

RE: THORNHILL MATTER

February 1980

Senior officers of the RCMP met with the Attorney General, the Deputy Attorney General and senior staff of the Attorney General's Department and briefed the Attorney General to the effect that as a result of information received by them from an anonymous source, certain inquiries were initiated into the information, which inquiries at that point did not warrant the commencement of a formal investigation. The RCMP advised that they would be evaluating all and such information as and when received and making such inquiries which in their judgment would be warranted. The RCMP were advised to report and consult directly with the Deputy Attorney General and/or the Director (Criminal) in this matter in respect to any on-going inquiries or investigation.

March 1980

As a result of certain questions asked in the House by Mr. MacLean, to Honourable T. Donahoe, Acting Attorney General, on ~~Thursday~~ ^{Thursday}, March 7th, Superintendent Christen issued a press release. (attached).

On March 13th you confirmed this in your reply to a series of questions put to you by Mr. David Muise.

APRIL, MAY, JUNE, JULY and AUGUST - In April the RCMP entered into an investigation of the allegations and during these months filed interim reports in the matter with the Deputy Attorney General.

September 11th The RCMP delivered to the Deputy Attorney General their report and investigative material relative to their investigation. The RCMP report and supporting material was fully assessed and evaluated by the Deputy Attorney General, the Director (Criminal) and the Assistant Director (Criminal) independently and considered by them.

October 23, 1980 The Deputy Attorney General delivered to me his memorandum on the subject of the RCMP investigation into the nature of the financial settlement made by four chartered banks in respect to indebtedness of Roland J. Thornhill. The Deputy advised that in his opinion, "the protracted discussions, the nature of the settlement and the circumstances under which the offer was made on behalf of Mr. Thornhill and accepted by the Banks, do not disclose evidence of the kind of intention necessary to constitute any criminal wrongdoing on the part of either the chartered banks or Mr. Thornhill" and accordingly, in his considered

opinion there was not evidence to warrant the laying of any charges in the matter. This opinion was concurred in by both the Director (Criminal) and the Assistant Director (Criminal) of the Department.

October 29, 1980

The Attorney General, accompanied by the Deputy Attorney General, held a press conference at which the Attorney General made public his decision in the matter.

December 22, 1980

The RCMP advised that after careful consideration of all facts involved, no charges would be laid against Mr. Thornhill or the Banks.

Dear,

Upon reading your draft version,
 may I request for your consideration
 a few changes which seem to me
 more clearly states the status of the
 matter as I understood to be the
 case on Friday last. I attach
 a redraft incorporating the changes for
 your consideration.

The A.G. is of the view that
 my statement which you agree to make
 ought to be released at the soonest to clear
 any ambiguity or misunderstanding.

Please advise your decision on the final
 draft at the earliest.

Thanks

G. S. P.

Supt. D.F. Christen, In charge of the Criminal Investigation Branch of the R.C.M.P., Halifax, states in reference to the comments of the Attorney General of the Province of Nova Scotia which were made on Friday, March 7, 1980, and subsequently reported by the news media on the same date, wishes it made quite clear the Attorney General was ^{Corrected in his} advised there was no formal investigation being conducted in relation to any government official and financial institution. Information has been received by the R.C.M.P. with respect to such matters and inquiries were conducted in mid-February, however, since that time no investigation has been carried out. The R.C.M.P. in conjunction with its normal police activities will evaluate any information it may receive in connection with this matter or any other matter.

and asked when there was a politician involved.
 I told him I made no diff. if he, & a
 politician were picked up for organized during
 if it was in the City of LA. They would
 deal with it. - Could you not carry
 out our work in the City & was
 advised only if C. P. represented someone.

Memo to File

7

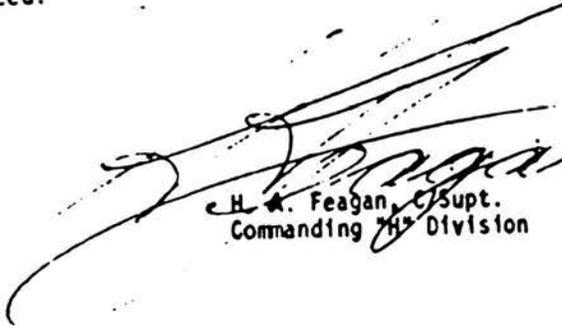
SECURITY CLASSIFICATION DE SECURITE
CONFIDENTIAL
OUR FILE / VOTRE REFERENCE
YOUR FILE / VOTRE REFERENCE
DATE 80-04-10

SUBJECT
OBJET

Roland THORNHILL

On this date C/Supt. Feagan and Insp. McInnis met with Mr. Gordon Gale, Director, Criminal Operations, Dept. of Attorney General, as per our usual Thursday morning meeting. Mr. Gale introduced a matter of present controversy relating to the Honourable Roland Thornhill and possible contravention of Section 110 of the Criminal Code. Inasmuch as there was considerable discussion in the House of Assembly and on the street, he felt that the matter should be cleared up one way or the other. It was his feeling that the Attorney General should direct us to do an investigation to determine whether there was an offence or not. During our discussion on the matter was mentioned that the Premier had stated outside the Legislature that Mr. Thornhill had accepted financial benefits while holding office as a Minister. Since this statement alluded to the fact that there was a possible conflict of interest, C/Supt. Feagan informed Mr. Gale we would be proceeding with investigation to which he agreed.


 M. J. McInnis, Insp.
 Asst. Officer i/c C.I.B.


 H. A. Feagan, C/Supt.
 Commanding 7th Division

By Hand 80-04-10
HFB

8

TO
A

Commissioner, Ottawa

Attention: D.C.I.FROM
OEAsst. Officer i/c C.I.B.
"H" Division

SECURITY - CLASSIFICATION - DE SECURITE

SECRET

OUR FILE / NOTRE REFERENCE

80H-314

YOUR FILE / VOTRE REFERENCE

DATE

80-04-15

SUBJECT
OBJETRoland J. THORNHILL (B: 34-09-01)
Receiving Benefit, Sec. 110(c) C.C.
Halifax, Nova Scotia

Attached is initial report from our Commercial Crime Section with attachments as identified therein, being further to our telephone conversation of 80-04-11.

It will be noted throughout in the excerpts obtained from the Assembly Debates that there is some vague innuendo that the police conducted an investigation and that there was no evidence uncovered that would cause an investigation to be continued. While not highlighted in this report, I would like to mention that on April 9th the Attorney General and Deputy Attorney General had conversation with Insp. Blue and I am informed that some attempt was being made to use Supt. Christen's Press Release in such a manner to suggest that our investigation established no indication of any wrongdoing. This conversation was a prelude to the Attorney General meeting with the media later that date. Of course, both were advised that such was not the case as no complete or thorough investigation had been conducted. Our initial inquiries in February failed to establish when Mr. Thornhill settled his loans, and accordingly, we did not pursue the issue further other than to gather and evaluate information. When the Premier on 80-03-2 (see para. 18) related to the media that Mr. Thornhill's loans were settled after he had been appointed to the Executive Council, we felt there was basis to the continuing controversy and that there was requirement on our part to conduct an investigation in view of Section 110(c) of the Criminal Code, hence the meeting with Mr. Gordon Gale on April 10th as per para. 19.

Further reports will be submitted as they come to hand.


M. J. McInnis, Insp.
Asst. Officer i/c C.I.B.

Encl.

PA CCBS
80-04-17
JWP.

1	TO - A/D.C.I. (Fed)	FROM - DE D.C.I.	DATE 80-04
2	O/C C.C.B.	A/D.C.I. (F)	80-04
3			
4			
SUBJECT - SUJET		By phone	

- | | | |
|--|---|--|
| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Prepare Reply
Réponse à rédiger | <input type="checkbox"/> Make File(s)
Dossier(s) à ouvrir |
| <input type="checkbox"/> Perusal - No action required
Pour information - aucune suite requise | <input type="checkbox"/> Prepare Brief
Exposé à préparer | <input type="checkbox"/> Return with Current File
Retourner avec le dossier |
| <input type="checkbox"/> Examination and Action
Pour examen et suite | <input type="checkbox"/> See Sender
Voir l'expéditeur | <input type="checkbox"/> Check Records
Vérifier les archives |

REMARKS - COMMENTAIRES

Re: Roland THORNHILL
 Minister of Development
 Nova Scotia.
 I'm broke of Lec 110 in
 that he had a substantiated
 debt written off at small
 70 of the dollar. Media
 speculation of Govt has
 admitted Minister did
 settle accounts while
 a minister.
 Debt was over 400,000.00
 and in return for concessions.
 Halifax C.C.B. in-
 vestigating & report will
 be forthcoming.
 A.B. (GAL) has been
 told that RCMP wish
 to investigate & to agree
 they should.
 There have been attempts
 to use RCMP by suggesting
 that they have looked at

REPLY - RÉPONSE

Mr. THORNHILL'S
 conversations & conf
 nothing wrong. "H
 Div are not prepared
 to let this be raised
 much to investigate
 fully ASAP.
 They do wish to do
 their best a little
 the leave & appeal on
 the [redacted]
 search warrant
 matter so that our
 warrants they execute
 or apply for will
 be accessible to pub
 press etc.

For your info & for
 Full report coming
 for your info
 R

A-5 (4/77) 7930-21-029-4767





"H" DIVISION

10

YOUR NO.
VOTRE NOOUR NO.
NOTRE NO 80H-3143139 Oxford Street
P.O. Box 2286
Halifax, Nova Scotia
B3J 3E1

80-05-21

SECRETThe Deputy Attorney General,
P.O. Box 7,
Halifax, Nova Scotia
B3J 2L6Rec'd
May 22 1980Attention: Mr. Gordon GaleRoland J. THORNHILL
Receiving Benefit Section 110(c) C.C.
Halifax, Nova Scotia

I am attaching copy of correspondence which was directed to Minister of Finance, the Honourable Allan MacEachen, and to the Solicitor General of Canada by Mr. J. R. Jamieson of Dartmouth, Nova Scotia. A copy of this correspondence was forwarded to me by Headquarters, Ottawa, who believe the Solicitor General's Department has advised Mr. Jamieson that his concern is of a provincial nature and that he should contact the appropriate provincial Attorney General's Department. My purpose in forwarding this correspondence to you is in the event Mr. Jamieson should contact you further in this regard.

I am personally disturbed that certain segments of the public interpreted the press release as suggesting there was no need for further investigation. As you know, inquiries made in February were preliminary in nature and were carried out to determine if there was any grounds to the allegations being circulated at that time. Once we were satisfied an offence possibly did exist full investigation was commenced.



D. G. Christen, Supt.
Officer in Charge C.I.B.

Encl.

Dep Comm (Crisis Ops)
RC1

FROM - DE

D.C.I.
d/clo

Quintel

Thomas Venner

- Comments
Commentaires
- Examination and Action
Lire et donner
- Prepare Brief
Préparer un exposé
- Return with Current File
Retourner avec le dossier
- Perusal - No action required
À titre de renseignements
- Prepare Reply
Rédiger une réponse
- Make File(s)
Ouvrir un dossier
- Check Records
Vérifier les dossiers

Subject - Sujet

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Date
80-06

I think the time has come to draw the line
 after reasons, with A.C. of Nova Scotia (and for
 Either we are running the police force
 and directing the conduct of investigation
 or they are, and if the latter is the case
 then a police force other than RCMP
 be what they should have.

I would like to discuss with you (or
 some of my 'c' tier officers) the prospect of
 meeting with A.C., D.A.C. etc, such a
 meeting not to exclude the possibility
 of threatening to recommend non-renewal
 of policing agreement if we can't reach
 a better understanding. They have been pushing
 and pushing.

don't see how we can keep pushing up
 without losing credibility & integrity
 sense develop policy position & control system

[Handwritten signature]
 10

P.A. - A.C.
 Date
 Init./N°

ÉCRIRE À LA MAIN

Classification

File No. - N° du dossier

73

FROM - DE

DATE

File

12

1

SUBJECT - SUJET

Comments
Commentaires

Prepare Reply
Réponse à rédiger

Make File(s)
Dossier(s) à ouvrir

Perusal - No action required
Pour information - aucune suite requise

Prepare Brief
Exposé à préparer

Return with Current File
Retourner avec le dossier

Examination and Action
Pour examen et suite

See Sender
Voir l'expéditeur

Check Records
Vérifier les archives

REMARKS - COMMENTAIRES

REPLY - RÉPONSE

At 3:45 pm 80-07-24, I was informed by Mr. Gordon Gale that he was extremely displeased because our investigator, Cpl. HOUSE had met with Crown Prosecutor, Kevin BURKE, for discussion on the Roland J. THORNHILL case. He intimated that our investigator should not have approached counsel bearing in mind that officials of the Attorney General's Department wish ~~to~~ us not to do so until after the investigation is completed and after members of ~~the~~ ^{the} Department had opportunity to review the complete file.

US NOT TO

I informed Mr. Gale that the views concerning discussion with Crown Counsel as expressed by the Attorney General had been passed on to members of our Commercial Crime Section. Needless to say, I also informed Mr. Gale that I was not in any position to instruct our members not to see Crown Counsel bearing in mind that it is normal practice when investigations are conducted, whether they be minor or major in nature.

Personally, I feel that their advice to us not to seek views of Crown Counsel in

A-5 (4/77) 7530-21-029-4767



ROYAL CANADIAN MOUNTED POLICE

GENDARMERIE ROYALE DU CANADA

TRANSIT SLIP

FICHE DE SERVICE

PA

Initial - Initiales

Date

NOTE - ÉCRIRE À LA MAIN

Classification

File No. - N° du dossier

FROM - DE

13

74

DATE

SUBJECT - SUJET

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| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Prepare Reply
Réponse à rédiger | <input type="checkbox"/> Make File(s)
Dossier(s) à ouvrir |
| <input type="checkbox"/> Perusal - No action required
Pour information - aucune suite requise | <input type="checkbox"/> Prepare Brief
Exposé à préparer | <input type="checkbox"/> Return with Current File
Retourner avec le dossier |
| <input type="checkbox"/> Examination and Action
Pour examen et suite | <input type="checkbox"/> See Sender
Voir l'expéditeur | <input type="checkbox"/> Check Records
Vérifier les archives |

REMARKS - COMMENTAIRES

REPLY - RÉPONSE

this particular investigation is tantamount to obstruction. Operational Manual III.6.E.4. - look for counsel for:

- (a) advice regarding the importance of evidence available;
- (b) advice regarding the importance of obtaining additional information to support charge;
- (c) advice on questions of law;
- (d) the procedures that will be followed in court.

Our own Division policy states in III.1.C.2.:

In exercising this responsibility, it is important that the investigator recognizes his role vis a vis that of the Crown Attorney. In those respects, and when a particular case so requires, he should consult with and take cognizance of the advice of the Crown Attorney. If that consultation should result in an unresolvable situation, the investigator should again consult with his superiors respecting a proper and adequate resolution to the matter.

A-5 (4/77) 7530-21-029-4767



ROYAL CANADIAN MOUNTED POLICE GENDARMERIE ROYALE DU CANADA

TRANSIT SLIP

FICHE DE SERVICE

PA	Initial - Initiales	Date
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FROM - DE

DATE

1-4

112

SUBJECT - SUJET

- Comments
Commentaires
- Prepare Reply
Réponse à rédiger
- Make File(s)
Dossier(s) à ouvrir
- Perusal - No action required
Pour information - aucune suite requise
- Prepare Brief
Exposé à préparer
- Return with Current File
Retourner avec le dossier
- Examination and Action
Pour examen et suite
- See Sender
Voir l'expéditeur
- Check Records
Vérifier les archives

REMARKS - COMMENTAIRES

REPLY - RÉPONSE

To further illustrate, the contract entered into between the Force and the Province clearly indicates that the internal management of the Provincial Police Services, including the administration and application of professional police procedures, shall remain under the control of Canada.

I don't personally think that we should get into a shouting match with any member of the Attorney General's Department over the way this case is to be handled. It is my view that the next report going to the Attorney General's Department will terminate with a statement similar to this - "this investigation has now been completed, and in due course, discussion will be initiated with Crown Counsel as in the normal case so as to determine which charge or charges most aptly apply." This view has already been made known to the Officer in Charge, Commercial Crime Section.

A-8 (4/77) 7530-21-029-4767



ROYAL CANADIAN MOUNTED POLICE GENDARMERIE ROYALE DU CANADA

TRANSIT SLIP

FICHE DE SERVICE

PA	Initial - Initiales	Date
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F. RELATIONSHIP WITH COUNSEL (cont'd)

E. RAPPORTS AVEC LE PROCUREUR (suite)

- E. 2. a. enforcement policy, as negotiated by Headquarters with the department concerned;
- E. 2. b. general policy of the Force;
- E. 2. c. Instructions as laid down by the Commissioner for the guidance of members in the conduct of investigations and prosecutions, and
- E. 2. d. policy based on local enforcement experience and considerations.

- E. 3. Do not refer counsel to the Department of Justice, or the department administering the act. However, counsel is free to communicate with the department concerned for advice and instructions.
- E. 3. a. When a question arises and counsel wishes to communicate directly with the department, try to obtain the necessary information for counsel or suggest that he first contact your commanding officer or officer commanding.
- E. 3. b. If counsel prefers not to contact your commanding officer or officer commanding, report the matter to Headquarters immediately so Headquarters will be able to discuss the matter if consulted by the department.

- E. 2. a. les politiques concernant l'application de la loi, qui ont été établies par l'entente intervenue entre la Direction générale et le ministère compétent;
- E. 2. b. la ligne de conduite établie par la Gendarmerie royale;
- E. 2. c. les directives lancées par le procureur général pour la gouverne des membres doivent enquêter et entamer des poursuites, et
- E. 2. d. une politique dictée par l'expérience policière et d'autres considérations au plan local.

- E. 3. Éviter de renvoyer le procureur au ministère de la Justice ou au ministère administrant l'application de la loi. Cependant, le procureur est libre de s'adresser au ministère compétent pour obtenir des conseils ou des instructions.
- E. 3. a. Lorsqu'il survient une difficulté et que le procureur désire communiquer directement avec le ministère, il faut d'abord obtenir les renseignements du commandant ou du procureur à besoin ou lui suggérer de communiquer d'abord avec le commandant divisionnaire ou sous-commandant divisionnaire.
- E. 3. b. Lorsque le procureur préfère ne pas communiquer avec le commandant divisionnaire ou sous-commandant divisionnaire, l'affaire à l'attention de la Direction générale immédiatement afin qu'elle soit en mesure d'en discuter avec le ministère, s'il y a lieu.

EXCEPTION:

EXCEPTION:

- 1. When an accused fails to appear in court after being granted bail.
- 2. Counsel believes there are sufficient grounds for an appeal.

- 1. Lorsqu'un prévenu omet de comparaître devant les tribunaux après avoir obtenu sa liberté sous caution, lui a accordé un cautionnement.
- 2. Lorsque le procureur croit qu'il existe des motifs suffisants pour interjeter appel.

E. 4. Look to counsel for:

E. 4. S'adresser au procureur pour obtenir les renseignements suivants:

E. 4. a. advice regarding the importance of the evidence available;

E. 4. a. des conseils sur l'importance des renseignements disponibles;

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E. RELATIONSHIP WITH COUNSEL (cont'd)

- E. 4. b. advice regarding the importance of obtaining additional evidence to support the charge;
- E. 4. c. advice on questions of law, and
- E. 4. d. the procedures that will be followed in court.
- E. 5. If you and counsel have a serious difference of opinion, arrange for your CIB officer to discuss the issue with counsel in a federal case or with the Attorney General if counsel is provincially appointed.

E. RAPPORTS AVEC LE PROCUREUR (suite)

- E. 4. b. des conseils sur l'importance d'obtenir des preuves additionnelles à l'appui l'accusation;
- E. 4. c. des conseils sur des questions de droit et
- E. 4. d. quelle sera la stratégie utilisée devant les tribunaux.
- E. 5. Si vous n'êtes pas du tout du même avis qu le procureur, il vous faudra prendre des dispositions avec l'officier responsable de votre S.-DEJ afin qu'il discute de l'affaire soit avec le procureur lorsqu'il s'agit d'une cause relevant d'une loi fédérale soit avec le procureur général, lorsque le procureur a été nommé par la province.

DEPARTMENT OF ATTORNEY GENERAL 17

MEMORANDUM

FROM: Gordon S. Gale
Director (Criminal)

TO: Gordon F. Coles, Q.C.
Deputy Attorney General

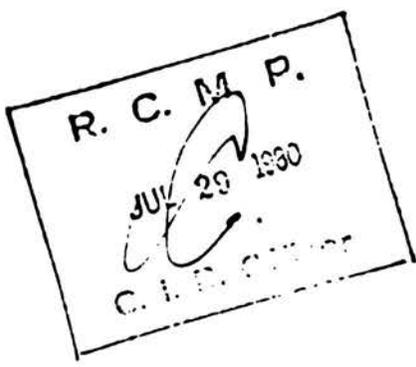
Attached is a report on Roland J. Thornhill. Also attached is a copy of my letter to the R.C.M.P. which is prompted by the forwarding minute signed by Inspector Blue. On July 24th I spoke to Inspector McInnis and reminded him that this matter had been discussed with him, Superintendent Christen and Chief Superintendent Feagan. Inspector McInnis assured me that no contact would be made with the Prosecutor and that Inspector Blue had been so instructed when Inspector McInnis saw his forwarding minute.

