

RECKONING
with
RACISM

Contents

<i>Acknowledgments</i>	ix
Introduction	3
1 The Trial	9
2 The People	23
3 A Black History of Nova Scotia	39
4 Race and Policing in Nova Scotia	50
5 The Initial Fallout	65
6 The Appeals Begin in Nova Scotia's Supreme Court	81
7 Nova Scotia Court of Appeal	97
8 Gender Matters	111
9 Appeal to the Supreme Court of Canada	124
10 The Supreme Court of Canada's "Gang of Five"	141
11 The Concurring Opinion in Defence of Judge Sparks	154
12 Epilogue	169
Conclusion	186
<i>Chronology</i>	193
<i>Notes</i>	197
<i>Illustration Credits</i>	262
<i>Index</i>	265

INTRODUCTION

I have been captivated by the *RDS* case since it began to weave its way through the courts.¹ What began as a simple criminal trial in 1994 in Nova Scotia Youth Court evolved into one of Canada's most significant race cases. When I taught *RDS* in my University of Ottawa criminal law class, the legal principle the students extracted was the importance of "objectivity." While their touching faith in objectivity is optimistic, even inspirational, the simplicity of the vision belies the challenges.

An African Nova Scotian teenager had been put in a choke hold, handcuffed, and charged for intervening in his young cousin's arrest. On appeal, the focus shifted from racist police practices to judicial racial bias. Never in its 122-year history had Canada's Supreme Court considered a similar complaint. Ostensibly, Canadians were content that their uniformly white judiciary exhibited no racism. In 1997, that complacency was shattered when the bench of nine white judges was asked to rule on *RDS*. The irony was that the impugned judge was Canada's first Black female judge. She was accused of racial bias against whites.

It struck me that delving deeply into *RDS* – the people, place, and time – might unearth useful tools to interrogate the role of racism in Canada's legal history. This narrative begins with the trial, broadens to examine the backgrounds of the individuals involved, and expands still further to elicit what we can learn about the history of African Nova Scotians more generally. It tracks the early history of slavery, the four larger waves of immigration, the discrimination that descended, and the experience of racialized policing. Then it moves back to the trial,

analyzing how and why this case blew up, the fight over media access, successive appeals that culminated in the 1997 Supreme Court of Canada decision, the reactions of the individuals directly involved, and the views of whites and Blacks within the wider community.

A remarkable set of characters emerged: the white Halifax police officer who conducted the arrest; the Black teen charged with assault and obstruction; the notable cast of white and Black lawyers who argued the case; the white judges who deliberated on it; and the riveted community members who recognized the stakes involved. Probing the long history of the African diaspora community in Nova Scotia, the dynamics of policing in a predominantly Black neighbourhood, the environment that elicited criticism of the police, the shocked responses of the all-white legal authorities, and the backgrounds of the judges who grappled with the case helps to explore the meaning of *RDS*.

Today's cumulative videos of racialized police violence and the explosive resistance of the Black Lives Matter movement have lent increased urgency to the study of Canadian racism. Despite centuries of racial inequities, discussions of racism have rarely registered inside our white legal system. *RDS* upended the silence several decades before the George Floyd murder, forcing the police, lawyers, judges, academics, the media, and the wider society to consider racism. This case became a lightning rod, the centre of a painful, tumultuous, late twentieth-century legal debate about race.

Race is a socially constructed myth that purports to divide human beings into distinct categories. Fictional classifications have changed over time and place. Groups historically deemed “non-white” in Canada include Indigenous peoples, French Canadians, central Europeans, eastern Europeans, Asians, Indo-Canadians, Jews, and Muslims. Significantly, people already perceived as white decided who was white.² This is why many antiracists describe “race” in scare quotes. It is why we refer to *racialized* people, to signify that race is a fiction but racism is a reality. Because this study deals with specific geographic settings and times, for ease of reference I shall make use of simplified descriptors for individuals such as “white” and “Black” with occasional use of other terms of preference such as “African Nova Scotian” and “African Canadian.”³

When naming the people described in this book, I have mostly adopted a preference for surnames, with some exceptions. Due to Rodney Small's youth during the arrest and legal proceedings, I have often referred to him as "Rodney," and have continued referring to him by his first name in later decades to avoid confusion. When describing the life backgrounds of other key figures, I have used their first names during their youthful years, switching to their surnames once they have commenced their careers. Although Judge Sparks's birth name was Corrine Sparks, she prefers to use "Connie" as her first name, and I have followed this preference except in formal references where her legal name appears.

Rocky Jones, the now-deceased African Nova Scotian defence lawyer in the *RDS* case, once expressed dismay that the author of the first book-length study of Black Canadian history, *The Blacks in Canada: A History*, was white.⁴ He may have preferred that this book be written by an African Nova Scotian. I am a white woman, which presents particular challenges for this research. My racial experience is the product of a life contained almost entirely within a privileged white bubble. My academic research began with the legal history of sex discrimination.⁵ I am indebted to the brilliant Black and Indigenous writers and activists who insisted that white feminists expand our essentialist focus on gender to encompass the complexities of race. Challenged by the courageous students of colour in my classrooms who demanded more inclusive learning, I have begun to shift my research to the legal history of racism.⁶

That so many people in this case are white means that while *RDS* is a study of Black resistance, it is also an inquiry into white racism. That may suggest specific responsibilities for white researchers. In the past, I have also faced allegations of bias on the basis of gender because of my femaleness and my feminism, an experiential background shared with at least two of the female judges who figure prominently in *RDS*. The richness of this case allows for substantial diversity of interpretation, and many voices register on the pages that follow. My hope is that readers will draw their own conclusions on the complex issues that emerged.

My understanding is that Judge Corrine Sparks, one of the principal actors in this case, may write a memoir about her life after she retires from the bench. She would undoubtedly narrate this story differently than I have been able to do. I join with many others in hoping that she does complete a memoir. It would make an invaluable contribution to our deeper understandings.

The surviving legal records for *RDS* include the transcript of the trial, the written factums containing the appellate submissions, the transcript and DVD recording of the arguments before the Supreme Court of Canada, and the decisions from the Youth Court, the Nova Scotia Supreme Court, the Nova Scotia Court of Appeal, and the Supreme Court of Canada.⁷ Biographical research on the witnesses, lawyers, and judges was supplemented with oral history interviews of the teenager charged, the arresting police officer, the lawyers for the prosecution, defence, and interveners, and many of the judges.⁸ The ninety-nine oral history interviews that I conducted added observations from family and friends of the individuals involved, journalists, community activists, politicians, policing experts, critical race analysts, criminologists, psychologists, social workers, law professors, historians, archivists, lawyers, and judges.⁹

Written sources added context to the history of anti-Black racism in Nova Scotia and its impact on policing, the criminal legal system, and the political, economic, social, and legal environments that permeated this case. Gender and class formed key intersecting variables. Canada's first Black female judge was forced to operate well outside socially prescribed gender- and race-specific roles for women. The class disparities between the accused Black teen, the middle-class white police officer, and the elite white judges were impossible to miss.

