Jan-158

COMPENSATION FOR WRONGFULLY CONVICTED AND IMPRISONED PERSONS

FEDERAL-PROVINCIAL GUIDELINES

The following guidelines include a rationale for compensation and criteria for both eligibility and quantum of compensation. Such guidelines form the basis of a national standard to be applied in instances in which the question of compensation arises.

A. RATIONALE

Despite the many safeguards in Canada's criminal justice system, innocent persons are occasionally convicted and imprisoned. Recently three cases (Marshall, Truscott, and Fox) have focussed public attention on the issue of compensation for those persons that have been wrongfully convicted and imprisoned. In appropriate cases, compensation should be awarded in an effort to relieve the consequences of wrongful conviction and imprisonment.

B. GUIDELINES FOR ELIGIBILITY TO APPLY FOR COMPENSATION

The following are prerequisites for eligibility for compensation:

1) The wrongful conviction must have resulted in imprisonment, all or part of which has been served.

2) Compensation should only be available to the actual person who has been wrongfully convicted and imprisoned.

3) Compensation should only be available to an individual who has been wrongfully convicted and imprisoned as a result of a Criminal Code or other federal penal offence.

4) As a condition precedent to compensation, there must be a free pardon granted under Section 683(2) of the Criminal Code or a verdict of acquittal entered by an Appellate Court pursuant to a referral made by the Minister of Justice under Section 617(b).

5) Eligibility for compensation would only arise when Sections 617 and 683 were exercised in circumstances where all available appeal remedies

have been exhausted and where a new or newly discovered fact has emerged, tending to show that there has been a miscarriage of justice.

As compensation should only be granted to those persons who did not commit the crime for which they were convicted, (as opposed to persons who are found not guilty) a further criteria would require:

a) If a pardon is granted under Section 683, a statement on the face of the pardon based on an investigation, that the individual did not commit the offence; or

b) If a reference is made by the Minister of Justice under Section 617(b), a statement by the Appellate Court, in response to a question asked by the Minister of Justice pursuant to Section 617(c), to the effect that the person did not commit the offence.

It should be noted that Sections 617 and 683 may not be available in all cases in which an individual has been convicted of an offence which he did not commit, for example, where an individual had been granted an extension of time to appeal and a verdict of acquittal has been entered by an Appellate Court. In such a case, a Provincial Attorney General could make a determination that the individual be eligible for compensation, based on an investigation which has determined that the individual did not commit the offence.

C. PROCEDURE

When an individual meets the eligibility criteria, the Provincial or Federal Minister Responsible for Criminal Justice will undertake to have appointed, either a judicial or administrative inquiry to examine the matter of compensation in accordance with the considerations set out below. The provincial or federal governments would undertake to act on the report submitted by the Commission of Inquiry.

D. CONSIDERATIONS FOR DETERMINING QUANTUM

The quantum of compensation shall be determined having regard to the following considerations:

1. Non-pecuniary losses

a) Loss of liberty and the physical and mental harshness and indignities of incarceration;

b) Loss of reputation which would take into account a consideration of any previous criminal record;

c) Loss or interruption of family or other personal relationships.

Compensation for non-pecuniary losses should not exceed $100,000.

2. Pecuniary Losses

a) Loss of livelihood, including loss of earnings, with adjustments for income tax and for benefits received while incarcerated;

b) Loss of future earning abilities;

c) Loss of property or other consequential financial losses resulting from incarceration.

In assessing the above mentioned amounts, the inquiring body must take into account the following factors:

a) Blameworthy conduct or other acts on the part of the applicant which contributed to the wrongful conviction;

b) Due diligence on the part of the claimant in pursuing his remedies.

3. Costs to the Applicant

Reasonable costs incurred by the applicant in obtaining a pardon or verdict of acquittal should be included in the award for compensation.

Province of Nova Scotia

Position Description

Position: Director (Criminal)
Incumbent: Gordon S. Gale, Q.C.
Department: Attorney General
Division: Legal Services
Location: Halifax
Date: November, 1985

Ex. 159

General Accountability

This position is accountable for providing advice and assistance and ensuring consistency, through acquired expertise, in all aspects of the criminal justice system, directing and supervising criminal appeals, formulating policy in all matters related to policing and acting as inter-governmental liaison in all matters related to criminal law.

Structure

This position is one of four reporting to the Executive Director (Legal Services). The others are Director (Civil Litigation), Director (Solicitor Services), and Director (Prosecutions).

There are three positions reporting to the Director (Criminal). These are Senior Solicitor (Young Offenders Act) who also reports to the Director (Prosecutions) in regard to Young Offenders Act prosecutions; Solicitor, of which there are four; Prosecuting Officer, of which there are seventeen prosecuting officers and forty-eight assistant prosecuting officers, who report only in regard to criminal appeals.

Nature and Scope

The Attorney General is responsible for the administration of justice within the Province and included in this is the criminal justice system. The Director (Criminal) is the position responsible for ensuring the proper application of the criminal law. This involves ensuring uniformity of application of criminal law through appeal action, provision of advice on criminal law and

enforcement policy to police agencies, provision of advice to prosecutors on appeal requests, and advice to the Attorney General on the effect of proposed or actual legislation on the criminal law.

Due to the advent of the Charter of Rights the number and complexity of criminal appeals has increased requiring complex examination of cases to be considered for appeal to ensure that the possible impact of decisions is properly presented to the Courts. This requires greater direction and supervision of the solicitors presenting the appeals.

The functions of the Director (Criminal) are the formulation of policy to ensure consistency in enforcement. Through accumulated expertise advising and directing police in the investigation of specific cases and advising prosecutors on matters of criminal law. Through an overview of crime to ensure that investigatorial resources are used to best advantage. By reason of expertise, forming part of the provincial delegation to national meetings on justice to advise the Attorney General and Deputy on matters relating to criminal law and policing and to assist at implementing decisions made at such meetings. Negotiation with R.C.M.P. on contractual matters.

The Director (Criminal) is responsible for liaison with the Nova Scotia Police Commission and considering its requests to the Attorney General for the purpose of formulating policy and legislative considerations arising therefrom. In addition, the Director (Criminal) is responsible for liaison with the Nova Scotia Hospital and the Lieutenant Governor's Warrant Review Board to determine the disposition of persons remanded by Courts or placed on Lieutenant Governor's Warrants. The position is also responsible for pardons and transfer of probation.

The Director (Criminal) is responsible for specific matters assigned by the Deputy Attorney General including Nova Scotia Hospital Act, Fatality Inquiries Act, Horse Racing Commission, Liquor Control Act, Liquor License Board, Lottery Act and Gun Clubs.

Major challenges of this position are:

Analysis of criminal law, to respond to or make recommendations, on charges.

Analysis of law enforcement problems so that changes can be implemented in particular trouble areas consistent with ensuring uniformity of response on a province wide basis.

The Director (Criminal) functions without supervision and consults with the Executive Director of Legal Services where policy formulation would require the approval of the Attorney General.

There is need for constant contact with the Director (Prosecutions) to ensure that the both directorates act in concert.

There are frequent contacts with other areas of the Department in the course of management of the unit with the Director, Administrative Services, on personnel and budget matters, the Director, Court and Registry Services, concerning utilization of courts and court officials, the Director, Correctional Services in providing legal advice. To a lesser extent there is contact with the Director (Solicitor Services) and the Director (Civil Litigation) over matters which have arisen within departments that require police investigations but result in civil action being required rather than criminal action. Also, because this position is that of chief advisor on criminal law and enforcement frequent contact is had with the Attorney General and his Deputy.

Frequent contact is made with other provincial departments at the deputy minister and director levels in regard to violations of statutes administered by those departments. Nationally, there is frequent contact with deputy ministers and directors in justice departments of other provisions and the federal government for the purpose of exchange of information and procedures, developing positions on criminal law and policing, and also for discussion of specific cases which involve this or other jurisdictions.

Outside of government there is frequent contact by judges of all levels of courts seeking assistance and information on various facets of criminal law. Also, there are frequent contacts with the practising bar in relation to criminal matters.

The Director (Criminal) is a member of the following job related organizations:

- Uniform Law Conference, Criminal Section, the purpose of which is to recommend amendments to the criminal law and to review criminal law proposals made by the federal justice authorities.

- Criminal law consultation committee of the Law Reform Commission of Canada the purpose of which is to review and assist in that Commission's reports to Parliament.

- Atlantic Police/Academy Advisory Council the purpose of which is to offer advice and review their training programs and to keep the Attorney General apprised of its activities.

- Representative of the Deputy Attorney General on the Nova Scotia Chiefs of Police Association.

Dimensions

Head office staff - Four Solicitors
Budgets - R.C.M.P. 22,000,000
Indirect responsibility for 24 municipal police comprising 750 police officers.

Specific Accountabilities

Ensure that amendments and changes to criminal law are consistent with provincial laws and objectives and are responsive to criminal problems in the Province.

Through formulation of policy to ensure consistency and effectiveness in the enforcement of criminal law.

Through the application of expertise in criminal law to advise police and prosecutors on specific investigations.

By reason of expertise in criminal law and familiarity with government to act as a resource person on criminal and police matters to other levels of government, the courts, police and prosecutors.

To act as liaison between the Department and enforcement agencies to formulate new policies for enforcement and to act as legal advisor to agencies of government which have interaction between enforcement and criminal law matters.

Approved by:

Incumbent _____ Date Nov. 4/85

Deputy Minister _____ Date Nov 6/85

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GORDON S. GALE, DIRECTOR (CRIMINAL)

1. Responsibility for all matters related to the Criminal Code; Prosecutions generally and all criminal appeals.

2. Responsibility for all matters related to R.C.M.Police; Municipal Police; Police investigations and reports; Nova Scotia Police Commission, Holland College; Prosecuting Officers; Review Board under Section 547 of C.C.; Pardons and Transfers of Probation.