GSG:jd
Enclosure
July 25, 1980

Give to Coles

18 79

188A



DEPARTMENT OF ATTORNEY GENERAL NOVA SCOTIA

JUL 29 2 13 PM '80

P. O. BOX 7 HALIFAX, NOVA SCOTIA B3J 2L8

July 25, 1980

C. O. "H" Division R.C.M.P. Halifax, Nova Scotia

Re: Roland J. THORNHILL (B: 34-09-01) - Receiving Benefit, Section 110(c) C.C. Halifax, Nova Scotia Your file numbers 80HQ-042-170 80H-314 79-260

This will acknowledge receipt of the Commercial Crime Section report which you forwarded July 23rd. I note that Inspector Blue in his forwarding minute of July 22nd states that preliminary discussions have been held with Crown Counsel, Mr. Burke and that it is intended to have further discussions with him when he and the investigator return from holidays. Such action by Inspector Blue is directly contrary to the instructions of the Deputy Attorney General relaid through me to Superintendent Christen, Chief Superintendent Feagan and Inspector McInnis. Those instructions were that no charges were to be laid nor was any contact to be made with Prosecutors concerning this matter until you had finished your investigation and forwarded a report to this Department so that the matter could then be examined and the Attorney General fully apprised of the evidence. Your investigators are to cease to have contact with the Prosecutors concerning this investigation and to concentrate on getting their long awaited report into the Department summarizing the evidence and the charges proposed based on the evidence so that it can be reviewed and then forwarded for prosecution if the evidence supports charges.

Gordon S. Gale Director (Criminal)

GSG:jd

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TO A
FROM DE

Officer In Charge
Commercial Crime Section

Officer In Charge
Criminal Investigation Branch

SUBJECT
OBJET

Roland J. THORNHILL (B: 34-09-01)
Receiving Benefit, Section 110(c) C.C.
Halifax, Nova Scotia

SECURITY CLASSIFICATION / DE SÉCURITÉ
SECRET
OUR FILE / NOTRE RÉFÉRENCE
80H-314
YOUR FILE / VOTRE RÉFÉRENCE
DATE
80-07-30

Correspondence of Mr. Gordon S. Gale, Director (Criminal) dated 80-07-25 is attached for your information. Please ensure the investigators conducting this investigation are aware and comply with the direction of the Attorney General's Department.

It is noted your next report is due the 80-08-30. It is requested this report set out in detail all evidence in our possession which would support or mitigate against a charge being laid in this matter.

D.F. Christen, Supt.,
Officer In Charge C.I.B.

Encl.

DFC:cay

NA
80-07-30
84.

MEMORANDUM

NOTE DE SERVICE

20

TO
A

Commissioner, Ottawa

Attention: Commercial Crime Branch

FROM
DE

Officer i/c C.I.B.
"H" Division

SECURITY CLASSIFICATION - DE SÉCURITÉ
SECRET
OUR FILE / NOTRE RÉFÉRENCE
80H-314
YOUR FILE / VOTRE RÉFÉRENCE
80HQ-042-170 ✓
DATE
80-08-05

SUBJECT
OBJET

Roland J. THORNHILL (B: 34-09-01)
Receiving Benefit, Section 110(c) C.C.
Halifax, Nova Scotia

I am attaching a copy of correspondence received from Mr. Gordon Gale, Director (Criminal), Department of the Attorney General, dated 80-07-25. I personally contacted Mr. Gale on the 80-07-31 concerning his statement that he had advised me Crown Counsel was not to be contacted in this matter until the Attorney General had been fully apprised of the evidence. I informed Mr. Gale I had no recollection of his having done so and I am certain if he had I would have remembered. He acknowledged possibly he had not advised me personally of the Deputy Attorney General's wishes in this regard. I was aware the Attorney General's Department did not wish a charge laid until the evidence available had been fully reviewed.

Mr. Gale advised the purpose in wishing to review the evidence prior to assigning a Prosecutor was firstly to determine the evidence available and if evidence to support a charge was present, the Department would then select appropriate counsel to handle this particular case. In view of Mr. Thornhill's position in the Provincial Government it would be the wish of the Attorney General to brief the Premier concerning any decision to prosecute. Mr. Gale advised there was no intent to interfere with our investigation and if any advice or direction was required, it would be provided by their office rather than a local Crown Prosecutor.

You will be kept advised as to the progress of this investigation and the decision by the Attorney General's Department as to the sufficiency of evidence available to support charges.


D.F. Christen, Supt.
Officer i/c C.I.B.

all Encl.

c.c. Officer i/c Commercial Crime Section

FA EC B5
80-08-08
Jul



ATTORNEY GENERAL
NOVA SCOTIA

TELEPHONE NUMBER: 428-8880

CROWN PROSECUTOR'S OFFICE

THE LAW COURTS
1815 UPPER WATER ST
HALIFAX, NOVA SCOTIA
B3J 3S7

September 4th, 1980

Mr. Gordon Gale
Director, Criminal
DEPARTMENT OF ATTORNEY GENERAL
P. O. Box 7
HALIFAX, N.S.

Dear Mr. Gale:

Re: Roland J. Thornhill

Enclosed herein is Mr. Burke's memorandum dated 28 August, 1980, referable to the above mentioned.

As it appears this file is being monitored by yourself, it will be considered concluded here unless we receive instructions from you.

Yours truly,

David W. Thomas, Q.C.
Chief Prosecuting Officer

DWT/gmn
Encl.



ATTORNEY GENERAL
NOVA SCOTIA

CROWN PROSECUTOR'S OFFICE

MEMORANDUM

TO: David Thomas, Q.C.

DATE: August 28, 1980

FROM: Kevin Burke

SUBJECT: Investigation of Roland J. Thornhill

You may recall that in early July of this year you gave instructions to myself concerning the above noted matter. In particular, you requested me to meet with Cyril House of the R.C.M.P., Commercial Crime Section, and to endeavour whether charges could be laid as a result of this investigation. I was then to forward my recommendations to you and await further instructions. As a result of your instructions, I have met with Cst. House on several occasions and have familiarized myself with his investigation, which according to Cst. House is very near completion. I should mention that in examining the materials compiled by Cst. House and in discussions with him, that one if not more charges could be laid in this matter.

On Tuesday, August 26th, 1980, I telephoned Cst. House to suggest that he and I arrange a meeting for Friday, August 29, 1980, to go over the file with the intention of narrowing down the number of charges that could be laid. On today's date I received a call from Insp. Ken Blue, Cst. House's superior, who advised me that he had received instructions from his C.O. to cease having further contact with this office concerning

. . . /2





ATTORNEY GENERAL
NOVA SCOTIA

CROWN PROSECUTOR'S OFFICE

MEMORANDUM

TO:

DATE:

FROM:

SUBJECT:

this matter. He further advised me that his C.O. had received correspondence from Gordon Gale on July 25th, 1980, which contained these instructions.

Even though I have not been advised by our Department to discontinue this file, in light of what Insp. Blue has told me, I have no alternative but to discontinue my contact with Cst. House and advise him accordingly.

K.B.





"H" DIVISION

24

GENDARMERIE ROYALE DU CANADA

YOUR NO.
VOTRE NO

OUR NO.
NOTRE NO 80H-314

3139 Oxford Street
P. O. Box 2286
Halifax, Nova Scotia
B3J 3E1

80-09-11

SECRET

The Deputy Attorney General
P. O. Box 7
Halifax, Nova Scotia
B3J 2L6

Attention: Mr. Gordon Gale

*Received
Sept 14/80*

Roland J. THORNHILL
Receiving Benefit Section 110(c) C.C.
Halifax, Nova Scotia

Reference to your correspondence of 80-07-25, I am attaching the investigative material relative to the above matter. May I please be provided with your legal views concerning the issues raised by the investigator, and whether it is your wish this matter be referred to a Crown Prosecutor.

[Handwritten Signature]
H.A. Feagan, S/Supt.,
Commanding "H" Division

Encl.

DEPARTMENT OF ATTORNEY GENERAL 25

MEMORANDUM

C O N F I D E N T I A L

FROM:

Martin E. Herschorn
Assistant Director (Criminal)

TO:

Gordon S. Gale
Director (Criminal)

Re: Roland J. Thornhill

This Memorandum deals with the following points:

1. a chronology of the negotiations which took place between Mr. Thornhill and the chartered banks culminating in the settlement of Mr. Thornhill's obligations in November of 1979.
2. the indications contained in the police investigation report of the position of the chartered banks had the settlement of Mr. Thornhill's obligations not been negotiated.

Negotiations for Settlement

In the early 1970's, the investigation report indicates that Mr. Thornhill obtained a number of loans at various branches of chartered banks in the Halifax-Dartmouth area. As of January 31, 1978, the following amounts were outstanding to the following banks:

<u>CHARTERED BANK</u>	<u>AMOUNT OUTSTANDING</u>
[REDACTED]	[REDACTED]

In the context of the aforementioned financial obligations on the part of Mr. Thornhill to these chartered banks, the police investigation report contains the following pertinent references to attempts to settle these obligations

- April 4, 1977 - The regional office of [REDACTED] indicated to its Dartmouth Branch that it was imperative that Mr. Thornhill get his bank loans under control.
- April 7, 1977 - [REDACTED] met with Mr. Thornhill to discuss his obligations.
- June 14, 1977 - A memo of the [REDACTED] indicates that Mr. C.A. Rice of H.R. Doane & Company had advised that Mr. Thornhill had turned to him for assistance in organizing his affairs.
- July 26, 1977 - A meeting of the major creditors took place this date with Mr. Thornhill, Mr. C.A. Rice, [REDACTED] and representatives of [REDACTED].
At this meeting, a proposal was put forward on Mr. Thornhill's behalf respecting a 7 1/2 to 10 year, long term program for retirement of Mr. Thornhill's obligations. This proposal included a further advance by [REDACTED] three banks of approximately \$27,000.00 to retire other debts.
- September 19, 1977 - An internal memorandum of [REDACTED] mentions the distinct possibility that [REDACTED] may be faced with a loss of \$25,000.00-\$30,000.00.

December 6, 1977 -

A letter from the Vice-President and General Manager of [redacted] to the Dartmouth Branch Manager indicates that [redacted] would cease [redacted] payments on Mr. Thornhill's loans at the end of December, 1977. There is an indication at this point in time that Mr. Thornhill was not living up to the proposal entered into with the chartered banks in July of 1977.

February 3 through 7, 1978 -

Letters were sent by [redacted] to Mr. C.A. Rice outlining Mr. Thornhill's current loan balances. The letter from [redacted] indicates that following the negotiations between Mr. Thornhill and his debtors during the latter part of 1977, no payments in reduction of these debts had been received.

September 17, 1978 -

Letters go forward from Mr. C.A. Rice to [redacted] outlining a proposal on Mr. Thornhill's behalf to "settle in full" the amounts due to each bank.

September 19, 1978 -

The Provincial Election is held.

September 21, 1978 -

The aforementioned proposal of September 17, 1978 was accepted by [redacted]

September 26, 1978 -

The aforementioned proposal was accepted by [redacted]

October 4, 1978 -

[redacted] responded to the proposal indicating that before they could give consideration to it they could require a current statement of Mr. Thornhill including his present salary.

- October 5, 1978 - Roland J. Thornhill is sworn in as Minister of Development, Province of Nova Scotia.
- October 16, 1978 - The aforementioned proposal was accepted by [REDACTED]
- November 5, 1978 - The aforementioned proposal was accepted by [REDACTED]
- November 27, 1978 - Certified cheques were forwarded by Mr. Rice to each of the aforementioned chartered banks as full settlement of Mr. Thornhill's obligations representing 25% of each bank's outstanding indebtedness.

Position of Chartered Banks
Had Offer of Settlement Not
Been Accepted

The police investigation report contains an internal memorandum of [REDACTED] (see attachment 8, page 5) apparently prepared sometime in 1978 from a Manager to the Regional Vice-President which contains the following reference:

"We have received no reductions from Mr. Thornhill during the past year and present loans were reduced by \$5,700.00 from the sale of securities. It is our opinion that ultimate repayment of this loan will only take place should Mr. Thornhill's financial position improve and then only over a projected period of time. In view of these circumstances and his heavy involvement elsewhere, we recommend that the account be written off as a bad debt."

...

At page 13 and 15 of attachment 8 of the police investigation report, two internal memorandums of [REDACTED] appear. The first memorandum, dated March 1978, is directed to the Regional Manager, Halifax/Dartmouth and Prince Edward Island from [REDACTED] Dartmouth Branch Manager. Mr. [REDACTED] comments, in part, as follows:

"From our point of view, bankruptcy proceedings would be politically unpalatable and would also result in Mr. Thornhill losing his security dealers' license and very likely would also mean a loss of his seat in the next election thereby leaving him without any source of income. Accordingly, although it is distasteful, there would appear to be no course but to write off these loans."

The reply portion of this memorandum signed [REDACTED] dated March 10, 1978, is as follows:

"We agree with your decision to write off this account as distasteful as it is and we would appreciate your forwarding a bad and doubtful debt report containing your recommendation."

The second internal [REDACTED] memorandum is not dated but would appear to have been written around the same time as the aforementioned memorandum of March 8, 1978. It is attributed to [REDACTED] and includes the following comment:

"Mr. Thornhill's overall financial position shows a deficit of about \$127,000.00. During July of 1977 a meeting was convened between all the lending banks, Mr. Thornhill, [REDACTED], and C.A. Rice of H.R. Doane & Company. Simply, [REDACTED] had offered to come to Thornhill's

aid provided the latter would leave politics and make some attempt to straighten out his financial mess. The banks agreed to advance an additional \$10,000.00/\$12,000.00 against [redacted] guarantee to clear up some sundry accounts and [redacted] is paying this at roughly \$1,000.00 per month. Effort was made to obtain a mortgage on the Thornhill residence but this proved fruitless as his wife refused to sign. Thornhill will not agree to leave politics and once the additional loan is repaid [redacted] will make no further funds available. There appears to be no chance of recovery and, accordingly, we reluctantly recommend write off of the balance now outstanding."

This memorandum has two additional notations at the bottom, one attributed to the Regional Manager, [redacted] as follows:

^u
~~"While completely distasteful, we have little alternative at this juncture but to recommend a full write off."~~

and the following comment attributed to [redacted] District Manager, Branch Banking, :

"We agree Mr. Thornhill's overall financial position is hopeless for all practical purposes, and in the circumstances, are supporting the recommendations made."

MEH:if
 October 17, 1980

M.E.H.



ATTORNEY GENERAL
NOVA SCOTIA

M E M O R A N D U M

TO: Honourable Harry W. How, Q. C.

FROM: Gordon F. Coles, Q. C.

RE: IN THE MATTER OF an RCMP Investigation into the nature of the Financial Settlement made by four Chartered Banks in respect to the Indebtedness of Roland J. Thornhill

DATE: 23 October 1980

1. The above captioned report, addressed to the Deputy Attorney General, was delivered to the Director (Criminal) of the Department on September 11th last. The report and attachments are lengthy and detailed and the attachments to the report include copies of loan applications, financial statements, bank records and correspondence pertaining to Mr. Thornhill's financial affairs with the Chartered Banks, [REDACTED] his former employers, other financial institutions and other persons with whom he has had financial dealings over a period from the early 1970's to and including September/October 1979, when the Chartered Banks accepted the latest proposal made on behalf of Mr. Thornhill for the settlement of his indebtedness with them.
2. The foregoing report and attachments have been fully considered by the Director (Criminal), Assistant Director (Criminal) of the Department, and the writer, to determine whether the nature of the financial dealings by the said Banks, with Mr. Thornhill, and in particular whether the settlement of Mr. Thornhill's indebtedness with the Banks constituted an offence on the part of the Chartered Banks, or on the part of Mr. Thornhill, contrary to the provision of Section 110 of the Criminal Code.
3. Attached, for your ready reference, is a xerox of the relevant provisions of Section 110(1) of the Criminal Code which sets out the offences which constitute frauds upon the government. The investigation by the RCMP was to ascertain the facts to determine whether the Chartered Banks, in their dealings with Mr. Thornhill, had committed

- any offence under Section 110(1)(a)(i) or (b) of the Criminal Code and whether Mr. Thornhill had committed any offence under Section 110(1)(a)(ii) or (c) in offering to settle his indebtedness on the basis proposed on his behalf.
4. During the period under investigation Mr. Thornhill had extensive dealings with the said Chartered Banks which involved obtaining loans for personal and investment purposes and refinancing past indebtedness. The history of these loan accounts indicate that they originated as borrowing accounts or demand loans not requiring repayment within a fixed term. Although the Banks expressed concern with the status of these accounts, it was in February and March of 1977 when the Banks expressed serious concern for the lack of security for the loans and the financial ability of Mr. Thornhill to repay the indebtedness and made demands that he do so.
 5. The report details the principal sums loaned or advanced and the interest charged against these loans, which appeared at all times to be either at the prime rate or prime plus rate.
 6. The report also particularizes;
 - (i) the payments made by Mr. Thornhill;
 - (ii) the application of proceeds realized on the sale of hypothecated shares;
 - (iii) the application of the proceeds from the sale of a cottage property.
 7. Copies of the correspondence attached to the report indicate that during the years 1977, 78 and 79 the Banks requested security for the outstanding balance of their loans and increased their demands that the balance outstanding be paid. Mr. Thornhill consulted a senior member of a prominent firm of Chartered Accountants concerning his financial affairs and the Chartered Accountant held several meetings with representatives of the Banks and others in an effort to settle the Banks' demands and those of other unsecured creditors. Discussions among them resulted in different proposals being considered providing for the repayment of the outstanding loan indebtedness. These proposals did not conclude in any agreement since they involved making financial arrangements and the providing of security which Mr. Thornhill was unable to accomplish.

8. The position concluded by two of the Chartered Banks can be summarized from their internal memoranda of March 1978 between their local branch managers and regional bank officers as follows:
- Notwithstanding the demands and proposals discussed, apart from the application of the sale of hypothecated securities, and the proceeds from the sale of the cottage property, balances of the loans remained outstanding.
 - Mr. Thornhill's overall financial position indicated no prospect of his being able to pay off the indebtedness.
 - Although bankruptcy proceedings were considered by one Bank, it was concluded that such proceedings would jeopardize his source of income, it being the only source to which they could look for payment in respect to their unsecured position.

The position reached by the said two Banks is best stated by quoting from their own internal memoranda:

"...we agree with your decision to write off this account as distasteful as it is and we would appreciate your forwarding a bad and doubtful debt report containing your recommendation..."

"...we have little alternative at this juncture but to recommend a full write off..."

"...we agree Mr. Thornhill's overall financial position is hopeless for all practical purposes, and in the circumstances, are supporting the recommendations made..."

9. Mr. Thornhill, through the accommodation of [REDACTED] [REDACTED] arranged to borrow limited funds enabling him to offer to pay each of the Banks twenty-five percent of the balance due each of them as payment in full for all outstanding indebtedness, as well as to settle the claim of the other pressing creditor. This proposal of settlement was set out in a letter of September 17, 1979, addressed separately to each of the Banks by the Chartered Accountant assisting Mr. Thornhill in these matters.

[REDACTED] accepted the proposed compromise settlement by letter dated September 21, 1979; [REDACTED] accepted the proposed compromise settlement by letter dated September 26, 1979 "providing other creditors are in agreement"; [REDACTED] accepted the proposed compromise settlement by letter dated October 16, 1979 "providing, of course, that all other Banks do likewise". [REDACTED] by letter dated October 4, 1979, replied to the proposed compromise settlement "before we can give consideration to the proposal put forth we require a current statement on Mr. Thornhill including his present salary". Subsequently, on November 5, 1979, [REDACTED] accepted the offer of settlement on the basis that "our acceptance is provided subject to a similar proposal being agreed to by the other three Banks involved and on the understanding that the settlement will be received by December 15, 1979".

10. The *cruz* of the matter is to determine whether there is evidence of the necessary criminal intent to characterize the settlement proposed on behalf of Mr. Thornhill and accepted by the Banks as constituting a fraud upon the government.

For a person, including a corporation, to be guilty of committing an offence under the provisions of Section 110 of the Criminal Code, involves the presence of a guilty or wrongful purpose or as was said by Mr. Justice Ritchie of the Supreme Court of Canada in

To say's
Coke's
(C) 7

Regina v. Cooper, in considering Section 110(1)(b) "the offence created by that Section is in a real sense a criminal offence of which 'intention' to confer the benefits 'with respect to' dealings with the government is a necessary ingredient". In the absence of such an "intention", there is no offence.

