

**ROYAL COMMISSION C. THE DONALD MARSHALL, JR., PROSECUTION**

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

**BY COURIER**

October 13, 1987

PERSONAL AND CONFIDENTIAL

Professor Clayton Hutchins  
54 Nightingale Drive  
Halifax, Nova Scotia B3M 1V4

Dear Professor Hutchins:

George MacDonald suggested that I contact you in connection with a research study which we are considering in connection with police organization and training in Nova Scotia.

I have attempted, without success, to reach you through the Law School. I would very much appreciate it if you could arrange to meet with me this week. Perhaps, upon receipt of this letter, you would be good enough to telephone me so that we can make mutually convenient arrangements.

Thank you for your co-operation.

Yours very truly,



John E. S. Briggs,  
Director of Research

JESB/ljb

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BY COURIER

October 13, 1987

PERSONAL & CONFIDENTIAL

Mr. Russell Juriansz  
Blake, Cassels & Graydon  
Barristers & Solicitors  
Commerce Court West  
26th Floor  
S.E. Corner of King & Bay  
Toronto, Ontario M5L 1A9

Dear Russell:

Further to my letter of October 8th, 1987, I now enclose a revised research outline "Discrimination Against Blacks in Nova Scotia in the Criminal Justice System". You might simply throw out the earlier rough draft which I forwarded to you.

The excerpts from the Hearing transcripts were prepared in haste. Consequently, our trusty librarian did not have a chance to edit same for purposes of continuity. I can only hope, therefore, that the material which we have sent gives you a good picture of the manner and extent to which the issue of discrimination/racism has arisen in the public hearings to date.

I have spoken with both Dr. Wilson Head and Scott Clark with respect to their participation in the in-house seminar of October 20th. They are both enthusiastic and agreeable. The object of the exercise is, I believe, essentially educational, but in a two-fold sense. Firstly, to raise the level of awareness of, and sensitize the participants to, the multiplicity and complexity of considerations which come into play when attempting to define and establish the existence of both intentional and systemic or institutional discrimination. Secondly, the purpose will be to advise Commission counsel as to ways in which they might best examine/cross-examine witnesses whose testimony provides evidence of, or is suggestive of, discriminatory/racist behaviour or attitudes on the part of themselves or others. In addition, there is the question of what techniques counsel might employ to flush out discriminatory or

Mr. Russel Juriansz

October 13, 1987

racist attitudes on the part of a witness when there is no evidence which illuminates that question.

For example, you will recall from your involvement with the Pitman "Task Force on Human Relations" that Dr. Frances Henry of York University "constructed a 'general measure' of racism and used a questionnaire which contained a total of 57 attitudinal items pertaining to racial prejudice. Its results indicated approximately fifteen percent of the population could be said to have very racist views, and a further thirty-five percent to be somewhat racist". Is there any forensic equivalent to Dr. Henry's study which could be employed in the form of a public inquiry?

I suggest that we confer by telephone regarding the order of parade and structure for the seminar and any other questions or concerns you may have.

Thank you for your co-operation.

Yours truly,

A handwritten signature in black ink, appearing to be "JESB", written over a horizontal line.

John E.S. Briggs  
Director of Research

JESB/jm  
Encl.

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COMMISSIONER

October 13, 1987

Ms. Andre MacLean,  
Telemarketing Representative  
Maritime Tel & Tel  
Maritime Center  
P. O. Box 880  
Halifax, Nova Scotia B3J 2W3

Dear Andre:

I want to finalize with you the arrangements for our teleconference on November 2nd. We will hear the evidence from Vancouver from 12:00 until 2:30 p.m. our time. I understand that a one hour break will be necessary at the end of the Vancouver session to make the link up to Boston. The Boston evidence will then be heard from 3:30 p.m to 6:30 p.m our time. I assume that, if for some reason the Vancouver evidence finishes up early, then we might be able to start the Boston portion earlier as well.

I will be in contact with you closer to November 2nd to let you know the seating arrangements that we will require for the teleconferencing room and also for the larger room.

I will also contact the CBC and put them in touch with you so that the appropriate arrangements can be made for filming the teleconference.

Please let me know if you have any comments on this or if any changes might be necessary.

Yours very truly,

Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb



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COMMISSIONER

**BY COURIER**

October 13, 1987

Mr. Donald C. Murray  
Stewart MacKeen & Covert  
Barristers and Solicitors  
Purdy's Wharf Tower One  
1959 Upper Water Street  
Halifax, Nova Scotia B3J 2X2

Dear Mr. Murray:

As you requested, enclosed please find copy of our  
interview with William Urquhart.

Yours very truly,



Susan M. Ashley,  
Commission Executive  
Secretary

GWMacD/ljb

Enclosure

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

October 13, 1987

Mr. Robert Murrant  
Boyne Clarke  
Barristers & Solicitors  
33 Alderney Drive  
Belmont House, Suite 700  
P.O. Box 876  
Dartmouth, N.S. B2Y 3Z5

Dear Bob:

RE: CBC Documents

During the course of the Inquiry Hearings, it has come to my attention that the solicitors for Donald Marshall, Jr. are in possession of various interviews conducted by people in your office, presumably in connection with the MacIntyre defamation suit against the CBC.

At the time that we requested material from the CBC, you indicated that the CBC was not prepared to hand over to the Inquiry documents which it considered to be privileged, which would presumably include notes of interviews conducted by lawyers in your office. Since the CBC has apparently provided this material to other counsel, I am astonished that it was not provided to the Commission, and I would appreciate it if you would now turn over to the Commission copies of all material that have been provided to solicitors for any of the parties to the Inquiry.

Yours very truly,

W. Wylie Spicer  
Commission Counsel

WWS/ljb

October 9, 1987

Professor Bruce H. Wildsmith  
Faculty of Law  
Dalhousie University  
Halifax, Nova Scotia  
B3H 4H9

Dear Bruce:

If your schedule permits it and if we can arrange it, I would like to spend the 21st and 22nd of October with the Indian witnesses who we know we are going to call at the present time in the next few weeks, i.e. Artie Paul, Roy Gould, Bernie Francis and Tom Christmas.

I will be in Toronto for much of next week, but if the suggestion looks okay to you, perhaps you could call the Commission and let one of the secretaries there know that the suggestion is okay.

Yours very truly,

W. Wylie Spicer  
Commission Counsel

WWS/mm

October 9, 1987

Dr. J. P. K. Binnie  
4849 2A Avenue  
Delta, British Columbia  
V4M 3N4

Dear Dr. Binnie:

Re: John Pratico

I refer to our telephone conversation of today's date.

Although I understand from our conversation that you have no recollection of John Pratico, I thought it might be useful if I sent you along a copy of the Cape Breton Hospital and Nova Scotia Hospital records concerning John Pratico to see whether or not this might refresh your memory at all. Although I recognize that this is an imposition on your time, I would appreciate it if you could take a few minutes to review the records and give me a call collect at the Commission offices in Halifax. I am taking this extra step of sending the records along to you by reason of the fact that our records would indicate that you treated John Pratico in 1971, at the time when the Sandy Seale murder took place. As I mentioned to you, Mr. Pratico gave testimony at Donald Marshall's Trial to the effect that he saw Donald Marshall stab Sandy Seale. This was completely untrue.

I am also sending along to you a copy of the transcript of the testimony given by Dr. Mian at the hearings of the Commission in Sydney last week. If you are able to take the time to read through Dr. Mian's testimony and to give me your comments on it, it would be greatly appreciated.

Thank you very much for any assistance you may be able to provide to us.

Yours very truly,

W. Wylie Spicer  
Commission Counsel

October 9, 1987

Dr. P. K. John  
Christian Medical College  
Vellore, India 63002

Dear Dr. John:

Re: John Pratico

I am one of the lawyers hired by the Royal Commission on the Donald Marshall, Jr., Prosecution. I am writing to inquire whether or not you would have been the Dr. John who treated John Pratico at the Nova Scotia Hospital in Dartmouth, Nova Scotia, in 1971. John Pratico gave testimony at the murder Trial of Donald Marshall, Jr., to the effect that he saw Donald Marshall, Jr., stab Sandy Seale. This testimony was completely untrue. At the time that Mr. Pratico gave this testimony, he had already been undergoing treatment both at the Cape Breton Hospital and at the Nova Scotia Hospital. Mr. Pratico's mental capabilities have become an issue at the Hearings of the Royal Commission.

Any recollections which you may have of treating John Pratico would be of assistance to us. To assist you in refreshing your memory, I am sending along a copy of John Pratico's medical records from the Nova Scotia Hospital. I would greatly appreciate it if you could review these and then give me a telephone call collect at the Royal Commission's offices in Halifax so that we might discuss them.

Your assistance would be greatly appreciated.

Yours very truly,

W. Wylie Spicer  
Commission Counsel

/mm

Enclosure

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

BY COURIER

October 8, 1987

PERSONAL & CONFIDENTIAL

Mr. Russell Juriansz  
Blake, Cassels & Graydon  
Barristers & Solicitors  
Commerce Court West  
26th Floor  
S.E. Corner of King & Bay  
Toronto, Ontario M5L 1A9

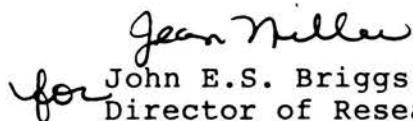
Dear Russell,

Enclosed please find copies of the following pages relating to discrimination from the Hearing transcripts:

Vol. II: 297/355-358  
III: 406/417  
IV: 603-604/701-705  
VI: 991-992/1001/1091-1100/1106-1125  
VII: 1131/1231-1256  
VIII: 1334/1340-1343  
IX: 1447/1457-1470/1545-1546/1606-1611  
X: 1791-1792/1817/1850  
XI: 1868-1870/1905-1909  
XII: 2125/2187/2236-2243  
XIII: 2296-2297/2363

Also enclosed are copies of research outlines on Blacks and Natives.

Yours truly,

  
for John E.S. Briggs  
Director of Research

JESB/jm  
Encl.

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BY COURIER

PERSONAL AND CONFIDENTIAL

October 8, 1987

H. Archibald Kaiser  
Associate Professor of Law  
Dalhousie Law School  
Halifax, Nova Scotia B3H 4H9

Dear Archie:

Re: Federal/Provincial Task Force Report on Compensation of  
Wrongfully Convicted and Imprisoned Persons

Please find attached a copy of the above-noted report which I obtained through the good offices of Marlys Edwardh.

I look forward to having your comments when you've had an opportunity to review the report. In addition, when we last spoke, you were good enough to volunteer to provide us with an outline of your current research project on compensation.

Thank you for your co-operation.

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc  
encl.



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THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

By Courier

October 7, 1987

PERSONAL & CONFIDENTIAL

Prof. Bruce Archibald  
Dalhousie University Law School  
1381 Henry Street  
Halifax, N.S. B3H 4H9

Dear Bruce:

Re: Research Project - The Local Crown Prosecutors and the  
Department of the Attorney General

Further to a letter of October 2, 1987 from John Briggs,  
please find enclosed an amended version of Paragraph 7, Page 5 of  
your contract with the Commission. Please initial both copies of  
Page 5 of the revised contract, substitute the new page for the  
old and return to the attention of John Briggs an initialed copy  
of the amended Page 5.

Thank you.

Yours truly,



for John E.S. Briggs  
Director of Research

JESB/jm  
Encl.

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COMMISSIONER

BY COURIER

October 7, 1987

PERSONAL & CONFIDENTIAL

Mr. Russell Juriansz  
Blake, Cassels & Graydon  
Barristers & Solicitors  
Commerce Court West  
26th Floor  
S.E. Corner of King & Bay  
Toronto, Ontario M5L 1A9

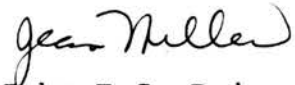
Dear Russell,

Further to our telephone conversation of this morning, I enclose copies of the following:

1. Royal Commission Terms of Reference
2. Opening Statement of May 7, 1987
3. Decision re Funding
4. Summaries of Evidence given at the Public Hearings in Sydney from Sept. 9/87 - Sept. 24/87
5. K. Edward Renner, "The Standard of Social Justice"
6. Part of covering letter - Renner to Briggs - accompanying above-noted article.

I have advised Commission Counsel that you will be available to come to Halifax for October 20, 1987. We will arrange transportation and accommodation.

Yours truly,

  
for John E.S. Briggs  
Director of Research

JESB/jm  
Encl.

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COMMISSIONER

October 6, 1987

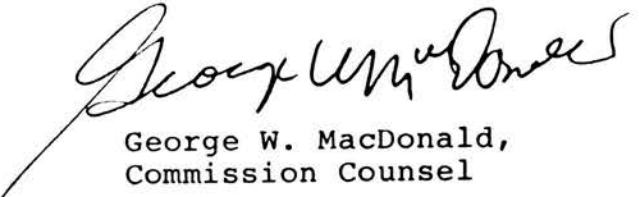
Mr. Jamie W. S. Saunders  
c/o Holiday Inn  
King's Road  
Sydney, Nova Scotia

Dear Jamie:

I refer to our conversation of October 5th concerning the release to the Commission of the documents we have requested and which are contained in the Thornhill and MacLean files. I advised that we are prepared to accept those documents on a confidential basis and would not put them into the public domain without having given you at least three weeks advance notice of our intention to do so. I understand three weeks would be sufficient time for you to receive instructions and make an Application to the Commission or to Court if that course of action is considered advisable.

I also confirmed to you that all of our researchers have, or will have, undertaken to hold in confidence the contents of any document to which they gain access through the Commission. I will be providing you next week with a copy of the relevant confidentiality clause contained in the contracts entered into with our various researchers.

Very truly yours,



George W. MacDonald,  
Commission Counsel

GWMacD/ljb

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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

October 6, 1987

Mr. Jamie W. S. Saunders  
c/o Holiday Inn  
King's Road  
Sydney, Nova Scotia

Dear Jamie:

No doubt you have seen the article contained in today's issue of the Chronicle-Herald with reference to the Commission seeking additional files from the Attorney General's Department.

My discussion with Mr. Underhill took place approximately one week ago and he contacted me directly at the office to discuss various matters involving the Commission. I had not anticipated any reference by him to our attempts to obtain materials from the Attorney General's Department relating to files other than Thornhill and MacLean. When I was asked directly if we were seeking any files with respect to the late Allan Sullivan, I indicated we had been talking with the solicitors from the Attorney General's Department with respect to many files, since it would be required to review a large number of files to determine the process which is followed within the Department.

When pressed concerning Mr. Sullivan, I indicated he had been an Attorney General and there may well be files where he would have an involvement which we would be looking at. I elected not to refer specifically to the one Allan Sullivan file you and I had discussed some time ago, and which a search of the Attorney General records failed to disclose. I was concerned that reference to any particular file would undoubtedly lead to questioning of the events of that occurrence.

I attempted to explain to Mr. Underhill that we have been getting full co-operation from the Attorney General's Department and that we were not going to be looking at specific judgments made in any case, but only at the process which is followed in the Department in criminal cases. Having read the article several times, I believe Mr. Underhill has accurately reported the substance of our discussion.

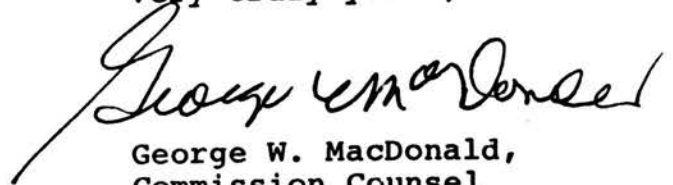
- 2 -

Mr. Jamie W. S. Saunders

October 6, 1987

I hope the foregoing will explain fully the  
circumstances behind the article which appeared in today's paper.

Very truly yours,

A handwritten signature in cursive script, appearing to read "George W. MacDonald".

George W. MacDonald,  
Commission Counsel

GWMacD/ljb

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COMMISSIONER

**BY COURIER**

October 6, 1987

Mr. Alan V. Parish  
Green Spencer  
Barristers & Solicitors  
Purdy's Wharf Tower I  
Suite 1301  
Halifax, Nova Scotia

Dear Alan:

Further to our telephone conversation of October 5, 1987, I now enclose for your reference, pages 1309-1324 inclusive of the hearing transcript with respect to proceedings on Friday, September 18, 1987 at St. Andrew's Church Hall, Sydney, Nova Scotia.

The enclosed transcript covers the Commission's application to exclude television cameras, Mr. Murrant's opposition to that application, and finally the Commission's ruling on the matter. I trust that you will find the enclosed helpful.

Yours truly,

  
John E. S. Briggs  
Director of Research

JESB:jrc

encl.

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COMMISSIONER

**BY COURIER**

October 5, 1987

Mr. Darrel I. Pink  
Patterson, Kitz  
Barristers & Solicitors  
Suite 1600, 5151 George Street  
Halifax, Nova Scotia B3J 2N9

Dear Mr. Pink:

Re: Your File # 9201/1 - "Advice to Prosecuting Officers"  
- Volumes 1 and 2

Further to your letter of October 2, 1987, and our telephone conversation of this morning, I wish to confirm that we are accepting the above-noted publications on a confidential basis.

Commission counsel will review the materials contained in these publications and as and when they identify material which they will wish to use for purposes of the public hearings, or otherwise, you will be so advised. You will be provided with ample time to challenge Commission counsel's use of any materials so identified in accordance with the general understanding reached between yourselves and Commission counsel in regard to any of the material which has been made available to Commission counsel on a confidential basis.

It is also my understanding that you wish to have the above-noted publications returned to your offices upon completion of the Commission's work. I trust that you will find the foregoing in order. Thank you for your co-operation.

I remain,

Yours truly,

John E.S. Briggs  
Director of Research

JESB:jrc



BY COURIER

October 2, 1987

Professor Bruce Archibald  
Dalhousie University Law School  
1381 Henry Street  
Halifax, Nova Scotia B3H 4H9

Dear Bruce:

Re: Research Project - The Local Crown Prosecutors and the  
Department of the Attorney General

---

Further to our conversation yesterday and this morning, I now enclose duplicate copies of the proposed contract between the Commission and yourself. If you are agreeable, please execute both copies of the contract, returning one to my attention.

Based upon the information you have provided to me, I have advised Susan Ashley for budgetary purposes, that your project will incur additional expenses over and above your professional fees, as follows: Research Assistant(s) in the amount of \$1,250. to \$2,500. depending on the requirements; typing in the estimated amount of \$600.; mailing of a questionnaire at an unknown cost; and travelling expenses for yourself and/or your research assistant. If there are other additional expenses which I have not noted, please advise without delay. In any event, expenses would be on a cost-recovery basis and are captured under paragraph 3(a) and (b) of the contract.

With respect to the use of Rob Bayne as a research assistant, I spoke with Wylie Spicer and he was entirely positive. I therefore suggest that you go ahead and make appropriate arrangements.

Archibald  
October 2, 1987  
Page 2

With respect to the research proposal as now drafted I would simply reiterate two points which I discussed with you yesterday and an additional point brought to my attention this morning by Wylie. To wit: under research topics, paragraph 2(d) "Qualifications" you should be sensitive to and address the question of the way in which local crown prosecutors are hired, eg. the political aspects. We have some material on file in regard to this subject and Wylie can give you a full briefing in connection with a senior crown prosecutor's attempts to have experienced prosecutors hired and the results of that effort. Under paragraph 3(a) The Role of Police in Prosecutorial Decisions, you should be alert to any differences between for example, the role played by the RCMP as compared to that played by other municipal forces. Under paragraph 4(c) The Concept of "Disclosure" should also encompass that as between the police and the crown, eg. do the police make full disclosure to the crown.

I have also made some additional comments in my previous letter of September 30, 1987 and I would ask you to consider the points raised in that letter along with those noted above to be within the scope of your research project.

If you should have any questions concerning the enclosed or any of the foregoing, please do not hesitate to advise accordingly.

Thank you for your co-operation. I remain,

Yours truly,

*Original signed by*

John E.S. Briggs  
Director of Research

JESB:jrc

cc: Commission Counsel

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COMMISSIONER

**BY COURIER**

October 6, 1987

PERSONAL AND CONFIDENTIAL

Scott Clark, Esquire  
c/o G.S. Clark & Associates  
Suite 712, 151 Slater Street  
Ottawa, Ontario K1P 5H3

Dear Scott:

Re: Research Project - The Criminal Justice System and  
Discrimination Against Indians in Nova Scotia

It has been suggested that it may be worthwhile for you to speak with an individual who went to school with Donald Marshall, Jr. and who "can recount incidents of dealing with the police and differential enforcement of the law (including one case where he himself was involved and no charges were laid because the victim was an Indian). He can also recount cases where Indians were treated with undue physical harshness as compared with non-Indians in the course of police duties".


This information was passed on to us by Clayton Ruby, Donald Marshall, Jr.'s counsel. The individual's name is Barry Penticost of 297 Rotary Drive, Apt. 101, Sydney, N.S. B1P 6L5. Mr. Penticost apparently has no telephone but has agreed to speak to a Commission investigator on the condition that he does not have to testify and that his identity can be kept anonymous.