3. Responsibility for all legal matters related to native people (Indians).

4. Responsibility for all matters related to N. S. Commission on Drug Dependency.

R. A. MACDONALD, DIRECTOR OF ADMINISTRATIVE SERVICES AND INSPECTOR OF LEGAL AND REGISTRY OFFICES

1. Responsibility for all Departmental administrative matters.

2. Responsibility for all matters related to non-legal personnel including compliance with Civil Service Commission directives and matters related to Order in Council appointments.

3. Responsibility for all matters related to Justices of the Peace, Provincial Magistrate's Court and all employees assigned to Provincial Magistrate's Court, County Court and Supreme Court; all Legal and Registry Offices and employees thereof; all court reporting services and personnel and all departmental statistics.

4. Responsibility for all Departmental accounting, preparation of estimates, budgetary matters generally, monitoring expenditures, departmental inspection and audits.

5. Responsibility for all accounting matters related to Federal-Provincial Agreements affecting the Department, Nova Scotia Legal Aid; Maintenance Orders.

JAMES L. CRANE, DIRECTOR OF PROBATION AND INSPECTOR OF PENAL INSTITUTIONS

1. Responsibility for Adult Probation Services and Correctional Services generally.

2. Responsibility as Inspector of Penal Institutions.

3. Responsibility for such programs, projects, planning or consultative committees involved in the criminal justice system as shall be approved by the Deputy.

Department of Justice Canada
Ministère de la Justice Canada

Ottawa Canada
K1A 0H8

March 16, 1987

Mr. Gordon S. Gale, Q.C.
Director of Criminal Law
Department of the Attorney General
3rd Floor
Provincial Building
1723 Hollis Street
Halifax, Nova Scotia
B3J 2L6

Gordon

Dear Mr. Gale:

The Department of Justice, Canada, has received a proposal from the Union of Nova Scotia Indians for research to be conducted on the legal needs of native people in selected sites in the province of Nova Scotia. The proposed study would include a focus on the problems and needs of native adults and young offenders, victims and witnesses in their encounter with the justice system involving criminal, civil and family matters.

The request was reviewed by Department of Justice personnel and it is believed that the results of such a study would assist the department in determining and addressing access to justice issues that affect native peoples in Canada. It is hoped that the province of Nova Scotia would agree to the usefulness of the proposed research.

Enclosed for your review and comments are the proposal from the Union of Nova Scotia Indians, a copy of the letter that has been sent to the Union of Nova Scotia Indians in response to their proposal, and background material and the proposed study draft terms of reference that have been prepared by the Programs and Research Section of the Department of Justice. If there is agreement to proceed with the study, we would propose that it would occur in two phases. The first phase would be essentially a feasibility study to determine what are the perceived special legal needs of natives in Nova Scotia and how they can best be

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Canada

assessed. In other words, the feasibility study would identify, clarify and priorize research issues, determine the availability and quality of information to address these issues, and if a legal needs research study is feasible, propose a research design that would include a budget and time frame. Based on the findings of the first phase, the second phase, if mutually agreed upon, would involve a study of the legal needs of native people in Nova Scotia.

If there is interest in this study by your department, would you please identify a person who could meet to further discuss the proposed research with representatives from this department and the Union of Nova Scotia Indians. It is estimated that the first phase of the research would require a maximum of twenty weeks. All costs of the research would be borne by this department.

The contact person at the Department of Justice is Ms. Patricia Begin. Ms. Begin can be reached at (613) 993-6645.

In advance, thank you for your consideration of this project.

Sincerely,

D.C. Préfontaine, Q.C.
Assistant Deputy Minister
Policy, Programs and Research Branch

Encl.

ISSUE

To determine the feasibility of conducting research on the legal needs of native people in selected sites in the province of Nova Scotia with a view to identify and priorize research issues related to both the legal needs and problems aboriginal people face in their contact with the justice system and to determine the availability, relevance, sources and quality of data to address the issues. The study would include a focus on the problems and needs of native adult and young offenders, victims and witnesses.

BACKGROUND

Since the passage of the Young Offenders Act, the Department in cooperation with provincial officials and Native organizations, has conducted legal needs assessment studies of Native youths in Quebec and Labrador with a focus on the role the Native courtworker program could play in these provinces in meeting the legal needs of native young offenders (currently the federal-provincial agreements on the Native Courtworker program cover services for native adults only). A somewhat similar, albeit broader, study has also been conducted in New Brunswick, (where no Native Courtworker program presently exists), which examined the legal needs of Native adult and youth offenders as well as victims and witnesses in their encounter with the justice system Given the dearth of quantitative information on native involvement with the justice system in Canada (ethnicity is not part of national statistics), these studies were basically exploratory and qualitative in their approach. Study findings mainly identify and detail legal needs articulated by key actors from native communities and agencies and justice system personnel. These findings have contributed to exploring the phenomena of native legal needs and impediments to access to justice.

Generally, the information derived from the research has pointed to three related areas in which native young offenders (Quebec and Labrador) and adult and young offenders, victims and witnesses (New Brunswick) experience unmet needs - public legal education, access to legal services, and encounters with the criminal justice system. It was found that among native people there tends to be lack of awareness of law, legal rights and obligations; a lack of understanding of court procedures and the justice system; a lack of knowledge about available legal services; problems in availability, accessibility and utilization of services; limited access to duty counsel and delivery of legal aid; problems with the timing for circuit court cases and legal

counsel; a disproportionately high rate of guilty pleas and incarceration; and linguistic and cultural barriers to unproblematic interaction with justice personnel including legal aid and the justice process in general. Absent from these studies are empirically confirmed phenomena or "hard conclusions".

STATUS

The Chiefs of Nova Scotia have requested that the Department conduct a comprehensive needs assessment study on "current public legal issues confronting both the urban and reserve Indians of Nova Scotia and to establish baseline data on native people and the law in Nova Scotia". The province of Nova Scotia has been without a Native Courtworker program since 1981. According to the Union of Nova Scotia Indians, this has resulted in the absence of native oriented public legal education services covering a range of legal information needs of victims, witnesses and offenders with no alternative program to deliver native oriented legal services to aboriginal peoples in conflict with the law living on and off reserves in Nova Scotia.

RECOMMENDATION

If such a study is supported by both levels of government and native organizations in Nova Scotia, it is recommended that as a first step toward launching a needs assessment study in Nova Scotia, a feasibility study be conducted. From the previously conducted native legal needs studies, much useful, albeit non-random and unsystematic, descriptive information has been collected. What has been learned can be applied to the formulation and testing of hypotheses and to determine if more rigourous research methods would improve data quality and representativeness as well as the generalizability of study findings thereby allowing for more definitive investigation and conclusions respecting native legal needs, problems and improved services and possibly new program options. In other words, a feasibility study could clarify relevant issues and concepts, establish reseach priorities, determine data collection capabilities and address the costs, strengths and weaknesses of conducting in-depth native legal needs research in Nova Scotia. It could then be used as a tool, in addition to consultations with a research steering committee, to inform decision-making regarding the value of conducting this research in Nova Scotia.

PROPOSED STUDY TERMS OF REFERENCE

Purpose:

To determine the feasibility of conducting research on the legal needs of native people in selected sites in the province of Nova Scotia with a view to identify and priorize research issues related to both the legal needs and problems aboriginal people face in their contact with the justice system involving criminal, civil and family matters and to determine the availability, relevance, sources and quality of data to address the issues. The study shall include a focus on the problems and needs of native adult and young offenders, victims and witnesses. The study shall propose a study design and cost estimate.

Essential Tasks:

1. Review and synthesize study findings from completed and relevant research with a view to identifying themes and issues. Meet with the advisory committee to discuss research issues and priorities and to review and finalize the work plan for the feasibility study.

2. Contact Native organizations and agencies (on-reserve, off-reserve, urban centres) to ascertain their interest and commitment regarding the feasibility and (the possible) subsequent study.

3. Based on (2), conduct on-site visits to select reserves, urban and rural centres to determine concerns regarding Native legal needs and problems encountered by Natives in their contact with the justice system as perceived by them, recommended priority research issues, available data and quality.

4. Consult with local Crown counsel, police, corrections and justice system officials regarding the study, determine recommended priority issues of importance for study, ascertain their cooperation regarding subsequent data collection, and available data and quality.

5. Consult with relevant social service networks to obtain cooperation and support, identify issues recommended for study, and available data and quality.

6. Prepare a progress report (1) based on the consultations outlined in (1), (2) and (3) indicating:

- issues identified by steering committee and Native organizations;
- the sites selected for the research, representativeness, their relevant characteristics, the

rationale for selection, level of local support;
- priority issues, relevant hypotheses for investigation;
- the nature of the available information related to Native involvement with the justice system and their legal needs; proposed methods of accessing qualitative and quantitative data; its availability, quality, comprehensiveness and comparability.

7. Prepare a progress report (2) based on consultations outlined in (4) and (5) indicating:

- issues identified by justice system practitioners and social service workers, how they were selected, their representativeness;
- the key actors selected for inclusion in the study, how they were selected and their representativeness;
- level of interest or support for the study;
- hypotheses to be investigated in the research;
- the nature of available quantitative data related to native involvement with the justice system (e.g. type and frequency of offences or actions, demographics of offenders or litigants, charges, pleas, representation, case outcomes or decisions, dispositions) and related to the legal information and other needs of native peoples; proposed methods of accessing qualitative and quantitative data; its availability, comprehensiveness, comparability and quality.

8. Prepare a final research design report that will identify the conceptual approach to the study (e.g. identify and priorize research issues and objectives, research hypotheses\questions and research concepts); determine the data collection methodology (e.g. quantitative and qualitative data elements and the data sources); construct preliminary research instruments; identify the preliminary analysis plan (e.g. sampling methods and methods of data analysis and assessment of data availability, comprehensiveness, quality and reliability from the various data sources); and estimate the costs of conducting the research.

PROPOSED RESEARCH ISSUES

Legal Education Needs Issues

Are native people aware of the law (criminal, civil, administrative, family)?

Are native people aware of their legal rights?

Do they use the law to exercise their legal rights, to settle disputes, and to meet legal obligations?

Do native offenders, victims and witnesses have an understanding of the criminal, civil and family law process? If yes, to what extent? What is the nature of the information they have received and the source?