All whose lives bump up against the criminal legal system are harmed. The *RDS* case brings unavoidably to public view the pain inflicted on the persons entangled in it. Making visible the depth of the harm carries risk of further damage. While emphasizing the necessity of documenting discrimination, Mohawk author Patricia Monture-Angus writes that “no amount of social change discounts the pain those particular individuals carry who become the symbols of our struggle.” She urges that

documentation be tempered with respect and compassion. The wisdom of her challenge is evident.¹⁰

There are several significant issues not covered here. The Indigenous communities on whose land the *RDS* events unfolded share with African Nova Scotians distinct but similar patterns of racist discrimination and resistance. The colonization of Mi'kmaw lands and cultures has evolved differently inside Black and white settler communities, yet, in 1989, the Royal Commission on the Donald Marshall, Jr., Prosecution found parallels for Blacks and Indigenous peoples in policing, criminal prosecution, and sentencing.¹¹ These and related matters of reconciliation and reparation deserve urgent attention, but the race focus here is specifically upon whites and Blacks.

Two related legal matters are not tracked in detail. The legal doctrine of judicial notice allows a court to accept certain evidence as fact without further proof, if the truth of it is so notorious or well known or so authoritatively attested that it cannot reasonably be doubted.¹² Rodney Small's defence lawyers chose not to argue that anti-Black police racism was sufficiently notorious to qualify for judicial notice. They were concerned about the voluminous, costly evidence potentially required to support judicial notice. They also feared that if the argument failed, it could be taken as a wider precedent denying the existence of racism. Since the argument was not made by the appellants, the Supreme Court chose not to consider it during the final appeal. Although future race cases will undoubtedly consider judicial notice as a key issue, in the late 1990s, the context was such that the omission was probably wise. There are two routes for allegations of judicial bias: an appeal or a complaint to a judicial council.¹³ Judicial council complaints constitute a significant avenue for judicial oversight but will receive limited attention here because the prosecution chose the appeal route.¹⁴

We live in a time of unparalleled controversy over racism and racial dynamics within our police forces, the legal profession, and the judiciary. There has never been a more pressing time for a full-scale assessment of the *RDS* case, the arrest that precipitated it, the people who took it to court, the excitement that surrounded it, the dramatic impact it had on the individuals involved, and its significance for the Canadian

legal system. This extraordinary case offers a unique focal point for a wider examination of Canadian anti-Black racism, judicial impartiality, police practices, and the race, class, and gender dimensions of the criminal legal system.

The Trial

On 2 December 1994, Rodney Darren Small appeared for trial before the Nova Scotia Youth Court at 3380 Devonshire Avenue in Halifax.¹ He was identified only by his initials (R.D.S.) because of his youth, but he has given permission to use the full name here.² A sixteen-year-old African Nova Scotian, slight in stature and younger-looking than his age, Small was charged with three *Criminal Code* offences: assaulting a police officer; assaulting a police officer with intent to prevent the lawful arrest of another person; and obstruction of a police officer.³ It was his first time facing criminal charges. They all stemmed from one police altercation.

In the fall of 1993, fifteen-year-old Rodney Small was living with his mother in a two-storey rowhouse at 2438 Creighton Street in a predominantly Black neighbourhood in the inner city's North End. On a misty overcast afternoon, October 17, Rodney was riding home on a borrowed mountain bike after visiting his grandmother. Several blocks from home, he was startled to see a crowd watching a scuffle on Brunswick Street. One young boy shouted that Rodney's cousin was being arrested. Fifteen-year-old N.R., who lived down the street from Rodney, was struggling with a police officer while encircled by a crowd of more than half a dozen people. As Rodney would later explain, "When somebody is being arrested in the community, it brings attention."⁴



In 1993, at the time of his arrest on three charges, including assaulting a police officer, fifteen-year-old Rodney Small lived with his mother at 2438 Creighton Street, a rowhouse in a predominantly Black neighbourhood in Halifax’s North End. This picture was taken in 2018.

Rodney was upset to see his cousin in handcuffs. Still on his bicycle, he moved closer. The officer warned Rodney to stay away or he would be next. Rodney ignored the officer and shouted to his cousin, “Do you want me to go tell your mother?” The next thing he knew, he was in a choke hold, arrested, and shoved into the police van alongside his cousin. At the station, he was released on his own undertaking. Charges were laid on 10 November 1994.⁵

Neither Rodney’s mother nor grandmother had money to hire a lawyer, but they sought help from the Black United Front, a Halifax-



Because he was under the age of eighteen, Small's case was heard in Devonshire Youth Court, a fast-paced court where Black youth were disproportionately represented.

based antiracism organization. There, they learned that there was a Black lawyer representing indigent clients through Dalhousie University's Legal Aid office. The lawyer was Burnley Allan Jones, whose nickname – “Rocky” Jones – was more frequently used.⁶ Jones told them he believed the charges were “bogus,” a clear example of the “shotgun approach” where the police laid multiple charges arising out of the same incident hoping some would stick. It was common for criminally charged individuals, especially poor ones, to accept a plea bargain, to plead guilty to one charge in return for dropping the others. Jones advised against this. He offered to take the case as part of a fight against police abuse of African Nova Scotians.⁷

Since Rodney was under eighteen, the case was heard in the Youth Court under the *Young Offenders Act*.⁸ African Nova Scotians were disproportionately represented there as accused youths.⁹ The pace of Youth Court was hectic, but many cases were diverted into community-service alternatives before trial. For reasons that were never made clear, Rodney's case was not on the diversion path.

The morning of the trial, Rodney arrived without family support.¹⁰ His mother, who was angry with him, did not attend. His father was in jail. He had not asked his grandmother because he was worried about causing her more stress. The courtroom gathering was unprecedented: a Black accused (Rodney Small), a Black defence lawyer (Burnley “Rocky” Jones), a Black court reporter (Marva Welch), a Black deputy sheriff (Ray Lawrence), and a Black judge (Corrine E. Sparks). The only two white people in the room were the arresting officer (Constable Donald Stienburg) and the Crown prosecutor (Richard B. Miller).¹¹

It was an unusual sight in a province that had long been criticized for having unjustifiably low numbers of Black lawyers, court workers, and judges. A 1989 Nova Scotia royal commission registered concern that there was only one Black judge in the province.¹² That was Judge Sparks herself. She was the first Black female judge in Canada. It was the first time Sparks had presided over a trial with a Black accused, Black defence counsel, Black court clerk, and Black deputy sheriff.¹³ The trial would hear from just two witnesses, one white, one Black, both male.