Unless, therefore, the agreement reached between Mr. Thornhill and each of the Chartered Banks effecting a settlement of his indebtedness was made by the Banks with an intention of conferring an advantage or benefit on Mr. Thornhill "as consideration for cooperation, assistance, exercise of influence... in connection with...business...relating to the government"; or, to "confer an advantage or benefit (on Mr. Thornhill)...with respect to" dealings with the government, the Banks are not guilty of committing any offence under Section 110 since the necessary ingredient of "intention" would be absent.

Similarly, for Mr. Thornhill to be guilty of any offence under Section 110, the offer made on his behalf to settle his indebtedness with the Banks must evidence a criminal intention to either accept or offer to accept an advantage or benefit from the four Banks "as consideration for cooperation, assistance or exercise of influence... in connection with...any matter of business relating to the government"; or with a guilty mind "demand or accept... from a person who has dealings with the government...an advantage or benefit...".

11. In determining the intention of Mr. Thornhill and the four Chartered Banks in concluding an agreement providing for the settlement of Mr. Thornhill's indebtedness with the Banks, the attachments to the police report evidence the following:

- A history of continued efforts by the Banks to effect collection, to realize on security held by and available to them, demands for repayment or satisfactory arrangements providing security for the outstanding indebtedness and its repayment.
- During the period from early 1977, 1978, until September/October 1979, protracted discussions were held by representatives of the Chartered Banks and a Chartered Accountant acting on behalf of Mr. Thornhill. Notwithstanding such discussions and various proposals considered, no agreement for the payment of the remaining outstanding balances due the Banks was reached.

- On or about March 1978, two of the Chartered Banks concluded that Mr. Thornhill's financial position was such that they saw no prospect of him satisfying his indebtedness to them and, accordingly, consideration was being given to writing the account off as a bad debt.
- The settlement of the indebtedness was initiated by the Chartered Accountant acting on behalf of Mr. Thornhill, in a letter written to each of the Banks on September 17, 1979. The offer was proposed based on the ability of Mr. Thornhill to arrange limited borrowings through the accommodation of [REDACTED] and represented a source of funds not otherwise available to the Banks. The money to be borrowed by Mr. Thornhill was available to him for the purpose of satisfying his indebtedness with the four Banks and another unsecured creditor and was limited to an amount which enabled the offer to be made on his behalf to settle his indebtedness with the Banks on the basis of twenty-five percent of the balances then remaining outstanding. As noted above, the offer was accepted by the Banks.
- The settlement proposed on behalf of Mr. Thornhill offered the Banks more than what two of them had expectations of receiving since, unknown to Mr. Thornhill, they had considered writing off the balances due them as bad debts. Therefore, the proposed settlement was a better offer than alternative prospects. The investigation discloses no evidence that the Banks, in accepting the settlement proposed, did so in respect to "dealings with the government" or for consideration other than to settle the unsecured balances due them on the best available terms, having regard to Mr. Thornhill's financial position.

Upon considering the report and attachments provided by the RCMP investigation, I am of the opinion that the protracted discussions, the nature of the settlement, and the circumstances under which the offer was made on behalf of Mr. Thornhill and accepted by the Banks, do not disclose evidence of the kind of intention necessary to constitute any criminal wrongdoing on the part of either the Chartered Banks or Mr. Thornhill.

Being of the opinion that the investigation does not reveal evidence to establish the essential ingredient of intention, which is a fundamental element of the offence, it is not necessary to consider the other elements of the provisions of Section 110 which would otherwise need to be considered to determine whether the investigation supports a prima facie case.

Accordingly, in my considered opinion, there is not evidence to warrant the laying of any charges against the Chartered Banks, [REDACTED]

[REDACTED] or Mr. Roland J. Thornhill, in the captioned matter.

FRAUDS UPON THE GOVERNMENT—Contractor subscribing to election fund
—Punishment.

110. (1) Every one commits an offence who

(a) directly or indirectly

(i) gives, offers, or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or

(ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person, a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(b) having dealings of any kind with the government, pays a commission or reward to or confers an advantage or benefit of any kind upon an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies upon him;

(c) being an official or employee of the government, demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies upon him:



39

ATTORNEY GENERAL
NOVA SCOTIA

29 October 1980

Chief Superintendent H. A. Feagan
Commanding "H" Division
Royal Canadian Mounted Police
Halifax, Nova Scotia

Dear Chief Superintendent Feagan:

Re: Your File 80HQ-042-170
80H-314
79-260

Enclosed is a copy of the Attorney General's decision in the above captioned matter, which he intends to make public at 3:00 p.m. today.

Also enclosed, under confidential cover, for your information, is a copy of my memorandum to the Honourable Harry W. How, Q. C., which sets out the basis for our opinion that the facts do not disclose evidence of the kind of intention necessary to constitute any criminal wrongdoing on the part of the Chartered Banks or Mr. Thornhill.

Yours very truly


Gordon F. Coles
Deputy Attorney General

THE FOLLOWING EXTRACTS ARE TAKEN FROM BANK DOCUMENTATION
AVAILABLE IN THE FILES OF THE DEPARTMENT
OF THE ATTORNEY GENERAL
AT THE TIME MESSRS. HERSCHORN AND COLES WROTE THE MEMORANDA
OF OCTOBER 17 AND 23, 1980 RESPECTIVELY

1. "You instructed us to place this account in the non-current category and we agree that quite properly it should be so classified. However, Mr. Thornhill is the financial critic in the Opposition Party in the Provincial Legislature and we do know that if the Conservative Party is elected in the next Provincial Election, at this point, Mr. Thornhill would be Finance Minister and Deputy Premier in the new Administration.

In view of this eventuality, we do not at this particular time want to class his loans as non-current."
(April 4, 1977)
2. "In light of political prominence Banks have agreed to go along with customer's proposal to cut living expenses, increase earnings and endeavour to repay loans over 9/10 year period."

(between July 1977 and December 1977)
3. (a) "From our point of view, bankruptcy proceedings would be politically unpalatable and would also result in Mr. Thornhill losing his security dealers license and very likely would also mean a loss of his seat in the next election thereby leaving him without any source of income. Accordingly, although it is distasteful there would appear to be no course but to write off these loans."
(March 8, 1978)
- (b) "We agree with your decision to write-off this account as distasteful as it is and we should appreciate you forwarding a Bad and Doubtful Debt Report containing your recommendation."

(March 10, 1978)
4. "... as we indicated in our writing of March 16th, any such action on our part would lead to immediate Bankruptcy, a loss of Mr. Thornhill's broker's license, and last but not least, place his political career in jeopardy.

We regret having not acted previously to comments contained in your letter of August 24th, however, we considered it prudent to await the outcome of the provincial election, and it would now seem apparent to us, that Mr. Thornhill will receive a cabinet posting in the new government. Meanwhile, however, we will contact the various other creditors regarding the status of his liability, however, again as brought out in our writing of March 16th, the (XX) Bank, decided to write off its liability and to quote its Branch Manager, they considered it a "Political donation".

We will be in a position to give you a further resume within the next few days concerning the other creditors' account, however, considering the recent turnaround in political parties, and the fact that Mr. Thornhill may indeed have a very influential role to play as an important cabinet minister, we now enquire if you would wish us to make a formal approach concerning the position of his debt with us."

(September 29, 1978)

5. "Considering Mr. Thornhill's position as Minister of Development for the Province of Nova Scotia, we consider it prudent not to apply too much pressure at this juncture, and would appreciate receiving your comments with regard to this matter."

(January 31, 1979)

6. "While payment of this debt is extremely doubtful, as we have said, we are reluctant to accept 25% on the basis presented. We think that the banks could well be open to criticism if it were publicly known we had given Mr. Thornhill preferential treatment because of his influential position. We probably would insist on sale of the house and monthly payments from any other debtor and we think this should be treated in the same manner.

The decision is an extremely political one and we pass it on for your comments."

(September 26, 1979)

7. (a) The Debtor, now Minister of Development, and Chairman of the Treasury Board for the Province of Nova Scotia, is in a bankrupt position financially.

7. (b) "The other competitor Banks to whom Mr. Thornhill is heavily indebted, have adopted a "wait and see" attitude, and for political reasons are not pressuring for payment and in fact are making no effort to contact him."

(,1979)

THE ATTORNEY GENERAL, THE HONOURABLE HARRY W. HOW, Q.C., ANNOUNCED TODAY THAT HE HAS RECEIVED A MEMORANDUM FROM HIS DEPUTY, MR. GORDON F. COLES, Q.C., IN THE MATTER OF THE R.C.M. POLICE INVESTIGATION INTO THE FINANCIAL SETTLEMENT MADE BY FOUR CHARTERED BANKS IN RESPECT TO THE BALANCES OF MONIES DUE THEM FROM THE HONOURABLE ROLAND J. THORNHILL.

MR. HOW STATED THAT UPON THE REPORT AND ATTACHMENTS BEING FULLY CONSIDERED BY MR. COLES AND OTHER SENIOR LAW OFFICERS OF THE CROWN, IT IS MR. COLES' CONSIDERED OPINION THAT THE NATURE OF THE SETTLEMENT REACHED DID NOT CONSTITUTE ANY CRIMINAL WRONG-DOING ON THE PART OF EITHER THE CHARTERED BANKS OR MR. THORNHILL AND THEREFORE THERE WAS NO EVIDENCE TO WARRANT THE LAYING OF ANY CHARGES IN THE MATTER. UPON CONSIDERING MR. COLES' MEMORANDUM, MR. HOW STATED THAT HE ACCEPTS HIS OPINION AND ADVICE IN THE MATTER.

BECAUSE OF THE INTEREST SHOWN IN THIS MATTER, MR. HOW THOUGHT IT APPROPRIATE THAT HE DEPART FROM THE USUAL ACCEPTED PRACTICE AND MAKE PUBLIC A COPY OF THE ADVICE WHICH HE HAS RECEIVED FROM MR. COLES.

Halifax, Nova Scotia
October 29, 1980.

I HAVE RECEIVED A MEMORANDUM FROM MY DEPUTY,
MR. GORDON F. COLES, Q.C., IN THE MATTER OF THE R. C. M. POLICE
INVESTIGATION INTO THE FINANCIAL SETTLEMENT MADE BY FOUR
CHARTERED BANKS IN RESPECT TO THE BALANCES OF MONIES DUE THEM
FROM THE HONOURABLE ROLAND J. THORNHILL.

I AM ADVISED THAT THE REPORT AND ATTACHMENTS
HAVE BEEN FULLY CONSIDERED BY MR. COLES AND OTHER SENIOR LAW
OFFICERS OF THE CROWN, AND IT IS THEIR CONSIDERED OPINION
THAT THE NATURE OF THE SETTLEMENT REACHED DID NOT CONSTITUTE
ANY CRIMINAL WRONGDOING ON THE PART OF EITHER THE CHARTERED
BANKS OR MR. THORNHILL. I HAVE CONSIDERED MR. COLES'
MEMORANDUM AND ACCEPT HIS OPINION AND ADVICE IN THE MATTER.

HARRY W. HOW, Q.C.
ATTORNEY GENERAL.

HALIFAX, NOVA SCOTIA
OCTOBER 29, 1980

• HAND WRITE - ÉCRIRE À LA MAIN

TO A

Sgt. Pratt.

FROM - DE 1/c Ops

- Comments
Commentaires
- Examination and Action
Lire et donner
- Prepare Brief
Préparer un exposé
- Return with Current File
Retourner avec le dossier actuel
- Perusal - No action required
À titre de renseignements
- Prepare Reply
Rédiger une réponse
- Make File(s)
Ouvrir un dossier
- Check Records
Vérifier les dossiers

Subject - Sujet: Roland Thornhill

Date: 80.11.06

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Memo to file please - re: meeting on 80.11.05.
- list of names attending attached.

Make memo in draft form for forwarding to DCI

PA - A.C.
D. PACE
11-01-09
11-01-09

U/Comm.

80.11.05.

- 2 DCT.
- 3 A/D CI (F).
- 4 S/Sgt. Jay.
- 5 O 1/2 CCB 'H'
- 6 O 1/2 CCS 'H'
- 7 Sgt. Plump.
- 8 Sgt. House.
- 9 C. O. 'H'
- 10 O 1/2 CCB
- 11 1/2 Ops
- 12 1/2 P+A
- 13 S/Sgt. Dillabough
- 14 Sgt. Pratt

-11-

D/A. G. - charge not warranted.

HAN: TE - ÉCRIRE À LA MAIN

File No. - N° du dossier
80149-042-170

TO A

S/Sgt P. DeLabaugh
O/C CCB
A/D.C.I. Federal
DCI
1/2 Gov't + Friends

FROM - DE
CC B 5 - 4-7
1/2 Ops.
O.C. CCB
A/D.C.I. (Fed) 80-11-14
1/2 Ops

- Comments / Commentaires
- Examination and Action / Lire et donner
- Prepare Brief / Préparer un exposé
- Return with Current File / Retourner avec le dossier actuel
- Perusal - No action required / À titre de renseignements
- Prepare Reply / Rédiger une réponse
- Make File(s) / Ouvrir un dossier
- Check Records / Vérifier les dossiers

Subject / Sujet: Roland Thornhill Date: 80-11-12

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Attached ~~are~~ is a rough draft of my recollection of the meeting on this matter. Kindly suggest revisions on this level up the line. I believe the DCI wanted to persuade this as well.

Please review + fwd. to A/D.C.I.(F) + DCI.

I have made some minor changes to what appears as a brief resumé of the meeting. Please forward to D.C.I. for his info.

Noted
R. DeL. (F)
A/D.C.I. 11-14
80

Prepare in final form and return please.

Stamp: 80-11-12
A-5 (79-06) 78

MEMO TO FILE

Re: Roland Thornhill (80HQ-042-170)

Meeting held HQ Ottawa, 1:15 p.m., 80-11-05.

Those present: Deputy Commissioner (Cr. Ops.) Quintal
 D.C.I., A/Commr. Venner
 A/D.C.I. (Federal), C/Supt. Riddell
 S/Sgt. Jay (Legal, 'C' Directorate)
 C.O. "H" Division, C/Supt. Faegan
 OIC CIB "H" Division, Supt. Christen
 OIC CCS "H" Division, Insp. Blue
 Sgt. J. Plomp (Legal, Halifax CCS)
 Cpl. C. House (Investigator)
 OIC CCB, Supt. Roy
 OIC CCB Operations, Insp. Kozij
 OIC CCB Policy & Admin., Insp. McConnell
 NCO i/c Government Frauds CCB, S/Sgt. Dillabaugh
 Sgt. PRATT HQ CCB

Purpose: To discuss in depth the problems derived from the Attorney General of Nova Scotia comments to the media that no charges were warranted. To test the strength and weakness of the investigation and plan a course of action on how best to deal with the fact that the A.G. has stated his opinion to the press without giving the RCMP an opportunity of rebuttal or comment.

Meeting: The meeting began with Supt. Christen and Cpl. House giving a brief resumé of the investigation and its results. The resumé highlighted a serious problem in that the Attorney General of Nova Scotia had made a press release without RCMP consultation that no charges were warranted in this matter. The A.G. stated that he based the contents of this news release on the opinion of the Deputy A.G., Mr. Coles, and other senior law officers of the Department. The manner in which the news release was made circumvented the normal procedure in dealing with these matters. Normal

procedure would be to discuss the merits and weakness of the investigation allowing the investigator an opportunity to shore up those areas that may be lacking in substance. *This consultation took place with a prosecutor assigned to the file, but in this case a request for this to be arranged was ignored and a benefit*

A discussion ensued on the content of the news release which in itself was confusing. *It* totally ignored ~~dealing~~ *dealing* three other aspects of the investigation, *namely* such as: a charge of False Pretences against Thornhill for false statements given to the banks in order to obtain loans; a charge under Section 110(1)(c) against the four banks concerned; and a charge of conspiracy against the four banks for having Thornhill receive a benefit. The news release appeared to lump all the requirements of Section 110 together and did not suggest that Section 110(1)(c) could stand on its own without, for example, having to prove the requirements of 110(1)(b) as well. *In Section 110(1)(c) the Crown does not have to prove that the benefit bestowed was for a specific favour in return, where a in Section 110(1)(b) this must be shown.*

The Halifax contingent felt very strongly that the investigational results supported a prima facie case under Section 110(1)(c), accepting a benefit. A well prepared submission touched on the essential ingredients of a charge, i.e.

- 1) mens rea
- 2) the meaning of an official
- 3) who exercised control over Thornhill
- 4) the requirement of a note in writing.

The submission and the investigation were queried on all aspects, for the investigation ~~had~~ *had* to stand the test ^{of} our own internal scrutiny so as to create a united front. Case law and other precedents were cited to support the necessary elements required to support a charge.

A discussion developed which fortified our prerogative to lay an information, recognizing that it was within the ambit of the Provincial A.G. as to what type of prosecution would be entered. ^{if any} A further brief discussion was held on the fact that the Force was morally obligated to lay an information if evidence supported such action. It was also noted that the Force has not consistently followed this procedure in past years as some Divisions have accepted a written submission from the A.G.'s which states that ~~no prosecution will be~~ ^{a stay of proceedings would be} entered should a charge be laid. This written decree from the A.G. has been sufficient to deter the laying of the information.

Conclusions: 1) The investigational evidence supported a prima facie case under Section 110(1)(c) against Thornhill.

- 
- 2) That the Attorney General of the Province must be informed in writing that it is our intention to pursue a charge against Thornhill under Section 110(1)(c) subject to conclusion #2.
- 2) That some leeway must be given the A.G., therefore a report shall be prepared pointing out our position ^{outlining the jurisdiction etc which supports our view} and asking the A.G. to reconsider his opinion in this matter. The report shall be prepared by "H" Division and shall be delivered By Hand to the A.G. ^{after review by HQs.}

● HANC...TE - ÉCRIRE À LA MAIN

O/C CCB

FROM - DE

D. C. L

TO A

- Comments / Commentaires
- Examination and Action / Lire et donner
- Prepare Brief / Préparer un exposé
- Return with Current File / Retourner avec le dossier actuel
- Perusal - No action required / À titre de renseignements
- Prepare Reply / Rédiger une réponse
- Make File(s) / Ouvrir un dossier
- Check Records / Vérifier les dossiers

Subject - Sujet

Date 80-1-1

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

- ① Page 2 line 5. "dealing". What does mean?
- ② Page 2 line 8. Should read 110 (i) (b) not (c). - check report on this if (b) - c) Rpt says (c)
- ③ Page 3 line 4. ... entered, if any.
- ④ Last conclusion: see my additions.
- ⑤ Page 2 line 3 see my additions.

→ Add some comment about the meeting being advised of the "leak" and that the turned out to be overstated.

→ Add some comment about our discussion on this point: we were meeting to provide AG's advice, guidance input into a sensitive decision in connection with a high profile investigation.

PA 50 F

Date 80-1-1

Classification
File No. - N° du dossier

• HANC - - ÉCRIRE À LA MAIN

TO A	FROM - DE	D. C. I.

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Examination and Action
Lire et donner | <input type="checkbox"/> Prepare Brief
Préparer un exposé | <input type="checkbox"/> Return with Current File
Retourner avec le dossier actuel |
| <input type="checkbox"/> Perusal - No action required
À titre de renseignements | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

Subject - Sujet	Date
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REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

This is a feature of the Commis responsibility to manage the Force & to ensure that the quality of our criminal investigation activity is of the highest order. Since the obvious ramifications of any charge being laid against the adun of the A.G. it rendered it absolutely imperative that merits of case be examined at highest possible level within Force. Has nothing to do with the Federal Sal Sen, who is not being consulted & who has no desire to be. His concerns end with the interest as to the sufficiency, propriety, legality etc of our operating procedures & the quality of our work.

PA. 546.
Date: 01-01-77
1-1-77

HAUT - ÉCRIRE À LA MAIN

File No. - N° du dossier

80110-042-170

TO A

S/Sgt. Dillabough
 Officer in Charge CCB Ops

FROM - DE
 CCB 5
 S/Sgt. Dillabough NCO & Grt. Fi

Comments
 Commentaires

Perusal - No action required
 À titre de renseignements

19

Brief
 or an exposé

Return with Current File
 Retourner avec le dossier act.

File(s)
 r un dossier

Check Records
 Vérifier les dossiers

Subject - Sujet

Roland Thornhill

Date

80.11.2

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Attached up-dated memo to file on the meeting held in H.Q. Also a memo from OIC CCB H Division & C.O. "H" Division which is accompanied by a memo addressed to the O.C.I. from the C.O. "H" Division. My personal opinion on this matter is that we should proceed with a charge under section 110(1)(c) in this matter. There is one rider, however, and that is if we do so in this case we must be prepared to proceed in like fashion in all other Divisions who are confronted with a similar situation.

80.11.23

I agree with Sgt. Pratt's opinion on both points & I realize the possible implications of going against the instructions of the Prov. A.G. but I believe that the ingredients are there for charges under 110(1)(c) and 110(1)(b) and it is a matter of principle involved here.

I would recommend though that before the charges are laid that we inform the Prov. A.G.