We have asked our investigator, Fred Horne, to speak to Mr. Penticost to obtain details of incidents where there has been a differential treatment of Indians by police. It may also be fruitful for you to speak with Mr. Penticost at some stage of your own field investigation, but I would ask you to touch base with Fred Horne prior to doing so. In any event, please ensure that you do not disclose Mr. Penticost's name to anyone or make reference to it in your written report(s).

Scott Clark  
Page 2  
October 6, 1987

If you have any questions regarding this, please do not hesitate to let me know.

Yours truly,

  
*for* John E.S. Briggs  
Director of Research

JESB:jrc

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

**BY COURIER**

October 5, 1987

PERSONAL AND CONFIDENTIAL

Scott Clark, Esquire  
c/o G.S. Clark & Associates  
Suite 712, 151 Slater Street  
Ottawa, Ontario K1P 5H3

Dear Scott:

Enclosed herewith an amended version of Paragraph 7, Page 5 of your contract with the Commission dated October 1, 1987.

The object of the revision to the confidentiality provision of the contract is to ensure that any research consultants acting for the Commission maintain the confidentiality of any information to which they become privy as a result of their activities. For example, you will no doubt become privy to information provided to you by the Department of the Attorney General and you will have to maintain the confidentiality of that information, as between yourself and the outside world, just as though it were information of a character confidential to the affairs of the Commission. It is on the basis of this confidentiality provision that the A.G.'s Department will allow us access to information and personnel in their department.

I am sure you will have no difficulty with this but should you have any questions, please do not hesitate to advise me without delay.

If you are agreeable, I would ask you to initial both copies of Page 5 of the revised contract, substitute the new page for the old, and return to my attention an initialed copy of the amended Page 5.

Scott Clark

-2-

October 5, 1987

On an unrelated matter, what about your portable computer? You were to make some inquiries and advise me as to models, compatibility and costs.

Thank you for your co-operation. I remain,

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jm  
encl.

**ROYAL COMMISSION IN THE DONALD MARSHALL, JR., PROSECUTION**

---

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COMMISSIONER

**PERSONAL and CONFIDENTIAL**

October 2, 1987

Professor R.J. Deslisle  
Faculty of Law  
Queen's University  
Kingston, Ontario

Dear Professor Deslisle:

Further to our telephone conversation of yesterday, I now enclose the following:

1. "The Use of Evidence and the Making of Evidentiary Rulings at the Trial of Donald Marshall, Jr." an opinion paper by Professor Bruce Archibald, Associate Professor, Dalhousie Law School.
2. Trial Transcript, R vs Donald Marshall, Jr., Nova Scotia Supreme Court, Sydney, Nova Scotia, November 2-5, 1971.

As I indicated to you during our conversation, it is the intention of Commission counsel to circulate Professor Archibald's paper amongst all counsel appearing before the Commission prior to calling Professor Archibald as an expert witness. Given the critical importance of the treatment of evidentiary issues at trial to the outcome, it is a subject which will no doubt demand a commentary on the part of the Commissioners in their final report as well as recommendations. In light of this, suffice to say that Professor Archibald's paper, and any recommendations which may be formulated as a result thereof, will all be subject to intense and critical examination.



Deslisle  
October 2, 1987  
Page 2

Please, therefore, review Professor Archibald's paper for the purpose of advising whether in your opinion it is 'error-free' and further in order to provide us with any comments you may have regarding any aspect of his opinion.

I would indicate that Bruce Archibald was pleased to have his paper referred to you and should you wish to contact him in order to facilitate your task, please feel free to do so.

You have advised that you believe that you will be able to provide your comments within ten days of receipt of the enclosed material. If you have any questions, please do not hesitate to contact me. Your co-operation in this matter is greatly appreciated.

Thank you. I remain,

Yours very truly,

A handwritten signature in dark ink, appearing to be 'JESB', with a horizontal line extending to the right.

John E.S. Briggs  
Director of Research

JESB:jrc

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

BY COURIER

October 2, 1987

Professor Bruce Archibald  
Dalhousie University Law School  
1381 Henry Street  
Halifax, Nova Scotia B3H 4H9

Dear Bruce:

I enclose for your information, a copy of my letter of today's date to Professor Deslisle of the Faculty of Law, Queen's University.

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc

encl.

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

**BY COURIER**

October 2, 1987

Mr. William L. Ryan  
Stewart MacKeen & Covert  
Barristers and Solicitors  
Purdy's Wharf Tower One  
1959 Upper Water Street  
Halifax, Nova Scotia B3J 2X2

Dear Mick:

Thank you for your letter of September 25, 1987.

The evidence of Donna Ebsary will be taken via teleconference and we have scheduled November 2nd, 1987 as the date when that will occur. David Ratchford will be giving evidence at about the same time, but we are not able at this time to provide you with a fixed date since it will depend on the speed with which other witnesses are dealt. Mr. Urquhart will be giving evidence as the second to last witness to be called during the Sydney phase of the Hearings, and again, I cannot give you an exact date at this time. As we are able to have a better indication of the time when witnesses will be called, I will advise you. I do not know if there are any other individuals whose evidence will impact upon the evidence to be given by Corporal Green. If there are any particular witnesses that you know of, please let me know and I can advise you of the tentative date when they are scheduled to give evidence.

Yours very truly,

George W. MacDonald,  
Commission Counsel

GWMacD/ljb

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

**BY COURIER**

October 2, 1987

Mr. Clayton Ruby  
Ruby & Edwardh  
Barristers & Solicitors  
11 Prince Arthur Avenue  
Toronto, Ontario M5R 1B2

Dear Clay:

Thank you for your letter of September 21, 1987 and the information concerning the cab driver who should be contacted by the interviewer dealing with the subject of differential treatment of Indians by police. I have given the name to our Director of Research and suggested that he pass it along to Scott Clark who is the individual conducting the research on the differential treatment of Indians.

I have also asked Fred Horne, our investigator, to speak with Mr. Penticost to obtain details of incidents where there has been differential treatment of Indians by police. If we can find actual incidents, I would propose putting the questions to the policeman involved.

I have advised both our Director of Research and Fred Horne that it is imperative to keep Mr. Penticost's identity confidential.

Yours very truly,

George W. MacDonald,  
Commission Counsel

GWMACD/ljb

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

**BY COURIER**

October 2, 1987

Mr. Clayton Ruby  
Ruby & Edwardh  
Barristers & Solicitors  
11 Prince Arthur Avenue  
Toronto, Ontario M5R 1B2

Dear Clay:

I acknowledge your letter of September 18th, 1987.

We had included a copy of the record of Donald Marshall, Jr. in the materials and it can be found in Volume 16.

We have obtained copies of the Informations and some other documents concerning other offences, and in particular, the alleged vandalism in the cemetery. We are putting together a package of these documents and will hope to have those available for distribution to all counsel when the Hearings resume in Sydney next week.

Yours very truly,

George W. MacDonald,  
Commission Counsel

GWMACD/ljb

cc: Ms. Anne Derrick

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

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COMMISSIONER

**BY COURIER**

October 2, 1987

Mr. Clayton Ruby  
Ruby & Edwardh  
Barristers & Solicitors  
11 Prince Arthur Avenue  
Toronto, Ontario M5R 1B2

Dear Clay:

Re: Jury Foreman

I acknowledge your letter of September 21st, 1987.

We do not have a copy of any tape of a radio interview with the foreman of the jury. I assume the interview would have taken place in Sydney and I will ask our investigators to determine if such a tape is in existence. My understanding is that tapes are kept for a short period of time and are destroyed, but we will make the inquiries in any event.

I certainly have not asked anyone to conduct an interview with the jury foreman. As you know, the provisions of the Criminal Code prohibit most discussions with members of the jury. When I have a report from our investigator, I will let you know the results.

Yours very truly,

George W. MacDonald,  
Commission Counsel

GWMACD/ljb

cc: Ms. Anne Derrick

# ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

October 1, 1987

Mr. R. Gerald Conrad, Q.C.  
Executive Director (Legal Services)  
Department of Attorney General  
5151 George Street  
10th Floor, Bank of Montreal Bldg.  
Halifax, Nova Scotia B3J 2L6

Dear Mr. Conrad:

I acknowledge your letter of September 30, 1987. I enclose a copy of a letter Susan Ashley has written to Mr. Hornsby and which sets out the efforts taken by the Commission officials in obtaining satisfactory facilities in Sydney for the conduct of the Hearings. The officials were cognizant of the difficulty which disabled members of the public would have obtaining access to the Hall, but unfortunately no reasonable alternative facility was available. When the Hearings move to Halifax, the facility which is being used provides ready access for disabled persons.

Very truly yours,

George W. MacDonald,  
Commission Counsel

GWMACD/ljb



**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

**BY COURIER**

October 1, 1987

Mr. Ronald N. Pugsley, Q.C.  
Stewart MacKeen & Covert  
Barristers and Solicitors  
Purdy's Wharf Tower One  
1959 Upper Water Street  
Halifax, Nova Scotia B3J 2X2

Dear Ron:

I thank you for your letter of September 29, 1987. We will make arrangements to have Oscar Seale and Leatha Seale called as witnesses during the Sydney phase of the Inquiry. Do you have any particular view as to when they should be called? Perhaps we can discuss this matter at the regular Wednesday meeting of counsel.

Yours very truly,

George W. MacDonald,  
Commission Counsel

GWMacD/ljb

cc: Anne S. Derrick  
Frank L. Elman  
Jamie W. S. Saunders  
Darrel I. Pink  
James D. Bissell  
Al Pringle  
E. Anthony Ross

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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BY COURIER

October 1, 1987

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Stewart MacKeen & Covert  
Barristers and Solicitors  
Purdy's Wharf Tower One  
1959 Upper Water Street  
Halifax, Nova Scotia B3J 2X2

Dear Ron:

We have had requests from other parties concerning payment of expenses to attend Hearings in Halifax. We have taken the position that only the expenses incurred by a person to attend and give evidence himself will be reimbursed by the Commission. Since Mr. MacIntyre will be giving evidence in Sydney, there will be no requirement that he attend in Halifax for that purpose, and accordingly, the Commission will not be paying any expenses incurred by him should he elect to travel to Halifax for the portion of the Hearings to be held in this city. I repeat that we have taken a similar position with respect to all requests of this nature.

Yours very truly,

George W. MacDonald,  
Commission Counsel

GWMacD/ljb

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

October 1, 1987

Mr. Ron Crocker,  
Executive Producer  
Canadian Broadcasting Corporation  
1840 Bell Road  
Halifax, Nova Scotia B3J 3E9


Dear Ron:

This is to confirm our telephone conversation of yesterday.

It is my understanding that the Commission will be given possession of the original tapes of the public Hearings once the Hearings are completed. We will pay for the cost of the tapes. It will be helpful if you could give us an idea of what the approximate cost might be. You have indicated that there would be no difficulty with us viewing portions of the tapes before the end of the Hearing phase, and similarly, we would provide access to the CBC once the tapes come into our possession.

I trust that this accurately reflects our agreement. I am sure you will let me know if it doesn't!

Yours very truly,

  
Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

October 1, 1987

Ms. Rosemary Coffin  
Sales Respresentataive  
Holiday Inn  
King's Road  
Sydney, Nova Scotia

Dear Rosemary:

Attached is a revised list of dates for which we will be in Sydney during the public Hearings. As you can see, we have added three weeks to the schedule, so that we will be in Sydney until December 17th. Starting on October 26th we will be working a four-day week from Monday to Thursday. This will mean that we will be arriving on the Sunday night and leaving on Thursday. The only exception to this is that in the week of November 2nd we will be spending the Monday in Halifax and arriving in Sydney on Monday night. There will be no change to our previous arrangements for the week of October 6th, that is, we will be arriving on Monday, October 5th and leaving on Friday, October 9th.

Rooms for all of these days should be reserved for the following eleven people: myself

Mr. George W. MacDonald, Q.C.  
Mr. David B. Orsborn  
Mr. W. Wylie Spicer  
Ms. Laurie J. Burnett  
Chief Justice T. Alexander Hickman  
Assoc. Chief Justice Lawrence A. Poitras  
The Hon. Mr. Justice Gregory T. Evans  
Mr. Fred Horne  
Mr. Jim Maloney  
Ms. Carole McDougall.

Please let me know as soon as you can whether there will be any problem with any of these dates.

- 2 -

Ms. Rosemary Coffin

October 1, 1987

Thank you for your continuing assistance.

Yours very truly,

Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb

Enclosure

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 30, 1987

**BY COURIER**

Dr. Ben Silverberg  
10 Foxbar Road  
Toronto, Ontario M4V 2G6

Dear Dr. Silverberg:

RE: Polygraph

I refer to our telephone conversation of September 29, 1987. I am enclosing a copy of the R.C.M.P. report which accompanied Mr. Smith's polygraph analysis.

I look forward to meeting you on October 14th, 1987 at 10:00 o'clock at your offices.

Kind regards.

Yours very truly,

W. Wylie Spicer,  
Commission Counsel

WWS/ljb

Enclosure

|   |    |                            |            |   |
|---|----|----------------------------|------------|---|
| OTHER FILE REFERENCES.<br>REF. AUTRES DOSSIERS. | 15 | DIVISION                   | DATE       | RCMP 352                                    |
|   |    | "H"                        | 21 Dec. 71 | RCMP FILE REFERENCES.<br>REF. DOSSIERS GRC. |
|   |    | SUB-DIVISION-SOUS-DIVISION |            |   |
|   |    | C.I.B.                     |            |   |
|   |    | DETACHMENT DÉTACHEMENT     |            |   |

RE  
OBJET:

Donald MARSHALL, Jr.  
Non-Capital Murder (Sec. 206(2)) C.C.,  
Sydney, N. S.  
(Sydney City Police Case)

RCMP 352

MARSHALL was convicted in Sydney, N. S. for the non-capital murder of Sandford William @ 'Sandy' SEALE (Negro). He was sentenced to life imprisonment by Mr. Justice J. L. Dubinsky.

2. The offence took place around midnight of the 28/29 May 71 (Friday evening - Saturday morning) in Wentworth Park in the City of Sydney. SEALE was stabbed once in the abdomen with a rather large weapon (blade about 3/4" wide and at least 4" long). The deceased underwent an emergency operation, but, expired at 8:00 A.M. on Saturday, the 29 May 71. Although conscious a number of times after the assault, he did not name his assailant. MARSHALL denied being the murderer, both to the police when interrogated and later on the stand during the trial. The weapon has never been recovered. Intensive investigation by the Sydney City Police was commenced and MARSHALL arrested on the 4 June 71. His Counsel, C.M. Rosenblum, has applied for leave to appeal the conviction.

3. After sentence was passed, one James William McNEIL, age 25 years, came forward and said that he was with a man by the name of Roy EBSARY during the evening of the 29 May 71 and that he, EBSARY, had in fact murdered SEALE in Wentworth Park. McNEIL was interviewed by Sydney City Police and the Prosecuting Officer for Cape Breton County, Donald C. MacNEIL, Q.C., on Monday the 15 Nov. 71. Roy EBSARY was picked up and interviewed and he denied murdering SEALE, although he did say that McNEIL and himself were in the park, after visiting a tavern during the evening of the 28 May 71 and that he and McNEIL became involved in an altercation with two men (later determined through investigation to be MARSHALL and SEALE). According to McNEIL and EBSARY, MARSHALL and SEALE attempted to rob them in the park. This altercation, which obviously happened prior to the murder, was not known to the police until McNEIL came forward on the 15 Nov. 71. At this point the Force became involved and I went to Sydney on the 16 Nov. 71 where, together with Sgt. G.M. McKINLEY, i/c Sydney G.I.S., a thorough review of the case was conducted with the following results.

17 November 71

4. From the outset of our investigation it was apparent the use of the polygraph would be extremely useful. A request was therefore made for this equipment and the operator and the necessary authority received for Cpl. E. C. SMITH, "F" Division, to proceed to Sydney to assist with this investigation.



Donal MARSHALL, Jr.  
Non-Capital Murder (Sec. 206(2)) C.C.,  
Sydney, N. S.  
(Sydney City Police Case)

R. 1012 352

5. Sgt. McKINLEY received McNEIL's written permission that he would undergo the polygraph test. We interviewed McNEIL and it was obvious by his demeanour and speech that he has sub-normal intelligence and is slightly mental. He was, nonetheless, convinced that EBSARY had stuck a knife into the deceased and that later they went to EBSARY's home where he, EBSARY, washed off the knife. Because we were certain that McNEIL's account of the altercation insofar as it concerned EBSARY allegedly stabbing MARSHALL was a figment of his imagination, we did not immediately question him or take any further action with respect to McNEIL at this time. Rather, a number of hours were spent by Sgt. McKINLEY and myself going over statements given by various witnesses to the police during the initial investigation and later and visiting the scene of the crime with Sergeant of Detectives John MacINTYRE, Sydney Police Department, and additionally perusing transcripts of evidence given at the preliminary hearing and some transcripts of evidence given in high court during the trial.

6. Without quoting all the evidence, the following are the salient points given by key witnesses of the events leading up to and following the stabbing. Kindly refer to the attached diagram which will illustrate and clarify much of the evidence given at the trial.

Maynard Vincent CHANT (Age 14 at time of murder - now Age 15)

Testified that he was walking down the railway tracks in Wentworth Park just prior to the stabbing. He first saw a person later identified as John Lawrence PRACTICO hiding in the bushes between the railway tracks and Crescent Street. He also saw two men, one of whom he recognized as Donald MARSHALL, standing close to each other on Crescent Street. He heard mumbling and swearing and he thought MARSHALL was doing most of the swearing. He then saw MARSHALL take out a knife from his pocket and jab it into the man he was with. CHANT became frightened at this point and ran down the railway tracks to Byng Avenue. During this time MARSHALL also walked over to Byng Avenue and met CHANT along with two other boys and two girls (these persons have never been located or identified). MARSHALL told the group that two men had attacked he and 'his Buddy' (SEALE). He also showed them a superficial cut on his arm, which was not bleeding, incidentally. He stated that his Buddy (SEALE) was on the other side of the Park with a knife in his stomach. A car then came along (neither the car or its driver were identified) and they (MARSHALL, CHANT and the occupants of the car) drove around to where SEALE was lying on the street. MARSHALL took care not to stand where SEALE could see him. CHANT took off his shirt and put it over SEALE's stomach while waiting for the ambulance.

John Lawrence PRACTICO (Age 16 Years)

PRACTICO attended the dance at St. Joseph's Hall, Sydney



## 6. continued.

until shortly before midnight, when he left by himself. He met MARSHALL and SEALE and they walked to the corner of Argyle and George Streets. MARSHALL wanted PRACTICO to come down into the Park. (Although PRACTICO never admitted or suggested that MARSHALL and SEALE were going into the park to attempt to 'roll' someone, the inference is there and it is the consensus of opinion MARSHALL and SEALE were, at this time, bent on robbing someone). PRACTICO then proceeded into the Park on his own and sat down in the bushes to drink a pint of beer when he saw SEALE and MARSHALL on Crescent Street. He testified that he was about thirty or forty feet from them at this time and that he heard an argument take place between the two during which SEALE is alleged to call MARSHALL a 'crazy Indian' and MARSHALL called SEALE a 'black bastard'. PRACTICO saw MARSHALL plunge a weapon into SEALE's side, SEALE fall to the ground and then MARSHALL running up Crescent Street towards Argyle Street. PRACTICO then ran to his home on Bentinck Street.

Neither of the two aforementioned witnesses told the truth to the police when they were first interviewed. However, this can be put down to the fact they were both scared and that PRACTICO is not too bright. In the final analysis evidence, which was as outlined above is believed to be factual and, what is just as important, there was no collaboration between the two. In other words, what the court had were the same facts told by two quite independent witnesses.

Terrence GUSHUE (Age 20)

GUSHUE also attended the dance at St. Joseph's Hall, but, left about 10:30 P.M. with a young girl. They were in the Park for some time and in fact saw and had conversation with MARSHALL and SEALE, although they did not know SEALE at the time. They did not witness the murder, but, could put both MARSHALL and SEALE on Crescent Street prior to the stabbing.

7. Some of the exhibits, particularly the jacket MARSHALL was wearing the night of the murder was examined. This light-weight yellow jacket was found to have the left sleeve cut and ripped. There were also some light blood stains on the left front portion of the jacket (see attached diagram) in such a position as to strongly indicate MARSHALL wiped his forearm on it. There were no blood stains on the inside of the sleeve, although MARSHALL led investigators to believe he had also been knifed during the scuffle with two unidentified men just prior to SEALE being stabbed. There was an insufficient

RCN 2 352

## 7. (continued)

quantity of blood on MARSHALL's jacket to have it typed. CHANT stated that the cut on MARSHALL's arm was not bleeding when he saw him on Byng Avenue. Although the cut was superficial, it was sutured at the hospital. While in gaol, MARSHALL removed the bandage from his arm and flushed it down the toilet and even removed the sutures himself, suggesting that he did not want to have anything around with his blood on that could be picked up by the police from which his blood type might be determined. There are on the jacket what appears to be hesitation marks caused by a knife, and I am firmly convinced MARSHALL inflicted the slight cut on his arm after he stabbed SEALE to add credence to his story.