CROWN WITNESS: A WHITE POLICE OFFICER

Prosecutor Miller opened by calling Constable Donald Stienburg to the witness box. A twenty-nine-year-old patrol officer, he had been with the Halifax police department for eight years. Stienburg stood over six feet tall, with a heavy-set athletic physique, a “big man” as Rodney described him. Some officers carried bad reputations within the African Nova Scotian community, but Rodney did not single out Stienburg as one of the worst. “He didn’t have a rep like some of the cops that we know,” Rodney explained years later.¹⁴ Then he added, “But the reputation of the police in general is not good. There has always been a very bumpy relationship between the Halifax police and the Black community. It’s ingrained in our history.”¹⁵

Stienburg testified that he and his partner were in their patrol car on October 17 when a call came in that the police were chasing a stolen

van. The van had been “dumped,” and “five non-white males, young kids,” jumped out and ran off. Stienburg said “two non-white males” ran across Brunswick Street in front of his car. His fellow officer ran after one fleeing boy, and Stienburg questioned the other, N.R., whom he arrested for theft and unlawful possession of a motor vehicle. He continued: “[T]here was a number of people milling around in the area. While I was holding [N.R.] a gentleman in a bicycle come ... He cut directly across the street on his bike, I believe it was a small mountain-bike type bike and drove right into my legs with the bike without stopping and started yelling at me.”¹⁶

Stienburg identified the bike rider as Rodney Small, the teenager seated in court wearing a “white Miami shirt.” Stienburg resumed: “He was straddling his bike at that time. He had put his feet on the ground. He was kind of on the ground straddling the bike and he was yelling at me at the time, pushing me with his shoulders and his arms away from the accused that I had arrested.”¹⁷

Q. Can you tell us how you were being pushed?

A. He was using his upper body and his two hands to push me away from the person I had arrested.

Q. Can you tell me where on your body did R.D.S. touch?

A. In my upper body, in my arms.

Q. Can you tell me how many times you were touched by R.D.S.?

A. It was all at once. While he was – attempting to push me away from the person I had just arrested, it lasted for approximately a couple of seconds, not very long.

The prosecutor continued:

Q. Why did you arrest R.D.S.?

A. Because he was interfering with the arrest of the person I had arrested before.

Q. And did you advise him of that?

A. Yes, I did ...

- Q. After you arrested R.D.S. what took place?
- A. At that time I was calling for assistance from other police officers. Another police vehicle arrived and another couple of policemen assisted me.
- Q. Okay. Was R.D.S. on his bike at this time or was he off his bike?
- A. I believe he was straddling the bike while this was occurring. I can't recall exactly what happened afterwards but he was taken from my custody and placed in a police vehicle shortly after.
- Q. Where were you and where was N.R. at this time after the arrest of R.D.S.?
- A. N.R. was on my left and the accused was on my right after the arrest.¹⁸

Pressed for more detail, Stienburg replied, "I was holding both of the accused at the time trying to control both of them, because there was two people there and I was by myself. I believe I had them in a neck restraint, both of them at that time."¹⁹

When the trial turned to cross-examination, defence counsel Rocky Jones criticized the officer's reference to "non-white" males. He had objected for years to the police use of the term. In his speeches to African Nova Scotians, he often stressed, "You're not a 'non' anything. Don't accept this negative definition. It makes whites the norm."²⁰ Jones would always insist, "I am not 'non' anything. I am *Black*."²¹ Jones noticed that Constable Stienburg became increasingly "tense and nervous" under this cross-examination.²² The officer conceded that the description relayed over the radio could have covered "natives" and "East Indians." "There was nothing specific in this communication that would identify black kids?" queried Jones. "No," replied Stienburg. "Is 'non-white' a description that they [the police] usually use for people of African descent?" queried Jones. "It has been, yes," admitted the officer. The point had been made: the imprecise terminology led the police to search only for Blacks.

Jones homed in on the multiple charges. The officer had initially advised Rodney that he was being charged with obstruction. Two more

charges were added before trial. Under continued cross-examination, Stienburg admitted that the check he ran on Rodney Small had uncovered no prior criminal record. It was “gross overcharging to say the least,” claimed Jones.²³

Jones turned to the physical interaction between the officer and Rodney:

Q. And R.D.S. didn't get off his bike at any time?

A. Not that I can recall, no.

Q. And he didn't knock you over?

A. No, he did not.

Q. And you continued with your arrest of N.R.?

A. Yes, that is correct.

Q. And the bike, if it did hit you, was not travelling at any high rate of speed?

A. No, it was not.²⁴

The first Jones had heard of the choke hold was at trial. Rodney Small had not thought to mention it during his pretrial interviews with his lawyer. Surprised that the officer had admitted this in his examination-in-chief, Jones felt he had been handed “a gift.”²⁵ He highlighted the excess force: “You mentioned that you put both young people in the neck restraint, correct?” “Yes,” replied Stienburg, “that's correct.”²⁶ Jones hoped to emphasize the stark disparity between the towering, burly twenty-nine-year-old officer and the five-foot-eight-inch fifteen-year-old Rodney Small, weighing all of 104 pounds. Observers that day said Rodney's stature and weight made him look about twelve years old.²⁷

DEFENCE WITNESS: A BLACK ACCUSED

Rocky Jones called Rodney Small as his only witness. “I was scared to death,” Rodney recalled, “and it was my word against that of a white police officer. I thought it was going to be a slam dunk for the white cop.”²⁸

- Q. Would you please tell the court what happened that day?
- A. I was coming from my grandmother's going up to my mother's house and I saw like – I saw a police car and I saw a crowd ... Laurice came up on his bike. He said they got N.R. down. I said, "Where?" I said, "What did he do?" or something like ... So we were driving down, we drove Uniacke on the sidewalk, drove down on the Brunswick sidewalk and we was in the grass, because they was like in the grass like, and I was asking them when we got there, I said, "What's wrong with you N? What happened? What happened? I'll go tell your mother."

And he [the officer] said, "Shut up, shut up, or you'll be under arrest too." I said "What, what, do you want me to go tell your mother?" And then, boom, grabbed me – unexpectedly grabbed me in some choke-holds and said you're under arrest. Then he just put me in the choke-hold and I couldn't really breathe or nothing. And then a woman – some woman said, "Let that kid go, let that kid go." She was saying to me, "What's your phone number? What's your phone number?" And I couldn't talk. N.R. had to yell it out. Told the woman my phone number, phone my grandmother's house.²⁹

The woman who called out was the aunt of one of the neighbourhood children. The community relationships were on high relief that day: the aunt's intervention; Rodney attempting to get the details of his cousin's arrest so he could tell N.R.'s mother; N.R. calling on the aunt to call *Rodney's* grandmother. Both sides apparently approached the aunt to testify, but according to Rodney, the police intimidated her, and she "wasn't too adamant about stepping forward."³⁰

Jones continued questioning:

- Q. Now this crowd on the sidewalk, can you describe the crowd?
- A. They were all little kids. None of them were older than 12, none of them.
- Q. Now when you were coming down the sidewalk and you got to this crowd of kids, can you describe how fast you were going?

