

IN THE MATTER OF:

The Public Inquiries Act,
R.S.N.S., 1967, Chapter 250

- and -

IN THE MATTER OF:

The Royal Commission on the
Donald Marshall, Jr.,
Prosecution

SUBMISSION ON BEHALF OF ROLAND THORNHILL

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TO: The Commission
Commission Counsel
Counsel for the various parties

The mandate of this Commission is to investigate the administration of criminal justice in the Province of Nova Scotia using, as a focus, the Donald Marshall, Jr. case. For purposes of comparison the Commission has also heard evidence as to how the Attorney General's department handled several other files, including that of Mr. Roland Thornhill.

It is not, however, within the mandate nor, we presume, the intention of this Commission to make any findings or express any comments on the issue as to whether Mr. Thornhill was guilty of any criminal offence. Indeed there was nothing before this Commission that would justify making any suggestion, or leaving any impression that an actual determination of guilt was or should be made.

Nevertheless because of the political career and high profile of Mr. Thornhill any evidence concerning him attracts media and public attention. In dealing with the evidence tendered, the submissions made and the ultimate decision of this Commission it is important, and only fair, to ensure that there is no misunderstanding nor any improper or incorrect impression created. It is to that purpose that the following submissions are made.

In reviewing how the Attorney General's department handled the Thornhill file, Commission Counsel submitted that the Deputy Attorney General improperly:

(a) took the case out of the R.C.M.P. hands and pre-empted their decision on whether to lay a charge by his press release of October 29th, 1980;

(b) that he interfered with their investigation by refusing to permit them access to a crown prosecutor during the police investigation; and,

(c) influenced their decision by opposing the laying of charges.

It is for this Commission to compare the actions of the Attorney General's department in relation to the Thornhill file and the Donald Marshall case. The impression that may be left however, is that not only did the Department act differently in relation to Mr. Thornhill but that somehow Mr. Thornhill is implicated in those actions. That impression is wrong and is to be dispelled.

1. At no time and to no extent was Mr. Thornhill involved with the Department's decisions on how to handle the file. There were no communications between Mr. Thornhill, or anyone on his behalf, with anyone in the R.C.M.P. or in the Attorney General's department. That is clearly established in the evidence of Mr. Feagan, Mr. Quintal and Mr. Coles.

Q. Mr. Feagan, you've described a series of meetings and discussions that were taking place between the R.C.M.P. and the Attorney General's Department. At no time was Mr. Thornhill ever involved in those discussions, was he?

A. He was never involved.

Q. If I were to put to you that he was having to sit back and read about this in the media, just like the rest of us, there's nothing you know of that could dispute anything like that.

A. That's right.
(evidence of Mr. Feagan - page 14695).
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Q. My last point, Mr. Quintal. The whole purpose of this Inquiry is to determine if the normal procedures in the R.C.M.P. were not followed and if for some improper reason. Let me ask you the question point blank. Did anybody put political pressure on you to arrive at the decision that you arrived at?

A. No.

Q. Mr. Thornhill certainly never communicated with you, did he?

A. I don't know him.

Q. And you have no evidence to indicate that Mr. Thornhill was engaged in any of these discussions with the A.G. or the Crown prosecutors or the R.C.M.P.

A. No.

Q. And I'll put my question to you that I put to Mr. Feagan yesterday. Based on all the evidence you have, he had to sit home and read about it in the paper just like I did.

A. Yes.
(evidence of Mr. Quintal - page 14870)
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Q. Yes. And in any event, you concurred in the decision. Now let me ask you the key question here. IN arriving at your concurrence in the decision, at least, did anybody put any political pressure on you?

A. None whatsoever.

Q. And certainly Mr. Thornhill was not involved in any of this, was he.

A. No, he was not. To my knowledge.
(evidence of Mr. Herschorn, page 14980)

Q. All right. And to sum it all up, one of the things that I've asked the last couple of witnesses, in arriving at your conclusions or your decision, did anybody put any pressure on you?