23 NOV 71

8. Cpl. E.C. SMITH conducted the polygraph tests on both McNEIL and EBSARY. His report is attached and indicates EBSARY is telling the truth when he answered "no" to the question, "Did you stab SEALE?" With respect to McNEIL's test, please note Cpl. SMITH cannot give an opinion as to whether or not he is telling the truth. Post-examination questioning leaves no doubt in my mind McNEIL is not telling the truth when he said EBSARY stabbed SEALE.

9. In conclusion, the chronology of events surrounding this murder appears thusly to the investigators. SEALE and MARSHALL entered Wentworth Park shortly before midnight intent on "rolling" someone. EBSARY and McNEIL, somewhat intoxicated, happened to walk through the park and were accosted by SEALE and MARSHALL. Their attacks were not successful and following the altercation a violent argument ensued between the two attackers culminating with MARSHALL stabbing SEALE and then inflicting a superficial wound on his own forearm to divert suspicion from himself before he made the pretense of summoning aid for SEALE. Later McNEIL, because he had been drinking and because of his subnormal intelligence, formed the idea that EBSARY had in fact stabbed SEALE when they were set upon. This became a fixation in his mind which surfaced in the form of positive action after MARSHALL had been sentenced to life imprisonment.

10. Mr. Donald MacNEIL, Q.C. has been made aware of the results of this investigation.

11. CONCLUDED HERE



(E.A. Marshall) S/Insp.  
"H" Division Detective Inspector

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 30, 1987

PERSONAL

Mr. Jamie Saunders  
Patterson, Kitz  
Barristers and Solicitors  
P. O. Box 1068  
10 Church Street  
Truro, Nova Scotia  
B2N 5B9

Dear Mr. Saunders:

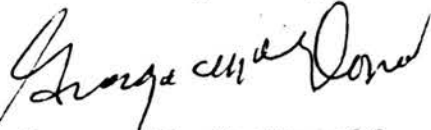
Re: Donald Marshall, Jr. Royal Commission

Recently in Sydney I asked if you could determine whether the Attorney General's Department had any files dealing with an incident in the early 1970's involving a Highway Inspector named Rhodenizer in the South Shore of Nova Scotia or involving an alleged possible dangerous driving or impaired driving charge against the late Allen Sullivan. You advised that no files were in existence at the present time. I asked if we would be permitted to interview the various people in the Attorney General's Department concerning the two instances to determine if they have any knowledge and you were going to take that matter up with your client and let me have your advice.

I also mentioned to you my desire to obtain any documents or information in existence concerning the role played by the R.C.M.P. in the Province investigating commission of major crimes in areas other than Sydney and Halifax. I had been advised by some witnesses whose names I cannot recall that wherever crimes of murder, attempted murder or rape occurred in areas other than Sydney or Halifax, the R.C.M.P. was required to carry out the investigation. There is no reference to this in the Agreement between the Province and the R.C.M.P. and I am anxious to determine if such a practice does

exist and if so, how knowledge of such a practice is communicated to the R.C.M.P. and to the Police Forces in other jurisdictions in the Province. I am asking the R.C.M.P. through Jim Bissell to provide me with whatever information is available to that force on this topic. Any information you can provide to me will be appreciated.

Yours very truly,

A handwritten signature in cursive script, appearing to read "George W. MacDonald".

George W. MacDonald  
Commission Counsel

GWMacD/fm

cc: Mr. Darrel Pink

**ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION**

---

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 30, 1987

Mr. Jamie Saunders  
Patterson, Kitz  
Barristers and Solicitors  
P. O. Box 1068  
10 Church Street  
Truro, Nova Scotia  
B2N 5B9

Dear Mr. Saunders:

**Re: Attorney General's Files**

The files involving the Thornhill and MacLean matters have been reviewed by Commission Counsel and by our research staff. I am enclosing a listing of documents contained in the various files which we would like to have copied and made available for Commission purposes.

As we indicated to you and Attorney General officials earlier, our interest in these files is with respect to the procedure and processes followed by the various persons involved in the administration of justice system in this Province. In identifying documents to be copied we made every effort to restrict our request to those documents which relate to the process. There are other documents which are of interest in assessing the steps which were taken and we would want to be assured that we and our researchers can continue to have access to those documents for review purposes as we continue with our work.

You will note that certain of the documents we are requesting are of an early date and before the involvement of the R.C.M.P. and the Attorney General's office. The documents are important, however, when considering the recommendations set out in the R.C.M.P. report and also in light of comments made by the Premier at a subsequent date to the effect that negotiations with the banks on behalf of Mr. Thornhill for payment of a reduced amount commenced prior to the date Mr. Thornhill was appointed to the Cabinet.



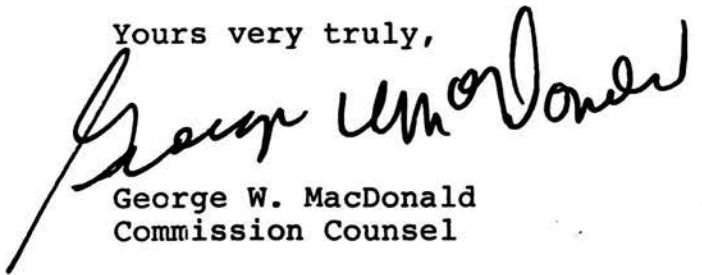
We have indicated to you and the Attorney General officials on several occasions that our interest in these files is restricted to an examination of the process and procedure followed and we have no desire to question the actual decisions which were made not to lay charges or to limit the charges which were laid. We continue to have some difficulty determining how we will be able to ensure that the Commissioners can consider the process in a vacuum and we invite any comments you might wish to make on this matter. For now we are asking that the documents we have identified be produced to us and we cannot accept them on any conditional basis and can only assure you of our intention to deal with the matter in a reasonable manner and to make every possible effort to avoid a situation where the actual decisions of the various officials involved will be subject to question.

It appears obvious that other files involving these individuals exist in other Government Departments. For example, the Auditor General's Department initiated the complaints against Mr. MacLean and files must be in the possession of that Department. In addition, we expect the Executive Council and individual members of Government would have files concerning both of these matters. Can you determine whether such files exist and arrange for our review of the file materials on the same basis that we reviewed those in the possession of the Attorney General's Department.

In accordance with our earlier understanding with the Attorney General's Department as outlined in correspondence from Reinhold Endres dated September 4, 1987, we require copies of the documents outlined on the enclosed lists by October 7, 1987 or your advice that the copies will not be made available. If the documents are not produced by that date and we have not received your assurance that they will be forthcoming, our intention is to issue a Subpoena directed to Mr. Coles to appear before the Commission on October 9 and to produce the particular documents which we have identified. Given the procrastination displayed by the Government during the summer in response to our request for production of documents in these files, we see no alternative but to adopt this course of action and this was fully explained

to Mr. Endres when the current arrangement was made  
on September 4.

Yours very truly,

A handwritten signature in cursive script, reading "George W. MacDonald". The signature is written in dark ink and is positioned above the typed name and title.

George W. MacDonald  
Commission Counsel

GWMacD/fm  
Encl.

cc: Mr. Darrel I. Pink

Document

- 1 RCMP Report by Cpl. C.R. House, Commercial Crime Section, dated 80-08-09.
- 2 Undated memo immediately following divider attachment no. 6 dealing with proposal to repay loans over an 8 to 10 year period.
- 3 Bank of Nova Scotia Memo to Dartmouth - Thornhill Loans, dated April 4, 1977.
- 4 Memo dated June 14, 1977 from W.A. Rice to Regional Manager.
- 5 Commitments by R.J. Thornhill, dated July 25, 1977.
- 6 Memo to File from D.H. Jordan, dated September 19, 1977.
- 7 Letter to R.W. MacDonald from R.C. McLeod, dated December 6, 1977.
- 8 Memo to File from R.D. Fischer, dated September 21, 1977.
- 9 Memo to File from R.C. McLeod, dated July 26, 1977.
- 10 Bank of Nova Scotia Memo to Dartmouth - Analysis of Loans, dated September 29, 1978 (?).
- 11 Short report from Bank of N.S. to Dartmouth (one page).
- 12 Memo from Halifax to Dartmouth - Bad Debt, dated January 31, 1979.
- 13 Memo Canadian Commercial Banking - Bad Debt, dated September 26, 1979.
- 14 Memo to Regional Manager from Dartmouth - Loans, dated March 8, 1978.
- 15 Letter to R.G. McLeod from Calvin A. Rice, dated September 17, 1979.



- 16 Letter to Calvin A. Rice from R.C. McLeod, dated October 4, 1979.
- 17 Letter to Calvin A. Rice from R.C. McLeod, dated November 5, 1979.
- 18 Letter to R.G. McLeod from Calvin A. Rice, dated November 27, 1979.
- 19 Letter to J.C. Sinclair from Calvin A. Rice, dated September 17, 1979.
- 20 Letter to C.A. Rice from J.C. Sinclair, dated September 21, 1979.
- 21 Letter to J.C. Sinclair from Calvin A. Rice, dated November 27, 1979.
- 22 Letter to Calvin A. Rice from J.C. Sinclair, dated November 29, 1979.
- 23 Letter to J.R. Ellis from Calvin A. Rice, dated September 17, 1979.
- 24 Letter to Calvin A., Rice from J.R. Ellis, dated September 26, 1979.
- 25 Letter to Calvin A. Rice from R.G. Kingston, dated October 5, 1979.
- 26 Letter to R.G. Kingston from Calvin A. Rice, dated November 27, 1979.
- 27 Letter to J.E. Quigley from Calvin A. Rice, dated September 17, 1979.
- 28 Letter to Calvin A. Rice from G.W. Rutledge, dated October 16, 1979.
- 29 Letter to Harry Steele from Calvin A. Rice, dated November 27, 1979.
- 30 Letter to Calvin A. Rice from R.J. Thornhill, dated November 12, 1979.
- 31 Letter to Calvin A. Rice from R.J. Thornhill, dated November 5, 1979.

**DOCUMENTS FROM THE ATTORNEY GENERAL'S DEPARTMENT FILES  
RELATING TO THE THORNHILL CASE**

**A.G. FILE : 09-80-0060-08**

Document

- 1 CBC Transcript of the CBC News broadcast on May 25, 1981.
- 2 Transcript of an ATV News broadcast on May 26, 1981.
- 3 Memo from G. Coles to H. How, dated Feb. 13, 1981
- 4 Letter from Gordon Coles to Superintendent Fagan dated January 27, 1981.
- 5 Appears to be a newspaper clipping from the Globe & Mail dated January 6, 1981.
- 6 Press Release by Gordon Coles when he was in Victoria attending a meeting of the Provincial Attorneys General.
- 7 Further Press Release issued by Gordon Coles either the same day or the day after.
- 8 Appears to be an internal memo from Coles to the Attorney General beginning with a paragraph dated February 1980.
- 9 Letter from Superintendent Fagan to Gordon Coles dated December 22, 1980.
- 10 Clipping from what appears to be a MacLean's magazine or something of that nature headed, "Crying All The Way To The Banks".
- 11 Memo from Gordon Coles to the Attorney General relating to concerns expressed by Mr. Thomas, the Chief Crown Prosecutor in Halifax, dated November 13, 1980.
- 12 Text of an ATV News Report dated November 5, 1980.
- 13 Press Release issued by the Attorney General dated October 29, 1980.
- 14 Revised version of the Attorney General's Press Release also dated October 29, 1980.

Document

- 15 Long memorandum by Gordon Coles addressed to the Attorney General, Harry How, expressing his views on the question of whether or not proceedings should be brought against Thornhill. The memorandum is dated October 23, 1980.
- 16 Letter from Coles to Superintendent Fagan dated October 29, 1980.
- 17 Internal memorandum from Herschorn to Gale re the Thornhill case and it's about five or six pages long and is dated October 17, 1980.
- 18 Letter from Fagan to Gordon Gale dated the length of September, 1980.
- 19 Letter dated September 4, 1980 from David Thomas, Chief Prosecuting Officer, to Gale enclosing a memorandum by Kevin Burke which is dated the 28th of August, 1980.
- 20 Memorandum by Kevin Burke dated August 28, 1980.
- 21 From Gale to Coles enclosing a copy of a letter from Gale to the RCMP on the subject of contacting a prosecutor.
- 22 Letter from Gordon Gale to the Commanding Officer of "H" Division dated July 25, 1980.
- 23 Statement taken down by the RCMP Commercial Crime Investigators from the Vice-President and General Manager of the Bank of Nova Scotia in Halifax by the name of R.C. MacLeod dated July 15, 1980.
- 24 Letter from Christin to Gale, dated May 21, 1980.
- 25 Letter from McInnis to Gale, dated April 15, 1980.

**DOCUMENTS FROM THE ATTORNEY GENERAL'S DEPARTMENT FILES  
RELATING TO THE WILLIAM JOSEPH (BILLY JOE) MACLEAN CASE**

A.G. FILE: 14-84-0002-06

Document

- 1 The Chronicle-Herald newspaper - Report details expense scandal, dated April 4, 1985.
- 2 The Chronicle-Herald newspaper - MLA's expense documents most unusual, Cormier, dated November 3, 1984.
- 3 The Chronicle-Herald newspaper - Cameron stands firm on charges, dated November 1, 1984.
- 4 The Mail-Star - MLA's may take legal action, dated October 31, 1984.
- 5 Newspaper article - Cameron accuses Giffin of halting probe by RCMP, dated October 30, 1984.
- 6 Letter to Hon. Arthur R. Donahoe, Q.C. from Hon. Ronald C. Giffin, Q.C., dated April 18, 1984.
- 7 Memo to Hon. Ronald C. Giffin, Q.C. from Gord F. Coles, Q.C., dated April 18, 1984.
- 8 Memo to Gordon F. Coles, Q.C. from Gordon S. Gale, Q.C., dated April 2, 1984.
- 9 Memo to Gordon Coles, Q.C. from Arthur R. Donahoe, dated January 13, 1984.
- 10 Letter to Gordon F. Coles, Q.C. from O. Paul Cormier, dated November 14, 1983.
- 11 Letter to Gordon F. Coles, Q.C. from A.W. Sarty, dated October 28, 1983.

Document

- 1 Memo to File from Martin E. Herschorn - R. v. William Joseph (Billy Joe) MacLean, dated September 16, 1986.
- 2 Letter to Norman Clair from Martin E. Herschorn, dated September 11, 1986.
- 3 Memo to Hon. Ronald C. Giffin from Martin E. Herschorn, dated September 9, 1986.
- 4 Letter to Martin Herschorn from Norman Clair, dated September 8, 1986.
- 5 Letter to Gordon S. Gale from A.E. Vaughn, RCMP, dated 85-08-01.
- 6 Investigation Report by Nigel Green, Sgt. RCMP - MLA expense claims, dated 86-03-27.
- 7 Letter to Gordon S. Gale from A.E. Vaughn, RMCP, dated 86-02-20.
- 8 Letter to Chief Superintendent Campbell Reid from Vincent J. MacLean, dated April 19, 1985.

**DOCUMENTS FROM THE ATTORNEY GENERAL'S DEPARTMENT FILES  
RELATING TO THE BILLY JOE MACLEAN CASE**

A.G. FILE : 09 86 0971 88 (2 files)

Document

- 1 Transcript of sentencing, October 3, 1986.
- 2 RCMP report, March 27, 1986 by Sgt. Nigel Green, Commercial Crime Section, RCMP.
- 3 Letter from Norm Clair to Martin Herschorn, dated September 8, 1986.
- 4 Letter from Joel Pink to Norm Clair, dated September 15, 1986.
- 5 Letter from Norm Clair to Joel Pink, September 12, 1986.
- 6 Letter from Martin Herschorn to Norm Clair, dated September 11, 1986.
- 7 Letter from Joel Pink to Norm Clair, dated September 2, 1986.
- 8 Letter from Joel Pink to Norm Clair, dated April 23, 1986.

**A. G. File 04 81 00709 (Re: Thornhill)**

1. Police report dated 14 April, 1980;
2. Police report dated 7 May, 1980;
3. Letter from Superintendent Christin to Gordon Gale dated 21 May, 1980;
4. Police report dated 3 June, 1980;
5. Police report dated 26 June, 1980;
6. Police report dated 18 July, 1980;
7. Police report dated 29 August, 1980;
8. Letter from Superintendent Feagan to Gordon Gale dated 11 September, 1980;
9. Police report dated 21 October, 1980.

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

By Courier

September 30, 1987

PERSONAL & CONFIDENTIAL

Prof. Bruce Archibald  
Dalhousie University Law School  
1381 Henry Street  
Halifax, N.S. B3H 4H9

Dear Bruce:

Thank you for your letter of September 24, 1987 with enclosed second draft of your opinion re the use of evidence in the making of evidentiary rulings at the trial of Donald Marshall, Jr.

George et al are now reviewing your paper and will no doubt provide any additional comments they have shortly. In view of the importance of your paper and the issues which it addresses, it is quite likely that the Commission will wish to have your paper vetted by an acknowledged expert in the field. This, of course, will not be done without advising you who and when and ensuring that you are satisfied with your final draft.

Incidentally, I note that on page 32, second to last line, you use the words "might have prevented" and I wonder, can you not be stronger on this point?

Thank you for your co-operation. I remain,

Yours truly,

John E.S. Briggs  
Director of Research

JESB/jm



**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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By Courier

September 30, 1987

PERSONAL & CONFIDENTIAL

Prof. Bruce Archibald  
Dalhousie University Law School  
1381 Henry Street  
Halifax, N.S. B3H 4H9

Dear Bruce:

Re: Research Project - The Local Crown Prosecutors and the  
Department of the Attorney General

Thank you for your letter of September 28, 1987, along with your proposal for the above-noted research project.

Your proposal would appear to comprehensively cover all of the points which we have previously discussed. However, I have circulated it amongst Commission counsel in the event that they may wish to raise any additional points for your consideration.

In the interim, I would simply mention two points as follows: firstly, you may recall during one of our discussions, I raised the question of who supervises the work of crown prosecutors in the sense of reviewing their work, almost from a quality control point of view. I also wondered about what internal review mechanisms existed for evaluating crown prosecutor's performance and competence. What mechanisms, if any, exist for handling complaints raised against crown prosecutors? How is internal discipline handled? I am wondering if it is your intention to deal with these types of questions under a research topic 2(d)- "Working Conditions and Career Prospects".

Secondly, I am very concerned that we explicitly address the question of the independent role and decision-making authority of the local crown prosecution, where that role/authority begins and ends and what are the circumstances which activate its commencement or termination. I believe it essential that we have a very clear picture of not only the institutional/structural

Prof. Bruce Archibald

September 30, 1987

framework and articulated policy statements affecting this question, but also the preceptions of crown prosecutors based on actual practice. It seems to me that only by focusing in on this critical question will we have a frame of reference against which one can evaluate the procedural decisions made in specific cases. If, for example, your research should indicate that the crown prosecutor's responsibilities are very clearly articulated and well understood, and the same clarity applies to decision-making procedures with respect to prosecutions themselves, then it should be relatively easy to determine in any particular case whether normal procedure has been followed or not. On the other hand, if your research should indicate that the specific responsibilities and decision-making authority of crown prosecutors is neither well articulated nor well understood, including the procedures relating thereto, then it may be difficult to judge whether or not there has been a departure from "normal procedures" in any particular case.

In either event, your research on this topic will be particularly important when it comes to formulating recommendations. I am sure that this latter concern is covered under the various research topics identified in section 2 of your proposal, but in view of its central importance I thought it worth reiterating in my own words.

I would hope to be able to communicate Commission counsel's comments to your very shortly, but in the meantime, would you please be good enough to forward to me your budget proposal for this project.

Thank you for your co-operation. I remain,

Yours truly,

John E.S. Briggs  
Director of Research

JESB/jm

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 29, 1987

Sydney Discovery Services  
185 Charlotte Street  
P. O. Box 542  
Sydney, Nova Scotia B1P 6H4

ATTENTION: Ms. Judy Robson

Dear Judy:


Attached is a revised list of dates for the Sydney Phase of the Hearings. As you can see, we have added approximately three weeks to our original schedule. You will also note that during the week of October 26th and following we will be moving to a four-day week.

We will not be needing you on November 2nd as we have arranged to hear evidence in Halifax on that day by way of teleconference.

Would you please make sure that you do not destroy the tapes of John Pratico's or Mrs. Pratico's evidence. Since the cameras were turned off during that portion of the testimony, yours is the only record that we have. At some point I will be asking you for copies of those tapes.

I will be in touch with you if anything else comes up.

Yours very truly,

  
Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb

Enclosure

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 29, 1987


Ms. Margaret E. Graham  
Margaret E. Graham Discovery Service  
298 Portland Street  
Dartmouth, Nova Scotia B2Y 1K4

Dear Margaret:

Further to our conversation by telephone, I enclose a revised list of dates for the Halifax phase of the public Hearings.

I would also like to notify you that we will be requiring your services to provide a transcript of evidence that will be taken from a witness in Boston by teleconference. The proceedings will be held at the Maritime Tel & Tel facilities in the Maritime Center. The likely date for the teleconference is November 2nd, 1987. I will confirm the date for you as soon as I possibly can. Please let me know if the revised schedule of dates for 1988 poses any difficulties for you.