A. I was coasting. Like I was coasting down Uniacke. I was still coasting. I was coasting from coming down the hill so I was like coasting there.

Q. And when you were coasting down the sidewalk did you run into anybody?

A. No.

Q. Did you hit anybody?

A. No.

Q. Did you intend to hit anybody?

A. No.³¹

Jones turned to the officer's earlier testimony:

Q. Now you've heard the testimony of the police officer here. What differences would you say in what he said and what you've got to say?

A. I know I didn't hit him at all for sure.

Q. The police officer, you heard him say that you were – you had taken two hands and were pushing him on the chest. Did you do that?

A. No, my hands were still on my handlebars because I was like standing on my bike. I was still on my bike. When he grabbed me he grabbed me off my bike.³²

Then it was prosecutor Miller's turn to cross-examine Rodney.

Q. [W]hen you heard what was going on and you heard N.R. was involved, you wanted to go right to the area, right?

A. I was like being nosey, I wanted to know what was going on, yeah.

Q. And obviously the place you're going to go to is the centre of the action, right?

A. Um ...

Q. At that time the police officer had a hold of N.R., did he?

A. No, I'm saying he already had handcuffs on him. He had the handcuffs on and the cop was just like [inaudible] and just holding his shoulder.

Q. So did you have any concern about N.R. at that point in time?

- A. I was just – I wanted to go tell his mother what happened with him.
- Q. Why didn't you?
- A. Because I was under arrest. How could I go?
- Q. You weren't under arrest at this time. You were sitting on your bike ... It's quite easy to take your bike and go to N.R.'s mother, isn't it?
- A. No, it wasn't like that.
- Q. Okay. Tell me how it was?
- A. As soon as I came down I was asking him and then the cop like cut me off. "Shut up, or you'll be under arrest too." I said ... "Do you want me to go tell your mother what happened? What happened?" Then he said, "Shut up, or you'll be under arrest too." Then he grabbed me. I was still talking to N.R. and then he went and grabbed me, oh, "You're under arrest." Put me in a choke-hold so I just –
- Q. How close were you to the officer at this time?
- A. Talking distance. Right like – closer than what me and you are.³³

Next, the prosecutor tried to discredit what he believed was an implausible story:

- Q. So for just asking a question, this is your story, for just asking the question you were put in a choke-hold?
- A. Yes.
- Q. You did absolutely nothing to this police officer –
- A. Nothing.
- Q. – to deserve being put in the choke-hold?
- A. Nothing.
- Q. You didn't hit him with the bicycle?
- A. Didn't touch him with my bike.
- Q. You didn't touch him with your hands?
- A. Didn't touch him with my hands.
- Q. What happened after you were put in the choke-hold?
- A. Some woman was yelling, "What's your phone number? What's your – get off that kid like that, what's your phone number?" And I couldn't talk and N.R. yelled my phone number out to her.
- Q. And what was N.R. doing at this time?

A. He had N.R. in a choke-hold too. He had us both like that.

Q. And what were you doing?

A. I was – I couldn't do nothing. I couldn't breathe and my face was like – I was almost like knocked out. He had me right under the chin and it was –

Q. You weren't struggling, you weren't doing anything?

A. I couldn't move. I was almost – I was dizzy.

Q. And what about N.R., what did he do?

A. N.R. couldn't do nothing. He had handcuffs on.

Q. So you have no explanation as to why the police officer here today [is] testifying as to what he did?

A. No.³⁴

THE LAWYERS' SUBMISSIONS AND THE DECISION

Defence counsel Rocky Jones stated that the court was faced with “two people giving two different stories.” The officer claimed that Rodney Small ran into him and was trying to hit him with his hands. Rodney denied any intention to run into the officer and insisted that he had not touched him. Jones conceded that if Rodney was “close enough that the police officer can grab him in a choke-hold and take him off his bicycle,” then “the bike may have touched the officer.” But he insisted that the bike was coasting not speeding, that Rodney had never taken his hands off his bicycle, and that there was no criminal intent to assault. Jones asked the judge to find that “this young person is a credible young person who's come before the Court to state his case as clearly as he can.” He emphasized that if there was “any doubt whatsoever it must be resolved in favour of the accused.”³⁵

Crown prosecutor Rick Miller agreed that it came down to whether “the police officer's version of events” was “to be believed over that of the defendant.” He based his argument on his understanding of police operations:

If you look at the police officer, he's saying, well, he was assaulted, there was obstruction. Obviously, there was a wilful striking of the police

officer by R.D.S. on the mountain bike. After that it was eventually the pushing, the shoving, therefore, in the police officer's mind he has to take action. That action is restraining R.D.S. and eventually placing him in a headlock. That is a very consistent, very normal explanation as to why people do, certainly police officers, why this police officer would do what he did.

Look at R.D.S.'s version of events. He's there, and even though he's concerned that his friend or his cousin is in some sort of trouble and he wants to contact his mother, for absolutely no reason he is placed in a choke-hold. I would submit, Your Honour, that does not make sense. If R.D.S. was there, as he alleges, making no contact with the police officer, simply having some concern for his friend, quite frankly he wouldn't be in the situation that he's facing today.

[I]t's simply a question of credibility here ... [T]here's absolutely no reason to attack the credibility of the officer. His explanation was straight forward. He was simply doing his lawful duty and carrying out the arrest of N.R. Again, it's just a question of, firstly, credibility and I would ask Your Honour to accept the evidence of Constable Stienburg over that over R.D.S. And secondly, based on the evidence of Constable Stienburg, would ask Your Honour to convict.³⁶

Miller resisted the claim of overcharging, noting that it was “normal practice” to have charges in the alternative. He asked for a conviction on all three.

Judge Sparks delivered her decision that day, directly after the lawyers' submissions. In busy provincial courts, judges commonly issued oral decisions on the spot, unlike higher courts where judges often reserve, issuing written reasons later. Judge Sparks's oral decision summarized the contrasting testimony of the two witnesses. It was the handcuffs that gave her pause:

[T]his gives me some questions because first of all that was not noted by the Constable. At least I didn't hear the Constable note that N.R. was handcuffed. He gave the Court the distinct impression that he had a rather difficult job in trying to restrain N.R., but I really query in my

own mind if this young boy was handcuffed what was the big ordeal about. It's a teenager, young person. I'm certainly not left with the impression based upon R.D.S.'s evidence that N.R. at that point was a threat to the officer. Again, nothing crucial turns on that point, but again I don't understand why it is that there is such a contrast in the evidence of R.D.S. and the Constable. And certainly, when R.D.S. indicated, I believe, two or three times, his distinct recollection that his friend, his cousin, N.R., was handcuffed when he approached the police vehicle this has a ring of truth, and it certainly provides some detail with respect to the actual incident.³⁷

Then she considered the credibility of the two witnesses and delivered the verdict:

I must say that [R.D.S.] presented in a very positive way although his articulation was not as clear as it could be. He seemed to be a rather honest young boy. He said quite openly on cross-examination he was being nosey. He wanted to go down to the street corner to see what was going on. He seemed to have been struck by the hostility which greeted him by the police officer, and, of course, if I accept the evidence of R.D.S., this is a young person, N.R., his friend, was just approaching showing some concern. Why should a police officer be threatened by another young person who was merely trying to assist his friend in a non-threatening manner?