P.A. - A.C.
 0019 AOCW 3/10/80
 21-01-80

● HANC TE - ÉCRIRE À LA MAIN

54

TD A	FROM - DE

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Examination and Action
Lire et donner | <input type="checkbox"/> Prepare Brief
Préparer un exposé | <input type="checkbox"/> Return with Current File
Retourner avec le dossier act. |
| <input type="checkbox"/> Perusal - No action required
À titre de renseignements | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

Subject - Sujet	Date
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REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

by written letter of our intended course of action and explain why the RCMP feels so strongly that we believe the laying of a criminal charge is the right of the policeman & that right was placed there by the legislators as a safeguard in our system of justice.

We should politely inform the A.G. that we have considered the matter carefully and that our decision is to lay criminal charge and then outline them in the letter.

The A.G. should be given a reasonable time to respond before going to the Magistrate (perhaps 24 hrs).

PA. A.C.
Init./N

80-11-24

Re: Roland Thornhill

Meeting held HQ Ottawa, 1:15 p.m. on 80-11-05

Those present: D/Commr. (Cr. Ops) Quintal, D.C.I.; A/Commr. Venner, A/D.C.I. (Fed) C/Supt. Riddell, S/Sgt. Jay (Legal, "C" Dir. C.O. "H" Div, C/Supt. Feagan, OIC C.I.B. "H" Div, Supt. Christen, OIC CCS "H", Insp. Blue, Sgt. J. Plomp (Legal Halifax CCS) Cpl. C. House (Investigator) OIC CCB, Supt. Roy, OIC CCB Ops, Insp. Kozij, OIC CCB Policy & Admin. Insp. McConnell, NCO I/C Govt Frauds CCB, S/Sgt. Dillabaugh, Sgt. Pratt CCB HQ.

Purpose: to discuss in depth the problems derived from the Attorney General of Nova Scotia comments to the media that no charges were warranted. To provide Headquarters, with advice and guidance input into a sensitive discussion in connection with a high profile investigation. To test the strength and weakness of the investigation. To plan a course of action on how best to deal with the fact that the provincial A.G. has stated his opinion to the press without giving the RCMP an opportunity of rebuttal or comment.

Meeting: the meeting began with Supt. Christen and Cpl. House giving a brief resumé of the investigation and its results. The resumé highlighted a serious problem in that the A.G. of Nova Scotia had made a press release without RCMP consultation that no charges were warranted in this matter. The A.G. stated that he based the contents of this news release on the opinion of the Deputy A.G., Mr. Coles, and other senior law officers of the department. The manner in which circumvented the normal procedure in dealing with these matters. Normal procedure would be to discuss the merits and weaknesses of the investigation allowing the investigator an opportunity to shore up those areas that may be lacking in substance. This consultation takes place with a prosecutor assigned to the file, but in this case our request for this to be arranged was ignored.

*meen
81-2*

A discussion ensued on the content of the news release which in itself was confusing. The news release totally ignored three other aspects of the investigation namely. A charge of False Pretences against Thornhill for false statements given to the banks in order to obtain loans; a charge under section 110(1)(b) against the four banks concerned; and a charge of conspiracy against the four banks for having Thornhill receive a benefit. The news release appeared to lump all the requirements of section 110 together and did not suggest that section 110(1)(c) could stand on its own without, for example, having to prove the requirements of 110(1)(b) as well. In section 110(1)(c) the Crown does not have to prove that the benefit bestowed was for a specific favour in return, where as, in section 110(1)(b) this must be shown. The Halifax contingent felt very strongly that the investigational results supported a *prima facie* case under section 110(1)(c), accepting a benefit. A well prepared submission touched on the essential ingredients of a charge, i.e.

- 1) mens rea
- 2) the meaning of an official
- 3) who exercised control over Thornhill
- 4) the requirement of a note in writing

The submission and the investigation were queried on all aspects, for the investigation had to stand the test of our own internal scrutiny so as to create a united front. Case law and other precedents were cited to support the necessary elements required to support a charge.

A discussion developed which fortified our prerogative to lay an information, recognizing that it was within the ambit of the Provincial A.G. as to what type of prosecution would be presented, if any. A further brief discussion was held on the fact that the Force was morally obligated to lay an information if the evidence supported such action. It was noted that the Force has not consistently followed this procedure in past years as some divisions have accepted a written submission from the A.G.'s proceedings would be entered should a charge be laid. This written decree from the A.G. has been sufficient to deter the laying of the information.

During the course of the meeting word was received from Halifax that the investigational report, its contents and recommendations had been leaked to the Press. This proved to be a gross overstatement. What had happened was that Kevin Burke, the Crown Prosecutor consulted on this case before it was referred to the Deputy A.G., had been interviewed on the T.V. news about the Thornhill matter during which he made a number of comments about the case being removed from his control.

A matter of equal importance evolved around the ratio decendi on the Commissioner's responsibilities to manage the Force and to ensure that the quality of our criminal investigations be of the highest order. Given the obvious ramifications of any charge being laid against the advice of the A.G. it rendered it absolutely imperative that the merits of the case be examined at the highest possible levels within the Force. The sphere of this case has nothing to do with the Federal Solicitor General who is not being consulted and who has no desire to be. His concerns mainly evolve around sufficiency, propriety, legality etc. of our operational procedures and quality of our work.

Conclusions:

- 1) The investigational evidence supported a prima facie case under section 110(1)(c) against Thornhill.
- 2) That some leeway must be given to the A.G. therefore, a report shall be prepared pointing out our position, outlining the jurisprudence etc, which supports it, and asking the A.G. to reconsider his opinion in this matter. The report shall be prepared by "H" Div and shall be delivered By Hand to the A.G. after review by HQ.
- 3) That the A.G. of the Province must be informed in writing that is our intention to pursue a charge against Thornhill under section 110(1)(c).

PRESS RELEASE

Mr. Gordon F. Coles, Q.C., Deputy Attorney General attending meetings of Provincial Attorneys General in Victoria, has denied a reported statement attributed to an Assistant Prosecuting Officer in the Attorney General's Department to the effect that an investigation into the settlement reached between four chartered banks and Mr. Thornhill had been assigned ^{Burke} to that particular Assistant Prosecuting Officer and subsequently withdrawn from him.

Mr. Coles said that although he has not seen the statement attributed to the Assistant Prosecuting Officer, he restates his previous advice that it was clearly understood policy and accepted practice between the R.C.M.P. and the Attorney General's Department that in matters of major or involved criminal investigations, particularly those involving allegations of so-called commercial crime and fraud, the police investigation into the facts is referred to the Deputy Attorney General or other senior lawyers in the Department experienced in the criminal law, to assess the report and determine whether the facts support any allegation of wrongdoing and thereby warrant the laying of charges. If the facts disclose evidence of the necessary ingredients to constitute an offence, a Prosecutor is then assigned and the police advised accordingly.

→ Quinlan
"not correct"

This particular investigation follows this agreed upon procedure and the R.C.M.P. understood from the beginning

that upon the completion of their investigation, they were to forward their report to the Deputy Attorney General for his consideration, advice and instructions in the matter. This in fact was done. Mr. Coles did not assign nor designate any Prosecutor to this investigation. It is understood that an investigating officer had some preliminary discussion with an Assistant Prosecutor during the course of his investigation but the Department instructions as to the procedure to be followed by the police in respect of this investigation remained unchanged.

The police report and attachment were fully and thoroughly assessed by the Deputy Attorney General, the Director (Criminal) and the Assistant Director (Criminal) and in their considered opinion the facts did not evidence the commission of any offence and therefore, there was no need to assign the matter to a Prosecuting Officer of the Department.

/ljb

(11)

Gordon F. Coles, Q.C.
Deputy Attorney General

Hon. Harry W. How, Q.C.
Attorney General

Further to the concerns expressed by Mr. Thomas, I have today issued the following statement, elaborating on my earlier remarks, which, hopefully, will serve to clarify the matter. This may be wishful thinking. A copy has been delivered to Mr. Thomas.

encl.
November 13, 1980

PRUSS RELEASE

61

GORDON F. COLES, Q.C., DEPUTY ATTORNEY GENERAL, ISSUED A STATEMENT TODAY TO ELABORATE ON HIS EARLIER REMARKS CONCERNING THE INVOLVEMENT OF MR. KEVIN BURKE, AN ASSISTANT PROSECUTING OFFICER IN THE DEPARTMENT OF ATTORNEY GENERAL, IN THE R.C.M.P. INVESTIGATION INTO THE SETTLEMENT MADE ON BEHALF OF MR. ROLAND THORNHILL WITH FOUR CHARTERED BANKS.

MR. COLES REAFFIRMS HIS EARLIER ADVICE THAT FROM THE COMMENCEMENT OF THE INVESTIGATION IT WAS CLEARLY UNDERSTOOD AND AGREED BETWEEN THE COMMANDING OFFICER "H" DIVISION AND HIMSELF THAT UPON COMPLETION OF THE INVESTIGATION THE REPORT WOULD BE FORWARDED DIRECTLY TO THE DEPUTY ATTORNEY GENERAL AS WAS THE PRACTICE IN INVESTIGATIONS OF THIS NATURE. THIS PROCEDURE WAS FOLLOWED IN RESPECT TO BOTH VERBAL AND WRITTEN PROGRESS REPORTS AND THE DELIVERY OF THE FINAL REPORT WITH ATTACHMENTS.

MR. COLES FURTHER STATED HE DID UNDERSTAND THAT DURING THE COURSE OF THE INVESTIGATION A R.C.M.P. INVESTIGATING OFFICER HAD CONTACTED MR. DAVID THOMAS, Q. C., A MEMBER OF THE ATTORNEY GENERAL'S DEPARTMENT AND PROSECUTING OFFICER FOR THE COUNTY OF HALIFAX, REQUESTING ACCESS TO A PROSECUTING OFFICER AND MR. THOMAS ASSIGNED MR. BURKE AS THE PROSECUTING OFFICER WITH WHOM THE INVESTIGATOR COULD CONSULT. MR. BURKE ASSUMED FROM THIS AN INVOLVEMENT OTHER THAN WAS OR SHOULD HAVE BEEN INTENDED SINCE SUCH DISCUSSIONS WITH HIM WERE NOT INTENDED TO CHANGE THE PROCEDURE UNDERSTOOD TO BE FOLLOWED BY THE R.C.M.P. IN THE MATTER. MR. COLES ATTRIBUTED ANY MISUNDERSTANDING OF HIS POSITION AND THAT OF THE DEPARTMENT'S PROSECUTING STAFF IN RESPECT TO THEIR INVOLVEMENT DURING THIS INVESTIGATION TO A LACK OF COMMUNICATION BETWEEN THE HIGHER AND LOWER ECHELONS IN THE R.C.M.P. AND THE DEPUTY'S OFFICE.

MEMORANDUM
"H" DIVISION

NOTE DE SERVICE

62

144

TO

Officer i/c Commercial Crime Section

FROM
DE

Officer i/c C.I.B.

SECURITY CLASSIFICATION / DE SÉCURITÉ
SECRET
OUR FILE / NOTRE RÉFÉRENCE
80H-314
YOUR FILE / VOTRE RÉFÉRENCE
79-260
DATE
80-11-06

SUBJECT
OBJET

Roland J. THORNHILL (B: 34-09-01),
Receiving Benefits, Sec. 110(c) C.C.
Halifax, Nova Scotia

In order that we can make a further submission to the Attorney General seeking a review of the evidence in this case, I would request your assistance in compiling a report which could be presented to the Attorney General in this regard. I am suggesting the format to be followed would be to once again set out the ingredients of Section 110(c) C.C. Having done so I think it would then be in order to quote those sections of Case Law from each of our Nova Scotia cases which have been dealt with over the past years and draw a parallel to the case at hand. The complete case reference should be attached to the report for the Attorney General's immediate reference.

Once having done this I would then draw a parallel between Mr. Thornhill's position, knowledge and actions as they relate to Section 110(c) C.C.

I feel we should then set out in detail what we interpret to be evidence of intent by Mr. Thornhill. In order to add impact to our submission I am suggesting where possible this be set out as briefly and concisely as possible using where possible no more than one or two sentences for each individual action which we deem to support criminal intention.

In your submission do not concern yourself with introductory paragraphs as this will be worked out later with the C.O.

D. F. Christen, Supt.
Officer i/c C.I.B.

Handwritten initials and date: "A", "RC - 11 - 66", "R 9/13"

DFC/rjb

158

63

9

NOTE FOR FILE:

Halifax, N.S.
80-11-13

RE: ROLAND THORNHILL

The following account of my meeting with the Attorney General, The Honourable Harry W. How, Q.C., and the Deputy Attorney General, Gordon F. Coles, Q.C. on 12 November 80 is not verbatim nor complete but includes the main points of conversation as I recall them.

On 80-11-10 I made an appointment through his secretary to meet with Mr. How in his office at 2.00 p.m. on 80-11-12 re the Thornhill matter. At that time it was not known whether or not Mr. Coles would be available.

When I arrived at Mr. How's office at 1.55 p.m. on 80-11-12 I was informed he would be a few minutes late for my appointment. While I was waiting for Mr. How at approximately 2.10 p.m. Mr. Coles came into his office and I therefore took this opportunity to speak with him. I delivered an envelope from the Chief Financial Officer and listened to his views on Contract negotiations. I also discussed our situation with respect to the future policing of Bedford and the matter of the Trenton police strike.

I then informed Mr. Coles that the purpose of my visit was to explain to him and to the Attorney General that I had read his memorandum of 25 October 80 wherein he outlined the reasons for his opinion there was not evidence to warrant the laying of any charge against Roland Thornhill. I told him that after discussing the whole matter with my C.I.B. Officer and other members

closely involved with the investigation I was not completely satisfied that there were no grounds for a charge under Section 110(1)(c) of the Criminal Code. I related further that I was having Sgt. J. Plomp, a legally trained member, research the matter, including Case Law and I was having him prepare some argument which I hoped we could discuss with him, Mr. Coles, at a later date. Mr. Coles outlined his perception of the necessity for the element of intent in this case. I told him I was not prepared to argue about the merits of the case at this time but it was our view that the "mensrea" required under Section 110(1)(c) was that the accused person must know the banks had dealings with the government and, with that knowledge, he accepted benefits from the bank. I repeated, however, that we would be preparing written argument outlining our views on the matter and asked if he would be prepared to discuss our arguments with us. Mr. Coles continued to support his views of the case at some length. He stated that he recognized the right of the police to lay charges but in this particular case we had asked for his legal opinion and he had given a decision after two other senior lawyers of his department, Mr. Gordon S. Gale and Mr. Martin Herschorn, and himself had carefully researched the law. He said he was amazed that I would argue a legal decision made by senior officials of the Attorney General's Department because by doing so I was questioning the integrity of those senior officials.

I explained that normally in complex criminal cases we worked closely with Crown Counsel and obtained advice and opinions from Crown Counsel and, together, came to an agreement respecting charges, but in this case he had requested that we deal with the Director (Criminal) and/or himself, and directed that we not consult Crown Counsel,

and, therefore, I felt it was not unreasonable for us to advance opinions. I stated further that I viewed his advice as assistance to us and felt that we should be given the opportunity to discuss the matter further before a final decision was reached as to whether or not charges should be laid.

Mr. Coles became very emotional at this point and stated that his department was responsible for the administration of justice in the Province and, as a senior official in that department, he would answer for his decisions. He explained that in his opinion the police report reflected a thorough investigation and had all the facts contained in it, and now that he had made a decision on those facts it should be no concern of mine to question his decision and, further, that he questioned the motivation of my advisors within the Force and that I had a great deal of nerve to suggest that after senior lawyers of his department had reviewed the matter and had come to a conclusion that they could be wrong and that if I went so far as to lay a charge I was treading on dangerous grounds.

At this point Mr. How arrived and I outlined again to him our feelings that there may be sufficient grounds for a charge against Thornhill. I explained that I had no intention of laying a charge until I had presented our arguments to he or his deputy and had the opportunity to discuss the matter further; that we were in the process of researching the matter further and therefore I was not prepared to talk about the case today but felt it was only proper that I should let him know what we were doing, especially because of the politically sensitive nature of the case and the current publicity about it.

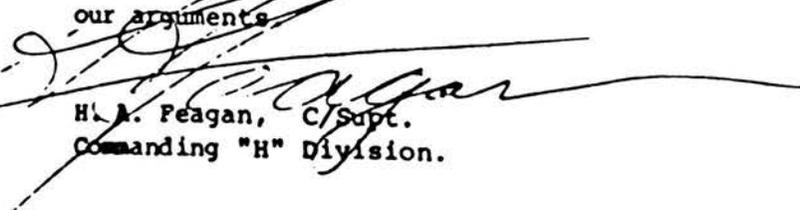
Mr. How stated that he had not involved himself directly with the Thornhill case because of possible political connotations and he had not read the R.C.M.P. report but that his Deputy dealt with the case for him and he had acted upon advice of his Deputy in declaring that no action would be taken. Mr. Coles then took command of the conversation and dealt at some lengths on the role of the Provincial Department of Justice in the administration of justice in the Province. He pointed out that he and the Attorney General were responsible to the people of the Province, that he was a senior attorney acting for and on behalf of the Department and he had, after careful research, not only given an opinion but had made a decision in the case and by presenting argument about his decision I was placing myself and the Force in a most serious position. He stated that I had absolutely no business questioning a decision of the Department and he intimated that ~~either~~ he ~~or~~ I would not be able to continue to work together in future if I displayed such a lack of confidence in him. He suggested I go home and reflect on the whole matter. I replied that my interpretation of his remarks was that he was instructing me not to take any further action in the case. He then stated that he was not making any threats but he couldn't understand why I would want to take any further action.

I told Mr. Coles that I had no ax to grind with anyone but that I took my job as Commanding Officer of the R.C.M.P. in the Province seriously and I recognized the need to co-operate with he and his department. In fact, it was for that very reason that I had refused to talk to the news media about this case and had responded to the media by explaining my communications with the Attorney General's Department were confidential. I, nevertheless, had

principles that I believed in and although I was not a lawyer, I was of the opinion from discussions with my investigators and from reading the report myself and his memorandum and excerpts from certain case law, and through my years of experience as a peace officer, that there was a prima facie case against Thornhill and, therefore, I had to live with these convictions. I explained again that in my opinion it would not be proper for me or any of my personnel to lay a charge in this case without first discussing our arguments with him and therefore I asked him again if he would entertain discussing our arguments. Mr. Coles replied that he would do so but he still felt I should not be questioning his judgment and he had no intention of changing his mind.

Mr. How entered into the conversation from time to time but did not say anything of significance. He claimed he couldn't understand why we were taking any further action and he said he felt I had received bad advice from the people who worked for me which, he intimated, did not speak well for them. I responded that I was responsible for my own decisions and although I found it very difficult in this case, I felt obliged to follow what I viewed as the proper course of action in the best interests of society and the Force.

I was able to leave Mr. How's office on reasonably good terms but I can foresee a further confrontation with Mr. Coles if and when we meet to discuss our views concerning this case. Furthermore, it is a foregone conclusion that he will reject our arguments.



H. A. Peagan, C/Supt.
Commanding "H" Division.

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TO: OFFICER I/C "H" DIVISION C.I.B.

FROM: OFFICER I/C "H" DIVISION C.C.S.

SECURITY CLASSIFICATION / DE SÉCURITÉ
SECRET - "FOR POLICE EYE ONLY"
OUR FILE / NOTRE RÉFÉRENCE
79-260
YOUR FILE / VOTRE RÉFÉRENCE
80HQ-042-170
80H-314
DATE
80 NOV 17

SUBJECT: Roland J. THORNHILL (B: 34-09-01)
- Receiving Benefit, Sec. 110(1)(c) C.C.
Halifax, Nova Scotia

Attached hereto please find a four-part report compiled by members of this Section re: the investigation in relation to Mr. Roland THORNHILL.

Part I of the report contains photocopies of the various reported criminal law cases dealing with Section 110 C.C. and related Sections referred to in Part II.

Part II is an Analysis, prepared by Sgt. PLOMP, LL.B., of Section 110(1)(c) C.C., element by element, and the interpretation by the various Courts of the Country as to the Law which applies to each element.

Part III is a Summary prepared by the investigator, Cpl. HOUSE, of the facts, as contained in his report dated 80-08-29, and the evidence presently available in this case as it applies to each of the various elements of the offence of Section 110(1)(c) C.C.

Part IV is a Summary of other available evidence and/or information which the investigator is aware of, but was not contained in his report of 80-08-29.

This attached, four-part report thus outlines very concisely the Law and the facts in this case with relation to a charge under Section 110(1)(c) C.C.

It appears evident that there is sufficient evidence and grounds to support the laying of a charge under Sec. 110(1)(c) C.C. against Mr. THORNHILL. In the laying of a charge, all that is necessary is that there are reasonable and probable grounds to believe that an offence has been committed and reasonable and probable grounds to believe that the person to be charged committed that offence. The determination, once a charge has been laid, as to the innocence or guilt of the person charged, is a matter for the Courts to decide.