What are the articulated demands and needs of native people, native agencies, social services, and justice system personnel for legal information?

Access To Justice Issues

What legal and other services are available to native litigants, victims, offenders and witnesses (e.g. crime prevention, mediation, interpretation, legal aid, counselling, in-court orientation, referral, etc.)?

How are they delivered and by whom?

Are the services accessible?

Are the native people aware that the services are available? How are they informed? Do they utilize the services?

Are there cultural, social or linguistic barriers affecting access or delivery of the services?

What is the quality of the services?

Contact With the Criminal Justice Process Issues

What are the charging practices? What are the determinants of the decision to lay a charge or not and of the nature of the charge(s) laid? Among others, are alcohol or the family related aspects of the offence factors to the decision? What is their relative importance?

Are native offenders informed of their rights and, in particular, of their right to counsel? Are they afforded legal representation at all stages? Can the quality of this legal representation be assessed? How?

Are there social, linguistic and cultural barriers for the treatment of aboriginal offenders, victims and witnesses by the criminal justice system? If yes, what are they and how could they be resolved?

What is the nature of the court dispositions of the cases? What are its determinants?

Are aboriginal victims and witnesses kept informed of the outcome

of the process? By whom and with what level of success?

At the prosecution and court levels, what are the problems encountered by aboriginal offenders, victims and witnesses? What organizations\mechanisms exist to respond to these problems? What are the options to respond to unmet needs? Do the options vary according to the various groups of aboriginal people? Age? The situation of offender vs victim or witness?

Department of Justice Canada / Ministère de la Justice Canada

Ottawa Canada
K1A 0H8

#162

. March 16, 1987

Deputy Attorney General
RECEIVED
Nova Scotia

Mr. Gordon S. Gale, Q.C.
Director of Criminal Law
Department of the Attorney General
3rd Floor
Provincial Building
1723 Hollis Street
Halifax, Nova Scotia
B3J 2L6

Gordon

Dear Mr. Gale:

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The request was reviewed by Department of Justice personnel and it is believed that the results of such a study would assist the department in determining and addressing access to justice issues that affect native peoples in Canada. It is hoped that the province of Nova Scotia would agree to the usefulness of the proposed research.

Enclosed for your review and comments are the proposal from the Union of Nova Scotia Indians, a copy of the letter that has been sent to the Union of Nova Scotia Indians in response to their proposal, and background material and the proposed study draft terms of reference that have been prepared by the Programs and Research Section of the Department of Justice. If there is agreement to proceed with the study, we would propose that it would occur in two phases. The first phase would be essentially a feasibility study to determine what are the perceived special legal needs of natives in Nova Scotia and how they can best be

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If there is interest in this study by your department, would you please identify a person who could meet to further discuss the proposed research with representatives from this department and the Union of Nova Scotia Indians. It is estimated that the first phase of the research would require a maximum of twenty weeks. All costs of the research would be borne by this department.

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In advance, thank you for your consideration of this project.

Sincerely,

D.C. Préfontaine, Q.C.
Assistant Deputy Minister
Policy, Programs and Research Branch

Encl.

Department of Justice Canada
Ministère de la Justice Canada

Ottawa Canada
K1A 0H8

March 16, 1987

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

Dear Kevin:

Re: Proposed Research on Native Legal Needs in Nova Scotia

As follow-up to our meetings late last year and to our recent telephone conversations, regarding the above mentioned, I am writing to inform you about the consideration our department is giving to this research proposal. As it was explained to you, our department could not proceed with such a research proposal unless the province of Nova Scotia was in support of the initiative and expressed a willingness to collaborate. In addition, the scope of the study could involve other ministries at the federal level. Consultations are underway regarding the research proposal with the appropriate ministries both at the provincial and federal levels. I will keep you informed on the developments and results of our consultations.

Sincerely yours,

Eddie Gardner

Eddie Gardner
Chief, Native Programs
Programs and Research Section

c.c. Daniel Sansfaçon
Patricia Begin

Canada

ISSUE

To determine the feasibility of conducting research on the legal needs of native people in selected sites in the province of Nova Scotia with a view to identify and priorize research issues related to both the legal needs and problems aboriginal people face in their contact with the justice system and to determine the availability, relevance, sources and quality of data to address the issues. The study would include a focus on the problems and needs of native adult and young offenders, victims and witnesses.

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counsel; a disproportionately high rate of guilty pleas and incarceration; and linguistic and cultural barriers to unproblematic interaction with justice personnel including legal aid and the justice process in general. Absent from these studies are empirically confirmed phenomena or "hard conclusions".

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RECOMMENDATION

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PROPOSED STUDY TERMS OF REFERENCE

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Essential Tasks:

1. Review and synthesize study findings from completed and relevant research with a view to identifying themes and issues. Meet with the advisory committee to discuss research issues and priorities and to review and finalize the work plan for the feasibility study.

2. Contact Native organizations and agencies (on-reserve, off-reserve, urban centres) to ascertain their interest and commitment regarding the feasibility and (the possible) subsequent study.

3. Based on (2), conduct on-site visits to select reserves, urban and rural centres to determine concerns regarding Native legal needs and problems encountered by Natives in their contact with the justice system as perceived by them, recommended priority research issues, available data and quality.

4. Consult with local Crown counsel, police, corrections and justice system officials regarding the study, determine recommended priority issues of importance for study, ascertain their cooperation regarding subsequent data collection, and available data and quality.

5. Consult with relevant social service networks to obtain cooperation and support, identify issues recommended for study, and available data and quality.

6. Prepare a progress report (1) based on the consultations outlined in (1), (2) and (3) indicating:

- issues identified by steering committee and Native organizations;
- the sites selected for the research, representativeness, their relevant characteristics, the

rationale for selection, level of local support;
- priority issues, relevant hypotheses for investigation;
- the nature of the available information related to Native involvement with the justice system and their legal needs; proposed methods of accessing qualitative and quantitative data; its availability, quality, comprehensiveness and comparability.

7. Prepare a progress report (2) based on consultations outlined in (4) and (5) indicating:

- issues identified by justice system practitioners and social service workers, how they were selected, their representativeness;
- the key actors selected for inclusion in the study, how they were selected and their representativeness;
- level of interest or support for the study;
- hypotheses to be investigated in the research;
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PROPOSED RESEARCH ISSUES

Legal Education Needs Issues

Are native people aware of the law (criminal, civil, administrative, family)?

Are native people aware of their legal rights?

Do they use the law to exercise their legal rights, to settle disputes, and to meet legal obligations?

Do native offenders, victims and witnesses have an understanding of the criminal, civil and family law process? If yes, to what extent? What is the nature of the information they have received and the source?

What are the articulated demands and needs of native people, native agencies, social services, and justice system personnel for legal information?

Access To Justice Issues

What legal and other services are available to native litigants, victims, offenders and witnesses (e.g. crime prevention, mediation, interpretation, legal aid, counselling, in-court orientation, referral, etc.)?

How are they delivered and by whom?

Are the services accessible?

Are the native people aware that the services are available? How are they informed? Do they utilize the services?

Are there cultural, social or linguistic barriers affecting access or delivery of the services?

What is the quality of the services?

Contact With the Criminal Justice Process Issues

What are the charging practices? What are the determinants of the decision to lay a charge or not and of the nature of the charge(s) laid? Among others, are alcohol or the family related aspects of the offence factors to the decision? What is their relative importance?

Are native offenders informed of their rights and, in particular, of their right to counsel? Are they afforded legal representation at all stages? Can the quality of this legal representation be assessed? How?

Are there social, linguistic and cultural barriers for the treatment of aboriginal offenders, victims and witnesses by the criminal justice system? If yes, what are they and how could they be resolved?

What is the nature of the court dispositions of the cases? What are its determinants?

Are aboriginal victims and witnesses kept informed of the outcome

of the process? By whom and with what level of success?

At the prosecution and court levels, what are the problems encountered by aboriginal offenders, victims and witnesses? What organizations\mechanisms exist to respond to these problems? What are the options to respond to unmet needs? Do the options vary according to the various groups of aboriginal people? Age? The situation of offender vs victim or witness?

A RESEARCH PROPOSAL

FOR

AN EXAMINATION OF PUBLIC LEGAL EDUCATION PROGRAMING FOR THE MICMAC PEOPLE OF NOVA SCOTIA

SUBMITED TO

THE FEDERAL DEPARTMENT OF JUSTICE

SUBMITTED BY:
THE UNION OF NOVA SCOTIA INDIANS
Sept. 12, 1985

Introduction

For the Micmac people of Nova Scotia the interest in legal services and the development of an awareness of the function of the law in society is a relatively recent occurrance. For the most part the interest in the law has been primarily in the area of land claims, fishing and hunting laws, etc., as opposed to the individual problems a person faces because of native status or their socio-economic condition.

With the increased interest in economic development spurred on by the availability of financial support from the Native Economic Development Fund and the creation of Indian owned financial development institutions there is bound to arise more interest and need for legal information that is specialized, i.e. commercial law.

For the most part Nova Scotia's reserves are rural communities and suffer from a lack of access to legal information that is often taken for granted by people living in our urban centres. For the Micmac people access has a broad definition that goes beyond just physical access to include knowledge of the availability of information services as well as the unique cultural and linquistic barriers that face Indian people.

In addition there needs to be a special recognition of the impact of the legal system on native women both as offender and as one who is affected by the social impact of a family or community member coming in conflict with the law.

In a recent report the Legal Services Corporation of the United States notes several major access barriers for native people:

> 1. Where no legal services are available;
> 2. Where the target group is unable to reach program offices because of physical distance, lack of transportation, etc.,
> 3. Where the service or program is unable to provide service on a particular problem because of inability or unwillingness;
> 4. Where there is a lack of knowledge of the program or knowledge that the program could be helpful on a particular problem;
> 5. Where potential services of information or referral direct the client elswhere irrespective of the effectiveness of assistance that could be had from the available legal services program;
> 6. Access problems due to language, ethnicity or culture;
> 7. Where lack of expertise or quality results in poor service and advice.