In my view, in accepting the evidence, and I don't say that I accept everything that R.D.S. has said in court today, but certainly he has raised a doubt in my mind, and therefore based upon the evidentiary burden which is squarely placed upon the Crown that they must prove all the elements of the offence beyond a reasonable doubt, I have queries in my mind with respect to what actually transpired on the afternoon of October the 17th.

The Crown says, well, why would the officer say that events occurred the way in which he has relayed them to the Court this morning. I'm not saying that the Constable has misled the Court, although police officers have been known to do that in the past. I am not saying that

the officer overreacted, but certainly police officers do overreact, particularly when they are dealing with non-white groups. That to me, indicates a state of mind right there that is questionable.

I believe that probably the situation in this particular case is the case of a young police officer who overreacted. I do accept the evidence of R.D.S. that he was told to shut up or he would be under arrest. That seems to be in keeping with the prevalent attitude of the day.

At any rate, based upon my comments and based upon all the evidence before the court, I have no other choice but to acquit.³⁸

Rick Miller and Donald Stienburg abruptly stood up and stalked out.³⁹ The accused teenager turned to his lawyer for confirmation. “He told me I was free,” recalled Rodney. Choked with emotion, he felt “stunned.”⁴⁰ And with that, forces were unleashed that would rile police, lawyers, judges, the media, and the public in protracted, bitter disputes for the next three years. It would ultimately be heralded as one of the most important, possibly the most important, legal decisions on race in Canadian history.

The People

DONALD STIENBURG

Donald Stienburg, the first witness at the trial, was born in 1965 in Ottawa but moved to Dartmouth, Nova Scotia, when he turned five. His father was an RCMP officer, his mother a dairy technician. Donnie, as everyone called him, grew up immersed in sports, a popular teenager who was elected valedictorian at Prince Andrew High School. Enrolled in engineering at Dalhousie University, he left before completion to follow his father into policing. Attracted by the physical fitness of the job, he emphasized, “I was a very physical person. I played hockey all my life.” And his family history beckoned: “It was in my blood type-thing through my father.” His younger brother, Dean, followed, joining the Halifax police force, where he was eventually elected head of the union.¹

In 1986, when Stienburg began his police career, the life of a patrol officer demanded gruelling shift work: two twelve-hour days, followed by two twelve-hour nights, with four days on and four days off. Officers patrolled the streets and conducted their own investigations. Stienburg loved policing in Halifax: “It was a small enough police force that you got to know everybody, busy enough to keep you on your toes, but not so busy that you felt completely overwhelmed, or unable to make a difference,” he explained.²



Donald Stienburg, in 2018. He left engineering school to follow his father into policing. An eight-year veteran of the Halifax police, he was the first witness at the trial. Rodney described him as “pretty big,” “built nice,” and “very athletic.”

whoever. When you sit down and talk to Donnie, [he is] very friendly, very honest.”⁵

As for Stienburg himself, he remembered taking the stand and telling the story as recorded in the Crown brief. “I knew what happened. I was there. And I thought my testimony was fine,” he recalled, “until the decision.”⁶

RICHARD B. MILLER

Crown prosecutor Richard (Rick) Miller was born in Halifax in 1961 and grew up in the working-class North End like Rodney Small, except he was white. His father worked at the grain elevators, his mother

The day of Rodney Small’s trial, Donald Stienburg showed up in court at 9:30 a.m. without sleep because he was just off the night shift. An eight-year veteran on the force, he was still inexperienced as a court witness. He had testified only two or three times a year before.³ Recalling the officer’s appearance that morning, Rodney Small described Stienburg as “pretty big,” “built nice,” and “very athletic,” with brownish dark hair and a “kind of circle-y face.”⁴ For his part, Prosecutor Miller viewed his sole Crown witness as highly credible: “Donnie just sort of gives you the impression he’ll tell you everything, tell you everything truthfully. You would never have the impression that you can’t trust this guy. It’s like if you had a favourite uncle, favourite cousin,

was a homemaker; neither finished high school. “We weren’t rich by any stretch of the imagination,” explained Miller. He played baseball and hockey in high school, where he excelled academically, becoming one of two classmates to go to university. “Quite frankly,” he explained, “a lot of people I grew up with went to jail.” He left home at age nineteen and made his way through commerce and law at Dalhousie while working to support himself. Rick recalled “really liking law school,” although he had little time to socialize with classmates while working thirty hours a week serving food and busing tables in the Victoria General Hospital cafeteria.⁷

Rick was called to the Nova Scotia bar in 1987. He began practice with a small criminal defence firm, took a stint as an in-house corporate counsel, and then opened up his own solo criminal defence firm. Representing legal-aid clients for a daily fee left him struggling to make ends meet, and he soon switched to prosecution work. At first, he could only get short-term contracts, but by the time of the *RDS* trial, Miller was working as a full-time Crown attorney at Devonshire Youth Court. He described prosecuting as “tough,” even “pressured” at times, but thoroughly “enjoyable,” even “fun.” Of average height and build with sandy hair, Miller was perceived to be an open, talkative person with a friendly demeanour.⁸

When Rodney Small’s trial began, Rick Miller had been in practice for seven years, yet people still thought of him as a novice. In his



Crown prosecutor Richard B. Miller, 2018. Miller grew up in the North End like Rodney Small and worked his way through law school. He represented legal-aid clients before switching to prosecution work.

memoir, Rocky Jones described Miller as “pretty new to the game.”⁹ Constable Stienburg thought of Miller as “brand new.”¹⁰ Miller’s earlier contractual criminal work had fallen under the radar. Years later, Miller expressed surprise that Jones was so dismissive. “Without meaning any disrespect,” he emphasized, “Rocky was not somebody that I wanted to remove from the case. To say the least, *he* was very junior.”¹¹ And Stienburg speculated about Miller’s awareness that he was perceived as inexperienced, wondering whether Miller may have been “keen to do his job because he was brand-new.”¹²