A. No, none whatsoever.

Q. Did you receive any phone calls from Mr. Thornhill?

A. Never spoke to him before, during or after.
(evidence of Mr. Coles, page 15093)

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2. The evidence is that notwithstanding the position adopted by the Attorney General's department the ultimate decision by the R.C.M.P. not to lay charges was made by the R.C.M.P. on the basis of a number of other legitimate considerations. The final decision not to lay charges was made by senior officials of the R.C.M.P. after careful review and consideration. (see evidence of Mr. Quintal at p 14775). Both the R.C.M.P. and the Attorney General's department witnesses testified that even if an investigating officer believes evidence merits the laying of a charge there is still the exercise of discretion, on the part of police and prosecutors, as to whether the public good is to be advanced by the initiation of criminal proceedings. See the evidence of Mr. Quintal at p. 14785 and 14865-14866;

Q. Now I'm going on to say why we're not going to lay a charge here. You express the view that sometimes even though there are reasonable and probable grounds, police officers have to exercise discretion.

A. Yes.

Q. Isn't that what you're saying?

A. Yes.

(transcript p. 14785)

Q. All right. Let me move on to my next point. At page 94 of the document book, in the middle paragraph, you set out a reference to the eminent British jurist, Sir Hartley Shawcross, and you state his proposition as follows:

"It has never been the rule that suspected offences must automatically be the subject of prosecution and that the public interest is the dominant consideration."

I take it you adhere to that proposition, do you?

A. Yes.

Q. I take it what you mean by that is that even if a police officer thinks that there may be reasonable and probable grounds to lay a charge, that doesn't automatically determine that a charge must be laid, that there is still a discretion.

A. Yes.

(transcript pages 14865-14866).

Each of the witnesses who were involved in the decision not to lay charges testified that they did so based on what they understood to be the proper exercise of discretion. In exercising their discretion the witnesses testified that there were other factors, apart from the position adopted by the Attorney General's department, which they considered and which they felt were legitimate and proper factors to support the decision not to lay charges. For example see the evidence of Mr. Feagan at p. 14688:

Q. ...Would cost to the community in a prosecution be a feature of a police officer's exercise in discretion?

A. I would say you would consider that, yes, along with a lot of other things.

Q. Would impact or effect upon an accused person

A. ~~of having a charge laid in force...~~
Oh, certainly.

Q. Be a consideration?

A. Yes.

Q. Would potential defences that may be raised by defence counsel be a consideration?

A. Yes.

Q. Would likelihood of conviction be a proper feature for a police officer to consider before swearing in information?

A. Yes.

(evidence of Mr. Feagan, pages 14688)

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The evidence of Mr. Quintal is particularly detailed on this point. It is also significant because he ultimately made the decision that charges should not be laid.

Q. How do your obligations go beyond that? If you establish that there is reasonable and probable grounds to lay the charge and to support a conviction, your obligations go beyond that. In what way?

A. Well that's my point. At the time is I wasn't sure that the evidence supported a conviction.

Q. Are you suggesting that what you've listed on page 95 would be a defence to a charge under subsection (c) of Section 110?

A. Yes.

(transcript p. 14787)

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Q. ...On your review of the file, did you see any evidence that anybody had pressured the banks to make the settlement which they, in fact, did?

A. No.

Q. In fact, there's no evidence that Mr. Thornhill, or anybody else, did anything other than make a proposal.

A. Through his accountant, yes.

(evidence by Mr. Quintal - page 14862-14863)

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Q. Let me put it to you this way. In your position, were you satisfied that the proposal that Mr. Thornhill had made to the banks through his chartered accountant could be characterized as a "normal business proposition"?

COMMISSIONER EVANS

You mean in the circumstances then existing?

MR. MERRICK

Q. Yes.

A. Yeah, uh-huh.
(evidence by Mr. Quintal - page 14862)
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Q. So that here the head of government knew. It's just that somebody didn't get a piece of paper. Is that what you were considering when you took, when you wrote your letter?

A. That's what we refer there in saying that the Premier could have been called to repeat that statement as a defence witness.
(evidence of Mr. Quintal - Page 14867-14868)
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A. ...These were all factors that would...

