inquiry.

"Commissioner" means a person appointed by the Governor in Council to conduct the inquiry.

"Commission" means the Donald Marshall Inquiry established pursuant to Minute of Council and the Governor in Council's commission dated the 28th day of October, 1986.

"Governor in Council" means the Governor in Council of Nova Scotia.

NOTICE OF INQUIRY

4. (1) Notice of the Inquiry shall be served upon any person, corporation, Minister of the Crown or Crown agency who, in the Commission's opinion, may have an interest in the Inquiry.

(2) In addition to, or in lieu of the Notice of Inquiry provided for in subsection (1) of this section 4, Notice of the Inquiry may be given by publication of the same in the Nova Scotia Gazette and in such Nova Scotia and other Canadian newspapers or other publications as in the opinion of the Commission would be appropriate.

(3) Notice of Inquiry shall set out the time and place appointed for the Inquiry.

RIGHT TO BE HEARD

5. (1) The following persons or their counsel shall have the right to be heard and to examine witnesses heard at public hearings of the Commission:
- (a) Commission Counsel;
 - (b) Any person who in the Commission's opinion ought to be given such right and then upon such terms as the Chairman may direct.
- (2) Any person wishing to be heard shall apply in writing to the Commission, within any time limits established by the Commission, for the right to be heard and to examine witnesses heard at public hearings of the Commission, and shall state specifically his interest and the extent of standing desired. Provided that the Commission is satisfied that standing is necessary for the protection of such interest, the Chairman may grant standing upon such terms as the Chairman may direct.
- (3) At the conclusion of the public hearings of the Commission any person, group or association who has been granted standing in any capacity will have the right at that time to make submissions to the Commission in writing, and, if the Chairman deems it necessary or expedient so to do, to make oral submissions following the filing of such written submissions. Any other person, group or association may, upon written application giving reasons for the request, be permitted to make a submission in writing to the Commission at the conclusion of the public hearings.
- (4) The Commission may in its discretion hold hearings in camera and the Chairman shall decide in the circumstances of that particular case who shall be permitted to attend, which counsel shall be permitted to attend and what conditions may be imposed upon any persons or counsel permitted to attend.
- (5) Persons having been granted standing may apply to Commission Counsel to call any witness or witnesses and such witness may be called by Commission Counsel. Any witness so called may in the discretion of Commission Counsel be examined first by Commission Counsel and then, subject to the provisions of subsection (5) of section 7 of these Rules, by other persons having the right to be heard and to examine witnesses at public hearings of the Commission in the order designated by the Chairman.

COMMISSION COUNSEL

6. (1) Commission Counsel shall assist the Commission in the orderly conduct of the Inquiry and ensure that all relevant

evidence is submitted to the Commission.

(2) At any public hearing any member of the public may request Commission Counsel, in writing, to ask a particular question of a witness and Commission Counsel may, in his discretion, ask such question.

INQUIRY PROCEDURE

7. (1) Prior to the commencement of public hearings for the purpose of hearing witnesses, the Commission may hold procedural hearings for the purpose of determining what persons shall have the right to be heard and for the purpose of having Commission Counsel tender documentary or other evidence which Commission Counsel determines should be tendered in advance of the public hearings for the convenience of the Commission or persons entitled to be heard.

(2) The Notice of Inquiry shall be read at the first public hearing of the Inquiry.

(3) Commission Counsel shall proceed first with the examination of witnesses.

(4) Commission Counsel may examine, cross-examine or re-examine all witnesses.

(5) Other persons having been granted standing may, in such order as the Chairman directs and subject to such terms as may have been imposed upon such right by the Chairman under the provisions of subsections (1)(b) or (2) of section 5 of these Rules, cross-examine witnesses called by Commission Counsel.

PRESENCE OF INTERESTED PERSONS

8. At the time and place appointed for holding the Inquiry the Commission may proceed with the Inquiry whether or not persons granted standing or their counsel are present.

ATTENDANCE OF WITNESSES

9. Where the Commission requires the attendance of any witness, either of its own motion or as a result of any application, the Notice to be served on the witness shall be in the form set out in Schedule 1.

PRODUCTION OF DOCUMENTS

10. (1) Where the Commission requires the production of any document by any person either of its motion or as a result of an application, notice to be served on that person shall be in the form set out in Schedule 2.