It is one focus of this proposal to identify the areas of legal public education in the native communities of Nova Scotia that do not fall within the context of conflict with the law. We must not focus on exclusively on criminal law matters.

In reality the legal problems of Micmac people are varied. In the non-criminal area such issues as:

* discrimination in employment
* loan defaults
* unfair consumer practices
* denial of benifits due under income support programs

The field of public legal education services for Micmac people in Nova Scotia has been in a state of significant decline over the past number of years. With the loss of the native court workers program in 1981 there has been no legal services operated by native or non-native people directed at the Micmac community.

With the disappearance of the court worker program native people have very little access to information on the legal system, and it is generally perceived as a foreign, white controlled system, that impacts dramatically on life in the rural reserve communities.

Just as the reserve communities perceive the legal system of Canadian society as alien and mysterious, so to the growing population of native people living in our urban centres reacte with distrust to the law which is seen as a tool of white control. Currently there are no programs to act as sources of

information and mediation for the urban Indian of Nova Scotia. For all native people in Nova Scotia, whether rural or urban, there is a need to demystify the law and make it part of their own values and rules.

The Chiefs of Nova Scotia in recognizing this state of affairs have therefore instructed their staff to prepare a comprehensive research proposal the results of which will form the basis for a comprehensive strategy for a whole new set of innovative program initiatives to meet the legal services needs for the Indian people of Nova Scotia.

RESEARCH OBJECTIVES

This study will undertake to carry out a comprehensive needs assessment on current public legal issues confronting both the urban and reserve Indians of Nova Scotia and to establish baseline data on native people and the law in Nova Scotia. Secondly it will undertake to develop a series of program strategies that will respond effectively to the identified needs of the Micmac people. More specifically the study will:

1. Undertake a literature search on legal service issues for native people in Canada and the United States.

2. Undertake an extensive process of consultation at the reseerve and urban levels with native people to identify what the people themselves perceive to be the problem areas.

3. Analyze the the above collected data to establish the legal service needs of Micmac people who live

   A. On reserves

   B. Off reserves

   C. In urban areas

4. Establish baseline data for Micmac people in terms of Types of crime, type of sentence and place of incarceration, male, female, and youth breakdown, Micmac attitudes to incarceration, and the particular problems of native women and youth.

5. Identify the special problems that native people encounter in facing municipal or provincial legal jurisdictions including the special problems of incarceration and fines in county and municipal incarceration.

6. Identify a number of program strategies that will provide sources of reliable, objective information to native people in the areas of:

1. legal education programs
2. legal information programs
3. legal service programs
4. judicial services
5. local correctional services

6. Make recommendations to the chiefs of Nova Scotia for a comprehensive action plan for Micmacs and the law in Nova Scotia which will give much greater ownership of the legal process to native people.

STUDY TEAM

Over all responsibility for the research project will rest with Kevin Christmas, Director of Economic Development for the Union of Nova Scotia Indians. Tom O'Leary, Cape Community Planning Associates, will act as principal consultant and researcher. He will be assisted in carrying out general research by a member of the Micmac community.

In addition it is proposed that a special advisory committee be established to provide ongoing advise and direction to the study team. Such a committee would be invaluable in defining focus to the overall project as well as assisting the study team in setting its priorities. This committee would be made up of representatives of the private and public sectors as well as representatives from other native associations with particular reference to the Native Council of N.S. and to the N.S. Native Women's Association.

The advisory committee would also review the draft final report as to its adequate coverage of such areas as the barriers native people confront in accessing the legal system; the expectation of the native community; as well as equality of aboriginal protection under the law.

METHODOLOGY

The appropriate methodology for this research project will consist of:

1. An extensive analysis of the literature using standard library research techniques as well as computer based searches therough appropriate databases.

2. Consultation with community leaders and band councils.

3. Interviews with appropriate government officials having a responsibility for law and justice relate areas.

4. Visitations to a number of innovative program models across the country.

5. Interviews with selected individuals from the Micmac community who have come into conflict with the law.

6. Special interviews with native people living in an urban setting as well as native women.

7. The consultation with the special advisory committee to provide overall feedback and direction to the study team.

8. The identification of new program strategies that can be said to be on the leading edge of progam innovation for natives and the law such as the concept of a Native Justice of the Peace program.

TIMEFRAME

It is expected that the study can be completed in a sixteen (16) week period.

BUDGET

Project Manager 40 days @ 300	12,000
Principal researcher 48 days @ 350	16,800
Rsearcher 80 days @ 100	8,000
Benefits @ 10%	3,680
Total	$40,480

Administration

office rent	4,000
office equipment	1,200
photocopying	1,200
telephone	2,000
travel and accomdation	15,000
report printing	2,000
total	25,400

Special advisory committee.(travel,accomadation honourarium etc.)	10,000
Total	$75,880

Nova Scotia

Attorney General

Memorandum

From: Martin E. Herschorn
Director (Prosecutions)

M.E.H.

Our File Reference: 23-87-0003-06

To: Gordon F. Coles, Q.C.
Deputy

Your File Reference:

Subject: **Federal Department of Justice Study - Legal Needs of Native People**

Date: March 18, 1987

In reviewing Gordon Gale's mail while he is away on vacation, I came across the attached correspondence from Dan Prefontaine. I thought it appropriate to bring this correspondence to your attention.

MEH:if
Encl.
c.c. Gordon S. Gale, Q.C.

25-87-0003-06

May 5, 1987

Mr. Daniel Sansfacon
Policy, Programs & Research Branch
Department of Justice
OTTAWA, Canada
K1A OH8

Dear Mr. Sansfacon:

Re: Federal Department of Justice Study
Legal Needs of Native People

Further to Mr. Prefontaine's letter of March 16th addressed to Gordon Gale of this Department concerning the proposed research on the legal needs of native people in Nova Scotia, I acknowledge the usefulness of such research.

I am referring your correspondence to R. G. Conrad, Executive Director, Legal Services, whom I suggest be your initial contact person in the Department. Mr. Conrad may wish to identify other persons depending on the need in the course of your proposed studies.

Since matters concerning aboriginal people in this Province are the responsibility of the Department of Social Services, I am copying Mr. Prefontaine's correspondence to Carmen Moir, the Deputy Minister of Social Services, who may wish to name a contact person in his Department.

Yours very truly

Gordon F. Coles

c.c. Carmen Moir

Nova Scotia

Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Our file no: 23-87-0003-06
Our phone no:

. September 11, 1987

Mr. Carmen Moir
Deputy Minister
Department of Social Services
Halifax, Nova Scotia

Dear Carmen Moir:

Re: Federal Department of Justice Study
Legal Needs of Native People

This relates to Gordon Coles' letter of May 5, 1987 to Mr. Daniel Sansfacon, a copy of which was forwarded to your attention. I am enclosing a copy of that letter for your ready reference.

The Department of Justice wishes to arrange a meeting in Halifax of representatives of the Department of Attorney General and other interested officials. I would appreciate it if you would advise me whether the Department of Social Services should be represented at that meeting and, if so, the name of the individual nominated for that purpose.

Yours very truly,

R.G.C.

R. Gerald Conrad, Q.C.
Executive Director

attachment

Allan Clarke Sept 29
Martha Crowe 9:30

Patricia Bagin
Dept of Justice

Bob
Ceci

Nova Scotia

Department of Social Services

Office of
the Deputy Minister

PO Box 696
Halifax, Nova Scotia
B3J 2T7

September 16, 1987

Mr. R. Gerald Conrad, Q.C.
Executive Director
(Legal Services)
Department of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Conrad:

Thank you for your letter of September 11, 1987 regarding the Federal Department of Justice Study on Legal Needs of Native People.

I am pleased to advise you that the Department of Social Services will be sending two representatives to the upcoming meeting on September 29, 1987, Mrs. Martha Crowe and Mr. Allan Clark.

If I can be of any further assistance, please do not hesitate to contact me.

Yours truly,

Carmen Moir
Deputy Minister

CM/ARC/sh

MEETING cunrad, [illegible] Crowe, [illegible] & 2 [illegible]

LEGAL NEEDS - NATIVE PEOPLE Sept 29/87.

- Research on legal needs

- Union N.S.I. Sept 12, 85 sent in a proposal

- we don't want [illegible] o ol stock
- research for nothing
- victims / offenders.

- Fed Gov't

- Standing Committee

UNSI
Agent

[illegible] on Edmund Yorie.
STEP I Our Position
STEP II Feasibility study
" III Review
" IV Decision / go ahead with the STUDY.

Sent [illegible].

Nova Scotia

Attorney General

Memorandum

From **R. Gerald Conrad, Q.C.**

Our File Reference **23-87-0003-06**

To **The Honourable Terence R.B. Donahoe,Q.C.**

Your File Reference

Subject

Date **October 1, 1987**

The Federal Department of Justice received a proposal from the Union of Nova Scotia Indians for research to be conducted into the legal needs of native people in selected sites in the Province of Nova Scotia. The proposed study would include a focus on the problems and needs of native adults and young offenders, victims and witnesses in their encounter with the justice system involving criminal, civil and family matters.

The Justice Department concluded that such a study would assist in determining and addressing access to Justice issues that affect native peoples in Canada. They asked Nova Scotia to assess the usefulness of the proposed research.

They propose that the study proceed in two phases. The first would be essentially a feasibility study to determine what are the perceived special legal needs of Indians in Nova Scotia and how they can best be assessed. Based on the feasibility study the second phase, if mutually agreed upon by Justice and ourselves, would involve a study of the legal needs of native people in Nova Scotia.

On September 29th Allan Clark and Martha Crowe of the Department of Social Services, and Bob Lutes and myself met with Daniel Sansfacon and Patricia Begin of the Department of Justice. The purpose of the meeting was to consider, in a general way, the focus of the proposed study and to determine whether it was appropriate to authorize a feasibility study.