Q. Go to what?

A. Influence whether he would be convicted or not.

Q. Whether he'd be convicted or not.

A. Yes.
(evidence by Mr. Quintal - page 14789).
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Q. All right. I'll come down to my last question. You've told us that notwithstanding the Attorney General's position in relation to this matter, you made your decision not to proceed because "you didn't think there was a strong enough case to lead to a conviction." And that's really what it was, was not it, Mr. Quintal?

A. Yes.

Q. You didn't believe the evidence was there.

A. That's right. That I think is the tenure of my memo of the 17th.

Q. And that's consistent with your 32 years of experience as a police officer and that's consistent with your oath of office.

A. Yes, sir.

(evidence by Mr. Quintal - Page 14870)

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Q. ...You would agree with me that on the basis of the file that you saw there was nothing about the September proposal made that indicated a guilty mind on the part of either the banks or Mr. Thornhill.

A. I would agree with that.

Q. Thank you. Indeed, Mr. Quintal told me yesterday that knowing what he knew of the business proposal he characterized it as a "normal business proposition." And I put it to you Mr. Herschorn, that on the basis of your file review you saw nothing that would cause you to challenge that description of the proposal.

A. No, I would not.

(evidence of Mr. Herschorn, page 14978-14979)

Q. Mr. Quintal told me yesterday that based on his 32 years' of experience as a police officer that he made his decision notwithstanding the Attorney General's position because he "didn't think there was a strong enough case to lead to a conviction." And I take it that that's what you're also saying as to why you concurred in the decision.

A. That is the, my bottom line.
(evidence of Mr. Herschorn, page 14980)

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Q. And would you agree with me, and agree with the previous two witnesses, that the fundamental decision that was made here was simply and purely because "you didn't think there was a strong enough case to lead to a conviction"?

A. That is correct.

Q. Thank you.
(evidence of Mr. Coles, page 15094)

3. The evidence before this Commission indicates that Mr. Thornhill has been neither "benefitted" nor "protected" by the method by which his file was handled by the department. In 1980 the settlement between Mr. Thornhill and his Banks was made public together with confirmation that the R.C.M.P. were investigating. There was considerable media attention which would raise, in the minds of some, the implication that Mr. Thornhill had committed a criminal act. To that extent he was, in the public mind, convicted without trial. Had charges been laid Mr. Thornhill would have had the advantage of being able to defend his actions in a Court of law. An acquittal would have vindicated him. Even a conviction, had such occurred, would have ended the matter once and for all.

Rather, for the last eight years Mr. Thornhill has, as a public figure in political life, laboured under the cloud of suspicion created by the R.C.M.P.

investigation. Ultimately Mr. Thornhill felt compelled to resign his cabinet portfolio;

"This was a very personal, difficult and agonizing decision for me. As I have spent 27 years in elective office, 10 of those as a Minister in this Government, which makes me the longest serving Minister of Economic Development in the history of this province. It has saddened me to witness the erosion of public trust in a profession which has brought me a great deal of satisfaction." (Assembly debates April 12, 1988, page 1684).

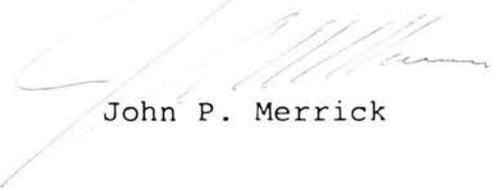
It is for this Commission to determine whether Mr. Donald Marshall, Jr. received justice at the hands of the judicial system in Nova Scotia. In doing so you will also consider whether the Attorney General's department proceeded appropriately in the handling of the Thornhill file. To the extent to which you may find that the Thornhill file should have been handled differently we would ask that you also note that Mr. Thornhill had no involvement in the decision as to the handling of the file. Further, that rather than protecting or benefitting Mr. Thornhill, such actions made him the subject of considerable and continuing public speculation and have caused him personal distress. He has been subjected to trial by publicity as apposed to public trial. There are many victims when due process is not followed.

Mr. Thornhill wishes to thank Your Lordships as well as Commission Counsel and Commission staff for their co-operation and indulgence in permitted us to be heard.

All of which is respectively submitted.

Yours truly,

**MacINNES WILSON
FLINN WICKWIRE**



John P. Merrick

JPM/ers