Stienburg spoke highly of Miller, describing him as a prosecutor with a “very practical approach,” who was “thorough,” “competent,” “well-respected,” and “personable.”¹³ Rocky Jones was less complimentary, tagging Miller as not one of the “heavy guns” and “a bit of a hawk.”¹⁴ As Miller watched *RDS* take on a life of its own, he reflected that “it was such a minor file. All I ever wanted to do as a prosecutor was just to present a fair case. This case had absolutely nothing to do with race. This turned into something it never was. It’s the most bizarre thing I’ve probably ever been involved in.”¹⁵

RODNEY DARREN SMALL

Rodney Small’s family had deep roots in Nova Scotia. He traced his two-century heritage there to the arrival of Black Loyalists and Jamaican Maroons. By the year of Rodney’s birth in 1978, his family resided in North End Halifax, a racially diverse, blue-collar enclave beyond the Citadel, dominated by the Halifax shipyard and the sprawling barracks of Canada’s largest military base. The African Nova Scotian inhabitants had formed close community bonds and took pride in institutions such as the Cornwallis Street Baptist Church, the YMCA, local schools, and a recreation centre. But racial discrimination had impeded socioeconomic elevation, and the area was impoverished with high crime rates. The response, overpolicing, failed to stem the downward spiral.¹⁶

Rodney’s family situation was a challenging one, as he would tell it years later. His mother, Denise Kelsie Small, was sixteen when she

gave birth to Rodney.¹⁷ In retrospect, he admitted that he had had little appreciation of “what it was like to have me at age sixteen,” especially because his father, Rodney Cain, “was a lifer in prison.”¹⁸ He described his mother as an African Nova Scotian with “blue eyes,” who “could pass for white” but would “get angry” if someone called her white. She was “self-educated” and “smart,” he added, but without a “career orientation” and employed primarily in domestic work. Rodney described their relationship as troubled. She was “a bit short in bringing me up,” he explained, a woman who was a strict disciplinarian and “didn’t understand what I was going through.”¹⁹

It was Rodney’s grandmother, Maude Kelsie, who served as the primary parent, frequently the mediator between Rodney and his mother. Maude Kelsie had been raised in Gibson Woods, King’s County, where she attended a racially segregated school. After moving to Agricola Street in Halifax, she cleaned hospital linens and raised fourteen children, “her own and some others, including me,” Rodney emphasized. When her family had grown, she moved to the Brunswick Towers, where she still kept an eye on Rodney, who adored her in return. “My Grandma was the one who brought me up and was like my mom,” he recalled. “I had a lot of hate in me as a young boy, but in my Grandma’s eyes, I could do no wrong.”²⁰

Rodney attended Cunard Street Daycare and then St. Patrick’s-Alexandra School. The autumn of his arrest, he was starting Grade 10 in high school. He described himself as a “fighter,” protective of the “underdog,” but also “a little bit of a bully,” something he ascribed to the disruption and violence he witnessed at home. He played basketball, pool, and ping-pong at the YMCA, a “safe haven” space. He appreciated the North End’s tight-knit “village-like” community where “you could go in anybody’s house,” but he deplored the police presence. “We were taught not to talk to the police, not to engage with the police, that it was dangerous,” he explained. The memory of Constable Stienburg’s choke hold was still searing years later: “I was dizzy. I thought I would asphyxiate. I had never had my breath cut off like that. I thought I might be brain-damaged. I thought this guy was trying to kill me. And then they will say it was a mistake.”²¹

According to Rodney, it was not his decision to place himself in the middle of an unprecedented case. The wheels propelling the case to the nation's top court were set in motion by the officer who laid the charges. Then the raw urgency of the competing issues eclipsed everything else. Rodney's main recollection was of being "intimidated" and "scared to death." "I was a confused young kid," he added: "I wasn't fully confident with Rocky, my lawyer. And in no way, shape, or form did I feel like I had an advantage because there was a Black judge. I felt I was at a bit of disadvantage. I felt Judge Sparks would have to show why she was there, that she would convict."²²

Surprised at the acquittal, he may have feared that Judge Sparks would lower the boom on him, yet another disciplinary parental figure like his strict mother. As some observers have noted, Black adults sometimes feel compelled to harshly discipline children to prepare them for societal racism.²³ Rodney also described himself as "a little upset" over Judge Sparks's verdict, wondering why she had speculated about the police.²⁴ Could her critique of police behaviour escalate the misconduct directed at him? An uncertain, emotionally troubled young man, he did his best to ignore what followed and to keep a low profile as the legal battle loomed over his future for three long years.

BURNLEY "ROCKY" JONES

Burnley "Rocky" Jones was born in Truro, Nova Scotia, in 1941, to a family descended from nineteenth-century Black Refugees. His parents, Willena Gabriel (a domestic worker and the first Black junior high school teacher in Truro) and Elmer Jones (a stationary engineer who tended industrial boilers) had ten children. They lived in Colchester County on "the Marsh," a predominantly Black neighbourhood composed of tarpaper shacks lacking furnaces and indoor toilets. The Zion Baptist Church was the cohesive centre of community life. The Jones men were all over six feet tall, known as "huge men" who were "extremely gentle," and Rocky grew up no exception.²⁵

He excelled academically at Willow Street primary school but lost interest in school because of racial hostility from white teachers at the

racially mixed Central Junior High School. It was then he noticed that his race defined what jobs he could hold, where he could sit in the movie theatre, which barbershop he could frequent, and which social activities he could join. By age seventeen, he dropped out of school and joined the military.²⁶

Rocky's stint with the military was short-lived. His supervising officers complained that he "couldn't take orders," and they bristled when he spoke up about racism. Next, he drifted through Toronto, where, between pool hustling and poker, he attended meetings of the Universal Negro Improvement Association and the Toronto Negro Veterans' Association. He was introduced to Harry Gairey of the West Indian Federation and Stan Grizzle of the Brotherhood of Sleeping Car Porters in Canada. He also met and married Joan Bonner, a Black woman from Oakville. Joan was engaged in the race politics of the 1960s, and her infectious enthusiasm catapulted Rocky into a burgeoning wave of Black resistance.²⁷

Before the Sixties were over, Rocky Jones had become one of the most visible faces of antiracist activism in Canada. He was a mesmerizing firebrand on the speaking circuit who could handle any challenge an audience could throw at him, an "eloquent" speaker with a deep, powerful voice. The coauthor of Jones's memoir, Jim Walker, described him as a "fast learner" who was "bright" and "good-looking." A physically imposing man, he had a larger-than-life presence – a devil-may-care agitator with a quick wit and a disarming smile.²⁸ African Nova Scotian cultural activist David Woods explained, "He had a facility to converse with anyone he met. He was a man everybody related to, everybody embraced. Even the ones he was fighting."²⁹

Jones forged connections with antiracist organizations in the United States: Students for a Democratic Society, the Student Nonviolent Coordinating Committee, the Congress of Racial Equality, and the Black Panthers. He tried to explain to American activists the parallels he saw in Canada. They insisted that Canadian racism was less malevolent. To Jones, this was a distortion based on the erasure of Black Nova Scotian history. He believed Blacks were facing a "cultural genocide" in Nova Scotia, and he resolved to return home to turn this around.³⁰



Burnley “Rocky” Jones, a descendant of Black Refugees and one of the most visible faces of antiracist activism in Canada, on a public-speaking tour.