Yours very truly,

  
Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb

Enclosure

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 29, 1987

BY COURIER

Mr. Al Pringle  
Department of Justice Canada  
4th Floor, Royal Bank Building  
5161 George Street  
Halifax, Nova Scotia B3J 1M7

Dear Mr. Pringle:

RE: R.C.M.P. Files - Thornhill and MacLean

I refer to our telephone conversation a few weeks ago and our discussion today in which both calls I requested that the R.C.M.P. agree to turn over to the Commission their files concerning Mr. Thornhill and Billy Joe MacLean.

This letter is merely to confirm in writing that this request has been made by the Commission and I would appreciate your early response.

Yours very truly,

W. Wylie Spicer  
Commission Counsel

WWS/jm

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

**BY COURIER**

September 29, 1987

Mr. Donald C. Murray  
Stewart MacKeen & Covert  
Barristers and Solicitors  
Purdy's Wharf Tower One  
1959 Upper Water Street  
Halifax, Nova Scotia


Dear Don:

Re: William Urquhart

I am responding to your letter of September 22, 1987 in which you asked the Commission to confirm that it will cover the expenses incurred by Mr. Urquhart while he attends certain portions of the public Hearings in Halifax.

While I can understand Mr. Urquhart's desire to be present during particular portions of the evidence, it is our policy that witness expenses only be covered by the Commission while the witness is giving testimony. This means, unfortunately, that Mr. Urquhart and other witnesses must be prepared to cover their own expenses while they are attending at the Hearings during periods in which they are not themselves giving evidence.

Yours very truly,

  
Susan M. Ashley  
Commission Executive

SMA/ljb

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

BY COURIER

September 29, 1987

Ms. Judy Yorke  
Director of Sales  
The Lord Nelson Hotel  
1515 South Park Street  
Halifax, N.S. B3J 2T3

RE: ROYAL COMMISSION PUBLIC HEARINGS

Dear Judy:


Attached is a revised schedule for the Halifax phase of our public Hearings. As you can see, we have made some changes. As a result, we will be sitting for most of January and most of March. We will not be holding any hearings in Halifax in 1987.

I hope these revised dates do not cause any difficulties for you and I would ask that you let me know immediately if there is any problem.

One of our concerns is that whatever hearing space we use be accessible to the handicapped. We have had a problem with this in Sydney and do not want to repeat it in Halifax. Could you please confirm that the Lord Nelson is accessible to those with a mobility handicap.

I look forward to meeting you on Friday.

Yours very truly,

  
Susan M. Ashley  
Commission Executive  
Secretary

SMA/ljb

Enclosure

**ROYAL COMMISSION ON THE DONALD MARSHALL R., PROSECUTION**

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 29, 1987

**BY COURIER**

Dr. W. A. MacKay,  
Ombudsman  
Suite 1100, Royal Bank Bldg.  
5161 George Street  
P. O. Box 2152  
Halifax, Nova Scotia B3J 3B7

Dear Dr. MacKay:

RE: Polygraph

I refer to our telephone conversation of today and enclose copies of the press clipping file which we have gathered concerning the incident involving Donald C. MacNeil.

I confirm our meeting at the Commission offices on Tuesday, October 20th, 1987 at 9:30 a.m. Thank you for your assistance.

Kind regards.

Yours very truly,

W. Wylie Spicer,  
Commission Counsel

WWS/ljb

Enclosures



BY POLICE, JUDGES *ESK 3.*

# Prosecutor Calls For Stern Action

The large number of serious crimes which have been committed in the Eskasoni area in the last several months has prompted Crown Prosecutor Donald MacNeil to call for stern action by police and the courts of law.

"Something has to be done. Those who commit crimes have to be taught the laws of this province," Mr. MacNeil said.

He made the remarks yesterday prior to the passing of sentence by Provincial Judge MacDonald on two Eskasoni brothers, John Jerome Paul and Peter Richard Paul.

The Paul boys were convicted last week of assault causing bodily harm and John Paul pleaded guilty to a charge of creating a disturbance.

Mr. MacNeil suggested to Judge MacDonald that he check the dockets to "see the frequency of visitors from Eskasoni during the past six months."

"I also suggest that the three provincial judges take a drastic stand against those persons from Eskasoni who are guilty of violations of the law," he added.

The Crown Prosecutor went on to say that there are many decent and respectable people living in the Eskasoni area and they have the same right as anyone else to protection from the courts.

Mr. MacNeil also suggested that the two Paul brothers and anyone else who commits a crime should not "receive praise or a medal but taught respect for the law."

Judge MacDonald sentenced the two youths to two months each in the county jail for assaulting Kenneth Stevens of Castle Bay at Eskasoni on the night of October 11. Stevens received eye and leg bruises when struck by the Paul brothers.

John Paul received an additional two months for creating a disturbance on Oct. 10 at Eskasoni. The sentences will run concurrently.

Judge MacDonald advised the two youths to keep away from liquor.

"If you keep on drinking, the next place you will go will be Dorchester Penitentiary. If you want to make several trips to Dorchester, just keep on going the way you are," Judge MacDonald told the two boys.

"I suggest you stay away from liquor. It's going to be up to you," Judge MacDonald added.

*Cape Breton Post  
October 29/69*

*p. 5*

*C.B. Post  
Oct. 29/69 p. 5*

ESK 4

THE CAPE BRETON  
**HIGHLANDER**  
 VOL. 6 NO. 48, SYDNEY, CAPE BRETON, NOV 26, 1989 24 PAGES 10¢

## Indians seek prosecution of local Crown Prosecutor

Albert Julian, Band Manager of the big Eskasoni Macmac reservation, has asked the Nova Scotia Human Rights Commission to investigate a recent statement by Crown Prosecutor Donald MacNeil.

MacNeil, who is also the Tory MLA for Cape Breton South (Sydney), recently called for a crackdown by the courts on an alleged crimewave among residents of the reservation. He implied that the courts should be more severe, in order to teach respect for the law. Band Manager Julian retorted angrily that MacNeil sounded "more like a persecutor than a Prosecutor." He described MacNeil's statement as a "declaration of discrimination against a minority."

"What hope does anyone from Eskasoni have of getting justice when pre-trial prejudice is openly announced in the news media? Is Eskasoni this man's magic word for a guilty verdict?"



ALBERT JULIAN

Chronicle  
Herald

January 23/70

# Law officer acted properly — Don hoe

ESK



R. A. DONAHOE

Attorney General R. A. Donahoe says Crown Prosecutor Donald C. MacNeil, of Sydney, "acted properly" in making a statement in court objected to by the Nova Scotia Human Rights Commission.

"I cannot urge the Crown prosecutor to withdraw his remarks as he acted properly in directing the mind of the judge to conditions that he believed existed in a stated area (Eskasoni)."

Text of Mr. Donahoe's statement, and of a letter on the subject he wrote to W. A. MacKay, of Halifax, chairman of the Human Rights Commission:

A recent news release by the Human Rights Commission relating to a complaint with respect to the remarks of a Crown prosecutor made in open court has been brought to my attention. This incident was the subject of a letter to me from the Human Rights Commission dated the 17th day of December, 1969.

After giving this matter my most careful consideration, I replied to the commission by letter dated the 30th day of December, 1969. I am releasing my letter to the chairman of the Human Rights Commission with this statement for publication.

Dear Mr. MacKay:

I have your letter of December 17, 1969 with reference to certain remarks alleged to have been addressed to a judge of the Provincial Magistrate's Court by the Crown prosecutor for the County of Cape Breton. We are dealing with a matter of principle and for our purpose at this time we may assume that the remarks objected to were in fact made.

I suggest that we are dealing with a matter of principle in that we are faced with a question as to whether or not remarks properly made in so far as the administration of justice is concerned by a Crown prosecutor in a court can be considered as contrary to the spirit and intent of the Human Rights Act.

I suggest to you that the remarks were properly made in so far as the administration of justice is concerned, because a conviction had been made and the Crown prosecutor was addressing the court in relation only to sentence. His remarks, in my opinion, would not constitute grounds for appeal against sentence.

There has been a great deal written and said with regard to sentence and from time to time the emphasis has changed, but the courts generally have accepted the proposition that there are three principles of criminal justice requiring consideration in the determination of punishment—namely, deterrence, reformation and prevention.

In this particular instance, the Crown prosecutor was directing the mind of the court to punishment as a deterrence. I should like to quote part of the decision of

J. K. MacKay, J.A., of the Ontario Court of Appeal in the case of Regina vs. Williams, 196 C.C.C. 172:

"The governing principle of deterrence, in my opinion, and common sense, that the emotion of fear should be brought into play so that the offender may be made afraid to offend again and also so that others who may have contemplated offending will be restrained by the same controlling emotion. Society must be reasonably assured, that the punishment meted out to one will not actually encourage others, and when some form of crime has become widespread the element of deterrence must look more to the restraining of others than to the actual offender before the Court."

"I am respectfully of opinion that the true function of criminal law in regard to

der 14 years of age; six cases of bodily harm; one case involving the use of a firearm; two cases of robbery with violence; one case of damage to property; one case of carrying an offensive weapon; one case of possession of stolen property; four cases of driving while impaired and ten cases of theft or breaking and entering and theft. All of these offences were committed in the area referred to by the Crown prosecutor.

In the administration of justice, we must be concerned with the rights of the individual, classes of individuals and society as a whole.

The Crown prosecutor very properly pointed out that there are many decent and responsible people living in the Eskasoni area and they have the same rights as anyone else to protection from the courts." An examination

spirit and intent of the Human Rights Act, but it must be kept in mind that he had a legal duty to discharge and I believe that his first duty was to acquaint the court with information that he considered relevant to the matter of sentence. The court, of course, would accept it, question it or disregard it altogether.

In conclusion:

(a) I cannot urge the Crown prosecutor to withdraw his remarks as he acted properly in directing the mind of the judge to conditions that he believed existed in a stated area;

(b) I cannot direct the Crown prosecutor to refrain from similar comments in the future as it may be his duty again in the future to direct the mind of the court to the prevalence of crime in an area;

(c) I am prepared to suggest to Crown prosecutors that they keep in mind the spirit and intent of the Human Rights Act, subject always to the discharge of their duties as officers of the court. It is their duty to present all material relevant to the guilt or innocence of an accused person and also all material relevant to the question of sentence.

It would be most improper for me to attempt in any way to direct judges as to the manner in which they should discharge their duties, as that would be an attempt to interfere on judicial independence, which is the very basis of the administration of law. Specifically, I am prepared to suggest to the Crown prosecutors that, except in most unusual circumstances, the question of race, religion, creed, colour, ethnic or national origin of an individual is not material to guilt, innocence or sentence.

I can appreciate the concern of the Human Rights Commission but, at the same time, I must keep in mind that the administration of justice is for the benefit of society as a whole.



D. C. MACNEIL

Text of Crown Prosecutor Donald C. MacNeil's statement:

In connection with the public statement issued by the Nova Scotia Human Rights Commission concerning my representations to the court after a conviction of a resident of Eskasoni last October:

I performed my duties in a manner that I considered to be in the interests of justice consistent with my position as Crown prosecutor for the county of Cape Breton.

My actions have been reviewed by the attorney-general of this province, and he has expressed the opinion to the Nova Scotia Human Rights Commission that I acted properly in directing the mind of the judge to the conditions I believed existed in the stated area.

As far as I am concerned, there was no discrimination against any class of individuals.

Punishment is in a wide blending of the deterrent and reformatory, with restitution not entirely disregarded, and with a constant appreciation that the matter concerns not merely the Court and the offender but also the public and society as a going concern. Punishment is, therefore, an art — a very difficult art — essentially practical, and directly related to the existing needs of society."

The Crown prosecutor acted properly when he brought to the attention of the judge what he believed to be an unusual number of criminal cases arising in one area of the community. His opinion is, I believe, substantiated by the list of offences attached hereto, covering a period from the latter part of December, 1968, to the early part of December, 1969.

That list shows convictions involving two cases of sexual intercourse with a female un-

Chronicle Herald  
Jan 23/70

Justice's  
interests  
served

Halifax Chronicle-Herald

Chronicle Herald Jan 23/70 p. 31

ESK 2

# Prosecutor's view criticized by human rights commission

The Nova Scotia Human Rights Commission says that recent statements in court by Cape Breton Crown Prosecutor Donald C. MacNeil, of Sydney, were "inappropriate and tended to be prejudicial in suggesting discriminatory treatment of Eskasoni residents before the courts and supporting such treatment in the general community."

## Text of the statement:

The Nova Scotia Human Rights Commission has concluded an inquiry into a complaint lodged by representatives of the community of Eskasoni concerning remarks made by Donald MacNeil, Crown prosecutor for the County of Cape Breton.

The complaint arose out of comments reported by the press to have been made during the course of a trial last October. The newspaper stories, which Mr. MacNeil has acknowledged were substantially correct, quoted him as saying in court that a large number of serious crimes had been committed in Eskasoni during the six months prior to the trial.

He was said to have referred to the number of persons from the area appearing in court and to have urged that "provincial judges take a drastic stand against those persons from Eskasoni who are guilty of violations of the

law." Mr. MacNeil also stated that there were many decent and respectable people in the Eskasoni area and they were entitled to protection from the courts.

According to the complainants, Mr. MacNeil's remarks promoted "pre-trial prejudice" in criminal cases involving Eskasoni residents. They felt that an accused person from their community would enter the courts at a disadvantage — that there would be an element of prejudging by both the courts and general public as a result of Mr. MacNeil's statements.

They also expressed the concern that, if Mr. MacNeil's approach to Eskasoni offenders were adopted by the courts, residents of the community would not be sentenced solely on the merits of their own case, but would be forced in some measure to pay for the transgressions of others.

Moreover, it was felt that Mr. MacNeil had identified a community that was known to be inhabited exclusively by Indians and his statements could heighten existing anti-Indian discrimination.

Immediately upon receiving the complaint, the director of human rights began an investigation, making it clear from the outset to all parties concerned that Mr. MacNeil's

remarks did not constitute a violation of any particular section of the Human Rights Act.

Mr. MacNeil was frank and co-operative in the investigation, but he contended that he had acted properly and, to support his argument, cited legal precedent which stressed the importance of sentences in criminal cases having a deterrent effect on potential offenders.

The Human Rights Commission has concluded that, although the actions of Mr. MacNeil did not constitute a contravention of a particular section of the Human Rights Act, his remarks ran contrary to the spirit of the Act and the Canadian Bill of Rights.

Moreover, the matter clearly came within the commission's jurisdiction to carry on programs of public education and information, and to co-operate with other government departments and community groups where human rights problems are concerned.

The commissioners did not presume to judge Mr. MacNeil's own attitudes, but limited their considerations to the content of his remarks and the effect that such remarks could have on the rights of individuals from Eskasoni. They agreed that, in the context of human rights concerns in Nova Scotia, Mr. MacNeil's statements were inappropriate and tended to be prejudicial in suggesting discriminatory treatment of Eskasoni residents before the courts and supporting such treatment in the general community.

The commissioners consider

the courts to be a social institution, an essential instrument of stability in society. In order to perform this social function fully, they must be free of suspicion. Justice must not only be done, but must be seen to be done.

While the commissioners expressed their confidence that the courts would not be influenced by Mr. MacNeil's proposed approach to Eskasoni offenders, they felt his remarks could create that suspicion, thereby undermining the courts in terms of their essential social function.

The commission would hope that judges and lawyers, recognizing the role of the courts in society, would refrain from references that might link or be interpreted as linking particular minority groups with particular forms of anti-social behavior.

Having reached its decision on the validity of the complaint, the commission felt that, in view of the limitations imposed upon it by virtue of the fact that this was not a formal complaint under the Act, it had to make public its findings in the matter. This was especially so because Mr. MacNeil's original remarks, made in court, had become the subject of public controversy.

It was also felt that this was fully in keeping with the commission's responsibility to carry on a program of public education in human rights matters.

Meanwhile, in addition to informing both sides in the dispute of its findings, the commission has brought the matter to the attention of the attorney-general's office.

Halifax Chronicle  
January 23



**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 29, 1987

**BY COURIER**

Dr. John J. Furedy  
Professor of Psychology  
University of Toronto  
100 St. George Street  
Sydney Smith Hall, Room 4024  
Toronto, Ontario M4Z 3Y2

Dear Dr. Furedy:

RE: Polygraph

I refer to our telephone conversation of yesterday.

I neglected to send along to you with my letter of yesterday's date copies of the polygraph examiner's report and also the R.C.M.P. report related to the November, 1971 investigation. Both these documents have been filed with the Commission and are, therefore, now a matter of public record, and I am enclosing them for your perusal prior to our meeting.

Yours very truly,

W. Wylie Spicer,  
Commission Counsel

WWS/ljb

Enclosures



"F" Division  
C.I.B.

RCMP 343

010-6

UR NO. \_\_\_\_\_  
TRE NO. \_\_\_\_\_

IR NO. 71 Poly 25  
TRE NO. \_\_\_\_\_

RCMP 343

Regina, Sask., 30 Nov 71.

CONFIDENTIAL

Officer i/c, C.I.B., Halifax, N.S.

Re: Donald MARSHALL - Non-Capital Murder  
Sec. 218(2) C.C. - Sydney, Nova Scotia  
28/29 May 71

GENERAL: On the authorization of the OIC C.I.B., "H" Division, a polygraph examination was administered to the following persons on 23 Nov 71 at Sydney, N.S.

1. James William MacNEIL
2. Roy Newman EBSARY

Before taking the examination both subjects signed forms stating that they were taking the test voluntarily. Particulars of this offence were provided by Insp. E.A. MARSHALL.

PURPOSE: The main issue under consideration in the polygraph examination was whether or not these subjects were telling the truth with reference to their knowledge of the above-noted offence.

DATA: (a) There were indications of truthfulness in EBSARY's polygraph recordings when he answered "No" to the following test questions:

1. Around the end of May this year do you know for sure who stabbed Sandy SEAL?
2. Around the end of May this year did you stab Sandy SEAL?
3. Around the end of May this year were you right there when Sandy SEAL was stabbed?
4. Around the end of May this year did you wash blood off a knife?

(b) Throughout MacNEIL's examination there were irregular and erratic reactions to the test questions. These variations are the type which prevent an analysis of the charts and I can render no opinion as to whether or not MacNEIL was telling the truth when he answered "Yes" to the following test questions:

*is Marshall  
rep. Marshall*

10 1971

71 Poly 25

30 Nov 71.

Re: Donald MARSHALL - Non-Capital Murder  
Sec. 218(2) C.C. - Sydney, Nova Scotia  
28/29 May 71

1. Around the end of May this year did Roy really stab Sandy?
2. Around the end of May this year did you see Roy stab Sandy?
3. Were you right there when Roy stabbed Sandy?
4. Around the end of May this year did you see Roy washing blood off his knife?


CONCLUSIONS:

It is my opinion, based on EBSARY's polygraph examination, that he was telling the truth to his questions.

REMARKS:

It will be noted that I gave an indefinite opinion as to MacNEIL's polygraph examination, however, the following should be added. This subject was interviewed after the examination and on a number of occasions was quite ready to admit that he was lying and that he was only "joking" when he said that EBSARY had stabbed SEAL. He would then revert to his original story. I believe that his mind was open to anything that might be suggested to him. Under the circumstances I do not feel that he is mentally capable of responding to a polygraph examination and for that reason no other tests were administered. I do feel, however, that EBSARY was truthful with reference to his polygraph examination.

DISTRIBUTION:

  
Cpl.,  
(E.C. Smith) #20894,  
Polygraph Section.

|   |                                       |                    |  |
|---|---------------------------------------|--------------------|--|
| OTHER FILE REFERENCES.<br>REF. AUTRES DOSSIERS: | DIVISION<br>"H"                       | DATE<br>21 Dec. 71 | RCMP FILE REFERENCES.<br>REF. DOSSIERS GRC:<br><br>7<br><br>RCMP 352 |
|   | SUB-DIVISION: SOUS-DIVISION<br>C.I.B. |                    |  |
|   | DETACHMENT DÉTACHEMENT                |                    |  |

RE  
OBJET: Donald MARSHALL, Jr.  
Non-Capital Murder (Sec. 206(2)) C.C.,  
Sydney, N. S.  
(Sydney City Police Case)

MARSHALL was convicted in Sydney, N. S. for the non-capital murder of Sandford William @ 'Sandy' SEALE (Negro). He was sentenced to life imprisonment by Mr. Justice J. L. Dubinsky.

2. The offence took place around midnight of the 28/29 May 71 (Friday evening - Saturday morning) in Wentworth Park in the City of Sydney. SEALE was stabbed once in the abdomen with a rather large weapon (blade about 3/4" wide and at least 4" long). The deceased underwent an emergency operation, but, expired at 8:00 A.M. on Saturday, the 29 May 71. Although conscious a number of times after the assault, he did not name his assailant. MARSHALL denied being the murderer, both to the police when interrogated and later on the stand during the trial. The weapon has never been recovered. Intensive investigation by the Sydney City Police was commenced and MARSHALL arrested on the 4 June 71. His Counsel, C.M. Rosenblum, has applied for leave to appeal the conviction.