(2) Other persons granted standing may apply to Commission Counsel to require the production of any document and Commission Counsel may in his discretion require the production of such document.

SERVICE OF DOCUMENTS

11. Any notice, summons or other document issued under these Rules may be served personally at the address of the person to be served, by certified post, or by such other method of service as the Chairman may direct.

EVIDENCE

12. (1) The Commission may admit as evidence Affidavits, Statutory Declarations, Rogatory Commissions and other evidence made or taken under the laws of Canada or any other country that may be applicable in any case in which the Commission considers it fit and proper to have such evidence presented, and whether such evidence is sworn or unsworn. The Commission may also in its discretion and as the Chairman may direct admit transcripts of related proceedings, statements of individuals, whether or not such individuals are available for examination and cross-examination.

(2) Without restricting the generality of subsection (1), the Commission may admit such written, oral or other evidence as the Commission may in its discretion deem relevant, whether or not the admission of such evidence is in accordance with the normal rules of evidence.

(3) Questions asked and documents and exhibits tendered as evidence in the course of the examination of witnesses called on behalf of the Commission shall not be open to objection merely on the ground that they do or may raise questions or issues that are not contained in or vary from the Terms of Reference contained in the Minute of Council.

(4) Where documentary evidence or a witness is outside the jurisdiction of Nova Scotia or is otherwise not available for Commission hearings, the Chairman or such person or persons as he may designate may be authorized to obtain such evidence in such manner as the Chairman may direct.

(5) Where possible the evidence of witness shall be taken under oath or solemn affirmation and witnesses shall be sworn or affirmed in the manner provided by the high courts having jurisdiction over the place where the evidence is taken.

(6) All evidence taken in any manner provided for by these Rules shall form a part of the record of the proceedings of the Commission.

SUBMISSIONS BY COUNSEL

13. (1) When all evidence has been adduced before the Inquiry, Commission Counsel and other persons granted standing shall have the right to address the Commission viva voce in such order as the Chairman directs and Commission Counsel shall have the right to address the Commission first and to make the final submission to the Commission.
- (2) The Chairman may direct that written submissions be made by counsel and other persons entitled to be heard in lieu of or in addition to their oral submissions.

THE CHAIRMAN

14. (1) The Chairman shall rule on any objections raised, determine all matters of procedure not provided for by these Rules and, when in his discretion it is necessary or desirable for the purpose of fully discharging the duties of the Commission, may allow departures from these Rules.
- (2) The Chairman shall determine the admissibility of any evidence tendered at such time as he deems fit.
- (3) The Chairman or any person designated by him may, in such a manner as the Chairman directs, take evidence in camera and in the absence of Commission Counsel or persons having the right to be heard and to examine witnesses at public hearings.
- (4) The Chairman or any Commissioner or person designated by the Chairman to take evidence may take such evidence within or without Nova Scotia.
- (5) Where by these Rules reference is made to a decision of the Commission, such decision of the Commission shall be enunciated by the Chairman.

QUORUM

15. A quorum for public hearings of the Commission shall be not less than two Commissioners.

ADJOURNMENTS

16. The Commission may adjourn its inquiry from time to time and from place to place.

AMENDMENTS

17. These Rules may be amended from time to time by the Commission as it sees fit.

AMENDMENT TO RULES OF PRACTICE AND PROCEDURE

1. Amend Rule 5 (5) to read as follows:

(5) Persons having been granted standing may apply to Commission Counsel to call any witness or witnesses and such witness may be called by Commission Counsel. Any witness so called may in the discretion of Commission Counsel be examined first by Commission Counsel and then, subject to the provisions of subsection (5) of section 7 of these Rules, by other persons having the right to be heard and to examine witnesses at public hearings of the Commission in the order designated by the Chairman. In the event Commission Counsel elect not to call any such witness, the party requesting that such witness be called may apply to the Commission for directions.

2. Delete Rule 12 (3).

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- (3) At the conclusion of the public hearings of the Commission any person, group or association who has been granted standing in any capacity will have the right at that time to make submissions to the Commission in writing, and, if the Chairman deems it necessary or expedient so to do, to make oral submissions following the filing of such written submissions. Any other person, group or association may, upon written application giving reasons for the request, be permitted to make a submission in writing to the Commission at the conclusion of the public hearings.
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