A *Halifax Daily News* columnist described Rocky Jones as a “populist bohemian,” someone “in the thick of every crisis, attending teach-ins, drop-ins, and sit-ins, spinning James Brown records and talking Marxism.”³¹ He confronted Halifax police over their intimidating tactics, accusing them of behaving like “an occupying force” in the Black community, and encouraged African Nova Scotians to resist. He emerged as a new form of leader, his revolutionary politics upsetting to some in both the white and Black communities who preferred change to come in more incremental ways.

Dissent within the African Nova Scotian community did not deter Rocky. His and Joan’s home became the headquarters of the new civil rights movement in Nova Scotia, their kitchen table the centre of debate and strategic planning. They brought Stokely Carmichael and Rosie Douglas to Halifax and helped establish the Black United Front. In 1988, Jones made submissions to the Royal Commission on the Donald Marshall, Jr., Prosecution inquiring into the wrongful conviction of a Mi’kmaq youth. Jones’s excoriation of the systemic racism against Blacks was one of the most powerful presentations the commission heard. He assisted the cultural “Black Renaissance” that showcased musicians, filmmakers, and poets. He coped with twenty-four-hour RCMP surveillance and survived regular death threats. Twice his house was burned down by arsonists; no charges were ever laid.³²

In 1968, Rocky Jones went back to school. He enrolled part-time at Dalhousie as a mature student and graduated in 1974 with a BA in history. While there, he helped establish the Transition Year Program for Black and Indigenous school dropouts who wished to attend university.



◀ Joan Jones, Rocky's wife, addressing a 1999 news conference for Black History Month. Born Joan Bonner in Oakville, her efforts catapulted the couple into the front wave of Black resistance.

▼ Rocky and Joan brought the Black Panthers to Halifax and helped establish the Black United Front. Here, Rocky (*second from left*) poses with Miriam Makeba (South African musician), C.L.R. James (Trinidad activist and writer), and Stokely Carmichael (Black Panther) in 1968.



By 1987, he was running a North End employment agency for prison inmates and former prisoners. He was making a remarkable transition – from a symbol of Black radicalism to antiracist institutional builder – and moving closer to the rest of the African Canadian community as it turned increasingly to activism. As one observer noted, “In such a small community, the leadership of one person can be so critical, and so it was with Rocky.”³³



Rocky Jones graduated from Dalhousie, with Joan at his side, in 1974. While there, he helped establish a transition year for Black and Indigenous dropouts. In 1989, he helped create the Indigenous Blacks & Mi'kmaq Initiative to bring Nova Scotia Blacks and Mi'kmaq into the legal profession. In 1992, he became one of its first law graduates.

In 1989, he helped create the Indigenous Blacks & Mi'kmaq Initiative at Dalhousie law school to bring Nova Scotia Blacks and Mi'kmaq into the legal profession. In 1992, at the age of fifty-one, he became one of its first law graduates. Called to the bar in 1993, he took a job at Dalhousie's Legal Aid Clinic, the first and only Black lawyer on staff. That was where Rodney and his mother retained him. He had one year of practice behind him, but it was a fortuitous match. They could not have found a better lawyer for the case.³⁴

CORRINE "CONNIE" ETTA SPARKS

Judge Sparks's Nova Scotian roots stretched back two centuries, with a heritage traced to Black Loyalists and Black Refugees. The family settled in Lake Loon, a segregated Black rural community in Preston township on the periphery of Halifax. Her father, Spencer Sparks, was employed as a custodian. Her mother, Helen Sparks, worked as a

domestic, caterer, and teacher in a segregated school.³⁵ Judge Sparks described her parents as “honest, self-respecting, church-going people who worked long, hard hours at many jobs to support their family.”³⁶

Connie³⁷ Sparks was born in 1953, the eldest of nine children. With both parents working, household chores fell on her shoulders. “I was the oldest, so it was no surprise that I became the responsible one. I had to look after the younger ones,” she explained. “My parents would always say, ‘You have to be an example for the others.’”³⁸ Childhood friend Delvina Bernard recalled that Connie’s mother “had high expectations” of her children in terms of “education, morality, and achievement” and that her home was “always spotless.” Bernard added: “She always had time for young people. But don’t mess with Mrs. Sparks, or she’ll tell you right straight about yourself.”³⁹

Financial precarity was balanced with strong religious faith. Connie was baptized in Cherry Brook Baptist Church, which her family had helped found in 1902, and she carried her religion through a lifetime.⁴⁰



Connie Sparks had Nova Scotia roots stretching back two centuries. She recalled being raised by honest, hard-working parents who balanced financial precarity with strong faith. She attended Cherry Brook United Baptist Church, which her family helped found in 1902.

She attended Lake Loon primary school, a segregated school with Black teachers, Black students, no library, and few resources. She sang in the church choir and attended Canadian Girls in Training (CGIT) and Explorers, church suppers, picnics, socials, and concerts. She sold wild blueberries in the summers and staffed the candy counter after school at the Mayfair Theatre in Dartmouth.⁴¹

Graham Creighton High School was her first experience of racial integration. “I would have to say, putting it mildly, there was a lot of racial tension there. Anti-Black racism was palpable,” recalled Connie. “Certain teachers were very hostile,” and Black students were “streamed away” from university-entrance programs. “If there was ever any infraction, it was always the Black kids who got punished, always more harshly than other students.” Although Connie stuck to the university track, the talkative, outgoing personality of her younger years disappeared. She became quieter, more introverted, reserved.⁴²

She found solace in the few racialized teachers who “took an interest” in her. Walter Borden, an African Canadian actor and playwright who taught her European history, introduced material on Black culture and politics. Some teachers helped her to overcome her lack of self-confidence. “They saw potential, something I did not recognize in myself,” she mused years later.⁴³ High school principal Gerald K. Barry connected her with the local Rotary Club, which provided some funding for university, and the Sisters of Charity assisted with room and board. Connie enrolled at Mount Saint Vincent University, which had begun actively recruiting Black female students.⁴⁴ The first in her family to attend university, she obtained a BA in 1974, with a major in economics and a minor in psychology. During her part-time job at the university library, she read about the American civil rights movement, the Black Panthers, and Angela Davis, and she joined the Black Students’ Association.⁴⁵

After graduation, she worked briefly as an investigator at the Human Rights Commission, where she met Ken Crawford, a Black law student summering there. Connie said that his encouragement and her interest in human rights inspired her to apply to law school. Wait-listed for several months at Dalhousie, to her surprise she was admitted just