3. After sentence was passed, one James William McNEIL, age 25 years, came forward and said that he was with a man by the name of Roy EBSARY during the evening of the 29 May 71 and that he, EBSARY, had in fact murdered SEALE in Wentworth Park. McNEIL was interviewed by Sydney City Police and the Prosecuting Officer for Cape Breton County, Donald C. MacNEIL, Q.C., on Monday the 15 Nov. 71. Roy EBSARY was picked up and interviewed and he denied murdering SEALE, although he did say that McNEIL and himself were in the park, after visiting a tavern during the evening of the 28 May 71 and that he and McNEIL became involved in an altercation with two men (later determined through investigation to be MARSHALL and SEALE). According to McNEIL and EBSARY, MARSHALL and SEALE attempted to rob them in the park. This altercation, which obviously happened prior to the murder, was not known to the police until McNEIL came forward on the 15 Nov. 71. At this point the Force became involved and I went to Sydney on the 16 Nov. 71 where, together with Sgt. G.M. McKINLEY, i/c Sydney G.I.S., a thorough review of the case was conducted with the following results.

17 November 71

4. From the outset of our investigation it was apparent the use of the polygraph would be extremely useful. A request was therefore made for this equipment and the operator and the necessary authority received for Cpl. E. C. SMITH, "F" Division, to proceed to Sydney to assist with this investigation.



RE  
OBJET:

Donald MARSHALL, Jr.  
Non-Capital Murder (Sec. 206(2)) C.C.,  
Sydney, N. S.  
(Sydney City Police Case)

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R. 1002 352

5. Sgt. McKINLEY received McNEIL's written permission that he would undergo the polygraph test. We interviewed McNEIL and it was obvious by his demeanour and speech that he has sub-normal intelligence and is slightly mental. He was, nonetheless, convinced that EBSARY had stuck a knife into the deceased and that later they went to EBSARY's home where he, EBSARY, washed off the knife. Because we were certain that McNEIL's account of the altercation insofar as it concerned EBSARY allegedly stabbing MARSHALL was a figment of his imagination, we did not immediately question him or take any further action with respect to McNEIL at this time. Rather, a number of hours were spent by Sgt. McKINLEY and myself going over statements given by various witnesses to the police during the initial investigation and later and visiting the scene of the crime with Sergeant of Detectives John MacINTYRE, Sydney Police Department, and additionally perusing transcripts of evidence given at the preliminary hearing and some transcripts of evidence given in high court during the trial.

6. Without quoting all the evidence, the following are the salient points given by key witnesses of the events leading up to and following the stabbing. Kindly refer to the attached diagram which will illustrate and clarify much of the evidence given at the trial.

Maynard Vincent CHANT (Age 14 at time of murder - now Age 15)

Testified that he was walking down the railway tracks in Wentworth Park just prior to the stabbing. He first saw a person later identified as John Lawrence PRACTICO hiding in the bushes between the railway tracks and Crescent Street. He also saw two men, one of whom he recognized as Donald MARSHALL, standing close to each other on Crescent Street. He heard mumbling and swearing and he thought MARSHALL was doing most of the swearing. He then saw MARSHALL take out a knife from his pocket and jab it into the man he was with. CHANT became frightened at this point and ran down the railway tracks to Byng Avenue. During this time MARSHALL also walked over to Byng Avenue and met CHANT along with two other boys and two girls (these persons have never been located or identified). MARSHALL told the group that two men had attacked he and 'his Buddy' (SEALE). He also showed them a superficial cut on his arm, which was not bleeding, incidentally. He stated that his Buddy (SEALE) was on the other side of the Park with a knife in his stomach. A car then came along (neither the car or its driver were identified) and they (MARSHALL, CHANT and the occupants of the car) drove around to where SEALE was lying on the street. MARSHALL took care not to stand where SEALE could see him. CHANT took off his shirt and put it over SEALE's stomach while waiting for the ambulance.

John Lawrence PRACTICO (Age 16 Years)

PRACTICO attended the dance at St. Joseph's Hall, Sydney

RE:  
OBJET:

Donald MARSHALL, Jr.  
Non-Capital Murder (Sec. 206(2)) C.C.,  
Sydney, N. S.  
(Sydney City Police Case)

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RC 1012 352

6. continued.

until shortly before midnight, when he left by himself. He met MARSHALL and SEALE and they walked to the corner of Argyle and George Streets. MARSHALL wanted PRACTICO to come down into the Park. (Although PRACTICO never admitted or suggested that MARSHALL and SEALE were going into the park to attempt to 'roll' someone, the inference is there and it is the consensus of opinion MARSHALL and SEALE were, at this time, bent on robbing someone). PRACTICO then proceeded into the Park on his own and sat down in the bushes to drink a pint of beer when he saw SEALE and MARSHALL on Crescent Street. He testified that he was about thirty or forty feet from them at this time and that he heard an argument take place between the two during which SEALE is alleged to call MARSHALL a 'crazy Indian' and MARSHALL called SEALE a 'black bastard'. PRACTICO saw MARSHALL plunge a weapon into SEALE's side, SEALE fall to the ground and then MARSHALL running up Crescent Street towards Argyle Street. PRACTICO then ran to his home on Bentinck Street.

Neither of the two aforementioned witnesses told the truth to the police when they were first interviewed. However, this can be put down to the fact they were both scared and that PRACTICO is not too bright. In the final analysis evidence, which was as outlined above is believed to be factual and, what is just as important, there was no collaboration between the two. In other words, what the court had were the same facts told by two quite independent witnesses.

Terrence GUSHUE (Age 20)

GUSHUE also attended the dance at St. Joseph's Hall, but, left about 10:30 P.M. with a young girl. They were in the Park for some time and in fact saw and had conversation with MARSHALL and SEALE, although they did not know SEALE at the time. They did not witness the murder, but, could put both MARSHALL and SEALE on Crescent Street prior to the stabbing.

7. Some of the exhibits, particularly the jacket MARSHALL was wearing the night of the murder was examined. This light-weight yellow jacket was found to have the left sleeve cut and ripped. There were also some light blood stains on the left front portion of the jacket (see attached diagram) in such a position as to strongly indicate MARSHALL wiped his forearm on it. There were no blood stains on the inside of the sleeve, although MARSHALL led investigators to believe he had also been knifed during the scuffle with two unidentified men just prior to SEALE being stabbed. There was an insufficient

RE  
OBJET:

Donald MARSHALL, Jr.  
Non-Capital Murder, Sec. 206(2) C.C.,  
Sydney, N.S.  
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PAGE 4

RCMP 2352

## 7. (continued)

quantity of blood on MARSHALL's jacket to have it typed. CHANT stated that the cut on MARSHALL's arm was not bleeding when he saw him on Byng Avenue. Although the cut was superficial, it was sutured at the hospital. While in gaol, MARSHALL removed the bandage from his arm and flushed it down the toilet and even removed the sutures himself, suggesting that he did not want to have anything around with his blood on that could be picked up by the police from which his blood type might be determined. There are on the jacket what appears to be hesitation marks caused by a knife, and I am firmly convinced MARSHALL inflicted the slight cut on his arm after he stabbed SEALE to add credence to his story.

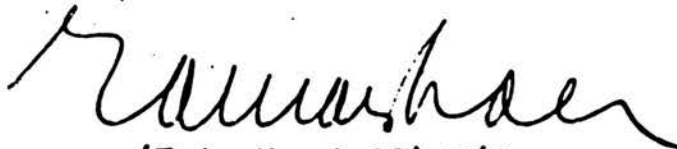
23 NOV 71

8. Cpl. E.C. SMITH conducted the polygraph tests on both McNEIL and EBSARY. His report is attached and indicates EBSARY is telling the truth when he answered "no" to the question, "Did you stab SEALE?" With respect to McNEIL's test, please note Cpl. SMITH cannot give an opinion as to whether or not he is telling the truth. Post-examination questioning leaves no doubt in my mind McNEIL is not telling the truth when he said EBSARY stabbed SEALE.

9. In conclusion, the chronology of events surrounding this murder appears thusly to the investigators. SEALE and MARSHALL entered Wentworth Park shortly before midnight intent on "rolling" someone. EBSARY and McNEIL, somewhat intoxicated, happened to walk through the park and were accosted by SEALE and MARSHALL. Their attacks were not successful and following the altercation a violent argument ensued between the two attackers culminating with MARSHALL stabbing SEALE and then inflicting a superficial wound on his own forearm to divert suspicion from himself before he made the pretense of summoning aid for SEALE. Later McNEIL, because he had been drinking and because of his subnormal intelligence, formed the idea that EBSARY had in fact stabbed SEALE when they were set upon. This became a fixation in his mind which surfaced in the form of positive action after MARSHALL had been sentenced to life imprisonment.

10. Mr. Donald MacNEIL, Q.C. has been made aware of the results of this investigation.

11. CONCLUDED HERE



(E.A. Marshall) S/Insp.  
"H" Division Detective Inspector



ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 29, 1987

Mr. R. L. Hornsby, President  
Community Involvement of the  
Disabled Society  
P. O. Box 1448  
Sydney, Nova Scotia B1P 6R7

Dear Mr. Hornsby:

I have just received a copy of your letter to the Honourable Terence Donahoe dated September 21st, 1987 in which you expressed concern that the facility in which the public Hearings of the Royal Commission on the Donald Marshall, Jr., Prosecution are being held is not accessible to the handicapped. I share your concern.

When I began work with the Royal Commission in late August, arrangements had been confirmed with Saint Andrew's United Church for quite some time. I understand that the Commission had looked at several possible sites for the Hearings in Sydney and that the Church Hall was the one which came closest to meeting our requirements. We do recognize, however, the access difficulties for people with a mobility handicap. I have checked with the Church to see if there is any possibility of having a ramp installed and they indicate that this would be extremely difficult. While I appreciate your belief that our offer to help people into and out of the Hall on an individual basis is not realistic or acceptable, we are, of course, more than willing to help in this way.

The accessibility issue was kept firmly in mind when we were looking for space to hold the Hearings in Sydney and I certainly hope that we will not have a similar problem when the Hearings move to Halifax. Please accept our apology for any inconvenience that you or the members of your group have suffered. We take seriously the concern that you have expressed

Mr. R. L. Hornsby

September 29, 1987

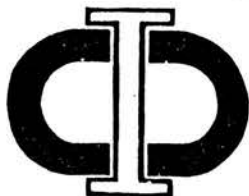
and will try to assist you as much as we can under the  
circumstances.

Yours very truly,

Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb

cc: The Honourable Terence Donahoe, Q.C.  
Mr. Donald Curren



## Community Involvement of the Disabled, Society

P.O. BOX 1448 SYDNEY, N.S. B1P 6R7

*"A Voice Of Our Own"*

September 21, 1987

Hon. Terence Donahoe  
Attorney General of Nova Scotia  
P.O. Box 7  
Halifax, N.S.  
B3J 2L6

Dear Mr. Minister,

On behalf of Community Involvement of the Disabled. I am writing you to bring to your attention a most distressful situation.

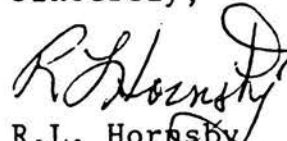
As you are aware, the Donald Marshall Jr. inquiry is being conducted at St. Andrew's Church Hall in Sydney. This facility is not equipped for entry by persons with a mobility handicap. As citizens of the province of Nova Scotia, disabled persons are entitled to attend this public inquiry.

Ms. Susan Ashley, spokesperson for the Royal Commission has stated that disabled persons could still attend the hearing, that there are several commission officials in attendance who could help them into and out of the hall (Cape Breton Post, Sept. 19, 1987, pg. 3). This, of course, is not a realistic nor an acceptable solution. Further, it is an insult to mobility impaired persons.

...2

We, the members of Community Involvement of the Disabled,  
anxiously await a resolution of this matter and a reply that  
addresses the seriousness of the situation.

Sincerely,



R.L. Hornsby  
President

c.c. Mr. Donald Curren  
Chairperson, NSHRC  
Mr. George MacDonald  
Chief Commission Counsel

## Marshall Jr. — Day Eight

# re still believes ght man: Walsh

evidence.  
One of those procedures was followed in the Seale investigation the night he was found lying in the street. In other testimony, Walsh was questioned concerning notes he made after viewing the transcripts of the 1982 appeal hearing as requested by MacIn-

e.  
The only conclusion the court can arrive at is that the actions of this man are not consistent with those of a man trying to proclaim his innocence to the world," said Walsh in his notes.

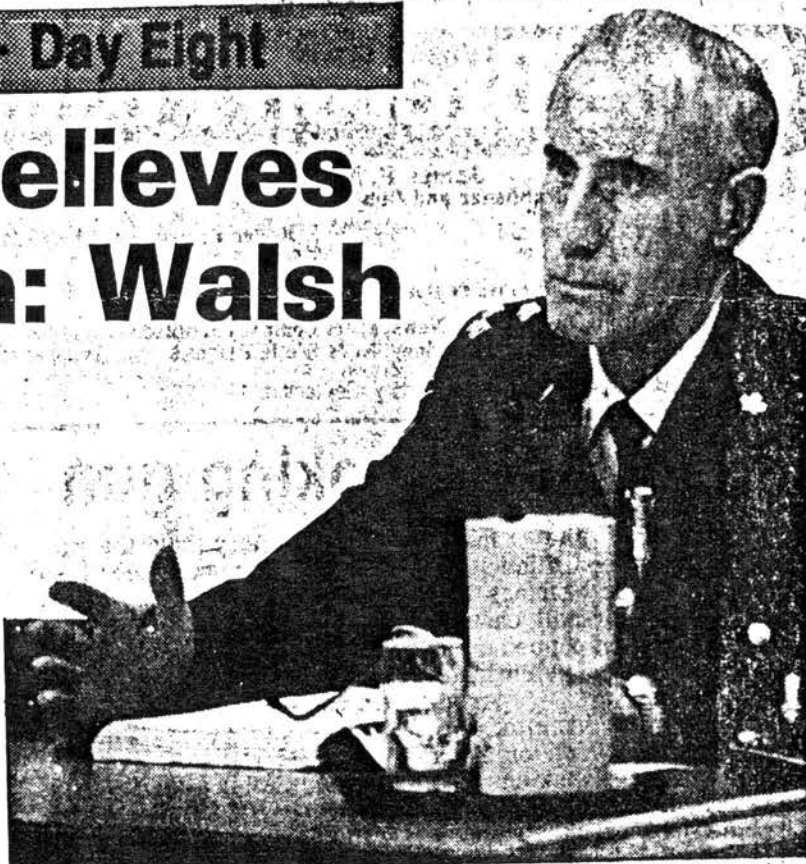
He explained Marshall must have been coached in what to say at the hearing because of his limited educational background and the length of time which passed between his conviction and appeal.

"He wasn't coming across forcefully enough for a court to believe him," said Walsh.

He said he was surprised the notes have surfaced during this inquiry adding he thought it was just something between a few men.

"This case has always troubled the chief," said Walsh adding he (MacIn-re) felt trapped because he couldn't comment on the issue.

Walsh, who is the eighth witness to appear before the commission, is expected to continue his testimony when the hearings resume at 9:30 Monday morning.



Post photo by Lloyd Warren

Chief Walsh testifies before commission Friday

# City

Bob Duchemin  
City Editor  
564-5451



## Hall inaccessible to handicapped

The hall where the hearing into the wrongful dismissal of Donald Marshall Jr. is being held may be one where evidence is being heard about alleged injustice against minority groups, but another such group feels left out because of the inaccessibility of the hearing for the handicapped.

The hearing is focusing partly on how police and the justice system has treated blacks and Indians in Nova Scotia.

However, says a spokesman for a disabled group, handicapped people are being discriminated against by the hearing itself because the hall in which proceedings are located, is not accessible.

"It makes us feel as if we're not wanted," said Ron Hornsby, president of Community Involvement of the Disabled (CID), a disabled-rights group in Cape Breton. "They could have put it in a building that was accessible to

availability of a ramp to enable them access to the basement hall.

Hornsby said his group is writing officials in charge of organizing the hearings, as well as the provincial attorney general's office, criticizing the decision and asking that the second part of the hearing, which will be held in Halifax, be accessible for everyone.

Susan Ashley, spokesman for the Royal Commission on the Donald Marshall Jr. Prosecution, said other locations were considered. "Thought was given to it but there didn't seem to be any other option," she said.

Ashley said St. Andrew's Hall was chosen for its meeting space as well as its offices which were needed by lawyers and other officials for the hearing.

Ashley suggested disabled people could still attend the



September 21, 1987

Gordon F. Proudfoot, Esq.  
Boyne Clarke  
Barristers & Solicitors  
P. O. Box 876  
Dartmouth, Nova Scotia  
B2Y 3Z5

Dear Gordon:

I am replying to your letter of September 16, 1987.

I am happy to speak to this witness without her identifying herself, but you will appreciate that if what she says can be used as testimony at some point, I will need to find out the name of the witness.

For the time being, however, your suggestion is satisfactory and perhaps you could get her to give me a call. I will be in Halifax next week (week of September 28th).

Yours very truly,

W. Wylie Spicer  
Commission Counsel

WWS/mm

ROYAL COMMISSION ON THE DONALD MARSHAL JR., PROSECUTION

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 29, 1987

Scott Clark, Esquire  
c/o G.S. Clark & Associates  
Suite 712, 151 Slater Street  
Ottawa, Ontario K1P 5H3

Dear Scott:

Re: Research Project - The Criminal Justice System and  
Discrimination Against Indians in Nova Scotia

Further to my letter of September 21, 1987 and our subsequent telephone conversations, I now attach duplicate copies of the contract between yourself and the Commission. If you agree that the terms of the contract accurately reflect our understanding, please be good enough to execute both copies, returning one to my attention.

I should emphasize that there are two points which are not explicitly addressed in the contract, but which have been the subject of discussions between us. Firstly, it should be understood and agreed that the Commission will require your first draft sufficiently in advance of March 31, 1988 in order to circulate it for purposes of a possible peer group evaluation. Secondly, although the contract does not set out a requirement for periodic progress reports, it should be understood that the Commission will require such reports with sufficient regularity to keep it abreast of your progress.

I trust that you will find the foregoing in order, but should you have any questions, please do not hesitate to bring them to my immediate attention. Thank you for your co-operation.

I remain,

Yours very truly,



John E.S. Briggs  
Director of Research

JESB:jrc  
attach.

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

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CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 28, 1987

Dr. John J. Furedy  
Professor of Psychology  
University of Toronto  
100 St. George Street  
Sydney Smith Hall, Room 4024  
Toronto, Ontario M4Z 3Y2

Dear Doctor Furedy:

I confirm our telephone conversation of today's date in which we arranged to meet at your offices at the University of Toronto on Tuesday, October 13, 1987 at 2:00 p.m.

At that meeting I would like to discuss with you, the reliability of polygraph examinations and in particular, the state of the art in 1971. If you are able to advise me what the RCMP attitude would have been towards polygraph testing in 1971 that would also be useful.

Thank you for your assistance. I look forward to meeting you.

Yours very truly,

W. Wylie Spicer  
Commission Counsel

WWS:jrc

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 24, 1987

Canadian Government Publishing Centre  
Supply and Services Canada  
Ottawa, Ontario  
K1A 0S9

Dear Sir/Madam:

I would appreciate your sending us one copy each of the First Report (CP32-37/1980-1) and Third Report (CP32-37/1980-3) of the Commission of Inquiry concerning certain activities of the Royal Canadian Mounted Police.

Thanking you in advance for your co-operation in this regard.

Yours truly

*Brenda McGilvray*

Brenda McGilvray  
Librarian

BMG:jrc

ROYAL COMMISS ION ON THE DONALD MARSHAL JR., PROSECUTION

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CHAIRMAN

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

BY COURIER

September 25, 1987

Mr. Reinhold Endres  
Director (Civil)  
Department of Attorney General  
5151 George Street, 9th Floor  
Bank of Montreal Building  
Halifax, Nova Scotia

Dear Mr. Endres,

RE: Thornhill and MacLean Files

Further to our discussion at your offices on September 16th and 17th, I have attached a list of the files by file numbers, which Prof. Edwards and myself reviewed last week.

It would be helpful if your office would review the attached list to ensure that I have accurately transcribed the identifying file numbers. In addition, I would ask you to confirm, as we discussed last week, that the attached list identifies all of the files in the possession of the Department of the Attorney General, including Crown Prosecutors' offices, pertaining to Messrs. MacLean and Thornhill.

I would appreciate hearing from you very shortly. Thank you for your cooperation. I remain,

Yours very truly,



John E.S. Briggs  
Director of Research

JESB/jm

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 24, 1987

BY HAND

Professor H.A. Kaiser  
Associate Professor of Law  
Dalhousie Law School  
Halifax, Nova Scotia  
B3H 4H9

Dear Professor Kaiser:

I acknowledge receipt of your letter of September 17, 1987  
addressed to W. Wylie Spicer, Associate Counsel to the  
Commission.

Since your letter was written, we have discussed the matters  
raised therein and I look forward to pursuing the subject further  
during the course of our meeting today.

Thank you for your interest in the work of the Commission. I  
remain,

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc

cc: W. Wylie Spicer

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

BY COURIER

September 21, 1987

Professor Bruce Archibald  
Dalhousie University Law School  
1381 Henry Street  
Halifax, Nova Scotia B3H 4H9

Dear Bruce:

**Re: Your Opinion Report on Use of Evidence and Rulings Thereon  
at the Trial of Donald Marshall, Jr.**

Further to our meeting with George MacDonald on Friday, September 18, 1987, I now enclose a copy of the transcript from Marshall's Preliminary dated July 5, 1971.