80HQ-042-170
80H-314
79-260

Officer in Charge "H" Div. C.I.B.
Page two
November 17, 1980

Having thus concluded that reasonable and probable grounds exist to charge Mr. THORNHILL under Section 110(1)(c) C.C., it is felt that it is our duty as sworn peace officers to so proceed and leave the final determination of this matter to the Courts.

It is realized that to so proceed would place our Force in direct conflict with the decision reached by the Deputy Attorney General of the Province of Nova Scotia and his Assistants. However, that is a matter of policy which must be dealt with at a much higher level, ie. whether we abide by their decision or whether we perform our duties and responsibilities as we see them and answer to the Law.

In reaching such a decision, it should be pointed out that we have dealt with the Deputy Attorney General's office throughout this matter in all earnestness and complete good faith. Previous instructions to submit reports prior to laying charges and to cease dealing with the office of the Halifax County Crown Prosecutor were followed. However, the reasons given for wanting the report prior to laying charges, to cease dealings with the Crown Prosecutors' office and the use of the report dated 80-08-28 to make final decisions without further dialogue with this Force and the manner in which the final decision by the Deputy Attorney General's Department was given to this Force and then immediately followed by a Press Conference, tends to lend itself to circumspection as to whether the ends of Justice have been truly served in this matter.

Therefore, a decision must now be made as to whether our duty is to be carried out in the manner in which we perceive it or if the decision of the Deputy Attorney General and his Assistants is to be followed.



R. Blue, Inspector
Officer in Charge,
"H" Division Commercial Crime Sec.

Enc.

TO: OFFICER IN CHARGE, "H" DIV. C.C.S.
FROM: SGT. J. PLOMP, "H" DIV. C.C.S.

RE: Roland J. THORNHILL (B: 34-09-01)

The purpose of this memorandum is to clarify the law surrounding S. 110 of the Criminal Code and to point out the weaknesses and basic academic and factual flaws in the memorandum from Gordon COLES, Q.C. to The Honourable Harry HOW, Q.C., Attorney General of Nova Scotia. I will make no detailed comment of the facts in this case other than to point out the various relevant omissions in Mr. COLES' memorandum.

The main offences we are concerned with in this case are S. 110(1)(b) C.C. and S. 110(1)(c) C.C. regarding the banks and Mr. THORNHILL, respectively. A copy of S. 110 is attached for convenience (APPENDIX "A").

It is quite clear from the reading of S. 110(1)(c) that the elements of the offence are:

- i) that the accused be an official or employee of the Government;
- ii) that he knowingly demands, accepts or offers or agrees to accept a commission, reward, advantage or benefit of any kind
- iii) from a person having dealings with the Government
- [iv) without the consent in writing ... proof of which lies upon him]

The purpose of S. 110(1)(b) was commented on by Arnup, of the Ontario Court of Appeal in R. v Cooper (No. 2) (1977), 35 C.C.C. (2d) 35 (Ont. C.A.), when he said, "Its purpose is to ensure and maintain the complete integrity of the public service Section 110(1)(c) contains co-relative provisions making it an offence with the same sanction for an employee of the Government to accept a benefit or advantage ..." (APPENDIX "B")

Section 110 speaks of "officials" or "employees". "Official" is defined in S. 107 of the Code (APPENDIX "C"). In SOMMERS v The Queen; Gray et al v The Queen, [1959]S.C.R. 670 124 C.C.C. 241 (APPENDIX "D"), it was held that the word, "official", in S. 107 included Ministers of the Crown.

The Section further speaks of "dealings with the government" which was dealt with in R. v KOLSTAD (1959), 123 C.C.C. 170 (Alta. S.C. App. Div.) affirmed [1960] S.C.R. 110 (APPENDIX "E") where MacDonald, J. held that:

"It is significant that the word dealings is immediately followed by the expression "of any kind". That indicates that Parliament did not intend the word "dealings" to be construed in a narrow, restricted sense. ..."

In R. v. WILLIAMS (1978) 29 N.S.R. (2d) 374 (N.S.S.C. App. Div.) (APPENDIX "F"), it was held that "dealings" included the negotiation of a hospital tax arrears settlement. In R. v RUDDOCK (1978) 39 C.C.C. (2d) 65 (N.S.S.C. App. Div.) (APPENDIX "G"), the benefactor had coin-operated amusement machines in taverns and lounges, the benefactor required the consent for these machines from the N.S. Liquor Licensing Board, of which the beneficiary was the Administrator -- totally without final decision-making power and even on occasion opposed the benefactor's machines. The benefactor was held to have had "dealings with the government".

I will now address the "crux" of Mr. COLES' memorandum, and the very basis of his opinion, i.e. that the evidence does not show "criminal intent" or mens rea. In R. v. COOPER (1977), 34 C.C.C. (2d) 18 (S.C.C.) ^(APPEALS 30) the Supreme Court of Canada held that S. 110(1)(b) requires "criminal intent". It does appear from the elements of S. 110(1)(c) in particular, that an "ulterior" or "specific" intent is not required to fulfill the requisite intent; i.e. no intention ulterior to the actus reus of the offence, (i.e. to accept a benefit from a person during dealings with the Government without the consent in writing ...

My position then is that very "little" mens rea is required to support a charge under S. 110(1)(c). In R. v WILLIAMS (Supra), MacIntosh, J. charged the jury that under S. 110(1)(c),

"... the Crown must prove beyond a reasonable doubt that ... the accused ... knowingly accepted from [the benefactor], a person having dealings with the government"...

MacIntosh, J. went on to say,

"It appears to me that our legislators have seen fit to demand of government employees a higher standard of integrity in their dealings with the public than it has placed on the one who confers a benefit on the government employee. Section 110(1)(b), which covers the latter situation - that is, where a person confers a benefit upon a government employee - decrees that the benefit must relate to the dealings with government; but no such restriction is contained in the provisions under which the accused stands charged. A government employee must not, without the written consent of the person who is the head of the government branch that employs him - and I do not know whether there is any authority on it, but I would take it that the head of the government branch that employs the accused is the Minister of Finance - and without that written consent the government employee cannot accept any benefit from a person he knows has dealings with the government ..."

The N.S.S.C. App. Div. in R. v WILLIAMS (Supra), endorsed the words of Arnup, J. in R. v COOPER (No. 2) (Supra) at pp. 36-37 which show the close relationship between ss. 110 (1)(b) and (c). The Appeal Div. went on to stipulate that for S. 110(1)(c) the mens rea required is that the accused person,

"must know that the benefactor had dealings with the government..."

The Court further endorsed the words of MacIntosh, J. in his charge to the jury (supra).

In R. v RUDDOCK (supra ..) the trial judge, O'Hearn, C.C.J. said,

"... the mental element involved is simply knowledge of the gift, knowledge of the connection of the giver with the government, and willingness to accept It does not involve bribery or anything that could be called bribery. It is conduct absolutely prohibited if the giver (SIC) knowingly accepts a gift from a person who is dealing with the government ..."

The points were approved by the U.S.S.C. App. Div.
MacDonald, J. also commented on the Gerald William MCKENDRY
(unreported) case. MCKENDRY was the beneficiary in the
R. v COOPER case. MacDonald, J. said:

"This section [110 (1)(c)] does not involve any
elements of fraud, breach of trust or bribery
which are expressly covered elsewhere in the
Criminal Code ...

In McKendry the possibility of actual corruption
existed. In the present case even if the
respondent [RUDDOCK] became totally corrupt and
dishonest there is nothing to indicate that he
had the power in any way to use his office to
assist his corruptor - not so Mr. McKendry.

MacDonald, J. further endorsed the words of Judge Lyons in
MCKENDRY, who said:

"It is obvious in my view that altogether apart
from s. 110(c) that the appearance of objective,
uncorrupted impartiality must be of the highest
importance. This indeed is an ethic which has been
given the full support of the criminal law in the
section that I have made reference to, and the
reason for that, I think, is obvious because the
appearance of justice is equally important as
justice itself. And the appearance of honesty
and integrity in dealings by Government employees
particularly where large sums of public money is
involved must be at all costs preserved lest the
failure to do so could result in *de facto* corruption
one perhaps sliding imperceptibly into the other.
It is clearly for this reason that s. 110(c) has
been enacted."

It should also be noted that in RUDDOCK, the agreed
statement of facts and the record stipulated that RUDDOCK, in
accepting the gifts, did not think he was doing anything wrong
in a criminal sense. This prompted Judge O'Hearn during
sentencing to state:

"What I am aware of is that in some parts of the
government service, it's quite common for people
dealing with the government to give Christmas
gifts. I've never heard of money being given but
the liquor and cigars and that kind of thing are
given. I'm aware of this as I think most members
of the community are.

I am also aware that a good many civil servants
have never heard of this provision of the Criminal
Code, so that they would probably be quite
astonished to find that in taking a gift of a
turkey or liquor or cigars from a person contracting
with their department that they were in serious
breach of the criminal law."

From the foregoing, it is quite clear that given the circumstances existing in the THORNHILL matter, there is sufficient evidence to proceed with charges under S. 110(1)(c) C.C., and that there is an abundance of evidence regarding mens rea; given THORNHILL's position, previous experience and admission to investigators that he knew all of the banks were dealing with the Government.

I will now analyze Mr. COLES' memorandum to the Attorney General, Mr. HOW, regarding the question of mens rea. As a general comment, Mr. COLES, throughout the whole memorandum mixes elements of offences under ss. 110(1)(a), 110(1)(b) and 110(1)(c) as if all of those form the elements of the one offence. In reality, it is quite clear that each sub-section forms a separate and distinct offence. This being the situation it is difficult to understand how anyone could import the elements of ss. 110(1)(a) and (b) into 110(1)(c) which is directly in issue when considering Mr. THORNHILL. Under S. 110(1)(c) it is clearly unnecessary to prove that the benefit was "... with respect to those dealings ..." [s. 110(1)(b)] or "... as consideration for co-operation, assistance, exercise of influence, or an act or omission in connection with ... any matter of business with the government ..." [s. 110(1)(a)]. Therefore, the last and second last sub-paragraph under Para. 1 is clearly very wrong and ill conceived. The same comment of course applies to the second last sub-paragraph of the memorandum.

It may also be noted that in any other case, any perceived, evidentiary weaknesses would probably be remedied after consultation with a Prosecuting Officer, which, in this case, we were deprived of On instructions from the Attorney General's Department. This action effectively removed the benefit of formal legal advice from our investigators, and was obstructive, to say the least.

This method of depriving our investigators of legal advice by having the total decision regarding the laying of charges made by the internal staff of the Attorney General's Department, and the Deputy Attorney General, was a repeat of similar action taken in a similar investigation regarding allegations of corruption made by Walton COOK, LL.B., M.L.A. in 1974. As a result of that investigation, despite recommendations that charges be laid inter alia under 110(1)(c), the Attorney General of the day, Allan SULLIVAN, with assistance from the present Deputy Attorney General, Mr. COLES, announced that there was not sufficient evidence to lay charges. Subsequently, in 1980, as a result of questions in the House of Assembly, we were asked to re-investigate, resulting in the conviction of one Douglas Mark RHODENIZER (Appendix " "), under S. 110(1)(c), on the exact evidence available, and contained in the report of which the decision not to prosecute was based in 1974.

80-11-04
Halifax, N.S.



J. PLOMP, Sgt.

Reginald Roy WILLIAMS Section 110(1)(c) C.C. (1978) (Appendix "F")

WILLIAMS was a Collections Officer with the Health Services Tax Department. He was dealing with Arthur BOUDREAU who was attempting to have a tax assessment written down. He gave WILLIAMS an air hockey game valued at about \$130.00. There was no evidence that WILLIAMS did anything out of the ordinary for BOUDREAU.

SENTENCE: 1 year, Conditional Discharge, no unusual terms.

Robert RUDDOCK Section 110(1)(c) (1978) (Appendix "G")

RUDDOCK accepted \$1,000.00 from Arthur BOUDREAU over a three-year period. RUDDOCK was the Administrator for the Nova Scotia Liquor Licensing Board. As part of his function, he dealt with applicatic by licensed tavern owners to have BOUDREAU's and other coin operate amusement machines installed. RUDDOCK had no final decision-making power and even opposed some of BOUDREAU's machines.

SENTENCE: Fine \$2,000.00 affirmed by the Nova Scotia Supreme Court Appeals Division.

Douglas Mark RHODENIZER Section 110(1)(c) (1980)

RHODENIZER was a Superintendent of Highways, who received two cheques in amount of \$150.00 each from construction companies who were under contract with the Department of Highways.

SENTENCE: Conditional Discharge after 1 year on same basis as Reginald Roy WILLIAMS.

Edward James BRIGLEY Section 110(1)(c) 2 charges (1979)

BRIGLEY was a Contract Inspector employed by the Department of National Defence and was a first line supervisor for a contract held by a cleaning company, Capital Maintenance Services Limited (C.M.S.L.) at C.F.B. Halifax. C.M.S.L. conferred benefits on BRIGLEY; i.e., C.M.S.L. loaned BRIGLEY about \$1,050.00 and gave him kickbacks of some \$3,000.00 - \$4,000.00. The loan was covered by a Promissory Note, arranged by C.M.S.L.'s lawyer.

BRIGLEY was convicted 110(1)(c) with regard to the loan, and, of course, the money received. Again here BRIGLEY had no power to influence the actual contract with C.M.S.L. but had supervisory powers over its day to day operation only.

SENTENCE: Fine \$2,000.00 1/d 30 days on each of two charges 110(1)

MEMORANDUM "H" DIVISION

NOTE DE SERVICE

77

C.O. "H" Division

Officer i/c C.I.B.

SECURITY - CLASSIFICATION - DE SECURITE
SECRET
OUR FILE / NOTRE REFERENCE
80H-314
YOUR FILE / VOTRE REFERENCE
DATE
80-11-18

SUBJECT / OBJET

Roland J. THORNHILL (BD: 34-09-01), Receiving Benefit, Section 110(1)(c) C.C. Halifax, Nova Scotia

I am attaching a review of our position as carried out by members of the Commercial Crime Section as it relates to the evidence in this case. The apparent difference is in the interpretation as placed on Section 110 by the Deputy Attorney General and members of his staff and that of our investigators as to the necessary ingredients to a prosecution under this section. The basic difference in position is in that of criminal intent. The Deputy Attorney General, in his review of the sections, feels there was no criminal intent on the part of Mr. Thornhill and, therefore, I assume concludes there was no need for Mr. Thornhill to obtain consent in writing from his Branch Head. Our investigation suggests the facts as set out in the attachment indicate there was intent if indeed intent is a necessary ingredient of the charge. I gather from your discussion with the Deputy Attorney General on the 80-11-12 he voiced the view that Mr. Thornhill had no assets and consequently it was a matter of the banks either settling for the amount offered or ending up with nothing. I further gather he did not feel the intent of this section of the Criminal Code had been placed in the law to deal with cases such as the evidence and circumstances in this particular case relate. By way of further example, he eluded to the fact any person who fell under Section 110 by definition would be in opposition to the law if he were to negotiate a loan at prime interest rate while another person on making application for a similar loan was required to pay the current interest rate. It is felt the matter of whether the Deputy Attorney General's position or ours is correct could be argued indefinitely. ~~It would therefore appear if we are to consider charges in this matter, we would be well advised to obtain an independent legal opinion of some consequence. Mr. Coles has indicated he does not consider legally trained members of this Division sufficiently experienced to draw the proper conclusion in this case. Such being the case, I suggest Mr. Coles has opened the door for us to seek more experienced counsel.~~

It is unfortunate the Attorney General's Department elected to deal with this matter in the manner in which they did. By releasing their findings publicly and at the same time providing us with a copy of their decision the whole matter was thrown immediately into the public forum. This

"H" Div. File No. 80H-314

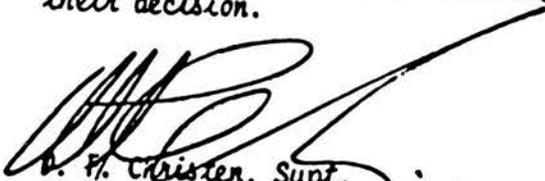
effectively closed down communication in my mind and does not now allow for a reversal of opinion by the Attorney General.

In speaking with Mr. Gordon Gale, Director (Criminal), on the 80-11-14, he implied both he and Mr. Martin Herschorn, Assistant Director, supported the Deputy Attorney General's findings and again referred to Queen versus COOPER. Mr. Gale further advised it was the Deputy Attorney General's wish to release his findings to the press at the time of his release in order the press could have the decision researched by their counsel before drawing an improper conclusion on their own. The Attorney General was apparently not in favour of this. Mr. Gale also advised instructions would be going forward to the Crown Prosecutor appointed to assist us in the Canadian Distilleries investigation not to include any recommendations as to charges in his report to the Deputy Attorney General. At the conclusion of the investigation the Deputy Attorney General and his staff will review the file to determine if or what charges are available.

I further gather from your conversation with Mr. Coles he has taken serious exception to our request for a review of the Thornhill matter. He has indicated any decision to lay a charge at this stage would be in direct opposition to his decision which was intended as a direction rather than a decision open to further discussion. (It would appear in future any major investigations involving politically prominent persons the decision as to whether there is evidence to support charges will be made at the Deputy Attorney General's level.)

We must therefore decide if we are going to charge Mr. Thornhill or follow the Deputy Attorney General's direction based on his findings and that of other senior personnel in his Department. I feel it is essential the findings of the Deputy Attorney General be reviewed as no doubt, if correct, it will have a bearing on charges of a similar nature in the future. If it is found there is support for the Deputy Attorney General's position, then, of course, the matter of charges in this case becomes secondary.

I do not feel there is any purpose or advantage to be gained in making a further representation to the Attorney General or the Deputy Attorney General. I suggest when we next discuss this case with them, it should be to tell them we are proceeding with charges or that we have accepted their decision.


D. F. Christen, Supt.
Officer i/c C.I.B.

Encl.

81-2-09
9

MEMORANDUM

NOTE DE SERVICE

79

TO A
FROM DE

Commissioner, Ottawa.

Attention: D. C. I.

C.O. "H" Division

SUBJECT
OBJET

Roland J. THORNHILL (BD: 34-09-01),
Receiving Benefit, Section 110(1)(c) C.C.
Halifax, Nova Scotia.

SECURITY - CLASSIFICATION - DE SÉCURITÉ
S E C R E T
OUR FILE / NOTRE RÉFÉRENCE
80H-314
YOUR FILE / VOTRE RÉFÉRENCE
DATE
80-11-19

The review of this case has now been completed by the "H" Division Commercial Crime Section and is forwarded with comments of the Officer i/c "H" Division C.I.B.

I arranged a meeting with the Attorney General, the Honourable Harry W. How, Q.C. and the Deputy Attorney General, Gordon F. Coles, Q.C. on 80-11-12 and explained our opinion that there was a prima facie case against THORNHILL under Section 110(1)(c) of the Criminal Code. I informed them we were preparing written argument to support our opinion.

The Deputy Attorney General, in the presence of the Attorney General, informed me his decision was based on a careful study of the matter carried out by himself and two other senior officials of his department, Mr. Gordon S. Gale, Director (Criminal), and Mr. Martin Herschorn, Assistant Director (Criminal). He emphasized the result was not a mere opinion but was a decision that no charge would be laid and this fact had been made subject of a news release by the Attorney General, and therefore the matter was closed. Mr. Coles expounded further that as his department was responsible to the people of Nova Scotia for the administration of justice in the Province, I had a great deal of gall to question his decision, and that if we now considered laying a charge, it would be a very dangerous step to take. He indicated he had no intention of altering his decision regardless of any written argument presented to him.

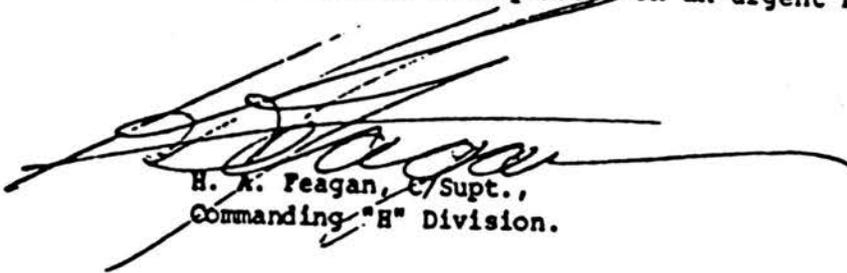
In view of the stand taken by Mr. Coles, which is supported by the Attorney General, it would be futile in my opinion to communicate our arguments to them. I suggest therefore we should obtain the advice of experienced counsel now to assess the strength of our case.

Provided we do have sufficient evidence to lay a charge, the dilemma then is whether or not we, the investigating police force, should exercise our right to initiate prosecution when the Attorney General of the Province has ruled no such action be taken.

"H" Div. File No. 80H-314

If a charge is laid in the face of the Attorney General's instructions, our future relationship with the Attorney General and his Deputy will be difficult regardless of the outcome of court action. Furthermore, should the prosecution be unsuccessful for any reason, subsequent civil litigation is a possibility. On one hand I feel we should exercise our right on the matter of principle in this Nova Scotia case. On the other hand we may well have already set precedent by complying with the instructions of Attorneys General with respect to similar cases in other provinces. Since we are a national Force working under like contracts with several provinces, I feel we must apply like policies in each province.