...../2

Following our meeting the provincial representatives consulted and agreed unanimously that no decision should be made on the merits of such a study until the conclusion of the Marshall Inquiry. As you know, the Marshall Inquiry Commission has interpreted its mandate to inquire into the whole of the administration of criminal justice in Nova Scotia and the Union of Nova Scotia Indians has status before the Commission. The Commission has authorized research of both a legal and an empirical nature into racial discrimination in Nova Scotia. I assume that the research will be directed to circumstances in 1971 as well as in 1987 although I have no direct knowledge thereof.

If you agree that it would be inappropriate at this point in time to make a decision with respect to the proposed study, I will advise the Federal officials that no decision will be made until the Report of the Marshall Inquiry has been received.

K.M. SYCHOLOGICAL SL VICES

PSYCHOTHERAPY - CLINICAL HYPNOSIS

Kris Marinic, M.S., Psychologist
(Candidate Register)

Suite 373
Halifax Professional Centre
5991 Spring Garden Road
Halifax, N.S. B3H 1Y6

Office
422-3572

#163

Exhibit Number 163
Filed on: JUN 27 1988, 1987
At The Hearing of the
Royal Commission On the
Donald Marshall, Jr., Prosecution
Registrar

The Royal Commission Into the
Donald Marshall, Jr. Prosecution
Halifax, N.S.

June 21, 1988

Re: Donald Marshall

Dear sirs:

I saw the above named individual on 23 occasions between the period of February 3rd and August 1st, 1984 at his request regarding assistance with adjustment following his release from prison. Then I saw Mr. Marshall on 9 occasions between April 3rd and July 24th, 1987 at his lawyer's request in order to help the former cope with stress associated with the, at the time, upcoming inquiry. Subsequently, I saw him on June 20, 1988 again at the request of his legal counsel regarding his quality of testimony; that is whether Mr. Marshall's ability to testify would be adversely affected by the procedings being televised.

At our most recent session he appeared to be exessively worried, anxious and fearful as well as fatigued and wasted. It is my opinion that his condition has deteriorated since I last saw him. He seemed to be particularly afraid of the humiliation associated with even further public exposure.
Mr. Marshall is a self-conscious and mistrustful individual who tends to perceive his enviroment and his present situation in particular, as hostile and threatening.

Given his past experiences and the ongoing current stress, in my opinion, the exposure to television cameras and bright lights would compromise his ability to testify. Most likely, his level of anxiety would adversly affect his speech, concentration and memory.
Consequently, not only would he endure more distress, the quality of his testimony would also suffer.

I therefore, recommend that the television equipment be turned off during Mr. Marshall's testimony.

Sincerely,

(K. Marinic, M.S.)

cc:

Mis Ann S. Derrick
Buchan, Derrick and Ring

RECEIVED
JUN 22 1988

#164

STATEMENT OF FACTS WITH RESPECT TO THE
"THORNHILL" CASE

I. Background

1. This case arose out of circumstances surrounding a compromise financial settlement reached by the Honourable Roland Thornhill ("Thornhill") on November 27, 1979 to settle his indebtedness to four Canadian chartered banks.

2. As of January 31, 1978 Thornhill was indebted to the four banks in the aggregate amount of $142,576.83 all of which was unsecured. This debt had been accumulated over a number of years commencing in the early 1970's.

3. Thornhill put forth a proposal, through his accountant, on September 17, 1979 whereby he would pay 25% owing to each of the banks, providing they all accepted and, there was a forgiveness of interest accruing since January 31, 1978. The four banks confirmed their acceptance during the period September 21 to November 5, 1979.

4. Thornhill had been Minister of Development in the Provincial Government since October 5, 1978.

II. Pre-Investigation Stage - January - March, 1980

5. In February, 1980, rumours were circulating publicly regarding the Thornhill case and the RCMP met with the Attorney General, the Deputy Attorney General, et al to brief the Attorney General.

6. On March 7, 1980 the Attorney General advised the Legislature that the RCMP were not conducting an investigation in relation to any government official, the provincial government or any government agency.

7. On March 11, 1980 the Attorney General, the Deputy Attorney General and Mr. Gordon Gale met with Superintendent Christen, OiC, CIB and Inspector Blue, OiC, CCS, to discuss RCMP involvement in the Thornhill matter. Following this meeting, the Deputy Attorney General reviewed and commented upon a draft press release prepared by Supt. Christen who released a modified version stating that the Attorney General was correct in his report to the House of March 7,

1980 and advising that: "Information had been received by the RCMP concerning such matters and in mid-February inquiries were made into such information, which inquiries did not warrant the commencement of an investigation".

III. RCMP Investigation - April 10, 1980 - August 29, 1980

8. On Thursday, April 10, 1980 Chief Superintendent Feagan and Inspector McInnes met with Gordon Gale, Director Criminal, and advised him that: "we would be proceeding with an investigation to which he agreed".

9. On April 18, 1980 the Attorney General, Harry How, is reported in a news article entitled "RCMP Seeking Documentation" as follows:

> "He told reporters later he is convinced Mr. Thornhill did nothing improper in the settlement with the banks and he hopes the Minister will stay in his job for a 'long time to come'.
> He said the matter of the Minister keeping his portfolio during the investigation would be up to the Premier to decide.
> Mr. How said his Department is letting the RCMP conduct the investigation.
> 'We are not going to be seen as exercising any political interference with what they do'."

10. On May 7, 1980 Cpl. House filed an interim report in which he concluded:

> "That there is sufficient evidence on hand to establish a prima facie case under Section 110(1)(c)C.C.
>
> Consideration is now being given as to whether or not there is sufficient evidence to substantiate an offence by the banks or its officers. Offences that are being considered are Sec. 110(1)(b)C.C. or Conspiracy, Sec. 423 C.C."

This RCMP report was forwarded to Gordon Gale's attention on May 14, 1980.

11. On June 26, 1980 a further interim RCMP report was submitted and concluded as follows:

> "Further investigation to follow.... upon completion of these inquiries an analysis of information and documentation on hand, the Crown Prosecutor will be contacted and a decision made regarding the laying of charges".

This report was forwarded to Mr. Gale's attention on June 27, 1980.

12. In early July, 1980 David Thomas, Q.C., Chief Prosecuting Officer, instructed Kevin Burke to meet with Cpl. House, Investigating Officer, to determine if charges should be laid, and then to forward his recommendations to Thomas and await further instructions.

13. On July 18, 1980 a further interim RCMP report was submitted detailing interviews with senior officers of the various banks involved and advising that:

> "preliminary discussions have been held with Crown Counsel, Mr. Burke, and it is intended to have further discussions with him when he and the investigator return from holidays. A review of all information gathered to-date will be undertaken then and any further course of action decided upon".

14. On July 24, 1980 Gordon Gale contacted the RCMP and advised of his 'extreme displeasure' that the Investigating Officer, Cpl. House had met with Crown Prosecutor, Kevin Burke. The RCMP spokesperson 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".

15. Following receipt of the RCMP report referred to in paragraph 14 herein, which was forwarded on July 23, 1980 Mr. Gale wrote to Chief Supt. Feagan to convey the Deputy Attorney General's instructions:

> "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 the long awaited report in to 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".

16. On September 4, 1980, Mr. Thomas, Chief Prosecuting Officer wrote to Mr. Gale "Re: Roland J. Thornhill" as follows: "As it appears this file is being monitored by yourself, it will be considered concluded here unless we receive instructions from you".

17. On August 29, 1980 a final report was submitted by the investigating officer and subsequently forwarded to Mr. Gale's attention by coverning letter dated September 11, 1980. The report concluded with the following two paragraphs:

> "The foregoing, read in conjunction with the attachments, outlines some of the evidence gathered to-date. This matter is a very involved and time-consuming one. On the basis of the information outlined as a result of my investigation, I would like to make the following recommendations: '1) That I have established a prima facie case of sec. 110 (1) (c) C.C. against Mr. Thornhill. Therefore, a prosecutor be appointed to take this matter before the courts; 2) That I have shown some evidence that Mr. Thornhill obtained funds by FALSE PRETENSES and I would like to further discuss this matter with a prosecutor (Sec. 320 (1)(c) C.C.) (Attachment #3). 3) That the four chartered banks involved in the settlement have violated the Criminal Code - Sec. 110(1)(c) by virtue of Sec. 21(1)(b) C.C. and consideration should be given to charging them; 4) That there is evidence that the four chartered banks, Mr. Thornhill, ... [et al]... have conspired to have Mr. Thornhill receive a benefit and should be charged with Conspiracy, Sec. 421(1)(d) C.C.
>
> In view of the fact that this is a delicate matter as well as a very involved one, it is requested that a Crown Prosecutor be appointed in view of Mr. Gale's correspondence of 80-07-25. I would like to discuss this matter with the prosecutor to:
>
> 1. Get his advice regarding the importance of the evidence available;
> 2. Get his advice regarding the importance of obtaining additional evidence to support the charge(s);
>
> 3. Seek his advice on questions of law; and,
>
> 4. The procedures that will be followed in court. This is per OPS. MAN. III.6.E.4."

#166

Therefore be it resolved that all members of this House understand the essential contribution of a free media and what it makes to a democratic government, and condemns any attempt by members of this House to intimidate or otherwise interfere in the discharge of those duties.

MR. SPEAKER: The notice is tabled.

Order, please.

This is a little bit out of order, but there has been a request, I understand, from the Government House Leader that we revert to Statements by Ministers and it would require the consent of the House.

MR. WILLIAM GILLIS: That would be placed in order.

MR. VINCENT MACLEAN: Why don't you just let it go . . .

MR. SPEAKER: Well, it is up to the House. It would require unanimous consent to revert . . .

Is it agreed?

It is agreed.

The honourable Solicitor General.

HON. RONALD RUSSELL: Mr. Speaker, would you please call the order of business, Statements by Ministers.

STATEMENTS BY MINISTERS

MR. SPEAKER: The honourable Attorney General.

HON. TERENCE DONAHOE: Thank you very much, Mr. Speaker. I had hoped that what I am now going to read would have been in my possession before my distinguished colleague, the Minister of Industry, Trade and Technology, rose to his feet a moment ago.