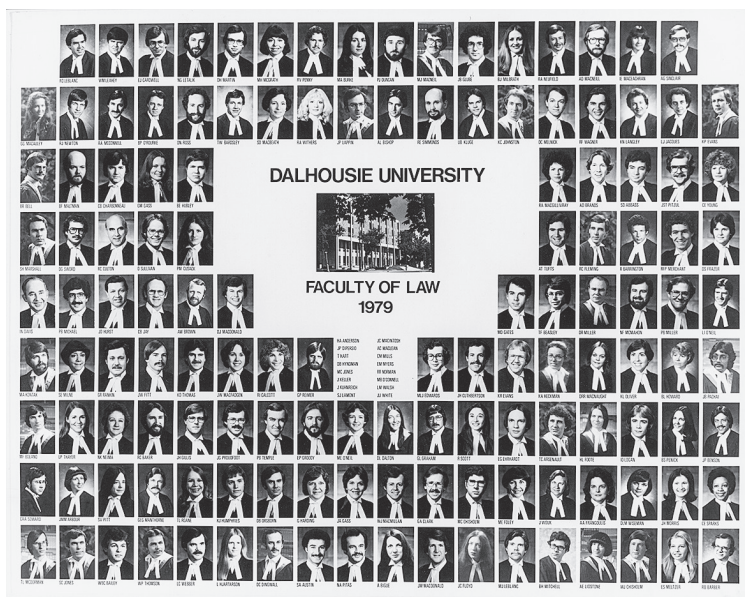
before classes started.⁴⁶ Despite its ninety-five-year history, Dalhousie law school had graduated few Black Nova Scotians.⁴⁷ When Connie began in 1975, there were only two other Black students, Douglas Ruck from Dartmouth, and Mel White, an African Caribbean. Ruck described the threesome as “Black in a sea of white faces.”⁴⁸

Connie’s reserved and deferential personality exacerbated her isolation, and she found law school “lonely, stressful, and intense.” “Coming from a small segregated community, then a small liberal arts school, to a prestigious law school was challenging,” she explained. “It was the first time in my life I had been exposed to the upper echelons of Canadian society.” She hated being called on in class. Holding down two jobs to cover expenses added to the challenges, and many times she considered quitting.⁴⁹ Years later, her law professor Wayne MacKay recognized how difficult Connie’s experience must have been: “The culture shock of being in this world, different from what your whole life experience has been, doesn’t make it easy.”⁵⁰ Another law professor, Leon Trakman, offered his impressions:

My recollection of her is someone who was modest and warm by nature, astute in her judgement, and never ever oversold herself. She was also fair-minded in her reaction to others, some of whom were perhaps less worthy of the same comment in their treatment of her. But she was very perceptive. She was also conscious that others carried their own burdens, mine in being born a white South African; but she never sought to build on that guilt, very much to the contrary.⁵¹

Financial challenges required she take a year out for various paid jobs. Mel White dropped out permanently. Connie Sparks was the sole Black woman, and the sole Black person, to graduate in 1979.⁵²

Sparks completed her articles with the Halifax City Solicitor’s Department. City lawyer Donald Murphy had a reputation for hiring women and African Canadians who could not get placements elsewhere.⁵³ “I did traffic-violation prosecutions,” Sparks recalled. After her 1980 call to the bar, she worked briefly as a trust officer for Canada Trust. Finding no jobs for Black female lawyers in Halifax, she uprooted



When Connie Sparks began Dalhousie law, she was one of three Black students “in a sea of white faces.” When she graduated in 1979, she was the sole Black person.

herself to Calgary, a city perceived as a “financial mecca” where everybody who wanted a job could get one. There, she worked for another trust company and a small oil-and-gas company.⁵⁴

Homesick, she soon returned to Dartmouth where she opened its first female law firm in 1981 with a white classmate, Helen Foote.⁵⁵ Under the shingle of “Sparks and Foote,” from an office on Portland Street above a jewellery store, the two practised family, real estate, and personal injury law, along with “whatever came in the door.” She and Foote secured appointments to the Residential Tenancies Board, resolving landlord-and-tenant disputes in the evenings, which helped pay the bills. It was, Sparks recalled, the “best years” of her practice career.⁵⁶

When Helen departed for a larger firm later that year, Sparks joined her classmate Douglas Ruck, whose Dartmouth office was located on Prince Albert Road.⁵⁷ Over the next six years, she expanded her family and real estate practice.⁵⁸ Doug Ruck explained that both of them were

“cognizant of what it meant to be Black in Nova Scotia” servicing primarily Black clients when “even they were not used to having Black lawyers.” Ruck described how one white judge demeaned him in court. Surprised that a white client had retained a Black lawyer, the judge queried, “Why did she come to you?” When Ruck complained to the judge in his chambers afterward, he asked if the judge had ever before said such a thing to a lawyer in open court. “He couldn’t name anyone.”⁵⁹ Donald Oliver, another Black Dalhousie law graduate and the only one to land an unprecedented job with a large Halifax law firm, was advised it would probably take him longer than his white colleagues to make partner. Oliver summed it up: “You can’t be a Black lawyer in Nova Scotia and not have experienced racism.”⁶⁰

In 1987, thirty-four-year-old Connie Sparks was appointed to the Nova Scotia Family Court. The first woman judge, Sandra Oxner, had been appointed to the Provincial Court in 1971. “I was the token woman,” laughed Oxner, “and Connie Sparks was the token Black. No doubt about that.”⁶¹ The appointment made Sparks the first Black judge in Nova Scotia, and the first Black female judge in Canada.⁶² With no application process, she had no idea she was being considered. She was taken aback when provincial Conservative cabinet minister Edmund Morris approached her to say he had put her name forward.⁶³

Nova Scotia Conservative premier John Buchanan took great pride in Sparks’s appointment. Years later, he called it “certainly historic, as far as we were concerned in 1987.” He added, “I don’t think anyone grasped the magnitude of what we were doing.



Sandra Oxner, the first woman judge in Nova Scotia, was appointed in 1971. She later commented: “I was the token woman, and Connie Sparks was the token black.”



The newly appointed Judge Sparks with her parents, 1987. The appointment made her the first Black judge in Nova Scotia and the first Black female judge in Canada.

We knew there had never been a Black judge in Nova Scotia. Then someone told me that the appointment would make Connie the first African Canadian female judge in the country.” It was, he remarked, “long overdue.”⁶⁴

The African Nova Scotian community feted the newly sworn-in Judge Sparks with a banquet, and she was inundated with congratulations from across Canada.⁶⁵ Her visibility caused the Canadian Bar Association to appoint her to the Task Force on Gender Equality. Its *Touchstones for Change* report, released the year of Rodney Small’s arrest, would demand greater recognition of women in law and the judiciary.⁶⁶ As the *RDS* case spun out of control, Sparks’s prominence would only grow – positively and negatively.

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