I understand that you will be revising your draft opinion in accordance with the points which we discussed and returning it to my attention later this week. I hope that you will give particular consideration to your recommendation with respect to "UNIFORM RULES OF EVIDENCE". If, as you seem to be suggesting, the Justice Department's draft of a new Canada Evidence Act would reduce the likelihood of a recurrence of the kind of problems that surfaced during the Marshall trial, then I think that this can and should be stated in Your Opinion more explicitly and forcefully.

I also understand that you will be examining the question of the Appeal Court's obligation to deal with matters not raised on appeal but which would seem to jump out at you from the trial record. This is I think, a very interesting question in and of itself, particularly in the broader context, i.e. the institutional arrangements for the administration of justice and the quality thereof. My own intuitive view, unencumbered by the benefits of researching the question, is that there is, or certainly ought to be, an obligation on the part of a Court of Appeal to address manifest errors of law which are obvious on the

Professor Archibald  
Page 2  
September 21, 1987

face of the record, notwithstanding that they may not be raised on appeal, where such errors go to central matters at issue at trial and where the resolution of such issues may well have been determinative of the final outcome at trial. I believe this to be very much front and center to the concept of the inherent jurisdiction of a court, particularly in an Appeal Court, to ensure the quality of the administration of justice in the Province and to take a proactive role in situations where such administration may tend to throw the system into disrepute.

Of course there is the whole question of defence counsel's responsibility and where you draw the line. I haven't thought that one out but I'm sure you will! I will be most interested to see what you turn up on this question as I am sure there must be a number of cases if not in this jurisdiction, elsewhere where Appeal Courts have jumped in to correct manifest errors even when these have not been raised on appeal.

If you require any materials further to the enclosed, please do not hesitate to contact me. Thank you for your co-operation.

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc

encl.



**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 21, 1987

Mr. Darrel I. Pink  
Patterson, Kitz  
Barristers & Solicitors  
Suite 1600, 5151 George Street  
Halifax, Nova Scotia B3J 2N9

Dear Mr. Pink:

Re: Advice to Prosecuting Officers

I understand from Professor Edwards that during a visit to your offices in August of this year, he requested certain specific provisions contained in the Attorney General's two volumes of "Advice to Prosecuting Officers".

I would appreciate it if you would be good enough to follow up on this matter at your earliest convenience and arrange to have the materials which Professor Edwards has requested, forwarded to my attention.

I would also ask you to confer with your client regarding our earlier request to have a complete copy of the two volumes "Advice to Prosecuting Officers" forwarded to the Royal Commission. We have requested this or similar material from all of the provinces and have been receiving it on a confidential basis where it is not a matter of public record. It would certainly facilitate our work to have a copy of this material on hand, rather than having to arrange to visit your offices every time we wish to examine the material. I thought that in view of the co-operation we have been receiving from all other provinces, your client might be prepared to reconsider its earlier position.

I would appreciate hearing from you on the foregoing matters at your earliest convenience. Thank you for your co-operation.

I remain,

Yours truly,

John E.S. Briggs  
Director of Research

JESB:jrc

bcc: Prof. Edwards  
Prof. Archibald ✓

**ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION**

---

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THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

STRICTLY CONFIDENTIAL

September 22, 1987

Professor John Ll.L. Edwards  
University of Toronto  
Faculty of Law  
78 Queen's Park  
Toronto, Ontario M5S 2C5

Dear Professor Edwards:

Re: A.G.'s Files

I enclose herewith for your information only, a list of those documents which we identified last week as being potentially relevant to our Inquiry.


I have also enclosed a copy of my memo to file relating to some of the documentation in the MacLean file.

Finally, I enclose for your records a copy of my correspondence of today's date with Darrel Pink which I believe is self-explanatory. I would expect to be in touch with you in a few days to discuss this and related matters.

I trust you will find this in order. Thank you for your co-operation.

I remain,

Yours truly,

  
John E.S. Briggs  
Director of Research

JESB:jrc

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 23, 1987

PERSONAL & CONFIDENTIAL

Professor Alan Grant  
York University  
Osgoode Hall Law School  
4700 Keele Street  
Downsview, Ontario M3J 2R5

Dear Alan,

RE: Proposed Research Project - Police Organization  
and Training Facilities in Nova Scotia

Further to our Toronto meeting of September 8, 1987, subsequent telephone conversation and your letter of September 9, 1987, I am, perhaps needless to say, disappointed that you are unavailable to undertake the necessary field research with respect to the above-noted project.

I am, however, very pleased to note your willingness to act as a resource person to the Commission. More on this shortly. In the meantime, I wish to thank you for your cooperation and participation to date.

With kind personal regards. I remain,

Yours very truly,



*for* John E.S. Briggs  
Director of Research

JESB/jm

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

**BY COURIER**

September 21, 1987

PERSONAL AND CONFIDENTIAL

Scott Clark, Esquire  
c/o G.S. Clark & Associates  
Suite 712, 151 Slater Street  
Ottawa, Ontario K1P 5H3

Dear Scott:

Further to our telephone conference last evening, I now enclose the following:

1. Vizkelety, Proving Discrimination in Canada, Toronto, 1987 (Carswell)
2. "Native People and Racism", Vol.4, No.2 of CURRENTS, Readings in Race Relations, Spring, 1987

I would hope to be in a position to forward a contract to you shortly. In the meantime, please consider that your services have been engaged commencing today, September 21, 1987, at your agreed upon per diem of \$350.00 to a maximum of \$40,000.00 for professional fees for completion of the project at March 31, 1988. In addition, you will of course be reimbursed for reasonable necessary expenses on a cost-recovery basis in accordance with our discussions on that subject and the outline of such costs reflected in your letter of September 10, 1987.

Please give some thought to the dates when you will require the services of Jim Maloney. The Commission is rather keen on the idea of continuing to use Mr. Maloney in Sydney while the Public Hearings are being conducted. The Commission is sitting in Sydney this week, will take a break next week and then resume their Hearings in Sydney on Tuesday, October 6 for a period of four days, following which there will be a three week break with the Hearings resuming again on Monday, October 26 and continuing for the next three weeks until Friday, November 13, 1987.

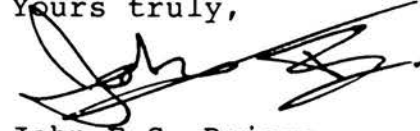
Scott Clark  
Page 2  
September 21, 1987

I dare say that there will be an overlap between your requirements and the Hearing dates outlined above, however, if we can accommodate the Commission's desires with your requirements, I would like to be able to do so. If, however, Mr. Maloney's non-availability as a result of attendance at the Public Hearings is going to jeopardize our research agenda, then please advise accordingly.

Please feel free to contact me at any time should you require any additional materials or assistance.

Thank you for your co-operation. I remain,

Yours truly,

A handwritten signature in black ink, appearing to read 'John E.S. Briggs', written over a horizontal line.

John E.S. Briggs  
Director of Research

JESB:jrc

encl.

**ROYAL COMMISSION ON THE DONALD MARSHAL JR., PROSECUTION**

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

PERSONAL AND CONFIDENTIAL

September 21, 1987

Bruce H. Wildsmith  
Barrister  
Room 307, Weldon Law Bldg.  
Dalhousie Law School  
Halifax, Nova Scotia B3J 1G6

Dear Bruce:

Re: The Criminal Justice System and the Discrimination Against  
Indians in Nova Scotia

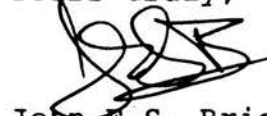
Further to our telephone conversation of Friday, September 18, 1987, please find attached the copy of Scott Clark's research outline entitled, "Adverse Effects for Native People Through Involvement in the Nova Scotia Criminal Justice System".

You will note that the various amendments which you had previously suggested to me have now been incorporated in the revised research outline. In any event, should you have any questions or concerns on this, please do not hesitate to contact me accordingly.

As I know you are fully aware, the success of this project is very dependent upon the full co-operation of your clients. I am sure that you can be instrumental in ensuring the required level of co-operation and no doubt Scott Clark will be in touch with you from time-to-time on that and related matters as the need arises.

Thank you for your co-operation.

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc

cc: Scott Clark

**ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION**

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

**BY COURIER**

September 21, 1987

PERSONAL AND CONFIDENTIAL

Dr. Wilson Head  
c/o Hotel Nova Scotian  
Hollis Street  
Halifax, Nova Scotia

Dear Wilson:

**Re: Proposed Research Project - The Criminal Justice System and  
Discrimination against Blacks in Nova Scotia**

I enclose herewith, two articles by Ed Renner, et al, plus another article which may be of interest. We have requisitioned the other articles which you indicated would be of interest to you, however they are not yet available. I shall forward them to you when we have them in hand.

I have also enclosed a copy of your proposal: "Perceptions of Racism and the Criminal Justice System of Nova Scotia The Donald Marshall Story" in which you will note I have had the last several pages retyped commencing with the heading, "Basic Assumptions: (Hypothesis)". You will also note that I have removed the last paragraph or so of your proposal under the heading "Administration of the Project" wherein you make reference to the cost aspects of the study. I consider that this is a confidential matter as between yourself and the Royal Commission and at this stage ought not to be the subject of a discussion in a wider forum.

I hope that as a result of tomorrow's meeting we will be able to focus the central thrust of the proposed research project and largely define the terms of reference. I realize that this may be somewhat ambitious, but I would hope that at least we can achieve a consensus on the essential salient questions to be addressed.

Dr. W. Head  
September 21, 1987  
Page 2

As discussed, I suggest that we meet for breakfast at your hotel at approximately 8:15 a.m. I shall be in touch before then.

Thank you for your co-operation.

Yours truly,

A handwritten signature in black ink, appearing to be "John E.S. Briggs", written over a horizontal line.

John E.S. Briggs  
Director of Research

JESB:jrc

encl.



# ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 18, 1987

Mr. Jamie W. S. Saunders  
Patterson, Kitz  
Barristers & Solicitors  
10 Church Street  
P. O. Box 1068  
Truro, Nova Scotia B2N 5B9

Dear Mr. Saunders:

On September 17, 1987 our investigator, Mr. Fred Horne, made contact with Mr. Jim McKillop, the Warden at Cape Breton Correctional Center in Sydney, and at that time it was confirmed that documents were held at the institution relating to FPS 441392A, Thomas Joseph Christmas - Born May 4, 1954 - Re:

1. Charge of Obstructing Justice  
-Sec. 119-1 C.C. - Withdrawn on  
October 4, 1971
2. Charge of Unlawful in Dwelling House  
-Sec. 307(1) C.C. - Sentenced to serve two  
years on October 5, 1971.

Our investigator requested a copy of these documents and Mr. McKillop expounded by telephoning Mr. Gerry Conrad of the Nova Scotia Justice Department in Halifax. Mr. Conrad instructed Mr. McKillop that the request for such documents should be made directly through Mr. Jamie Saunders, a lawyer representing the Justice Department and in attendance at the Marshall Inquiry Hearings.

It is hereby requested that the indicated documents be turned over to the Commission.

Very truly yours,

W. Wylie Spicer,  
Commission Counsel

WWS/ljb

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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September 21, 1987

Scott Clark, Esquire  
c/o G.S. Clark & Associates  
Suite 712, 151 Slater Street  
Ottawa, Ontario K1P 5H3

Dear Scott:

I enclose herewith a copy of the letter which I have sent recently to Bruce Wildsmith, legal counsel for the Union of Nova Scotia Indians. You will note that I have forwarded to Bruce, for his information, a copy of your revised research outline.

You will no doubt be in touch with Wildsmith on a number of occasions, if only in order to facilitate your research requirements. He will no doubt wish to know how the project is progressing, etc. I do not wish us to be or even appear to be less than open and certainly not to fuel any notion that we are being secretive or withholding information. However, there are two situations I wish to avoid, namely: 1) any interference or pressure being exerted upon you in the carrying out of the research now that the terms of reference have been agreed upon; and, 2) the reporting of your findings and conclusions thereon in a piecemeal form in the press.

Consequently, if you find that you're experiencing any difficulty from any quarter, please advise without delay. As to my second concern noted above, you will obviously have to exercise your good judgement and discretion with respect to whom you speak and the nature and content of any such conversation.

Thank you for your co-operation. I remain,

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc  
encl.

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

BY COURIER

September 18, 1987

PERSONAL & CONFIDENTIAL

Prof. Edward Renner  
Psychology Department  
Life Sciences Centre  
Room 3263, 3rd Floor  
Dalhousie University  
Halifax, N.S. B3H 4J1

RE: Proposed Research Project - The Criminal Justice System  
and Discrimination Against Blacks in Nova Scotia

Dear Professor Renner,

Further to our recent telephone conversation, I regret that I was unable to meet with you this morning. However, I have scheduled a meeting with Dr. Wilson Head at our offices on Tuesday, September 22, 1987 at 9:30 a.m. I understand that you also will be available at that time on Tuesday and both Dr. Head and myself believe that your attendance would be most helpful. I also expect that Jeremy Gay will be attending as Counsel, on behalf of the Black United Front along with a representative from BUF. Tony Ross will not be available due to commitments in Sydney at the Marshall Inquiry.

With reference to the proposed research project, enclosed for your ready reference is a copy of the research proposal which was originally submitted to the Commission by the Black United Front. I have also enclosed for your reference copies of the following:

1. The Royal Commission's Terms of Reference, dated October 28, 1986;
2. Opening Statement of Chief Justice Hickman;
3. Decision of the Royal Commission, dated May 14, 1987.

The Royal Commission on the Donald Marshall, Jr., Prosecution has been charged with the following task:

"to inquire into, report your findings, and make recommendations to the Governor in Council respecting the investigation of the death of Sandford William Seale on the 28th-29th day of May, A.D., 1971; the charging and prosecution of Donald Marshall, Jr., with that death; the subsequent conviction and sentencing of Donald Marshall, Jr., for the non-capital murder of Sandford William Seale for which he was subsequently found to be not guilty; and such other related matters which the Commissioners consider relevant to the Inquiry;". (emphasis added)

In order to appreciate the Commission's understanding of its role, it is instructive to note the Opening Statement by Chief Justice Hickman wherein he states, inter alia:

"In order to make meaningful recommendations to the Government, the Commission must, of necessity, review the actual circumstances of the Donald Marshall case...

Bringing out the facts will give the Commission an understanding of what happened. But that is only a beginning. It is not enough to examine minutely one incident, and from that to expect to suggest changes within a complex system of administration of justice. In order to develop meaningful recommendations, the most important part of our mandate, all contributing or potential contributing factors must be carefully reviewed within the context of the current state of the administration of justice in Nova Scotia. It will be necessary to examine the role of the Attorney General as a member of Cabinet in criminal prosecutions, the relationship between prosecutors, defence counsel and the police (both Provincial and R.C.M.P.), who makes decisions to prosecute and how and on what basis these decisions are made, the organization of police forces in Nova Scotia and how they interact with the communities they police.

Standing has been granted to the Black United Front and the Union of Nova Scotia Indians. Both of these groups state that minorities in the Province are not treated fairly or equitably by the justice system, and suggest that racism and discrimination may have contributed to the conviction of Donald Marshall, Jr. These charges must be investigated and examined to determine if these factors play any part in the administration of justice in Nova Scotia. It should be apparent, therefore, that the activities of individual people, and of various authorities are to be reviewed and

September 18, 1987

questioned, and that extremely important public issues will be considered by the Commission.

On the basis of understanding what happened to Donald Marshall, Jr., and after having analyzed the present functioning of the criminal justice system in Nova Scotia, we will make recommendations for the future which are designed to increase the confidence of all Nova Scotians in the system of administration of justice." (emphasis added) (See enclosed copy of Chief Justice's statement, Pages 3 and 4).

You will also note that the Commisisoners have also stated in their Decision of May 14, 1987 with respect to the question of public funding for legal counsel, as follows:

Standing has been granted to the Black United Front and the Union of Nova Scotia Indians. These groups requested standing because they hold the view that discrimination and racism influence the administration of justice in the Province of Nova Scotia, and may have contributed to Donald Marshall, Jr. being convicted and sent to prison. These serious allegations will be considered by the Commission. We believe that the public interest requires, in a proper case, that the point of view of organized and affected minority groups be appropriately represented and articulated.

This is such a proper case. The extent of involvement required at the Hearings by counsel for these groups is difficult to predict at this time.

The Commission has also instructed its counsel to confer with both such groups prior to experts being retained by the Commission to carry out research concerning the matters of racism and discrimination." (emphasis added) (See enclosed copy of Decision, Pages 4 and 5.)

The Commissioners have also reiterated these concerns, with respect to racism and discrimination in the administration of justice, in the course of their opening statement at the commencement of the Public Hearings which are now being held in Sydney. The scope and Terms of Reference of any research project designed to address questions relating to the criminal justice system and discrimination against Blacks in the Province of Nova Scotia will, of course, be determined in the context of the Commission's Terms of Reference and its understanding of those terms as outlined above.

Prof. Renner

-4-

September 18, 1987

I am enclosing a copy of a rough draft outline of the proposed research project as developed by Dr. Head and forwarded to me yesterday. I should add that this material was prepared by Dr. Head in haste and at my request and is really being circulated simply to provide a focus for our discussion next Tuesday.

I hope that the foregoing, along with the enclosures, will assist you in preparation for our meeting. I look forward to meeting with you at that time, if not before.

Thank you for your cooperation. I remain,

Yours truly,

John E.S. Briggs  
Director of Research

JESB/jm  
Encl.



**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

BY COURIER

September 18, 1987

PERSONAL & CONFIDENTIAL

Mr. Jeremy Gay  
Smith, Gay, Evans & Ross  
Barristers & Solicitors  
604 Queen Square  
Dartmouth, N.S. B2Y 3Z5

RE: Proposed Research Project - The Criminal Justice System  
and Discrimination Against Blacks in Nova Scotia

Dear Jeremy,

Further to our telephone conversation of last evening, I enclose herewith a letter addressed to Tony Ross which was forwarded to me by Dr. Wilson Head of Toronto.

I presume the letter contains, amongst other things, the outline of the proposed research project. I have, however, enclosed a copy of the research proposal which Dr. Head has forwarded to me just on the chance that it is not contained in the enclosed letter. I might add that I have had pages 5, 6 and 7 of the proposal retyped commencing with the section entitled, "Basic Assumptions: Hypothesis".

I have made arrangements for Dr. Wilson Head to meet with us in Halifax next Tuesday at 9:30 a.m. at the Commission offices in the Maritime Centre. I have also arranged for Ed Renner to attend and I would ask you to follow through on Dr. Head's request that a BUF representative who is very familiar with the Black community in Nova Scotia be in attendance. Perhaps you would also be good enough to track down "Buddy" Day as Dr. Head has indicated he would like to meet with him while he is in Halifax. I gather that BUF would know his whereabouts if you do not.



Mr. Jeremy Gay

-2-

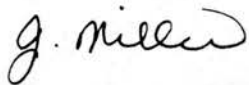
September 18, 1987

The purpose of our meeting will be to advance our discussions with respect to the Terms of Reference and scope of the proposed research project with respect to the Justice System and discrimination against Blacks in the Province of Nova Scotia. Given the obvious limitations of time under which we are operating, it will be necessary to clearly focus the thrust of any research project in order to achieve any potentially significant results.

If you should have any questions concerning the foregoing, please do not hesitate to contact me at your earliest convenience otherwise I shall look forward to seeing you at our offices on Tuesday at 9:30 a.m.

Thank you for your cooperation. I remain,

Yours truly,

  
for John E.S. Briggs  
Director of Research

JESB/jm  
Encl.

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 14, 1987

Mr. Dan McIntyre  
Race Relations Commissioner  
Province of Ontario  
Ontario Human Rights Commission  
400 University Avenue  
Toronto, Ontario M7A 1T7

Dear Dan:

Just a note to thank you very much for taking the time to see me last week when I was in Toronto. I very much enjoyed the opportunity of meeting with you and found our discussion very helpful.

I certainly appreciate the interest you've shown in the work of the Commission and I feel confident that as our research progresses, I shall be in touch again.

In the meantime, thank you for your co-operation. I remain,

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

PERSONAL AND CONFIDENTIAL

BY COURIER

September 14, 1987

Ms. Carol LaPrairie, Ph.D.  
Senior Policy Analyst  
Policy Development Section  
Programs & Policy Directorate  
Department of Justice  
239 Wellington Street  
Ottawa, Ontario K1A 0H8

Dear Carol:

It was very good of you and Chris Murphy to meet with me for lunch last week in Ottawa.

I found our discussion very helpful and certainly appreciate your interest in our research project relating to natives in the criminal justice system.

Please pass on my regards to Chris Murphy and also Eddie Gardner. I look forward to receiving the box of goodies which you indicated that you would be forwarding to me shortly.

I shall certainly be in touch with you again as the research project unfolds and doubtless, Scott Clark will be doing likewise.

In the meantime, warm personal regards. I remain,

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

PERSONAL AND CONFIDENTIAL

BY COURIER

September 14, 1987

Mr. John P. Guy, Q.C.  
Assistant Deputy Attorney General  
Province of Manitoba  
5th Floor, Woodsworth Building  
405 Broadway  
Winnipeg, Manitoba R3C 3L6

Dear Mr. Guy:

Re: Crown Attorneys' Handbook

Thank you for your letter of September 2, 1987 regarding the  
above captioned subject.