Your direction is requested on an urgent basis, please.



H. K. Feagan, C/Supt.,
Commanding "H" Division.

PAE 25
81-01-02
41

HP... ÉCRIRE À LA MAIN

FROM - DE

81

D. C. I.

TD
A

T. Veener

- Comments
Commentaires
- Examination and Action
Lire et donner
- Prepare Brief
Préparer un exposé
- Return with Current File
Retourner avec le dossier actuel
- Perusal - No action required
À titre de renseignements
- Prepare Reply
Rédiger une réponse
- Make File(s)
Ouvrir un dossier
- Check Records
Vérifier les dossiers

Subject - Sujet

Date

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Can't go looking for a better legal opinion.
 So it is in fact a benefit at all if
 the bankruptcy settlement
 was going to in fact be a lighter
 penalty. - Jury - reasonable doubt
 they should acquit.

Contract police Force should solicit
 the advice on the point of whether or
 not the ~~prosecutor~~ officer should lay a
 charge. There may be one
 ultimate answer but unless this is not
 apparent then AG is the last word.

fingerprinting of juveniles is an error,

The end of a parliamentary system - 4

P.A. - A.C.
 Date: 5/10/71
 PACE 5/10/71
 8102/71

OIC Commercial Crime Branch

82

SECURITY CLASSIFICATION - DE SÉCURITÉ
SECRET
OUR FILE / NOTRE RÉFÉRENCE
80HQ-042-170
YOUR FILE / VOTRE RÉFÉRENCE
DATE
80-11-25

OIC Operations

SUBJECT
OBJET Roland J. Thornhill (BD: 34-09-01)
Receiving Benefit, Sec. 110(1)(c) C.C.
Halifax, N.S.

On file is latest correspondence from CO and OIC CIB, "H" Division. Briefly, the Attorney General and Deputy Attorney General of N.S. were informed by the CO of our opinion that there was a prima facie case against Thornhill. Despite this, the Deputy A.G., supported by the A.G., indicated no intention of altering their decision not to lay charges and for the Force to do so would be a dangerous step. The CO suggests we obtain the advice of experienced counsel to assess the strength of our case, that is the strength of the case against Thornhill.

Attached are A-5's from members of Government Frauds Section with the opinion to proceed with prosecution with advance notice, say 24 hours, to the A.G.

I am not in favour of having this case reviewed by counsel. The evidence in this case has been assembled and reviewed by experienced and competent police officers. I have faith in their convictions and opinions. The decision to be made is do we proceed with charges. I recommend we proceed.

T. Kozij
T. Kozij, Insp.
OIC Operations
Commercial Crime Branch

Atts.

PARCA
81-811
G

• HANDWRITEN - ÉCRIRE À LA MAIN

TO A

FROM - DE

TO: Hop Court (Crim Ops)

FROM: D.C.I.

- Comments
Commentaires
- Examination and Action
Lire et donner
- Prepare Brief
Préparer un exposé
- Return with Current File
Retourner avec le dossier act
- Pursuit - No action required
À titre de renseignements
- Prepare Reply
Rédiger une réponse
- Make File(s)
Ouvrir un dossier
- Check Records
Vérifier les dossiers

Subject - Sujet

Date

80-12

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

For your signature.

I did not include the comments received about Justice opinion (ADM level) or outside counsel. They can be added if you see but I don't think are relevant to the exercise. I wanted to cover the reasons why IN THIS CASE we should not go outside because of the investigators answers opinions that we should.

Do you wish the file?

P. P. C. O. S.
81-01-09
gsl

P.A. - A.C.

Date

Init. JA



84

TO
A

C.O. "H" - HALIFAX.

FROM
DE

DEPUTY COMMISSIONER (CRIMINAL OPS).

SECURITY - CLASSIFICATION - DE SECURITE
OUR FILE/NOTRE REFERENCE 80HQ-042-170
YOUR FILE/VOTRE REFERENCE 80H-314
DATE 80-12-16

SUBJECT
OBJET

Roland J. THORNHILL (BD: 34-09-01)
Receiving Benefit, Section 110(1)(c) C.C.
Halifax, Nova Scotia

Your correspondence of 80-11-19 with attachments, as well as previously supplied material has been studied and discussed by both the D.C.I. and myself. Our observations, comments and directions are as follows.

Dealing first with the question of having your opinions as to the law and jurisprudence reviewed by independent outside counsel, we are convinced that this should not be done. There are questions of both propriety and spending authority involved and, in respect of the latter, only the Department of Justice can authorize the employment of counsel by the RCMP for such purposes. We sought the advice of Mr. D.J.A. Rutherford, Director of Prosecutions, on these points and he in turn consulted with Mr. D.H. Christie, Associate Deputy Minister, Department of Justice. It was their feeling that the Department of Justice would probably not authorize such expenditures for the following reasons. In a constitutional form of government such as exists in Canada, with certain relevant responsibilities and powers bestowed upon the province by the British North America Act, the chief law officer of a province (Attorney General in this case) is the chief law officer in a monopolistic sense. His advice and decisions (to the extent that the latter are binding) cannot be interfered with or qualified by independent legal opinions sought elsewhere and such a practice on the part of the police would be inappropriate. It would not, in a situation such as this one, be inappropriate for the police to urge the Attorney General himself to seek advice outside his own department, indeed outside his own province, in order that whatever the advice might be, it would stand a better chance of being perceived by everyone concerned as objective and unbiased. In these particular circumstances, however, given the known attitude of the Attorney General and his officials, and considering what all has transpired so far, it would be impractical. Consequently, no outside opinion will be sought by this Force at this time nor should we urge that course of action on the Attorney General.

Turning to the material provided you by Mr. Coles in his seven page memorandum to the Attorney General, I must agree that while it makes some relevant points with respect to the position of the Banks, and the effect of Section 110(b) of the Criminal Code, it fails to address in an informative, convincing fashion, the position of Mr. Thornhill vis à vis the unique requirements of Section 110(c) C.C. Nor does it pay sufficient heed to the deliberate differences which exist between those two sub-sections and the reasons for those differences as they seem to be set out in jurisprudence. No useful purpose would be served by providing more layman's analysis of the law in this area but, that, and a careful study of the material your investigators have put forward, convinces us that at least no overlooked automatic defence, or justification for such behaviour on the part of Mr. Thornhill, exists. Some reasonable and probable grounds to lay a charge under Section 110(c) against Mr. Thornhill appear to be present.

Having said that, however, we do not agree with the position of the Officer in Charge of your C.C.S. when he states in his memorandum to your CIB Officer dated 80-11-17 that, "all that is necessary is that there are reasonable and probable grounds to believe that an offence has been committed and reasonable and probable grounds to believe that the person to be charged committed that offence", before proceeding. We believe our obligations as peace officers go beyond that and if they do not, then the discretion which we have all executed from time to time in the proper performance of our duties has been misplaced. The eminent British jurist, Sir Hartley Shawcross expresses the proposition that it has never been the rule that suspected offences must automatically be the subject of prosecution and that the public interest is the dominant consideration. Decisions as to what is or is not in the public interest are very much the proper concern of an Attorney General. I believe the opinions of your OIC CCS as set out above are an oversimplification of the position we find ourselves in and for that reason not particularly useful in coming to the decision we must now reach.

You have not understated at all the serious consequences we could look ahead to if a charge against Mr. Thornhill was to be laid. These consequences would be even more serious, and completely predictable, if the charge was laid, a prosecution took place and the case was dismissed. In the situation at hand, your investigators were denied the traditional interim step of consultation with a crown counsel, which step is of great assistance in coming to a better appreciation of the evidence, available defences, interpretation of the law, etc. You have had substituted for that, a much less dynamic exercise, one which cannot help but impair the opportunity for investigator and crown counsel to intelligently assist each other in formulating a course of action. In the process you received from the D.A.G. his

seven page memorandum referred to above and I believe it is essential that you respond to him in writing with some comment about the insufficiency of that memorandum. It seems to be established in Regina vs WILLIAMS, and, in Regina vs RUDDOCK that the intention to commit an act which the accused knew to be unlawful, is not one of the elements that the crown needs to prove in Section 110(c). It is to be pointed out that our differences of opinion on that point contributed to the delay and the difficulty we have experienced in determining an appropriate course of action.

Turning now to that determination, it is our considered opinion that charges against Mr. Thornhill and/or the Banks ought not to be laid. Regarding the Banks, the words "with respect to those dealings" in Section 110(b) presents an obstacle which the evidence you have accumulated fails to overcome. Chances of a conviction would appear remote. The documentation clearly shows their motive and intent but that is not sufficient.

With respect to Mr. Thornhill, the following considerations weighed heavily in our decision to provide you with the directions contained herein.

- Mr. Thornhill accumulated these debts over a long period of time during which he took some initiatives, none of them full and complete to pay them off.
- He, with the assistance of [REDACTED] and his accountant, was the one who engineered the final settlement and in the process wound up paying off his debts at twenty-five cents on the dollar. Given the fact that:
 - (a) bankruptcy might have been cheaper,
 - (b) one, possibly two of the banks had already written off these debts,
 - (c) he now has an obligation to [REDACTED] amounting to 12 yearly repayments of \$3,600.00 each and has signed over his share of the Thornhill home.

It could be argued that:

- (a) he hardly received a benefit at all,
- (b) if he did, he received it from [REDACTED] not the banks.

The opposite argument of course is that he was over \$142,000.00 in debt one day and only about \$35,000.00 in debt the next day, a rather favourable turn of events to be sure. It seems very unlikely however that a jury of twelve, no matter how instructed, would ever unanimously agree that a conviction was appropriate. It is likely that they would be impressed by such probable defence witnesses as the Premier (if in fact he is the "head of the branch of government") who could be expected to testify that he would have willingly authorized Mr. Thornhill's activity had he been asked to. I think they would also feel some sympathy for the accused and in the absence of any specific evidence that he was preparing to favour the banks in some way, would exercise that sympathy to Mr. Thornhill's benefit.

It is our further opinion that no false pretence investigation should be pursued against Mr. Thornhill as a result of the information and documentation you have accumulated to date on this file. There may well be an offence there in connection with misrepresentations he made to the banks, however, since there is no indication they wish to lay charges themselves, it would be perceived as an exercise of dubious faith if we were to simply re-orient our efforts away from Section 110(c), upon which the Attorney General has pronounced himself, and towards another criminal code section which may or may not be easier to prove. The above also applies to the question of conspiracy and I think you will be able to agree that if we do not proceed under Section 110(c) the file should be closed.

The above course of action has been decided upon in full consultation with the D.C.I. and we both share the responsibility for so directing. We also both appreciate that your investigators may be less than satisfied with this approach. They have done their work thoroughly and with competence. The activities of Mr. Thornhill and his associates, as well as the practices and procedures of the banks involved have been brought under appropriate scrutiny. I trust they will be able to take satisfaction from having conducted themselves objectively and professionally throughout. That is in itself a worthwhile accomplishment.

Please advise us of the reaction of your Attorney General once your approach is finalized. We would be particularly interested in whether or not he has a change of mind with respect to the question of intent vis à vis Section 110(c).

J.R.R. Quintal,
Deputy Commissioner.

PREVIOUS
3/10/09
JL



MEMORANDUM

NOTE DE SERVICE

88

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE/VOTRE RÉFÉRENCE 80HQ-042-170
YOUR FILE/VOTRE RÉFÉRENCE 80H-314
DATE 80-12-16

C.O. "H" - HALIFAX.

DEPUTY COMMISSIONER (CRIMINAL OPS).

SUBJECT
OBJET

Roland J. THORNHILL (BD: 34-09-01)
Receiving Benefit, Section 110(1)(c) C.C.
Halifax, Nova Scotia

Your correspondence of 80-11-19 with attachments, as well as previously supplied material has been studied and discussed by both the D.C.I. and myself. Our observations, comments and directions are as follows.

① Dealing first with the question of having your opinions as to the law and jurisprudence reviewed by independent outside counsel, we are convinced that this should not be done. There are questions of both propriety and spending authority involved and, in respect of the latter, only the Department of Justice can authorize the employment of counsel by the RCMP for such purposes. We sought the advice of Mr. D.J.A. Rutherford, Director of Prosecutions, on these points and he in turn consulted with Mr. D.H. Christie, Associate Deputy Minister, Department of Justice. It was their feeling that the Department of Justice would probably not authorize such expenditures for the following reasons. In a constitutional form of government such as exists in Canada, with certain relevant responsibilities and powers bestowed upon the province by the British North America Act, the chief law officer of a province (Attorney General in this case) is the chief law officer in a monopolistic sense. His advice and decisions (to the extent that the latter are binding) cannot be interfered with or qualified by independent legal opinions sought elsewhere and such a practice on the part of the police would be inappropriate. It would not, in a situation such as this one, be inappropriate for the police to urge the Attorney General himself to seek advice outside his own department, indeed outside his own province, in order that whatever the advice might be, it would stand a better chance of being perceived by everyone concerned as objective and unbiased. In these particular circumstances, however, given the known attitude of the Attorney General and his officials, and considering what all has transpired so far, it would be impractical. Consequently, no outside opinion will be sought by this Force at this time nor should we urge that course of action on the Attorney General.

Turning to the material provided you by Mr. Coles in his seven page memorandum to the Attorney General, I must agree that while it makes some relevant points with respect to the position of the Banks, and the effect of Section 110(b) of the Criminal Code, it fails to address in an informative, convincing fashion, the position of Mr. Thornhill vis à vis the unique requirements of Section 110(c) C.C. Nor does it pay sufficient heed to the deliberate differences which exist between those two sub-sections and the reasons for those differences as they seem to be set out in jurisprudence. No useful purpose would be served by providing more layman's analysis of the law in this area but, that, and a careful study of the material your investigators have put forward, convinces us that at least no overlooked automatic defence, or justification for such behaviour on the part of Mr. Thornhill, exists. Some reasonable and probable grounds to lay a charge under Section 110(c) against Mr. Thornhill appear to be present.

Having said that, however, we do not agree with the position of the Officer in Charge of your C.C.S. when he states in his memorandum to your CIB Officer dated 80-11-17 that, "all that is necessary is that there are reasonable and probable grounds to believe that an offence has been committed and reasonable and probable grounds to believe that the person to be charged committed that offence", before proceeding. We believe our obligations as peace officers go beyond that and if they do not, then the discretion which we have all executed from time to time in the proper performance of our duties has been misplaced. The eminent British jurist, Sir Hartley Shawcross expresses the proposition that it has never been the rule that suspected offences must automatically be the subject of prosecution and that the public interest is the dominant consideration. Decisions as to what is or is not in the public interest are very much the proper concern of an Attorney General. I believe the opinions of your OIC CCS as set out above are an oversimplification of the position we find ourselves in and for that reason not particularly useful in coming to the decision we must now reach.

You have not understated at all the serious consequences we could look ahead to if a charge against Mr. Thornhill was to be laid. These consequences would be even more serious, and completely predictable, if the charge was laid, a prosecution took place and the case was dismissed. In the situation at hand, your investigators were denied the traditional interim step of consultation with a crown counsel, which step is of great assistance in coming to a better appreciation of the evidence, available defences, interpretation of the law, etc. You have had substituted for that, a much less dynamic exercise, one which cannot help but impair the opportunity for investigator and crown counsel to intelligently assist each other in formulating a course of action. ~~In the process you received from the D.A.G. his~~

(2)

seven page memorandum referred to above and I believe it is essential that you respond to him in writing with some comment about the insufficiency of that memorandum. It seems to be established in Regina vs WILLIAMS, and, in Regina vs RUDDOCK that the intention to commit an act which the accused knew to be unlawful, is not one of the elements that the crown needs to prove in Section 110(c). It is to be pointed out that our differences of opinion on that point contributed to the delay and the difficulty we have experienced in determining an appropriate course of action.

Turning now to that determination, it is our considered opinion that charges against Mr. Thornhill and/or the Banks ought not to be laid. Regarding the Banks, the words "with respect to those dealings" in Section 110(b) presents an obstacle which the evidence you have accumulated fails to overcome. Chances of a conviction would appear remote. The documentation clearly shows their motive and intent but that is not sufficient. *and*

⑬ With respect to Mr. Thornhill, the following considerations weighed heavily in our decision to provide you with the directions contained herein.

Mr. Thornhill accumulated these debts over a long period of time during which he took some initiatives, none of them full and complete to pay them off. *on the basis of his after tax*
~~He, with the assistance of [redacted] and his accountant, was the one who engineered the final settlement and in the process wound up paying off his debts at twenty-five cents on the dollar. Given the fact that:~~
His ability to liquidate his debts on a liquidation in the foreseeable future was considered.

- (a) bankruptcy might have been cheaper,
- (b) one, possibly two of the banks had already written off these debts,
- (c) he now has an obligation to [redacted] amounting to 12 yearly repayments of \$3,600.00 each and has signed over his share of the Thornhill home.

It could be argued that:

- (a) he hardly received a benefit at all,
- (b) if he did, he received it from [redacted] not the banks.

His ability to liquidate his debts in the foreseeable future was considered unlikely on the basis of his "after tax" fixed income, by his accountant and obviously agreed to by the bank who accepted his [redacted] after

The opposite argument of course is that he was over \$142,000.00 in debt one day and only about \$45,000.00 in debt the next day, a rather favourable turn of events to be sure. It seems very unlikely however that a jury of twelve, no matter how instructed, would ever unanimously agree that a conviction was appropriate. It is likely that they would be impressed by such probable defence witnesses as the Premier (if in fact he is the "head of the branch of government") who could be expected to testify that he would have willingly authorized Mr. Thornhill's activity had he been asked to. I think they would also feel some sympathy for the accused and in the absence of any specific evidence that he was preparing to favour the banks in some way, would exercise that sympathy to Mr. Thornhill's benefit. *It is our further opinion that no false pretence investigation should be pursued against Mr. Thornhill as a result of the information and documentation you have accumulated to date on this file. There may well be an offence there in connection with misrepresentations he made to the banks, however, since there is no indication they wish to lay charges themselves, it would be perceived as an exercise of dubious faith if we were to simply re-orient our efforts away from Section 110(c), upon which the Attorney General has pronounced himself, and towards another criminal code section which may or may not be easier to prove. The above also applies to the question of conspiracy and I think you will be able to agree that if we do not proceed under Section 110(c) the file should be closed. The A.G. is also to be informed that we do not intend to pursue the matter.*

The above course of action has been decided upon in full consultation with the D.P.I. and we both share the responsibility for so directing. We also both appreciate that your investigators may be less than satisfied with this approach. They have done their work thoroughly and with competence. The activities of Mr. Thornhill and his associates, as well as the practices and procedures of the banks involved have been brought under appropriate scrutiny. I trust they will be able to take satisfaction from having conducted themselves objectively and professionally throughout. That is in itself a worthwhile accomplishment.

Please advise us of the reaction of your Attorney General once your approach is finalized. We would be particularly interested in whether or not he has a change of mind with respect to the question of intent vis à vis Section 110(c).

J.R.R. Quintal,
Deputy Commissioner.

I do not presume to be a substitute for the courts but there are factors that needed serious consideration before embarking on a course of action in defiance of a specific directive the A.G. He is to be advised that in the present case we will abide by his directive.

NOTE - ÉCRIRE À LA MAIN

92

RCI
TP
A

FROM - DE

DEPUTY COMMISSIONER
(CR. OPS.)

Comments
Commentaires

Examination and Action
Lire et donner

Prepare Brief
Préparer un exposé

Return with Current File
Retourner avec le dossier et

Perusal - No action required
À titre de renseignements

Prepare Reply
Rédiger une réponse

Make File(s)
Ouvrir un dossier

Check Records
Vérifier les dossiers

Subject - Sujet

Poland J. Thornhill

Date

80/12

REMARKS (Use same A 6 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

File returned with copy sent
to C.O. "H" for... forwarded transmission

RECEIVED
81-01-09

P.A. - A.C.
Date
Init.



Royal Canadian Mounted Police Gendarmerie royale du Canada

19

80.12.17

CONFIDENTIAL

Your file Votre reference

80H-314

93

Our file Notre reference

80HQ-042-170

C.O. "H" - HALIFAX

Re: Roland J. THORNHILL (BD: 34-09-01)
Receiving Benefit, Section 110(1)(c) C.C.
Halifax, Nova Scotia

Your correspondence of 80.11.19 with attachments, as well as previously supplied material has been studied and discussed by both the D.C.I. and myself. Our observations, comments and directions are as follows.

Dealing first with the question of having your opinions as to the law and jurisprudence reviewed by independent outside counsel, we are convinced that this should not be done. There are questions of both propriety and spending authority involved, and in respect of the latter, only the Department of Justice can authorize the employment of counsel by the R.C.M.P. for such purposes. Indications are they would probably not authorize such expenditures, keeping in mind the constitutional form of government as it presently exists in Canada, and the relevant responsibilities and powers bestowed upon the province and its chief law officer. The Commissioner has not, however, made a formal request to Justice in this regard.