I rise now, Mr. Speaker, to advise you and to advise all members of the House that I am in receipt of a telex communication from Kelowna, B.C., which bears on the matters which have occupied so much time in this House the last few days and are the subject of the statements made just moments ago by the Minister of Industry, Trade and Technology. With the indulgence of the House I wish to read a communication which has been sent to me from Mr. Hugh Feagan and it reads as follows:

"It is not usual for me to become involved in matters which were completed prior to my retirement from the R.C.M.P.

My name is being used now simply because a reporter from the Toronto Star newspaper contacted me to ask about my involvement in recollection of and opinions about, the investigation of the affairs of Hon. Roland Thornhill.

It is clear from my reading of the Toronto Star article that what I have said about the matter has been misrepresented.

It must be made clear, as it was in Chief Commissioner Simmond's letter of February 21, 1981 addressed to Mr. Harry How, Attorney General of Nova Scotia of the day, that because the matter was of a high profile nature, steps were taken to have it very carefully reviewed with the R.C.M. Police force both at the divisional and headquarters level. Further, it is important to remember that the Force was clearly of the view that it had the right to lay charges, regardless of any legal advice it received, from the Attorney General's Dept., if the Force was convinced that there were reasonable grounds to do so.

This entire matter was carefully reviewed under the direction of Mr. J.R.R. Quintal who was the senior officer for criminal operations at R.C.M.P. Headquarters in Ottawa.

Initially, prior to that review, I was of the opinion that charges could possibly go forward against Mr. Thornhill. Following the complete review, it became clear that all of the circumstances reflected in the file, combined with the evidence gathered by the investigating officers, did not warrant the laying of any charge nor the continuation of any further investigation, as noted in Commissioner Simmond's letter to Attorney General How. That was a conclusion with which I agreed.

It is important, I believe, to recall, as Commissioner Simmonds pointed out in February 1981, that my judgement and that of the R.C.M.P. Force was reached entirely within the Force and there was no outside influence or direction.

The matter was handled properly at all stages by R.C.M.P. and by the Nova Scotia Attorney General's Department.

Contrary to some media reports, it should also be made clear that at no time did the Department of the Attorney General of Nova Scotia block or attempt to block, any investigation of this matter.

Reputations, my own included, are being subjected to scrutiny in this matter, and I felt it important for all concerned, again myself included, to have a clear statement of the facts made available.".

Signed, Hugh Feagan and dated at Kelowna, British Columbia, April 12, 1988. I will table that, Mr. Speaker.

MR. SPEAKER: The honourable Leader of the Opposition.

MR. VINCENT MACLEAN: Mr. Speaker, in tabling the memo which is considerably different from the live interview which I had the opportunity to watch last night on CBC . . .

AN HON. MEMBER: It is edited . . .

MR. VINCENT MACLEAN: Mr. Speaker . . .

MR. WILLIAM GILLIS: The Leader of the Opposition has the floor.

#167

MEDIA POOL COPY

80-11-05 - Wednesday.
1.00 P.M. - Meeting D.C.I. and N.S. C.I.B. re: Thornhill case and refusal by A.G. to prosecute.
- 5-10-78: Appointed to Cabinet. All proposal made to banks in sept 79.
- 3.30 P.M. Christen says Thomas heard that our report has been leaked and Kevin Burke appeared on A.T.V. to comment on it.
- 1 copy, Original, by Christen. never left his safe.
  2 copy Halifax Comm. Crime
  1 Com. Crime Ottawa
  1 to DAG, 2nd copy, 6 weeks.

a) head of gov't branch for written consent
b) Knowledge of dealing with the gov't

Decision: They are to write back to A.G. and say they feel very strongly about the matter and oumtline their reason why they disagree with the evaluation of the D.A.G. We feel a charge is warranted under 110-(1)(C)

They are likely to be questioned about their visit here. They can candidly admit that they felt stron,gly that a charge should be laid on the basis of the evidence available and that because of the seriousness of the matter, HQ felt it should be discussed.

80-11-06 - Thursday
2.30 P.M. - DCI. re: Thornhill case.
- a) No leak of report - Just that an informant of the investigator says he saw a copy of this report.
  b) Burke made a statement to the press that he had been assigned the case but then it was removed and told that he was not to handle and the RCMP told not go to him.
  c) DAG has issued lengthlu statement from Victoria that the case was never assigned to Burke - that as per standing practice, RCMP were to report such serious cases for review by A.G. Dept.

C) cont'd
prior to charges. (Div. says this is new as a standing policy for all cases).

d) Liberal caucus met and issued a statement charging cover-up. They want an all party inquiry.

e) "H" to go ahead with action agreed upon yesterday.

4 dec 80 - Jeudi
9.30 a.m. - Briefing by D.C.I. (I had been away to Interpol Conference)

3) Thornhill file: - Faghan had a very stormy meeting with A.G. and D.A.G. He made known our views and got a rough treatment - They have sent in their proposed reply to the A.G.
- D.C.I. is reviewing and will prepare a memo for me to H Div.

80-12-10 - Wednesday
10.30 a.m. - I call C/Supt Feaghan. (on another case)
2) He asks me where we are at in terms of laying charges in the Thornhill case. - Insp. Blue and the other member have to appear next Wednesday in civil court. - Even if access to documents is contested, in their verbal testimony, they will have to say that they had in fact recommended charges and that they believe the evidence warrants this.
- Defendants may also call C/Supt Feaghan - There is a lot of publicity in the Halifax area on this civil case. Thornhill is sueing for defamation of character. Two bank employees whom the station says were transferred or fired due to this Thornhill affair are also thinking of a civil suit.

.... /3

- Feaghan says A.G. never said we could not lay the charge but that it would be very serious in light of the legal review made by 3 top legal brains in his dept., as well as himself.
- if comments are made by our members in civil court it may jeopardize our ability to lay a charge at a later date, as it could prejudice a fair trial
- Really need a decision before the civil action proceeds
- I told him we had the matter under review and would get back to him a.s.a.p.

80-12-17 2:00 PM. - Wednesday
- O.C.I.
- call to Feaghan.
- He'll photofax my memo today.
- Re: civil case - this morning Blue was allowed to give his background - Then he was asked if he had in fact recommended charges against Thornhill.
- Thornhill's lawyer objected
- so did the lawyer for the A.G.
- Judge also asked federal counsel and he replied that he really had no grounds to object.
- They will now draw up a list of questions they want to ask Blue, then seeking directions from a judge.
- Proceedings have been adjourned.

80-12-23 - Tuesday.

- Discussed with the Comm'r

3) Discussed the Thornhill case and the Force policy on the production of police report, to the effect that we should resist the production of any report unless required by law.

5:10 P.M. - I call Feaghan.

a) He appeared on both ATV and CBC - He made a statement on ATV without any question being asked. On CBC after he made his statement he was asked if the decision had been made in Ottawa. He replied "I won't deny that I consulted our office in Ottawa, but the final decision was made here.

I ask him to get a transcript of what he said if possible, aS SOME ARE infering the Min. was involved and he was not.

.../4

5:10 P.M. - Call to Feaghan - Cont'd

b) I ask him how the decision was taken by his staff - He said they did not like it, but they have (now) accepted it. He sees no need for me to go down there now. No doubt it will be discussed when I do my visit there.

81-01-14 - Wednesday
3.50 P.M. - C/Suot Feaghan calls.
- CBC are unable to give them a copy of the tape as it is against their policy - We would have to go there and take notes.
- Feaghan states that all his comments with regards to consultation related to RCMP HQ and the Commissioner.

81-03-16 - Monday - Notebook No. 4 - 6 février 1981 au 22 mai 1981.

12.25 P.M. - C/Supt Feaghan
- article appeared in local paper on Mar 13/81 quoting the A.G. that he had rec'd a letter from the Comm'r completely vindicating Thornhill.
- I tell him the Comm'r letter simply stated we had reached the same conclusion that his DAG had reached "charges are unwarranted"
- If we had of course reached a different conclusion, we would have attempted to lay charges.
- We will send him a copy if not already done.

(DCI told to look after this).

- - - -

#1/68

The Way it Went.

Insp. Blue originally spoke to me about the file in June or July 1980. Subsequently Cst. House came to see me and I assigned Kevin Burke to the file.

On 28 August 1980 Burke sent me a Memo indicating that on that date he had been informed by Insp. Blue that the RCMP had been instructed to have no further contact with the P.O. Apparently Gordon Gale gave these instructions to Insp. Blue's C.O. [redacted]

I forwarded Burke's memo to Gordon Gale on 4 September 1980

There was no question about it. As far as myself, Burke + Cst. House were concerned, I had assigned the file to Burke. There could be no misunderstanding.

And there is no doubt about how the file was removed from the the P.O. — the RCMP picked it up.

Comments re Release of 6 Nov 80.

Re 1. An Asst. P.O. was assigned to the case by DWT.

Re 2. The matter was withdrawn from the Asst. P.O. by Insp. Blue CCS

Re 3. The Asst. P.O. did not say Mr. Coles had assigned him to the investigation. He didnt say who had assigned him.

Re 4. P.O. not privy to that policy.
Why should Dept. get involved. Are P.O's not competant? Are P.O's to refer "major" matters involving RCMP to Dept. for decisions. If so why not HPD & DPD. P.Os should feel they can do their jobs. If they need advice on matters of policy they can ask for it if they have no specific instructions.

Re 5. Wade, Norton & self are not exactly juniors.

On 6 Nov/80 the Deputy A.G. issued a Press Release to the following effect:

1. He denied an Asst. P.O. had been assigned to the "Thornhill" investigation.

2. He denied the Asst. P.O. had that investigation withdrawn from him.

3. He denied that he (Deputy A.G.) had assigned or designated any Prosecutor to this investigation.

4. He made reference to clearly understood policy & accepted practice between RCMP and A.G's Dept. re major investigations particularly commil crime & fraud cases.

5. He made reference to senior lawyers in the department experienced in the Criminal law.

On 6 Nov/80 the Deputy, who was in Victoria BC, issued a press release to the following effect:

1. He denied a P.O. had been assigned to the "Thornhill" investigation

2. He denied the investigation had been withdrawn from the P.O.

Comments on 7 Nov/80 CTV newscast

Re 1. Who requested removal & to whom was request made.