I very much appreciate your willingness to forward a copy of your  
Province's Handbook on a confidential basis when it has been  
received from the printers. I will look forward to receiving the  
publication in due course.

Thank you very much for your co-operation. I remain,

Yours truly,



John E.S. Briggs  
Director of Research

JESB:jrc

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

PERSONAL AND CONFIDENTIAL

September 14, 1987

Professor Peter Russell  
Department of Political Science  
University of Toronto  
Room 3053, 3rd Floor  
Sydney Smith Hall  
100 St. George Street  
Toronto, Ontario M5S 1A1

Dear Professor Russell:

I very much enjoyed the opportunity of meeting with you for lunch last week in Toronto.

Your interest in the work of the Royal Commission was most appreciated and I can assure you that I found your various suggestions most helpful. I have no doubt that I shall be in touch with you again as the work of the Commission progresses.

In the meantime, again, many thanks. I remain,

Yours sincerely,



Joan E.S. Briggs  
Director of Research

JESB:jrc

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

PERSONAL AND CONFIDENTIAL

BY COURIER

September 14, 1987

Mr. C. Richard Quinney, Q.C.  
Director of Prosecutors  
Saskatchewan Justice Department  
8th Floor, 1874 Scarth Street  
Regina, Saskatchewan S4P 3V7

Dear Mr. Quinney:

Re: Crown Prosecutors' Manual

Further to your letter of September 2, 1987 addressed to Ms. Brenda McGilvray, I appreciate your willingness to forward a copy of your manual at some future date upon completion of the current review.

However, I am somewhat concerned that your review and revision may not be completed within the lifetime of this Royal Commission and I would therefore ask that you reconsider forwarding the manual as it now stands. I am receiving similar material from other provinces, some of which has been forwarded on a confidential basis, where the publication in question is not a matter of public record. For example, Manitoba has undertaken to forward a copy of their publication which was recently up-dated and is now in the hands of the printers.

In any event, it would be appreciated if you would reconsider the matter as I believe that having a copy of the manual now in effect in Saskatchewan would facilitate the work of our Royal Commission. If upon reconsideration of the matter you are not able to accede to our request for the complete manual, I would appreciate if you would forward those guidelines/directives to

C.R. QUINNEY  
PAGE 2  
SEPTEMBER 14, 1987

Crown Prosecutors which have been formulated on the subject of DISCLOSURE. Should you have any questions concerning our request, please do not hesitate to contact me at your earliest convenience.

Thank you for your co-operation. I remain,

Yours truly,

A handwritten signature in black ink, appearing to be "JESB", written over a horizontal line.

John E.S. Briggs  
Director of Research

JESB:jrc



# ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 11, 1987

Mr. Mike Barnes,  
Program Director  
Halifax Cablevision Limited  
P. O. Box 8660  
Station "A"  
5841 Bilby Street  
Halifax, Nova Scotia B3K 5M3

Dear Mike:

I received your letter indicating that you would not be able to participate in the coverage of the Inquiry during its Sydney Hearings. As you may know, the CBC is providing a fixed position camera for the duration of the Sydney Hearings to be pooled with the other networks.

Unfortunately, I am not too happy with the present arrangement for a variety of reasons. I would like to know if you have any interest at all in becoming involved again, once the Hearings move into the Halifax phase. If you do, we would be more than pleased to receive a proposal from you.

Yours truly,

Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb

# ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
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COMMISSIONER

## STRICTLY CONFIDENTIAL

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

TO: PROFESSOR JOHN L.L. EDWARDS

FROM: JOHN E.S. BRIGGS, DIRECTOR OF RESEARCH

DATE: SEPTEMBER 4, 1987

RE: **ACCESS TO THORNHILL AND MACLEAN FILES**

-----

Pursuant to discussions with the Attorney General's Department it has been agreed that Commission Counsel and yourself may view/examine the two above-noted files. The files may not be removed or copied although you will be able to make notes of the material you are examining and for that purpose you may wish to utilize a pocket dictaphone.

Please be advised that we wish you to examine these files for the purpose of preparing a list of those materials/documents which reflect on the process and procedure employed by the A.G.'s Department with respect to prosecutorial decision-making. We are not interested in the merits of the particular decision taken in these cases. It is on the basis of this understanding, as reflected in George MacDonald's affidavit of September 2, 1987, that the Province has agreed to make these files available for our examination. I have attached for your ready reference a copy of that affidavit and would refer you in particular to paragraph #2 wherein he indicates the Commission's rationale for seeking these files. I have also attached for your information, a copy of the A.G.'s Interlocutory Application to obtain a Stay of our subpoena and the newspaper clippings of Thursday, September 3 and Friday, September 4, relating to this matter.

Professor John Ll.L. Edwards  
Page 2  
September 4, 1987

I cannot over-emphasize the highly sensitive nature of this matter and the requirement that any of the information you obtain as the result of your examination of the files be retained on a strictly confidential basis and is not to be discussed with anyone other than Commission Counsel and myself. In particular, I must emphasize the requirement that you avoid any discussion whatsoever with any member of the press, officer of the A.G.'s Department or indeed anyone other than Commission Counsel or myself.

I should also emphasize the importance of maintaining very strict security over any of the written notes which you make relating to these two files. Pending further advice from Commission Counsel or myself, please refrain at this stage from preparing any written report or memorandum on this subject.

If the interest of the press, as demonstrated in the last two days is any indication, I expect that they will attempt to crawl all over you when and if they learn of your presence in town and the purpose therefore.

Thank you for your co-operation.

JESB:jrc

enclosures

cc: George MacDonald  
Wylie Spicer

**ROYAL COMMISSIC ON THE DONALD MARSHALL, J., PROSECUTION**

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. David Ratchford  
2360 Birchmont Road, Apt. 801  
Scarborough, Ontario  
M1T 2M8

COPY

Dear Mr. Ratchford:

**Re: Royal Commission on Donald  
Marshall, Jr., Prosecution**

I want to confirm my telephone advice to you on September 7 wherein I advised your evidence at the Hearings of this Royal Commission would best be heard at or around the same time as Donna Ebsary. We have been attempting to have the story presented to the Commissioners in a chronological fashion, to the extent that is possible. To have your evidence heard at a very early date would disrupt the chronology of the story unduly.

At the present time the best estimate I can give you for your appearance would be during the week of October 26. As the Hearings progress, I should be able to tie that down with some precision.

When I spoke to you approximately ten days ago, you inquired about the assistance we could provide you from a financial point of view to enable you to attend in Sydney. The Commission will be able to pay your reasonable travel expenses and any hotel and living expenses you incur during your visit to Halifax. Unfortunately there is no provision for paying witness fees other than a very modest amount which has existed for many years. If your work commitments require you to be in Ontario at the time when we would like to have you give evidence, arrangements can be made to have you give evidence in Ontario via a teleconference facility.

The teleconferencing facility would require my attending in Toronto to ask you questions. All other counsel and the Commissioners would be located in Halifax and be able to see you give evidence and we would be able to see them. The examination conducted by the other counsel would be via the conferencing facility. While such a procedure is possible, it obviously does not have the same impact as personal appearance of a witness, and necessarily the public does not see the evidence being given by the witness. We realize, however, that on occasion it is necessary to proceed in this fashion.

I appreciate you have some difficulty predicting your work commitments. It would be extremely beneficial, however, if you could let me know whether you wish to attend in person, or have your evidence taken by the teleconferencing facility from Toronto since the necessary arrangements would have to be carried out.

Thank you for being so willing to discuss this matter with me on the occasions I have been in touch with you. You were going to arrange to have a copy made of the cassette recording you have of an interview you took with Roy Ebsary in 1980 or 1981, and prior to the time the video cassette was made. I indicated to you that any reasonable expenses you incurred in having the copy made would be reimbursed.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

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THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. Alexander Christmas  
President, UNSI  
Union of Nova Scotia Indians  
P. O. Box 961  
Sydney, Nova Scotia  
B1P 6J4

COPY

Dear Mr. Christmas:

Re: Royal Commission on Donald  
Marshall, Jr., Prosecution

Your letter of August 25, 1987 directed to the Executive Secretary of the Commission has been referred to me for reply. I have had a discussion with Mr. Wildsmith last week on this topic and no doubt he has reported to you the substance of our discussion.

In a Decision of the Commission dated May 14, 1987 it was stated:

"... With the exception of the Attorney General for Nova Scotia, none of the parties granted standing can reasonably take the position that either the public interest or their own interest requires the presence of legal counsel on their behalf throughout the Hearings."

Subsequent to the filing of that Decision, the Government of Nova Scotia requested that the Commission act as taxing authority and pass on the reasonableness of any accounts being submitted by legal counsel to parties granted standing. In an attempt to avoid conflict and controversy with other counsel, we wrote to all counsel on an individual basis setting out our understanding of the witnesses to be called who may give evidence of interest and relevance to the party represented by such counsel. It was not intended that such listing necessarily be exhaustive, but I

would expect every counsel would recognize the requirement to satisfy Commission staff of the necessity of his being present during the examination of any witness not set out in the list. I believe Mr. Wildsmith and I understand each other's position and in particular that Commission staff will be reasonable but must discharge its mandate to take steps to prevent unnecessary expenditure of public funds.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm

cc: Mr. Bruce Wildsmith



# ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. R. Gerald Conrad, Q.C.  
Department of Attorney General  
P. O. Box 7  
Halifax, Nova Scotia  
B3J 2L6

Dear Mr. Conrad:

**Re: Royal Commission on Donald  
Marshall, Jr., Prosecution**

On September 4 we discussed the procedure to be followed to enable Commission Counsel to have access to files of the Attorney General dealing with the Thornhill and MacLean matters. During those discussions I raised with you the concern of the Commission Counsel and staff that an adversarial position has developed between your Department and the Commission and that we would very much like to avoid any further public arguments as the Commission proceeds to carry out its job.

In particular, I advised you that the Commissioners had commissioned various experts to carry out research and provide reports. I told you of the involvement of John L. L. Edwards of the University of Toronto and in particular he is going to be reviewing the Thornhill and MacLean files on our behalf.

Other experts are going to be looking at the role of Prosecutors; the role of the Police; and the questions of possible racism and discrimination in the administration of justice system. All of those topics were referred to in the Commission's Opening Statement delivered on May 13, 1987. Each of the researchers have indicated to Commission staff that they would want to have assistance, information and co-operation from various persons in the justice system, including of course members of the Attorney General's Department.

Once we have been able to define with precision the exact research tasks to be carried out by the various researchers, we will provide you with details and you would then be able to know the type of co-operation which will be requested. At that time, if you wish, I and John Briggs, our Director of Research, would be prepared to meet with you and your staff to discuss in detail the type of procedures to be followed and hopefully some method can be devised whereby our researchers will be able to obtain access to documents and people without the necessity of our having to become involved and issue subpoenas or take other hard positions.

I would appreciate if you could raise this matter generally with your superiors and obtain preliminary instructions. We have been pressing each of our researchers to commence their activities and be in a position to provide us with reports in a publishable form no later than March 31, 1988. Obviously such a deadline can only be achieved if everyone co-operates. You might also advise whether we should deal directly with you on this topic or through Messrs. Saunders and Pink.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm

cc: Mr. Reinhold M. Endres  
Mr. Darrel I. Pink  
Mr. Jamie W. S. Saunders

ROYAL COMMISSIC ON THE DONALD MARSHALL r., PROSECUTION

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

DELIVERED

COPY

Mr. William L. Ryan  
Stewart, MacKeen & Covert  
Barristers and Solicitors  
900-1959 Upper Water Street  
Halifax, Nova Scotia  
B3J 2X2

Dear Mick:

Re: Donald Marshall Inquiry

I tried to get you late last week by telephone without success. I wanted to determine if you have agreed to let me interview Sgt. Green.

I will be making an Opening Statement to the Commission when it commences Hearings on Wednesday, September 9. At that time I will refer to the fact that, to date, only Sgt. Green and Staff Sgt. Wheaton have refused to meet with Commission Counsel and provide us with the opportunity to interview them. I will be commending everyone else for the co-operation they have extended to us.

I will be staying at the Holiday Inn in Sydney commencing September 8 and if you wish to discuss this matter with me, please give me a call.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm

**ROYAL COMMISSION ON THE DONALD MARSHALL R., PROSECUTION**

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. E. Anthony Ross  
Smith, Gay, Evans & Ross  
Barristers and Solicitors  
P. O. Box 852  
Dartmouth, Nova Scotia  
B2Y 3Z5

COPY

Dear Tony:

**Re: Royal Commission on Donald  
Marshall, Jr., Prosecution**

I am enclosing copy of a report directed to me by Fred Horne and dated August 8, 1987. This report outlines the discussions which Mr. Horne had with the various individuals you identified to me in late July.

If there are any other persons you want to have interviewed, would you please advise and the necessary arrangements can be made.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm  
Encl.

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. James D. Bissell  
General Counsel  
Director, Atlantic Region  
Department of Justice  
4th Floor, Royal Bank Building  
5161 George Street  
Halifax, Nova Scotia  
B3J 1M7

Dear Mr. Bissell:

**Re: Royal Commission on Donald  
Marshall, Jr., Prosecution**

Thank you for your letter of August 11, 1987  
dealing with the notebooks of various Force members  
and the location of the exhibits from the Ebsary Trial.

I look forward to your further advice concerning  
access to the notebooks of the various R.C.M.P. Officers.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm

ROYAL COMMISSIC ON THE DONALD MARSHALL J., PROSECUTION

---

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. David L. Delaney  
Barrister and Solicitor  
P. O. Box 847  
Sydney, Nova Scotia  
B1P 1G4

COPY

Dear Mr. Delaney:

Re: Royal Commission on Donald  
Marshall, Jr., Prosecution

Thank you for your letter of August 19, 1987  
and for your co-operation in arranging for me and my  
fellow counsel to meet with members of the Ebsary family.

I did meet with Donna Ebsary in Boston and  
will be in touch with her directly to arrange for her  
giving evidence via teleconferencing facility. Arrangements  
are being made for Greg Walsh to give his evidence in  
camera. We had not been aware that Mary Ebsary wanted  
her evidence to be taken in that fashion as well and  
I will be discussing this question with Wylie Spicer  
who will be conducting the actual examination of Mrs.  
Ebsary. I would expect we will be able to accommodate  
her wishes in this regard.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. Ronald N. Pugsley, Q.C.  
Stewart, MacKeen & Covert  
Barristers and Solicitors  
P. O. Box 997  
Halifax, Nova Scotia  
B3J 2X2

COPY

Dear Ron:

Re: Royal Commission on Donald  
Marshall, Jr., Prosecution

I acknowledge your letter of September 2,  
1987 concerning John Butterworth.

I will make arrangements to have Mr. Butterworth  
called to give evidence before the Commission in Sydney  
and when we have determined the time when he would give  
evidence, I will advise you and all other counsel.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm



**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. Maynard Chant  
P. O. Box 23  
Louisbourg, Nova Scotia  
B0A 1M0

COPY

Dear Mr. Chant:

**Re: Royal Commission on Donald  
Marshall, Jr., Prosecution**

I acknowledge your letter of August 24, 1987.

This Commission was set up pursuant to the provisions of the Public Inquiries Act. That Act incorporates other Statutes of the Province, the result of which provides that the Commission may pay normal witness fees to any witness required to attend to give evidence. Unfortunately, the normal witness fee is quite inadequate. We will be able to provide you with travel expense moneys plus the witness fee of \$3.00 per day. The travel expense is based on 20¢ per mile. I understand Louisbourg is approximately 25 miles from Sydney and on the assumption you will be required to attend in Sydney on two days, travel expenses of \$20.00 plus the witness fee can be provided.

I regret we are unable to treat you in a more equitable fashion but we are bound by the provisions of the Statutes governing this Commission and all expenses will be subject to scrutiny by the Auditor General for the Province at a later date.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

---

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 8, 1987

Mr. M. D. Mattson  
P. O. Box 603  
Chester, Nova Scotia  
B0J 1J0

COPY

Dear Mr. Mattson:

Re: Royal Commission on Donald  
Marshall, Jr., Prosecution

I thank you for your letter of August 21, 1987. I understand you attended at the Commission offices recently and discussed the matter with my co-counsel, David Orsborn, and he informed you that the Commission will reimburse you for expenses incurred in your attending to give evidence at Sydney.

I am not aware whether Mr. Orsborn arranged to give you a copy of the Statement you provided to the Sydney Police. A copy of that Statement is enclosed in any event. I look forward to seeing you in Sydney.

Yours very truly,

George W. MacDonald  
Commission Counsel

GWMacD/fm  
Encl.

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

**BY COURIER**

September 3, 1987

PERSONAL AND CONFIDENTIAL

Dr. Wilson Head  
111 Yorkminster Road  
Willowdale (North York), Ontario  
M2P 1M5

RE: Proposed Research Project - The Criminal  
Justice System and Discrimination against Blacks  
in Nova Scotia

Dear Dr. Head:

Further to our telephone conversation this morning, I confirm I will be arriving from Halifax on Tuesday, September 8th, 1987 and will proceed from the airport directly to your offices on College Street for our meeting at approximately 11:30 a.m. Since our conversation this morning, I have also spoken with Mr. Daniel MacIntyre, Race Relations Commissioner, and as I understand he is a friend of yours, with your concurrence I agreed to his suggestion that the three of us meet for lunch.

With reference to the proposed research project, I enclose for your ready reference a copy of the Research Proposal submitted to the Commission by the Black United Front. I had understood that they had forwarded this material to you, but at the time we spoke, you had not yet received it.

I also enclose for your reference copies of the following:

1. The Royal Commission's Terms of Reference, dated October 28th, 1986;
2. Opening Statement of Chief Justice Hickman;
3. Decision of the Royal Commission, dated May 14th, 1987.

The Royal Commission on the Donald Marshall, Jr., Prosecution has been charged with the following task:

Dr. Wilson Head

September 3, 1987

"to inquire into, report your findings, and make recommendations to the Governor in Council respecting the investigation of the death of Sandford William Seale on the 28th-29th day of May, A.D., 1971; the charging and prosecution of Donald Marshall, Jr., with that death; the subsequent conviction and sentencing of Donald Marshall, Jr., for the non-capital murder of Sandford William Seale for which he was subsequently found to be not guilty; and such other related matters which the Commissioners consider relevant to the Inquiry;". (emphasis added)

In order to appreciate the Commission's understanding of its role, it is instructive to note the Opening Statement by Chief Justice Hickman wherein he states, inter alia:

"In order to make meaningful recommendations to the Government, the Commission must, of necessity, review the actual circumstances of the Donald Marshall case...

Bringing out the facts will give the Commission an understanding of what happened. But that is only a beginning. It is not enough to examine minutely one incident, and from that to expect to suggest changes within a complex system of administration of justice. In order to develop meaningful recommendations, the most important part of our mandate, all contributing or potential contributing factors must be carefully reviewed within the context of the current state of the administration of justice in Nova Scotia. It will be necessary to examine the role of the Attorney General as a member of Cabinet in criminal prosecutions, the relationship between prosecutors, defence counsel and the police (both Provincial and R.C.M.P.), who makes decisions to prosecute and how and on what basis these decisions are made, the organization of police forces in Nova Scotia and how they interact with the communities they police.

Dr. Wilson Head

September 3, 1987

Standing has been granted to the Black United Front and the Union of Nova Scotia Indians. Both of these groups state that minorities in the Province are not treated fairly or equitably by the justice system, and suggest that racism and discrimination may have contributed to the conviction of Donald Marshall, Jr. These charges must be investigated and examined to determine if these factors play any part in the administration of justice in Nova Scotia. It should be apparent, therefore, that the activities of individual people, and of various authorities are to be reviewed and questioned, and that extremely important public issues will be considered by the Commission.

On the basis of understanding what happened to Donald Marshall, Jr. and after having analyzed the present functioning of the criminal justice system in Nova Scotia, we will make recommendations for the future which are designed to increase the confidence of all Nova Scotians in the system of administration of justice." (emphasis added) (See enclosed copy of Chief Justice's statement, Pages 3 and 4).

You will also note that the Commissioners have also stated in their Decision of May 14th, 1987 with respect to the question of public funding for legal counsel, as follows:

" Standing has been granted to the Black United Front and the Union of Nova Scotia Indians. These groups requested standing because they hold the view that discrimination and racism influence the administration of justice in the Province of Nova Scotia, and may have contributed to Donald Marshall, Jr. being convicted and sent to prison. These serious allegations will be considered by the Commission. We believe that the public interest requires, in a proper case, that the point of view of organized and affected minority groups be appropriately represented and articulated.

Dr. Wilson Head

September 3, 1987

This is such a proper case. The extent of involvement required at the Hearings by counsel for these groups is difficult to predict at this time.

The Commission has also instructed its counsel to confer with both such groups prior to experts being retained by the Commission to carry out research concerning the matters of racism and discrimination." (emphasis added) (See enclosed copy of Decision, Pages 4 and 5).