In a situation such as this one, it would not be inappropriate for the police to urge the Attorney General himself to seek advice outside his own department, indeed outside his own province, as others have done in the past in order that whatever advice is received, it would stand a chance of being perceived as objective and unbiased. If possible, this should be done at the time of referral to the Attorney General. In the present case, given the known attitude of the Attorney General and his officials along with what has transpired so far, it would be impractical to do so now. To conclude on this point, no outside opinion will be sought by the Force at this time, nor should we urge that course of action on the Attorney General.

.../2

Deputy Commissioner (Criminal Operations) Sous-commissaire (Sûreté)

Turning to the material provided you by Mr. Coles in his seven page memorandum to the Attorney General, I must agree that while it makes some relevant points with respect to the position of the Banks, and the effect of Section 110(b) of the Criminal Code, it fails to address in an informative, convincing fashion, the position of Mr. Thornhill vis à vis the unique requirements of Section 110(c) C.C. Nor does it pay sufficient heed to the deliberate differences which exist between those two sub-sections and the reasons for those differences as they seem to be set out in jurisprudence. No useful purpose would be served by providing more layman's analysis of the law in this area but, that, and a careful study of the material your investigators have put forward, convinces us that at least no overlooked automatic defence, or justification for such behaviour on the part of Mr. Thornhill exists. Some reasonable and probable grounds to lay a charge under Section 110(c) against Mr. Thornhill appear to be present

Having said that however, we do not agree with the position of the Officer in Charge of your C.C.S. when he states in his memorandum to your CIB Officer dated 80.11.17 that, "all that is necessary is that there are reasonable and probable grounds to believe that an offence has been committed and reasonable and probable grounds to believe that the person to be charged committed that offence", before proceeding. We believe our obligations as peace officers go beyond that and if they do not, then the discretion which we have all executed from time to time in the proper performance of our duties has been misplaced. The eminent British jurist, Sir Hartley Shawcross, expresses the proposition that it has never been the rule that suspected offences must automatically be the subject of prosecution and that the public interest is the dominant consideration. Decisions as to what is or is not in the public interest are very much the proper concern of an Attorney General. I believe the opinions of your OIC CCS as set out above are an oversimplification of the position we find ourselves in and for that reason, not particularly useful in coming to the decision we must now reach.

You have not understated at all the serious consequences we could look ahead to if a charge against Mr. Thornhill was to be laid. These consequences would be even more serious, and completely predictable, if the charge was laid, a prosecution took place and the case was dismissed. In the situation at hand, your investigators were denied the traditional interim step of consultation with a crown counsel, which step is of great assistance in coming to a better appreciation of the evidence, available defences, interpretation of the law, etc. You have had substituted for that, a much less dynamic exercise, one which cannot help but impair the opportunity for investigator and crown counsel to intelligently assist each other in formulating a course of action. It is indeed regrettable that you

or your investigators were not afforded the opportunity of this consultative process with those who had replaced the usual crown counsel. You were instead provided by the D.A.G. a seven page memorandum outlining his advice to his Minister and, I believe it is essential that you respond to him in writing with some comment about the insufficiency of that memorandum with regards to intent. It seems to be established in Regina vs Williams, and in Regina vs Ruddock, that the only proof of intent required under Section 110(c) for an offence to have been committed is the acceptance, knowingly, of a gift, benefit, etc. It may suffice to quote the following from Regina vs Williams: "An offence under Section 110(1)(c) is the acceptance of a benefit without having first obtained a consent." It is to be pointed out that our differences of opinion on that point contributed to the delay and the difficulty we have experienced in determining an appropriate course of action.

We have given long consideration to the course of action to be followed in this case, and have carefully reviewed the actions of Mr. Thornhill and the banks. It is our considered opinion that charges against Mr. Thornhill and/or the banks ought not to be laid against the wishes of the Attorney General and his Deputy Minister as re-emphasized to you during your meeting with them on 80.11.12 that "the result was not a mere opinion but was a decision that no charge would be laid". (Your memo of 80.11.19 refers.)

With respect to Mr. Thornhill, the following considerations weighed heavily in our decision to provide you with the directions contained herein.

- Mr. Thornhill accumulated these debts over a long period of time during which he took some initiatives, none of them full and complete to pay them off.
- His ability to liquidate his debts in the foreseeable future was considered unlikely on the basis of his "after tax" fixed income, by his accountant and obviously agreed to by the bank who accepted his offer.
- He, with the assistance of [REDACTED] and his accountant, was the one who engineered the final settlement and in the process, wound up paying off his debts at twenty-five cents on the dollar. Given the fact that:
 - (a) bankruptcy might have been cheaper,
 - (b) one, possibly two of the banks had already written off these debts,
 - (c) he now has an obligation to [REDACTED] amounting to yearly repayments of \$3,600 each and has signed over his share of the Thornhill home.

- It could be argued that:
- (a) he hardly received a benefit at all,
 - (b) if he did, he received it from [REDACTED] not the banks.

The opposite argument of course is that he was over \$142,000 in debt one day and only about \$43,000 in debt the next day, a rather favourable turn of events to be sure. It seems very unlikely however that a jury of twelve, no matter how instructed, would ever unanimously agree that a conviction was appropriate. It is likely that they would be impressed by such probable defence witnesses as the Premier (if in fact he is the "head of the branch of government") who could be expected to testify that he would have willingly authorized Mr. Thornhill's activity had he been asked to. I think they would also feel some sympathy for the accused and in the absence of any specific evidence that he was preparing to favour the banks in some way, would exercise that sympathy to Mr. Thornhill's benefit. I do not presume to be a substitute for the courts, but these are factors that needed serious consideration before embarking on a course of action in defiance of a specific directive of the A.G. He is to be advised that in the present case, we will abide by his directive.

It is our further opinion that no false pretence investigation should be pursued against Mr. Thornhill as a result of the information and documentation you have accumulated to date on this file. There may well be an offence there in connection with misrepresentations he made to the banks, however, since there is no indication they wish to complain or lay charges themselves, it would be perceived as an exercise of dubious faith if we were to simply re-orient our efforts away from Section 110(c), upon which the Attorney General has pronounced himself, and towards another criminal code section which may or may not be easier to prove. The above also applies to the question of conspiracy and I think you will be able to agree that if we do not proceed under Section 110(c), the file should be closed. The A.G. is also to be informed that we do not intend to pursue the matter.

I appreciate that your investigators may be less than satisfied with this approach. They have done their work thoroughly and with competence. The activities of Mr. Thornhill and his associates, as well as the practices and procedures of the banks involved have been brought under appropriate scrutiny. I trust they will be able to take satisfaction from having conducted themselves objectively and professionally throughout. That is in itself a worthwhile accomplishment.

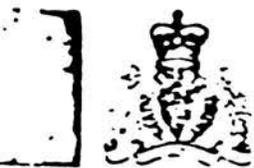
To resume, the Attorney General should be advised that:

- (a) the Williams case seems to contradict the D.A.G.'s interpretation of intent under Section 110(c) of the Criminal Code, as stated above;
- (b) in this case, after very careful consideration of all the factors involved, we have decided to abide by his instructions that charges are not to be laid, as conveyed at the meeting of 80.11.12;
- (c) we do not intend to pursue an investigation of a possible offence of false pretence by Mr. Thornhill regarding possible misrepresentation to the banks when obtaining some of his loans. There is no complaint from the banks, nor do we have any indication that they would be prepared to lay charges themselves, based on their previous reluctance to deal with Mr. Thornhill in relation to his loans. It would be perceived as an exercise of dubious faith on our part to re-orient our efforts away from Section 110(c) at this time; and
- (d) upon receipt of his comments to (a) above, we will consider our file closed.

Please advise us of the reaction of your Attorney General once your approach is finalized. We would be particularly interested in whether or not he has a change of mind with respect to the question of intent vis à vis Section 110(c).



J.R.K. Quintal,
Deputy Commissioner,
Criminal Operations.



oyal Canadian Mounted Police Gendarmerie royale du Canada

98

Your file Votre reference

CONFIDENTIAL

22 December 1980

Our file Notre reference
80H-314

Gordon F. Coles, Q.C.,
Deputy Attorney General,
Province of Nova Scotia,
P.O. Box 7,
Halifax, N.S.

Dear Sir:

Re: Roland J. THORNHILL (BD: 34.09.01),
Receiving Benefit, Section 110(1)(c) C.C.,
Halifax, Nova Scotia.

This is further to our discussion of 12 November 1980.

As explained to you during our meeting, I feel some reasonable and probable grounds to lay a charge under Section 110(1)(c) C.C. against Mr. THORNHILL are present. While I agree the material provided in your memorandum to the Attorney General makes relevant points with respect to the position of the banks and the effect of Section 110(1)(b), it does not address in a convincing fashion the position of Mr. THORNHILL vis-a-vis the unique requirements of Section 110(1)(c). It is our view that deliberate differences exist between those two sub-sections and the reasons for those differences are set out in jurisprudence. It seems to be established in Regina vs. Williams and in Regina vs. Ruddock that the only proof of intent required under Section 110(1)(c) for an offence to be committed is the acceptance knowingly of a benefit without having first obtained consent in writing. No other intent is required under that specific sub-section. I am attaching material put forward by my investigators for your information.

Because of the advice you gave me during our November 12th meeting concerning the consequences of pursuing this case

CONFIDENTIAL

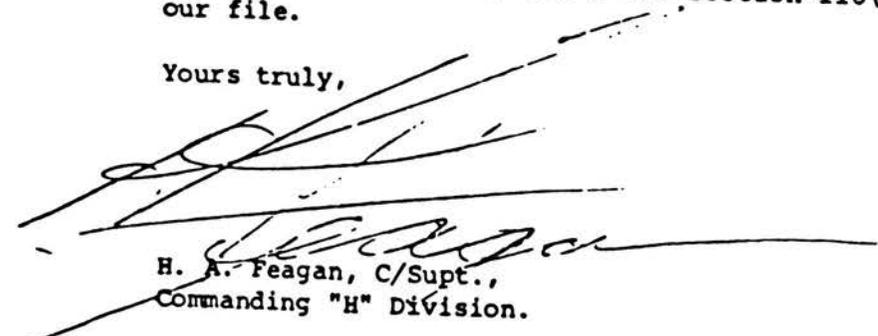
further in the face of the Attorney General's decision, and because my investigators were not afforded the opportunity of the normal consultative process with Crown Counsel, and because of my concern over the Force's responsibilities in cases of this nature, I referred the matter to my Commissioner.

After careful consideration of all facts involved it has been decided that:

- (1) Charges against Mr. THORNHILL and/or the banks will not be laid in contradiction to the wishes of the Attorney General.
- (2) We do not intend to pursue an investigation of a possible offence of False Pretences by Mr. THORNHILL regarding misrepresentation to the banks when obtaining some of his loans.

I would appreciate your further comments with respect to the question of intent vis-a-vis Section 110(1)(c) to conclude our file.

Yours truly,



H. A. Feagan, C/Supt.,
Commanding "H" Division.

Encl.

P.O. Box 2286,
Halifax, N.S.
B3J 3E1

TTE - ÉCRIRE À LA MAIN

File No. - N° du dossier

8010-042-

TO - À	FROM - DE	Date
OIC Ops A/DCI (F) D.E.I. Dep Comm (Crim Ops) Criminiv	Sgt J. French CCB - Insp Kozji A/DCI DCI A/E (ops)	801 80 80-01 80-0

- Comments / Commentaires
- Action / Donner suite
- Prepare Brief / Préparer un exposé
- Return with Current / Retourner avec le do.
- Perusal and P.A. / Lire et classer
- Prepare Reply / Rédiger une réponse
- Make File(s) / Ouvrir un dossier
- Check Records / Vérifier les dossiers

SUBJECT / SUJET

Roland Thornhill

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Attached is a telex print rec'd from C.O. H. Dev. on the matter. D.E.I.
 Your info x that of A/E (ops)

For your information. There were newspaper articles locally referring to the decision having been made between FEAGA and "his" "commissions" in Ottawa. C.O. "H" phoned me on this last week & he feels the issues now are dying down. (Kamm)

I do not believe that I is dying down, I believe that we will hear much more. It seems to me that a new all its special decisions have been made in accordance with our responsibilities as Peace Officers.

Noted
 Meeting Date - Date de réunion: 80.01.06
 PA-AC
 Date: Insl./N°

● HAND - TE - ÉCRIRE À LA MAIN

101

TO A

A/DcI (F)
P.C.I.

FROM - DE

C.C.B. Insp Koff
A/D.P.C.I. (F) 80-12

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Examination and Action
Lire et donner | <input type="checkbox"/> Prepare Brief
Préparer un exposé | <input type="checkbox"/> Return with Current File
Retourner avec le dossier act. |
| <input type="checkbox"/> Perusal - No action required
À titre de renseignements | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

Subject - Sujet
Robert J. Thornhill

Date
80-12-2

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

*Believe the file on this case is with DCI
I am forwarding attached memo to DCI through
you for your information.*

*P.C.I. - The O-1/c C.C.B. operations express
his concern over the decision NOT to
lay a charge in this instance.*

*In this case I don't really feel we are
taken away the police's (investigators)
right to lay a charge. We (senior
management of the Police) have decided
NOT to lay a charge and I certainly
think that Senior Management of any Police
force has the right to direct or make
the decision NOT to charge.*

R

MAccB
S.P.S.A.C.

Date <i>81</i>	Init <i>9/2</i>
-------------------	--------------------



MEMORANDUM

NOTE DE SERVICE

102

TO
A

DCI

FROM
DE

OIC OPERATIONS - CCB

SECURITY - CLASSIFICATION - DE SECURITE
SECRET
OUR FILE / NOTRE REFERENCE
80HQ-042-170
YOUR FILE / VOTRE REFERENCE
DATE
80-12-29

SUBJECT / OBJET Roland J. Thornhill (BD: 34-09-01)
 Receiving Benefit, Sec. 110(1)(c) C.C.
 Halifax, N.S.

The purpose of this memorandum is not to review the merits or demerits of this case as this was previously done and I also previously mentioned my views as to prosecution. Rather, I raise my concerns about the precedent established by the RCMP in acquiescing to the direction given by the Attorney General of Nova Scotia.

It was the Attorney General who decided not to proceed with a charge in this case. It is the policy of the Force that it is the responsibility of the investigator, and not the Attorney General, to decide which charges, if any, are to be laid and against whom. As I stated, having acquiesced to the Attorney General's directive in this case sets a precedent, not only for Nova Scotia but for all provinces and my concern is that we may not be able to maintain the position the RCMP have the right to decide which charges, if any, are to be laid and against whom. Undoubtedly we have allowed our policy to slip. Aside from this case, Admin. Bulletin AM-186, copy attached, directs that the prosecuting authority will make a decision with respect to statutory offences committed by a member.

In my view, the policy of the Force as to decisions on charges should remain intact and adhered to in all cases. Further, I suggest this policy be re-affirmed.

T. Kozij
 T. Kozij, Insp.
 OIC Operations
 Commercial Crime Branch

*MAKES
 81-05-1
 2*



ATTORNEY GENERAL
NOVA SCOTIA

CONFIDENTIAL

January 27, 1981

C/Supt. H. A. Feagan
Commanding "H" Division
Royal Canadian Mounted Police
Halifax, Nova Scotia

Dear C/Supt. Feagan:

Re: Your file 80H-314

In reply to your confidential letter of December 22, 1980, I acknowledge your advice of the decision reached after careful consideration of all facts involved in the above captioned matter.

You made reference to the cases of R. v. Ruddock and R. v. Williams. Since both of these cases originated in this jurisdiction and staff of this Department were involved in both the prosecutions and in representing the Crown on the respective appeals before the Appeal Division of the Nova Scotia Supreme Court, you can assume that we are very familiar with the evidence involved and the decisions of our court were carefully considered in assessing and evaluating the police reports and enclosures in the above captioned matter in reaching our decision. Other relevant authoritative cases were also considered by senior staff members as well as the undersigned.

Water
81-02-

The factual situations in respect to Mr. Williams and Mr. Ruddock are completely different and distinguishable from the circumstances of the Banks acceptance of the proposal to settle Mr. Thornhill's indebtedness with them, and in our opinion the necessary element of intention was present in those cases whereas it was lacking in the above captioned.

Yours very truly

R. C. M. P.
JAN 28 1981
C. O. [unclear]

[Signature]
Gordon F. Coles
Deputy Attorney General

PHENAS
81-02-06
gwl

December 30, 1980.

Gordon F. Coles, Q.C.,
Deputy Attorney General,
Province of Nova Scotia,
P.O. Box 7,
Halifax, N.S.
B3J 2L6

MP-2-3

Re: Use of Crown Counsel

I am writing to seek clarification concerning the role of the Crown Prosecutor vis-a-vis the R.C.M. Police in this Province. As you will recall, in the recent THORNHILL investigation, directions were issued by your Department that we were not to contact the Crown Prosecutor concerning this matter until the investigation had been completed and our report forwarded to the Department so the matter could then be examined and the Attorney General fully apprised of the evidence. It was felt in following this direction that if a difference of opinion existed as to the sufficiency of evidence to support charges as recommended, then, of course, as frequently transpires with Crown Counsel, further dialogue would have taken place in an effort to resolve these differences. By immediately making the Department's decision public, any further representation on our part was made most difficult. It is, therefore, considered necessary that in all cases, we have the benefit of Crown Counsel, a step which is of great assistance in coming to a better appreciation of the evidence available, defences, interpretation of the evidence, etc. This is considered paramount in complex and involved cases.

In investigations of a sensitive nature, if it is considered necessary the investigation be reviewed by your office, I would request that if a dissenting opinion to that of the Crown Prosecutor and the investigator is reached, the opportunity for further discussion be made available. If the difference of opinion cannot be resolved through discussion, then I suggest the matter as to whether to proceed with a charge rests with the police. It is recognized the ultimate responsibility for the administration of justice rests with the Attorney General and, therefore, in exercising this right, he may stop any prosecutions by entering a stay of proceedings.

HP-2-1

December 30, 1980.

Re: Use of Crown Counsel.

I would appreciate your views as to the opinions expressed so that we may be in accord as to the policy to be followed in future cases.

H. A. Feagan, C/Supt.,
Commanding "H" Division.

P.O. Box 2286,
Halifax, N.S.
B3J 3E1.



ATTORNEY GENERAL
NOVA SCOTIA

106

28 January 1981

C/Supt. H. A. Feagan
Commanding "H" Division
Royal Canadian Mounted Police
Halifax, Nova Scotia

R. C. M. P.
HALIFAX, N. S.
JAN 30 1981
C/Supt
"H" Division

Dear C/Supt. Feagan:

Re: Your File HP-2-3
Crown Counsel

I refer you to yours of December 30, 1980 and your request for my views on the above captioned.

To appreciate the role of crown counsel, it is necessary to understand the role of the Attorney General. Mr. Justice Dickson, in delivering the majority judgment of the Supreme Court of Canada in the Dilorio case made reference to the role of the Attorney General in the context of law enforcement as follows:

*never should
we use the
word
enforcement" //*

"...law enforcement is primarily the responsibility of the Province and in all provinces the Attorney General is the Chief law enforcement officer of the Crown... Among (his responsibilities) within the field of criminal justice, are the court system, the police, criminal investigations and prosecutions, and corrections. The provincial police are answerable only to the Attorney General as are the provincial Crown Attorneys..." Dilorio and Fontaine v Warden of the Common Jail of Montreal (1976) 8 N.R. 361 at 389."

As you know, under the Criminal Code, "prosecutor" means the Attorney General and includes counsel acting on his behalf. Your reference to "crown counsel" therefore is to persons employed in the Department of Attorney General or retained from without who are authorized by the Attorney General to act on his behalf, i.e. agents. The fact that the Attorney General deploys part of his staff throughout

28 January 1981

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the Province, or retains others throughout the Province to act on his behalf, does not confer on such persons an independent or separate status other than agents acting on his behalf. Indeed, apart from the Deputy Attorney General, who has special statutory authority to exercise the authority of the Attorney General, except in special cases, all Barristers employed in the Department discharge their responsibilities on behalf of the Attorney General and any of them can be designated by him at any time to advise him or act on his behalf as a prosecutor.

As you know, the Attorney General has structured his Department so as to best enable him to discharge his responsibilities for the administration of justice within the Department. In respect to discharging his responsibilities as "prosecutor", the Attorney General communicates to and instructs his agents through the Deputy Attorney General, the Director (Criminal), and the Assistant Director (Criminal) of his Department.

It has not been the policy of the Attorney General of this Province to require the police forces within the Province to consult with his agents, i.e. prosecuting officers, and seek their advice before the laying of charges, as I understand to be the policy of at least one of the contracting provinces. Our practice has been to encourage consultation between the police and the prosecutors and, except in routine cases, expect that charges be laid on the advice of persons acting on behalf of the Attorney General wherever practical. The desirability of this is obvious. A person trained and experienced in the law is better able to determine the evidence required to prove an alleged offence and whether the evidence available is sufficient to prosecute such an offence and thereby eliminate the laying of unwarranted charges, the laying of more serious charges than warranted and "double barreling". To achieve this objective we have deployed persons throughout the Province to act as prosecuting officers on behalf of the Attorney General and have directed police forces to deal with them in such matters, unless otherwise directed.