Re 2. The press release of 6 Nov/80 said the Thornhill investigation followed the agreed upon procedure of referring the matter to DAG or other Sr. Lawyers to assess the report.

Re 3. How can DAG say this. - Memo forwarded to Gale setting out Burke's position. As far as Burk, House & DWT were concerned this was Burke's file.

Re 7 Nov 180 CTV news cast

1. D.A.G. said file was removed from CPO at request of AG Dept.

2. D.A.G. said nothing unusual about Thornhill file being taken to P.O.

3. DAG said Burke may have misunderstood

Dave MacLaughlin CHNS

9 to 12

What time on 6 Nov/80 did Martin talk to Coles conveying my concern for clarification.
9:30 pm

What time did CHNS talk to Coles on 6 Nov 80
9 ish 3 pm. ±

Copy of tape

Keeps coming back to fact he told RCMP to report to him

1st paragraph of Press Release dated 6 Nov/80 implies that the Assistant P.O. has made a false statement.

1st paragraph on p-2 of the Press Release states "Mr. Coles did not assign nor designate any prosecutor to this investigation." The Asst. P.O. did not say Mr. Coles had assigned him to the case.

The fact of the matter is that Insp. Blue o/c CCS spoke to me about the file originally and subsequently Cst. Cyril House attended my office and gave me a briefing. ~~on where the Investigation was at that point in time~~. I then assigned Mr. Kevin Burke, the P.O. in question, to look after this matter. This was early in July 1980.

On 28 August Mr. Burke advised me by written memo that on that date Insp. Blue called [redacted] and advised him, Burke, he had instructions to cease having further contact with the Prosecuting office regarding this matter.

Subsequently the file was picked up from Mr. Burke by Cst. House, the Investigator.

Mr. Burke's Memorandum was forwarded by me to Mr. Gordon Gale, Director (Criminal) in the Attorney General's Department on 4 September

Ex #169

3

32

RCMP seeking documentation

The RCMP filed sworn informations Wednesday and Thursday for eight search warrants to examine records at financial institutions in the Halifax-Dartmouth area regarding their dealings with Development Minister Roland Thornhill.

Police want to examine documents held by the Royal Bank of Canada, the Bank of Nova Scotia, the Bank of Montreal, the Toronto-Dominion Bank, the Canadian Imperial Bank of Commerce, Royal Trust and Richardson Securities of Canada.

The police are looking for documentation of the minister's business dealings with the institutions between Jan. 1, 1974 and April 16, 1980.

The warrant applications are based on a suspected violation of Section 110 of the Criminal Code of Canada, which makes it illegal for a person to use political influence or purported political influence to obtain a benefit.

Attorney-General Harry How said in the legislature Thursday Mr. Thornhill told the RCMP "he has nothing to hide and he was prepared to supply them with any information or documents which were available to him."

Answering David Muise (L-Cape Breton West), he said his department is assessing any information it is given and the RCMP had furnished a report "within the last few days."

He said he had no personal knowledge of the search warrants but he had heard about them just before entering the House.

He told reporters later he is convinced Mr. Thornhill did nothing improper in the settlement with the banks and he hopes the minister will stay in his job for a "long time to come."

He said the matter of the minister keeping his portfolio during the investigation would be up to the premier to decide.

Mr. How said his department is letting the RCMP conduct the investigation.

"We are not going to be seen as exercising any political interference with what they do."

APR 18 1980

Nova Scotia Supreme Court, Appeal Division
Coffin, Cooper and Macdonald, JJ.A.
February 14, 1978.

CRIMINAL LAW - TOPIC 5833
Sentencing - Considerations on imposing sentence - Deterrence - The Nova Scotia Court of Appeal held that in sentencing on a charge against a government official of accepting a gift the deterrent effect of sentencing was paramount - See paragraphs 19-25.

CRIMINAL LAW - TOPIC 5902
Sentence - Corruption of officials - Acceptance of benefit by government official - Criminal Code of Canada, R.S.C. 1970, c. C-34, s.110(1)(c) - The administrator of the Nova Scotia Liquor Licencing Board accepted a total of $1,000.00 from a man at four consecutive Christmas parties - The accused had no power of decision respecting the man's dealings with the Board and the gifts were not specific bribes - The accused lost his job because of the gifts and suffered public humiliation - The Nova Scotia Court of Appeal affirmed a sentence of the accused to a fine of $2,000.00.

CRIMINAL LAW - TOPIC 6202
Sentencing - Appeals - Variation of sentence - Duties of appeal court - The Nova Scotia Court of Appeal stated that the court was required to consider the fitness of the sentence appealed from, but that a sentence should not be deemed improper merely because the Court of Appeal would have imposed a different one - The Court of Appeal stated that apart from misdirection or non-direction on proper sentencing principles a sentence should be varied only if the court is satisfied that the sentence is clearly excessive or inadequate - See paragraph 26.

Summary:
This case arose out of a charge against the accused as a government official of accepting gifts. The accused was the administrator of the Nova Scotia Liquor Licencing Board. He accepted a total of $1,000.00 in four successive years at Christmas parties from a man who dealt with the board. The accused had no power of decision in the man's dealings with the board and the gifts were not specific bribes. The accused pleaded guilty and was sentenced to a fine of $2,000.00. The Crown appealed from sentence.

The Nova Scotia Court of Appeal dismissed the appeal and af-

firmed the sentence of the accused.

For the appeal from the sentence of the man who made the gifts to the accused. See R. v. Boudreau (1978), 24 N.S.R. (2d) 63; 36 A.P.R. 63.

CASES JUDICIALLY NOTICED:

R. v. Cooper (No. 2) (1977), 35 C.C.C.(2d) 35, appld. [para. 8].
R. v. Cooper (1975), 22 C.C.C.(2d) 273, consd. [para. 10].
R. v. Jackson (1977), 21 N.S.R.(2d) 17; 28 A.P.R. 17, consd. [para. 15].
R. v. Tanguay (1976), 24 C.C.C.(2d) 77, dist. [para. 16].
R. v. Morrissette (1971), 1 C.C.C.(2d) 307, consd. [para. 19].
R. v. Melanson (1976), 18 N.S.R.(2d) 189; 20 A.P.R. 189, appld. [para. 22].
R. v. Cormier (1975), 9 N.S.R.(2d) 687, appld. [para. 26].

STATUTES JUDICIALLY NOTICED:

Criminal Code of Canada, R.S.C. 1970, c. C-34, s.110(1)(c).

COUNSEL:

REINHOLD M. ENDRES, for the appellant;
IAN H. N. PALMETER, Q.C., and TERENCE R. B. DONAHOE, for the respondent.

This case was heard on January 16, 1978, at Halifax, Nova Scotia, before COFFIN, COOPER and MACDONALD, JJ.A., of the Nova Scotia Supreme Court, Appeal Division.

On February 14, 1978, MACDONALD, J.A., delivered the following judgment for the Appeal Division:

1 MACDONALD, J.A.: The Crown applies for leave to appeal and if granted appeals against the sentence of a fine of $2,000.00 imposed upon the respondent by His Honour P. J. O Hearn in the County Court Judge's Criminal Court of District Number One following his conviction after a plea of guilty on the following charge:

> that he at or near Halifax in the County of Halifax, Nova Scotia, between the 1st day of December 1973 and the 1st day of January, 1977, did, being an official of the government of Nova Scotia, to wit: the Administrator of the Nova Scotia Liquor Licensing Board, unlawfully accept from a person having dealings with the said government, to wit: Arthur BOUDREAU, a commission, re-

ward, advantage or benefit, and more particularly money; without having the consent in writing of the head of the branch of government that employed him, contrary to section 110(1)(c) of the Criminal Code.

2 Section 110(1)(c) reads as follows:

110. (1) Every one commits an offence who

> (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.

3 This section does not involve any elements of fraud, breach of trust or bribery which are expressly covered elsewhere in the *Criminal Code*. The Crown did not allege or prove that the monetary benefits received by the respondent from Mr. Boudreau were given and accepted as bribes. The maximum penalty for a violation of s.110(1) is five years' imprisonment.

4 The statement of facts set forth in the factum of counsel for the appellant are:

> During the time of the commission of the offence under Section 110(1)(c) of the *Criminal Code of Canada*, the Respondent, Robert McGee Ruddock, was the Chief Administrative Officer of the Nova Scotia Liquor License Board. As such, he was responsible for the general administration of the Board's affairs, acting under the direction of the Liquor License Board.
>
> The record shows that the Respondent received, over a period of four years, the total sum of $1,000.00 from Arthur Boudresau and his firm, Automatic Amusement Limited. This benefit was bestowed on the Respondent by Boudreau on the occasion of four successive Christmas parties organized by Boudreau in 1973, 1974, 1975 and 1976. On each occasion Mr. Ruddock received an envelope containing cash in the amounts of $200.00, $200.00, $300.00 and $300.00 respectively. In addition, Boudreau

and Automatic Amusement Limited favoured the Respondent with other gifts such as chocolates and liquor, delivered to the Ruddock home during the past four Christmas seasons.

5 Counsel for the respondent takes no exception to the foregoing statement of facts but says the following items of fact appear in the record and should be considered.

During the years that the Respondent received the Christmas gifts as admitted, nothing was done for Arthur Boudreau or his firm Automatic Amusement Limited by the Respondent, which was not done or would not have been done for any other person having similar limited dealings with the Liquor License Board. The record further indicates that the Respondent did not have decision-making authority in his employment and submissions made to the Trial Judge on behalf of the Respondent show that the Respondent was on record with the Liquor License Board as being opposed to the use of certain kinds of coin-operated amusement machinery in certain types of licensed establishments. This certainly is not consistent with any suggestion that the Respondent accepted Christmas gifts in exchange for favours or to be given to Boudreau or others.

The record, it is submitted, clearly shows that the circumstances of the offence do not show a 'bribery' or 'pay-off' situation, and His Honour Judge O Hearn agreed with this in his decision.