The scope and Terms of Reference of any research project designed to address questions relating to the criminal justice system and discrimination against Blacks in the Province of Nova Scotia will, of course, be determined in the context of the Commission's Terms of Reference and its understanding of those terms as outlined above. We have consulted closely with legal counsel for the Black United Front, and will continue to do so, in the determination of the scope of the proposed research project.

It is my understanding from my discussion this morning with Mr. Tony Ross, legal counsel for BUF, that they believe you would be the best person to conduct the proposed research project. The Commission is certainly open to that suggestion and I would hope that during our meeting next week we could discuss the specifics of your potential involvement. I would also hope to be able to discuss with you, in some detail, your thoughts with respect to the proposed Terms of Reference prepared by BUF, including the proposed methodology and any problems related thereto, the estimated time required to undertake and complete the work, completion dates for the first and final drafts, and cost and fees.

I would emphasize at the outset a point which has been made with the Black United Front on several occasions and that is that any research undertaken by the Commission must be completed and in publishable form by March 31st, 1988 at the latest. Given this very tight time frame, it is essential to commence work as quickly as possible if the research is to ultimately serve any useful purpose. From the Commission's perspective, we are interested in quality research which will provide a credible basis for ultimately formulating practical recommendations designed to redress and ameliorate problems that have been identified, be they in the nature of blatant discrimination or adverse effects experienced by blacks as a result of the present

Dr. Wilson Head

September 3, 1987

functioning of the justice system in Nova Scotia. With your very considerable practical experience in these matters, I am sure you can appreciate the difficulty of achieving all of this within the time limits noted above. In any event, I very much look forward to our meeting next Tuesday and should you have any questions in the interim, please do not hesitate to contact me accordingly.

Thank you for your co-operation. I remain,

Yours very truly,



John E. S. Briggs,  
Director of Research

JESB/ljb

Enclosures

P.S. I also enclose for your information a copy of the application made by the Black United Front for the time that they sought to have standing before the Royal Commission.

J.E.S.B.



**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

**BY COURIER**

September 3, 1987

PERSONAL AND CONFIDENTIAL

Scott Clark, Esquire  
c/o G. S. Clark & Associates  
Suite 712, 151 Slater Street  
Ottawa, Ontario K1P 5H3

Dear Scott:

I acknowledge receipt of your letter of September 1, 1987, along with the enclosed research outline and costs and your invoice for fees and expenses for our meeting this week. With regard to the latter subject, your invoice is now being processed and I would hope that, at least before the snow flies, you will be receiving a check from the Commission in the amount of \$912.20.

I shall be in touch with you again shortly regarding the matter of the research project.

I trust that you will find this in order.

Yours very truly,

John E. S. Briggs,  
Director of Research

JESB/ljb

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

---

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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 3, 1987

Mr. Fred Sharp,  
Assistant Superintendent  
Cape Breton Correctional Center  
Sydney, Nova Scotia

Re: Donald Marshall, Jr.

Dear Sir:

This is to formally request that you release to Mr. Fred Horne, the investigator for the Commission, the incarceration records in respect of Donald Marshall, Jr., for the years 1970 and 1971, together with such other records as you may have concerning Mr. Marshall.

Should you have any questions concerning this request, please do not hesitate to contact me.

This letter also confirms that Mr. Horne is authorized on behalf of the Commission to receive the documentation from you.

Thank you for your co-operation.

Yours very truly,

David B. Orsborn,  
Commission Counsel

DBO/ljb

ROYAL COMMISSION      THE DONALD MARSHALL, JR. PROSECUTION

---

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

BY COURIER

PERSONAL AND CONFIDENTIAL

September 3, 1987

Professor Peter Russell  
Department of Political Science  
University of Toronto  
Room 3053, 3rd Floor  
Sydney Smith Hall  
100 St. George Street  
Toronto, Ontario    M5S 1A1

Dear Professor Russell:

Re: Royal Commission on the Donald Marshall, Jr. Prosecution

Further to our telephone conversation of September 1, 1987, I thought that it might be of some interest for you to have a copy of the Royal Commission's Terms of Reference, and consequently I am enclosing same for your ready reference.

I have also enclosed a copy of Chief Justice Hickman's Opening Statement; the Commission's decision of May 14, 1987 with respect to the question of standing, along with the tentative outline of proposed research projects.

The Royal Commission on the Donald Marshall, Jr., Prosecution has been charged with the following task:

"to inquire into, report your findings, and make recommendations to the Governor in Council respecting the investigation of the death of Sandford William Seale on the 28th-29th day of May, A.D., 1971; the charging and prosecution of Donald Marshall, Jr., with that death; the subsequent conviction and sentencing of Donald Marshall, Jr., for the non-capital murder of Sandford William Seale for which he was subsequently found to be not guilty; and such other related matters which the Commissioners consider relevant to the Inquiry;". (emphasis added)

Prof. Peter Russell  
Page 2  
September 3, 1987

In order to appreciate the Commission's understanding of its role, it is instructive to note the Opening Statement by Chief Justice Hickman wherein he states, inter alia:

"In order to make meaningful recommendations to the Government, the Commission must, of necessity, review the actual circumstances of the Donald Marshall case...

Bringing out the facts will give the Commission an understanding of what happened. But that is only a beginning. It is not enough to examine minutely one incident, and from that to expect to suggest changes within a complex system of administration of justice. In order to develop meaningful recommendations, the most important part of our mandate, all contributing or potential contributing factors must be carefully reviewed within the context of the current state of the administration of justice in Nova Scotia. It will be necessary to examine the role of the Attorney General as a member of Cabinet in criminal prosecutions, the relationship between prosecutors, defence counsel and the police (both Provincial and RCMP), who makes decisions to prosecute and how and on what basis these decisions are made, the organization of police forces in Nova Scotia and how they interact with the communities they police.

Standing has been granted to the Black United Front and the Union of Nova Scotia Indians. Both of these groups state that minorities in the Province are not treated fairly or equitably by the justice system, and suggest that racism and discrimination may have contributed to the conviction of Donald Marshall, Jr., These charges must be investigated and examined to determine if these factors play any part in the administration of justice in Nova Scotia. It should be apparent, therefore, that the activities of individual people, and of various authorities are to be reviewed and questioned, and that extremely

Professor Peter Russell  
Page 3  
September 3, 1987

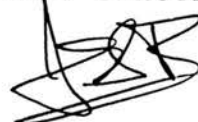
important public issues will be considered by the Commission.

On the basis of understanding what happened to Donald Marshall, Jr., and after having analyzed the present functioning of the criminal justice system in Nova Scotia, we will make recommendations for the future which are designed to increase the confidence of all Nova Scotians in the system of administration of justice." (emphasis added)  
(See enclosed copy of Chief Justice's statement, Pages 3 and 4).

I very much appreciate you making yourself available to meet with me while I'm in Toronto next week and I would confirm that I will meet with you at your offices in the Department of Political Science at the University of Toronto on Wednesday, September 9, 1987 at 12:00 noon. I felt that the enclosed materials might provide you with some useful background information prior to our luncheon meeting.

I look forward to seeing you next week. Thank you for your co-operation.

Yours sincerely,



John E.S. Briggs  
Director of Research

JESB:jrc

**ROYAL COMMISSION     THE DONALD MARSHALL, JR.     PROSECUTION**

---

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5     902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
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COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

BY COURIER

September 3, 1987

Mr. James D. Bissell  
General Counsel  
Director, Atlantic Region  
Department of Justice Canada  
4th Floor, Royal Bank Building  
5161 George Street  
Halifax, Nova Scotia     B3J 1M7

Dear Jim:

Re:   RCMP Material

Thank you for your letter of September 3rd relating to the inclusion of the RCMP material in the Exhibit Books. I can confirm that in order to get the material out to the various counsel, we have deleted from the volumes that went out, Page 89 of Volume 18 and Page 213 of Volume 16. I'd also confirm my discussions with Al Pringle in which I indicated that we would require for admission, the notebook or a copy of the relevant pages from Eugene Cole. In this connection I appreciate your offer to provide a "will say" statement and I would be grateful if you would in fact prepare such a statement for distribution to other counsel. Ideally we would want to see the statement refer to the notes that Mr. Cole took and should have a copy of the notebook page appended to it. It would be our intention to offer the extract from the notebook into evidence, and if the RCMP is not willing to do this by consent, perhaps you would let me know so that the appropriate subpoena could be issued.

Many thanks for your help.

Yours very truly,



David B. Orsborn  
Commission Counsel

DBO:jrc

Outgoing

**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

BY COURIER

September 3, 1987

PERSONAL & CONFIDENTIAL

Mr. E. Anthony Ross  
Smith, Gay, Evans & Ross  
Barristers & Solicitors  
604 Queen Square  
Dartmouth, N.S. B2Y 3Z5

Dear Mr. Ross,

RE: Proposed Research Project - Criminal Justice System  
and Discrimination Against Blacks in Nova Scotia

Further to our telephone conversation of September 2, 1987, I have made arrangements to meet with Dr. Wilson Head in Toronto next week. I have forwarded to him a copy of the Research Proposal which you have submitted on behalf of the Black United Front.

When I spoke with Dr. Head yesterday, he had not yet received from you a copy of the material outlining the Research Proposal. I would suggest that we tentatively plan to meet during the week of September 14, 1987. In view of your involvement with the Public Hearings, I think it essential that we seize the first available opportunity during that week in order to attempt to finalize the Terms of Reference for this project.

Thank you for your cooperation. I remain,

Yours very truly,



John E.S. Briggs  
Director of Research

JESB/jm



**ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION**

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COMMISSIONER

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COMMISSIONER

BY PUROLATOR

September 3, 1987

PRIVATE & CONFIDENTIAL

Mrs. Debbie (MacPherson) Timmins  
Pleasant Bay, Cabot Trail  
Cape Breton, Nova Scotia

Dear Mrs. Timmins,

As per your request, please find enclosed a subpoena for you to attend at the Hearings of the Marshall Inquiry in Sydney on September 14th at 10:00 a.m. and thereafter as long as your attendance shall be required.

Yours truly,



David B. Orsborn  
Commission Counsel

DBO/jm  
Encl.

**ROYAL COMMISSION ON THE DONALD MARSHALL MURDER, PROSECUTION**

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
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COMMISSIONER

BY COURIER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 2, 1987

Mr. Reinhold Endres  
Director (Civil)  
Department of Attorney General  
5151 George Street, 9th Floor  
Bank of Montreal Building  
Halifax, Nova Scotia

Dear Mr. Endres,

I have received this morning, the documents that you have filed in support of the Application for an Order staying the effect of the subpoena issued to Gordon F. Coles, Q.C.

I will be filing an affidavit to be used at the Hearing of the Application, and I will have a copy sent to you as soon as it is prepared. The purpose of the affidavit will be to establish that the issue of the release to us of the Thornhill and MacLean documents was raised with the Attorney General's Department months ago and that we delayed issuing the subpoena as an accommodation to the Department to enable it to decide what decision it would make. It was the clear understanding between counsel that in the event the Department decided not to release the documents, the subpoena would be issued in time to permit an Application to Quash to be heard prior to the date when the subpoena was returnable. There is no reason whatever that the Application to Quash could not be heard on a normal Chambers Day.

At the Hearing of the Application on Tuesday, I will take the following positions on behalf of the Commission:

(a) That the Supreme Court of Nova Scotia is not the appropriate forum to bring an Application for a stay, and that the Application could only be heard by the Commissioners.

(b) In the alternative, no stay should be granted because this is obviously a further attempt by the Attorney General's Department to delay the production of documents to which we are entitled.

Mr. Reinhold Endres

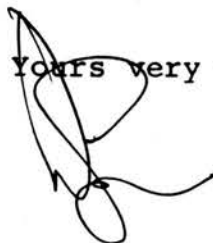
-2-

Sept. 2, 1987

(c) In the further alternative, I will advise the Court that we are prepared to argue the merits of your Application to Quash the subpoena on Tuesday, September 8th.

I wanted to bring these matters to your attention immediately. If appropriate, I will advise the Chambers Judge on Tuesday of our willingness to argue the merits on that day, and that you were advised of this position today.

Yours very truly,

A handwritten signature in black ink, appearing to be 'G MacDonald', written over the closing 'Yours very truly,'.

George MacDonald  
Commission Counsel

GMacD/jm

# ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX  
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN  
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS  
COMMISSIONER

THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

September 1, 1987

Ms. Rosemary Coffin  
Sales Department  
Holiday Inn - Sydney  
480 King's Road at Castle Drive  
Sydney, Nova Scotia B1S 1B3

Dear Rosemary:

I had indicated to you earlier that the Royal Commission on the Donald Marshall, Jr., Prosecution would be requiring 10 rooms for certain dates and that I would be advising you as to the names of the individuals who will be registering in those rooms. I can now give you final confirmation of those names. They are as follows:

Chief Justice T. Alexander Hickman  
Associate Chief Justice Lawrence A. Poitras  
The Honourable Gregory Thomas Evans  
George W. MacDonald, Q.C.  
David B. Orsborn  
W. Wylie Spicer  
Susan M. Ashley  
Laurie J. Burnett  
Fred Horne  
Steven Janex.

Ms. Burnett, Mr. Horne, Mr. Janex and myself will be arriving on Monday, September 7th and staying for all of those dates I had indicated to you previously. We have also reserved a room in the name of Mr. Jim Maloney for Tuesday, September 8th, 1987 to Thursday, September 10th, 1987 inclusive. I would also like to reserve a room for Mr. Ian Fraser to arrive on Tuesday, September 8th to stay for the Tuesday and Wednesday nights. We have also rented Salon E for the evening of Tuesday, September 8th. I am assuming that our arrangements for the Boardroom for the duration of our stay are confirmed. Rm 336

I hope that the Government rate can be given to all of these individuals.

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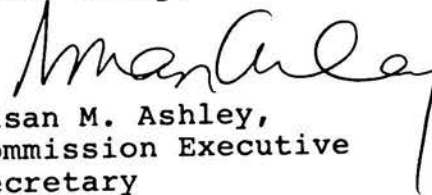
Ms. Rosemary Coffin,  
Sales Department

September 1, 1987

I would appreciate it very much if you could confirm these reservations on receipt of this letter.

Thank you very much for your continued assistance.

Yours truly,

  
Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb

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September 1, 1987

Ms. Donna Ebsary  
P. O. Box 121  
Newton, Massachusetts 02195

Dear Donna:

I am enclosing a copy of the transcript of the tape recording of our interview in Boston. Also enclosed is a booklet which contains all of the statements which you have given from time to time and the evidence which you gave at the various trials. It would be useful if you could review these documents prior to our meeting again in Boston later this Fall. I will let you know as early as possible the date which we will schedule to take your evidence by teleconference facilities.

Very truly yours,

George W. MacDonald,  
Commission Counsel

GWMACD/ljb

Enclosures

# ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

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September 1, 1987

Mr. Robert B. Hyslop  
Associate Deputy Attorney General  
Department of Justice  
Province of Newfoundland and Labrador  
St. John's, Newfoundland A1C 5T7

Dear Mr. Hyslop:

Many thanks for your prompt response to our request for a copy of your Crown Attorney's Handbook. This will be of interest to the Commission in its work relating to Crown Prosecutors in Nova Scotia.

Again, many thanks.

Yours very truly,

David B. Orsborn  
Commission Counsel

DBO:jrc



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COMMISSIONER

September 1, 1987

BY COURIER

Mr. James D. Bissell  
Counsel, Atlantic Region  
Department of Justice Canada  
4th Floor, Royal Bank Building  
Halifax, N.S. B3J 1M7

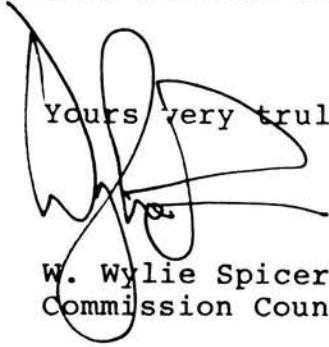
Dear Mr. Bissell,

RE: Correctional Service Material

I am replying to your letter of today's date to Susan Ashley.

With respect to the comments on Page 2 of your letter, the Commission does not intend to examine the policies, procedures or practices of the Correctional Service of Canada or the National Parole Board other than we would like an answer to the question as to why there is some requirement for admission of guilt prior to commencement of any parole processes. Other than that and the evidence concerning the input of the Sydney Police Department or other provincial agencies, the Commission does not intend to delve into the practices of the Correctional Service or the National Parole Board.

Yours very truly,

  
W. Wylie Spicer  
Commission Counsel

WWS/jm

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BY COURIER

THE HONOURABLE  
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COMMISSIONER

September 1, 1987

Mr. Reinhold Endres  
Director (Civil)  
Department of Attorney General  
5151 George Street, 9th Floor  
Bank of Montreal Building  
Halifax, Nova Scotia

Dear Mr. Endres,

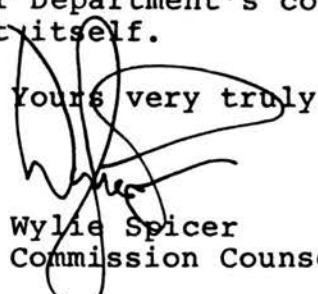
RE: Commission Subpoena - Thornhill and MacLean

I wish to confirm our telephone conversation of August 31, 1987. You advised me that the Government wished to challenge the subpoena issued by the Commission by way of a Chambers Application. You indicated that the first available contested Chambers date was October 29th and you asked us for our consent to having the matter dealt with on that date and you further requested that we not require the Government to apply to stay the subpoena.

I advised you later in the day that the Commission was not prepared to put the matter off to October 29th but that, if you wish to make an application for some sort of stay, we would be prepared to waive time limits with respect to notice.

Up to this point in time, we have been advised that the Attorney General's Department and its employees were being represented by the firm of Patterson and Kitz and, in particular, Jamie Saunders and Darryl Pink. We had understood that your Department and indeed yourself would be considered to be clients. Accordingly, because of that understanding, I have sent a copy of this letter to Mr. Saunders and Mr. Pink since I would regard it as my responsibility to deal with your Department's counsel rather than with the client department itself.

Yours very truly,

  
Wylie Spicer  
Commission Counsel

WWS/jm  
cc: Darryl Pink  
Jamie Saunders

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COMMISSIONER

August 31, 1987

Ms. Anne S. Derrick  
Buchan, Derrick & Ring  
Barristers & Solicitors  
5516 Spring Garden Road  
Suite 205, Sovereign Bldg.  
Halifax, Nova Scotia B3J 1G6

Dear Anne:

Your letter of August 27th, 1987 addressed to Lois has been directed to me for reply.

Regarding your first request, I am advised that a copy of the map of Wentworth Park was sent to Mr. Ruby on August 13th.

Unfortunately, we only have one copy of the Ebsary tape. However, if you would like to come to the Commission office to look at it again, we would have no problem with your doing so. Simply give me a call.

Finally, I have directed our staff to make sure that Witness Books be sent to you. We will do this as soon as possible.

Yours truly,

Susan M. Ashley,  
Commission Executive  
Secretary

SMA/ljb

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THE HONOURABLE  
MR. JUSTICE GREGORY THOMAS EVANS  
COMMISSIONER

August 31, 1987

Mr. Alexander Christmas,  
President  
Union of Nova Scotia Indians  
P. O. Box 961  
Sydney, Nova Scotia B1P 6J4

Dear Mr. Christmas:

Your letter of August 25th, 1987 to Lois Dyer has been directed to me for reply. I have succeeded Ms. Dyer in the position of Executive Secretary to the Royal Commission.

I do not know the details of the discussions between Mr. Wildsmith and Ms. Dyer regarding the participation of the Union in the Hearings. However, it appears that Ms. Dyer was referring to the principles that have been accepted to be applied in taxing accounts of counsel for funded participants before the Royal Commission. The first principle stated is as follows:

"Reasonable costs incurred are to be paid as taxed and none of the funded participants before the Royal Commission can reasonably take the position that either the public interest or their own interest requires the presence of legal counsel on their behalf throughout the Hearings."

This, and the other principles that have been adopted, apply to all parties with standing before the Commission who have been funded by the Province. It is not meant to imply any judgement of the importance of their interest before the Commission. There will be no attempt to downplay the interest that your Union has in the proceedings. I should note that this rule also applies to lawyers for the Royal Commission itself.

As you may know, Professor Wildsmith has been most helpful in working with us to devise a research plan to look into some of the problems faced by Native people in the justice system. It is our hope that this research, as well as the direct participation of the Union in the Hearings, will adequately deal with your interests.

- 2 -

Mr. Alexander Christmas

August 31, 1987

If you have any other questions or concerns, please do not hesitate to contact me.

Yours very truly,

Susan M. Ashley  
Commission Executive  
Secretary

SMA/ljb

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September 1, 1987

Mr. James D. Bissell  
Counsel, Atlantic Region  
Department of Justice Canada  
4th Floor, Royal Bank Building  
5161 George Street  
Halifax, Nova Scotia B3J 1M7

Dear Jim:

Enclosed you will find Volumes 11 through 21 of the Exhibit Books. Please check Volumes 16 through 21 and get back to me immediately.

Volumes 1 through 10, the trial transcripts, will be forwarded to you shortly.

Very truly yours,

David B. Orsborn,  
Commission Counsel

DBO/ljb

Enclosures