There has been, and will continue to be, police investigations in respect to which the police will be directed to deal with representatives of the Attorney General other than with one of his regular designated prosecuting officers. This may be the situation in respect to investigations requested by the

28 January 1981

108

Attorney General; investigations into major and complex criminal activity; particular kinds of crimes, including conspiracies; cases of possible personal conflict; and such other criminal investigations which the Attorney General considers should be attended upon by his Deputy or other designated persons in the Department. In such situations you will continue to be specifically instructed and the investigating officers expected to have all necessary consultation and requests for prosecutorial assistance in accordance with such instructions.

The Attorney General has the responsibility for the superintendence of all matters connected with the administration of justice in the Province. Apart from his prosecutorial responsibilities generally, he has additional power to prefer indictments, to assume the conduct of criminal proceedings privately commenced, to enter a stay of proceedings, and, as a condition precedent to the laying of certain charges give or withhold his consent, inter alia.

Considering the respective roles and responsibilities of the police in investigating alleged criminal activity, and the Attorney General for prosecuting charges arising out of such investigations, I do not think a situation of conflict should arise. Notwithstanding "any one" on reasonable and probable grounds may lay an information, the Attorney General has the authority to take over the conduct of a prosecution and may enter a stay or discontinue it as he thinks best. It would appear implicit, therefore, that the person who has the prosecutorial responsibility would decide any difference of opinion which might arise between an investigating officer and the Attorney General or his agent. I have always understood this to be the policy in this Province.

Yours very truly



Gordon F. Coles
Deputy Attorney General

MANDAT - ÉCRIRE À LA MAIN

TO A	A/DCI (FED) O/C E.C.B. 1/2 Av't Jround + P + A	FROM - DE	109
		D.C.I. A/DCI (Fed) 81-0205 1/2 Qps.	

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| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Examination and Action
Lire et donner | <input type="checkbox"/> Prepare Brief
Préparer un exposé | <input type="checkbox"/> Return with Current File
Retourner avec le dossier actuel |
| <input type="checkbox"/> Perusal - No action required
À titre de renseignements | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

Subject - Sujet: Crown Counsel Date: 81-02-0

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Attached material from the Div requires analysis & response. I am also attaching a copy of a letter recently received from Justice (RUTHERFORD) on the same subject in which to say some very appropriate things. Might be useful in formulating a reply. O/C E.C.B. will want some input re date

O/C E.C.B. - Have the reviewed a reply prepared.

R. A/DCI
81-02-05

1/2 Av't Jround.
Reply to 'H' in general terms - we disagree that final dec. is with P.S. - new policy coming.

Give Copy of AB etc to P + A for new policy.

P.A. - A.C.	
Date	Init./N°

1-020-4767
A-8 (79-08) 7



MEMORANDUM "H" DIVISION

NOTE DE SERVICE

110

TO: A
FROM: DE

Commissioner, Ottawa

Attention: D.C.I.

C.O. "H" Division

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE / NOTRE RÉFÉRENCE HP-2-3
YOUR FILE / VOTRE RÉFÉRENCE
DATE 81-02-03

SUBJECT / OBJET

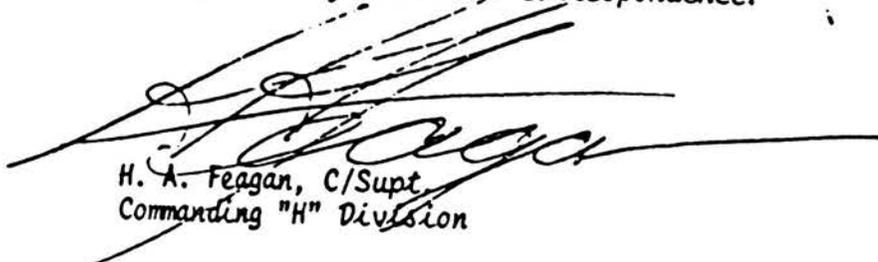
Use of Crown Counsel

As a result of the manner in which the appointment of a Crown Prosecutor was withheld in the THORNHILL case, it was considered advisable to approach the Deputy Attorney General to obtain his views concerning the role of Crown Counsel vis-a-vis the direction on occasion for the police to deal with a representative of the Attorney General other than one of his regular designated prosecutors. Copies of my correspondence to the Deputy Attorney General dated 80-12-30 together with his reply of 81-01-28 are attached.

Without elaboration it would appear the position of the Attorney General's Department in this Province remains basically unchanged from the procedure followed in the THORNHILL case. Despite the acknowledged right of "anyone" to lay a criminal charge, the Deputy Attorney General has indicated the person who has the prosecutorial responsibility (Attorney General) will decide on any difference of opinion between the investigating officer and the Attorney General or his Agent.

In his last paragraph Mr. Coles has divided the respective roles and responsibilities of the police and the Attorney General. The police are charged with the responsibility of investigating alleged criminal activity and the Attorney General for prosecuting charges arising out of such investigations. There appears to be no doubt Mr. Coles's view of the Attorney General's role is quite clear. The final decision as to whether a prosecution is commenced rests with the Attorney General.

I would appreciate any comments you may wish to offer with respect to the Deputy Attorney General's correspondence.


H. A. Feagan, C/Supt.
Commanding "H" Division

Encls.

TO - A NCO 1/2 Louis J. Favelle OIC CCIB	FROM - DE CCBS - 111 S/Sgt. Dillabaugh	Date 8/02
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| <input type="checkbox"/> Comments
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Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

SUBJECT - SUJET
Use of Crown Counsel Re Thornhill Case

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Attached is a draft reply to the C.O. 'H' Division on this issue. Ref. A-5 dated 81.02.09 - in which OIC comments that OIC CCIB may wish to make a comment.

Sir,

Should we not go one step further here, and suggest to the C.O. 'H' Div that a response to Mr. Cole's letter would seem in order, & that we would support him in pointing out the disagreements we have to Mr. Cole's views on the right of a policeman to lay a criminal charge.

Also it might be appropriate at the same time to make Mr. Cole aware that our decision not to proceed with charges against Mr. Thornhill was based on an independent analysis of the evidence & take this opportunity to point out that should a similar situation arise where we feel that the evidence is sufficient, that we would feel we had an obligation to our oath of office to lay the criminal charge. Would it not be wise to express these views while we have the opportunity?

Diary Date - Date d'agenda

Meeting Date - Date de réunion

Date 81.04.02
P.A. [Signature]
8/02

112

TO
A

C.O. "H" Division

FROM
DE

D.C.I.

SECURITY - CLASSIFICATION - DE SECURITE
OUR FILE / NOTRE REFERENCE 80HQ-042-170
YOUR FILE / VOTRE REFERENCE HP-2-3
DATE 81-02-26

SUBJECT / OBJET Use of Crown Counsel

- > Your memorandum dated 81-02-03 refers.
- > You have correctly analyzed and highlighted an issue of paramount importance in the eyes of the Nova Scotia Deputy Attorney General, Mr. Coles. The Deputy Attorney General has expanded upon his prime function which is that of a prosecutorial in nature, to include a policy decision which infringes on the Police role. He, in his position, has assumed the final right to dictate to a police officer, when an honest difference of opinion exists, that an information will not be preferred.

-> I do not agree with Mr. Coles' interpretation of his role or that which he may delegate to his Crown prosecutors. He has over-stepped the common law parameters and attempted to create a policy which is not consistent with the law of land.

Granted the Attorney General does have the power to dictate on whether or not an information may be preferred in some matters. These are specified in the Criminal Code and are primarily applications of preventive detention over which he has the overall authority for their initiation and termination. Furthermore, the

Attorney General does, by virtue of Part XVII of the Criminal Code, have the right to prefer a direct indictment, a process by which a proceedings, once stopped, can be re-started.

- The Attorney General, or his agents, are not law enforcement officers. It is not their function to actively gather evidence. They may however, advise and give opinions on whether a prosecution is justified; but in the last resort it is the policeman, who acting honestly and within his discretionary power, ^{who} ~~which~~ has the right to make the final decision on whether or not to swear to an information. The whole process, once an information is laid, then falls on the prosecutorial function which consists of the Attorney General and his Crown Agents. Should they, in their wisdom believe a criminal charge is not warranted; the system ^{of} ~~at~~ checks and balances in the Criminal Justice process allows for a stay of proceedings.
- It is Mr. Coles belief, that he can infringe upon the police function with which I take issue. It is the police duty to gather evidence and bring it before a trier of fact and should the Attorney General or his employees, the Crown Prosecutors, interfere with this role the impartiality of each is destroyed and an abuse of justice takes place.
- Policy is currently being developed on this matter and should be implemented soon.

T.S. Venner, A/Commr.
Director, Criminal Investigation

HAUTE ÉCRITURE - ÉCRIRE À LA MAIN

11A

TO A	A/DCI (E)	FROM - DE	
	DCI	CCB - INSP KOZIJ	
	A/DCI (Fed)	A/A/DCI (Fed)	8-26-09
	D/c C.C.B.	DCI	8-26-11
		A/DCI (Fed)	8-26-11

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À titre de renseignements | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

Subject - Sujet ROLAND J. THORNHILL	Date 81-06-0
--	-----------------

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Following conclusion of this case, the CO "H" Division on 80-12-30 (Tab A) wrote Deputy AG of N.S. stating, briefly, that if in an investigation there is a difference of opinion between the investigator and the Crown Prosecutor, then the matter as to whether to proceed with a charge rests with the police.

Deputy AG, on 81-01-28, concluded in his final paragraph that, "The person who has the prosecutorial responsibility would decide any difference of opinion which might arise between an investigating officer and the Attorney General or his agent." The CO subsequently asked for comments on the Deputy AG's correspondence (Tab C) & Tel <

Reply for DCI's signature attached.

FOR YOUR SIGNATURE -

As you know, ref the last sentence in Par #3 of my letter, case law is evolving to the contrary in the Province of Quebec. Division de KEABLE. We will have to keep an eye on that evolution.

~~Per~~ R A/DCI (F) 31.06.16

Atch 5
1-2
Date
Init. (M)



MEMORANDUM

NOTE DE SERVICE

115

TO A C.O. "H" Division

FROM DE D.C.I.

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE / NOTRE RÉFÉRENCE P.2-14
YOUR FILE / VOTRE RÉFÉRENCE HP-2-3
DATE 81-06-09

SUBJECT / OBJET Use of Crown Counsel

Your memoranda of 81-02-03 and 81-04-29 refer. Please excuse the late reply but, as I am sure you can appreciate, this area is topical and in a state of flux making a reply difficult.

We note with interest Mr. Cole's initial attempts to encompass the "local crowns" within the Department of the Attorney General only to segregate them later by applying special status to those prosecutors working in his office or reporting directly to the Department. There can be no doubt that he wishes certain types of investigations scrutinized by people within his direct control. The intent of this policy is clearly enunciated and to discredit their philosophy would certainly not be in our best interests--little could be gained in any event no matter the forum.

Force policy is currently under review and although certain facets may change, the underlying theme will not. We do not intend to abrogate what we consider to be our right, role and duty as the ultimate judge of the legitimacy of a criminal charge with the commensurate authority to initiate the criminal proceedings. We will maintain this stance until the Criminal Code is amended to indicate otherwise or case law evolves to the contrary.

In spite of Force policy, however, the contractual, legal and functional relationships with the Attorneys General must be maintained. It is and will continue to be the responsibility of the Commanding Officers to mesh any differing points of view in order to ensure that the interests of both justice and the public are best served.

T.S. Venner, A/Commr.
Director, Criminal Investigation

KFT:smr

116

2/4

81.02.25.

The Honourable Harry W. How, Q.C.
Attorney General
Provincial Building
P.O. Box 7
HALIFAX, Nova Scotia

Dear Mr. How:

Following our conversation of this morning, you will find attached the letter to which minor corrections were made.

I apologize for this inconvenience and hope this will be satisfactory.

Yours truly,



R.H. Simmonds
Commissioner

1200 Alta Vista Drive
Ottawa, Ontario
K1A 0R2

RECEIVED
81-03-09
gwl

117

81.02.25.

The Honourable Harry W. How, Q.C.
Attorney General
Provincial Building
P.O. Box 7
HALIFAX, Nova Scotia

3/4

Dear Mr. How:

80HQ-042-170

This letter is to confirm our recent conversation concerning the Thornhill investigation and is provided in accord with the contractual relationship existing between your office and the Force.

In view of the controversial nature of this case, and the high profile that it has assumed, I took steps to ensure that it was very carefully reviewed within the Force at both the Divisional and "HQ" level.

Perhaps I should just say that we of course accept the fact that any legal advice required during the course of a criminal investigation that we conduct as a result of our contractual relationship with the Province must come from Law Officers of the Crown within your office.

We also maintain as a matter of principle that police officers have the right to lay charges, independent of any legal advice received, if they are convinced that there are reasonable grounds to do so and provided of course that a Justice well accept the charges.

Therefore when the Deputy Attorney General advised on the 29th of October 1980 that the circumstances and evidence in this case were such that in his judgement charges were not warranted, and having in mind the principles stated in the two preceding paragraphs, I instructed that the file be carefully reviewed within the Force.

.../2

4/4

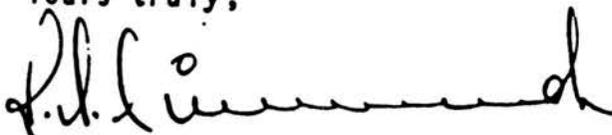
This review was conducted by the Deputy Commissioner for Criminal Operations, Mr. J.R.R. Quintal, my senior staff officer for Criminal Operations at "HQ". He convened a meeting at "HQ" Ottawa on the 5th of November 1980 and was assisted in his review by senior and well experienced officers on "HQ" staff, as well as the Commanding Officer, Divisional C.I.B. Officer and investigators from "H" Division.

At the completion of his review he came to the same conclusion as had the Deputy Attorney General, that being that the circumstances of the case as reflected in the file, combined with evidence in the hands of the investigators, did not warrant the laying of a charge nor the continuation of investigation.

Following his review the Deputy Commissioner briefed me on his conclusions, and although I did not personally review the file or sit with the review team, I fully support the decision reached by the Deputy Commissioner on the facts as he related them. What is important of course is that this is a judgement reached entirely within the Force and without outside influence or direction. Had we come to a different conclusion we would have sought further discussion with the Deputy Attorney General following which, if differences had not been reconciled it might have been necessary to present an Information and Complaint to a Justice, well knowing that any subsequent decision as to whether or not prosecution proceed was a matter entirely for your consideration. However, in view of our assessment and conclusions neither step was necessary.

I trust that the foregoing adequately describes our handling of this matter.

Yours truly,



R.H. Simmonds
Commissioner

1200 Alta Vista Drive
Ottawa, Ontario
K1A 0R2

PA ECAS
81-03-09
gub

• H: TRITE - ÉCRIRE À LA MAIN

TO - À	FROM - DE	119	Date
Imp Kozit 1/2 Hort Funds	D. C. I. 1/2 Op		81-05 81.05.0

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Préparer un exposé | <input type="checkbox"/> Return with Current File
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Lire et classer | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

SUBJECT - SUJET

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

I had meant to reply more formally to your memo of 80-12-29 for which reason I kept this around much too long.

The issue, I believe has been somewhat over by events but I think you may be able to agree with me now when I suggest that the first sentence in your second par is not factual. REMP decided not to proceed. It happens that in this particular case that was the same course of action preferred by A.C. But it might not have been nor in the two positions coincide the next time this comes up. The decision was made based on evidence and lack of it.

I'm attaching another file which I would ask you to P.A. when finished. Inside are copies of correspondence exchanged between DCI regarding the other concern you raise. We're still intending to pursue that.

Your views & comments are always appreciated.

Diary Date - Date agenda Meeting Date - Date de réunion

PA to Thornhill file

OPS RECORDS
REV. OPER
11 PA-AFZ
81-05
[Signature]

A-5 (80-08) 753C 20-4787

A veteran Halifax R.C.M.P. officer says he has resigned from the force because of the way the so-called Thornhill affair was handled. Corporal Cyril House says his superiors ordered him to abandon investigation into the financial affairs of Development Minister, Roland Thornhill, before it was finished. No charges were ever laid against Thornhill, who had arranged to have a large debt partially written off by several banks. House says his superiors were playing politics, and the blame rests with officials in Ottawa.

Meanwhile, Attorney General, Harry How, says he knows of no influence being used political or otherwise in the Thornhill case. He said the affair was investigated by the R.C.M.P. and his department later determined that the evidence didn't warrant the laying of charges. How says the R.C.M.P. later reassessed the whole issue and reaffirmed that position.

How

"What is important is that this judgment they reached which was in exact conformity with that position taken by Mr. Coles and on which I acted, is that the evidence didn't warrant charges. He says what is important is that this is a judgment reached entirely within the force and without outside influence or direction. And therefore I think that, in my view, is a statement which refutes any suggestion that anyone had any influence on the R.C.M.P. in making the decision they did at the highest levels, that the evidence did not warrant any charge against Mr. Thornhill."

John O'Brien

"So you feel there would be no percentage in the forces making political decisions themselves?"

How

"If there was any influence, it certainly didn't come from the Provincial Government, nor did we.....either to the Federal Government or the R.C.M.P. We operate totally independently as we properly should."

Bruce Graham

"A senior R.C.M.P. officer has shed some new light on the bank loans investigation involving Nova Scotia Development Minister, Roland Thornhill. The Officer in charge of the forces' national commercial crime section says charges were not laid because the mounties did not have an air-tight case against Thornhill."

Blaine Henshaw

"For the first time since the Thornhill investigation was completed, a senior R.C.M.P. officer has explained specifically why charges were not laid. The officer in charge of the R.C.M.P.'s commercial crime section Superintendent Bob Roy of Ottawa tells A.T.V. News that the mounties simply did not have an air tight case against Thornhill. However, charges were considered, but the decision was made not to proceed with them because Thornhill had at least two possible defences. Superintendent Roy says the most obvious one was that Thornhill could have gained an even greater benefit by declaring personal bankruptcy, but instead he elected to pay at least 25% of his bank debts. Roy also says that evidence that Premier Buchanan was fully aware that the settlement was being negotiated would indicate that the Premier consented to the settlement in principle even though he never gave written consent. On the basis of those two possible defences, Roy says the force decided the case was not strong enough to lay a charge because chances for a conviction would have been slim. Meanwhile Corporal Cyril House, the mountie who investigated Thornhill's financial affairs has resigned from the R.C.M.P. because he disagrees with the force's decision. Superintendent Roy says Corporal House is a good policeman who did a complete and thorough investigation of the Thornhill case, and he is sorry to see him leave the force. However, Superintendent Roy also says he doesn't feel the Corporal's resignation was necessary."

"In effect, what Superintendent Roy has said about the investigation is that there was enough evidence to lay a charge against Thornhill, but that evidence in itself was not strong enough to support a conviction. And therefore, no charges were laid."

Bruce Graham

"Well, as expected the Thornhill bank loans affair highlighted question period in the Nova Scotia legislature today, but Opposition Leader, Sandy Cameron, was unsuccessful in his attempt to get an independent enquiry established by Government."

Ian Morrison

"There were cries of stone-walling and cover-up from the Opposition benches as Liberal Leader, Sandy Cameron, pressed Premier Buchanan to appoint the Chief Justice of the Supreme Court of Nova Scotia to look into the events surrounding the bank loans write-off of Development Minister, Rollie Thornhill and yesterday's resignation by the investigating officer, Cyril House of the R.C.M.P. Cameron says the investigation by the Chief Justice is necessary because there still is a cloud of suspicion hanging over the administration of justice in Nova Scotia and over all members of the legislature."

Sandy Cameron

"We were requesting that the Chief Justice carry out an enquiry into the situation surrounding the Thornhill affair. And the reason why is that in light of Corporal House's resignation yesterday, we felt that as a result of that we a lot of questions were brought up and therefore we needed some answers."

Ian Morrison

"Premier Buchanan says he can't understand the position of the Opposition. Apparently the investigation that has been carried out is acceptable to the senior staff of the R.C.M.P., including the Chief Commissioner, the Deputy Prime Minister of Canada, Alan MacEachen, the chief law officers of the province, but not to Cameron and his colleagues."

Premier Buchanan

"The Chief Justice of Nova Scotia certainly hasn't any jurisdiction to do such a thing and the Leader of the Opposition knows that. It is unfortunate that Mr. Cameron is not willing to accept the statement by letter, and he has a copy of it, of the independent investigation of the R.C.M.P. report made by the Chief Legal Officer of the R.C.M.P. in Ottawa."

Ian Morrison

"Buchanan says it was his Government that originally requested the investigation, and in his opinion, the whole matter has been properly and fully dealt with."