It is acknowledged by the Appellant that the Respondent co-operated fully with the police in their investigations into this offence and into the circumstances surrounding other matters and offences related to Arthur Boudreau and his company and other individuals. Submissions are on the record which indicate that the Respondent in accepting these gifts did not think he was doing anything wrong in a criminal sense. It is difficult to understand the naivete of the Respondent in this situation, particularly in view of his responsible position and his record of faithful and unblemished public service, but the Respondent himself has admitted to his 'stupid' and 'unthinking' actions. His Honour Judge O Hearn accepted this submission and the record, including the character evidence and the pre-sentence report supports this real lack of 'criminal intent' on the part of the Respondent.

The record shows that the Respondent received the gifts at Christmas parties held by Boudreau and his company. Submissions to the Trial Judge and to the police investigators by the Respondent would indicate that it was a habit of Boudreau at such parties to give out envelopes to other persons. This does not in any way take away from the seriousness of the offence to which the Respondent has plead guilty, but it does help in some way to understand the thinking or perhaps the 'unthinking' on the part of the Respondent.

6 After hearing the evidence of several character witnesses called on behalf of the respondent and after having received a presentence report and hearing submissions of counsel the trial judge imposed the sentence now challenged by the Crown. In his remarks on sentencing the trial judge said:

> 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.
>
> When we look at this particular instance, however, there are some other considerations that have to be kept in mind. First of all, the gifts consisted of money which I think is most unusual, and not petty cash either. And, they continued over a period of years. So that it's quite clear that even without any Code provision this would have occurred to any person aware of the implications that it wasn't in propriety and not merely a minor one but a fairly substantial one.
>
> . . .
>
> Quite apart from any intention on the part of the accused or the other party involved, it's a precautionary provision of the Code. The mental element involved is simply knowledge of the gift, knowledge of the connec-

tion of the giver with the government, and willingness to accept. It does not involve any element of fraud or breach of trust, or bribery, and without going beyond the ambit of this case one can imagine that it was a preparation, but there is no direct evidence of that. It's just the kind of character that this has, that a man who operates coin-operated machines and other things which are used in taverns and who has business with the government, with this branch of the government, goes out of his way to be pleasant to one of the officers of the government in this particular fashion.

But I want to make it clear that it does not involve bribery or anything that could be called bribery. It is conduct that is absolutely prohibited if the giver knowingly accepts a gift from a person who is dealing with the government, without the permission of the head of his department.

So that...I hope to deal with that aspect of any media misinterpretation of it to make clear what the accused has pleaded guilty to.

. . .

Mr. Ruddock has been an outstanding citizen of his community and has contributed in many ways to its good. But, this particular kind of act has to some extent destroyed or at least damaged his power to do good in the community. Undoubtedly it will affect some of his relationships in what he has been doing, and, of course, it may result in dismissal from his employment and loss of substantial pension benefits.

This I don't know. Nobody has said anything other than that this is a real possibility. I have to take it into account on that basis.

. . .

But again, here the publicity involved whether it is true or misleading, I don't know, it certainly adds to that, and this is part not only of his punishment, but a part of the damage that he has done by this kind of conduct. And, it is punishment that rarely gets involved in the public account of the punishment or in the...even the judicial account of the punishment.

That is to say, the public do not count this as part of the sentence ordinarily. They may in such a case as this if it is given that kind of publicity.

The public ordinarily do not take into account all these losses, nor do the cases cited or the other cases that touch on this usually take into account this kind of thing except very cursorily. What you find cited are sentences of imprisonment, sentences of fines, discharges, and probation things of that kind. And yet this is a very real part, real consequence and therefore a real part of the punishment involved in the conviction of this nature.

The primary purpose of criminal penalties is the protection of the public by eliminating the conduct that is prohibited. This is done incidentally or mediately, that is by the means of various techniques of which the principal are rehabilitation and deterrence. Deterrence applies not only to the accused but to others. In this case, I am quite satisfied that as far as the accused is concerned, deterrence of him personally is no longer required prospectively.

There is, however, an element of deterrence of the public and especially of the people in the employ of the government and those dealing with them which is important here and will have to be taken into account. Although, of course, it cannot absolutely dominate the picture. There is also an element in all criminal proceedings of denunciation of the offence, and that has to be taken into account.

. . .

The accused should have been aware of the impropriety. I cannot understand myself how he could let himself accept them in the circumstances of his employment. Counsel has described it as 'stupid' and 'unthinking', perhaps that's a way of putting it. But they certainly were grossly improper and extraordinary and a discharge of either absolute or conditional is not appropriate.

. . .

...There is no scintilla of evidence before me of any other impropriety, everything else I have heard has been

to this credit and I do not think it is an appropriate case for imprisonment...

7 The appellant desires to appeal against the sentence on the grounds that it inadequately reflects the element of deterrence particularly deterrence to others and that is is inadequate having regard to the nature of the offence and the circumstances of the respondent.

8 The element of deterrence has two aspects. The specific, i.e., to deter the offender and the general, i.e., to deter others. By his conviction the appellant has lost his employment with the government which he had since February 1, 1968. He doubtless has suffered great humiliation and embarrassment. The presentence report indicates that he has suffered great emotional strain as a result of this matter. He is a man of forty-six years of age, married with two grown sons and has no previous criminal record. His conviction for this offence with all the attendant ramifications thereof, some of which I have referred to, has, no doubt, graphically brought home to him and gravity of the matter. In light of his background it seems to me that reformation and rehabilitation are not factors that are of any real significance here. Of major importance, however, is general, or third party, deterrence. In *R. v. Cooper (No. 2)* (1977), 35 C.C.C.(2d) 35, Arnup J.A., in delivering the judgment of the Ontario Court of Appeal said in respect of s.110(b) and (c) (pp.36-37):

> Section 110(1)(b) is part of a section found in the *Criminal Code* beneath the heading 'Frauds upon the government'. It is a section which has been in the same terms for many years. In our view it creates a serious offence. Its purpose is to ensure and maintain the complete integrity of the public service. It does so by providing that any person having dealings of any kind with the Government who confers a benefit of any kind upon an employee or official of the Government 'with respect to those dealings' commits an offence punishable by imprisonment for five years. 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, directly or indirectly, from a person who has dealings with the Government.
>
> It has been urged by counsel for the Crown that the paramount consideration in this case is one of general deterrence. We agree with that submission. In our view, it is important for the business community to re-

alize the seriousness of the offence which s.110(1)(b) creates. It is equally important that the public at large should understand that the law stands ready to punish severely persons who breach the section, and in appropriate cases to punish those officials or employees of the Government who accept benefits of the kind prohibited, and thereby contravene the provisions of s.110(1)(c).

9 The factual situation was summarized by Arnup, J.A., as follows (p.35):

> The facts upon which the conviction was based are summarized in the judgment of this Court: see 22 C.C.C. (2d) 273, 7 O.R.(2d) 429, 29 C.R.N.S. 293. The appellant is 43 years of age and has no prior conviction. The benefits conferred upon the employee of the federal Government consisted of four separate return air fares to Florida, and hospitality at the appellant's ranch for four weekends, on two of which the employee's wife also attended. It was said by Judge Graburn that there was no suggestion that the Government employee had acted improperly or corruptly in approving or recommending large grants to two companies controlled by the appellant. The jury did, of course, find that the benefits were conferred 'in respect of' (the appellant's) dealings with the Government...

10 The employee of the government who received the benefits from Mr. Cooper as described above was one Gerald William McKendry. He was charged under s.110(1)(c) of the *Code*, pleaded guilty and was sentenced to six months' imprisonment by His Honour Judge Lyon of the Ontario County Court Judge's Criminal Court in and for the Judicial District of York. (Sept. 16, 1977 - unreported) The total benefits received by him amounted to approximately $1,200.00. The background of the matter is more detailed in *R. v. Cooper* (1975), 22 C.C.C.(2d) 273, and are that McKendry was employed by the federal government, in DREE, as a director of the Special Analysis Group. Two of Mr. Cooper's companies had made application for DREE grants in the amounts of $617,000.00 and $119,970.00. The latter application was apparently granted by McKendry himself but there was no corruption involved and the approval by McKendry of the $119,970.00 was entirely legitimate and proper.

11 At the relevant time Mr. McKendry was fifty-three years of age. As a result of the charge he was dismissed from the

employ of the government without compensation. He was described by the trial judge as "a man of impeccable character, highly thought of by very responsible individuals...he has been very active in charitable matters...and certainly has been much more than what we perhaps might call an "average citizen" in terms of community participation and in terms of response to community needs...."

12 Judge Lyon, after expressing the view that rehabilitation of Mr. McKendry was not a significant factor, went on to say:

> ...Mr. McKendrey occupied what appears to me a relatively high position in terms of his responsibilities, and the trust that was placed in him. No doubt he had a significant influence in terms of applications, whether he was able to approve them or whether it was a question of referring them to his superior. And in his position of processing these applications for Government grants there were large sums of public money involved. The amounts have been referred to in the Statement of Facts.
>
> It's obvious in my view that altogether apart from Section 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 imperceptably into the other. It is clearly for this reason that Section 110(c) has been enacted.
>
> . . .
>
> I previously mentioned the high office, the large sums, the nature of the Legislation dealing with grants, and considered from that point of view, it is my conclusion that the appearance of total rectitude, probity and honesty is therefore of the greatest importance; it is important to a high degree both to other Government employees and to members of the public, and in particular to the business community who may have dealings with the Government.

> ...some period of incarceration is called for in order to give full weight to the two elements of deterrence and condemnation.

13 One has to distinguish the positions held by Mr. McKendry and the respondent respectively. The latter had no decision making power with respect to the granting or refusing of liquor licenses or other allied matters. Mr. McKendry on the other hand apparently had the power to approve large DREE grants or, at least as Judge Lyon said, "had a significant influence in terms of applications..." This to my mind is a vital distinction and no doubt led Judge Lyon to say "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."

14 In *McKendry* the possibility of actual corruption existed. In the present case even if the respondent 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.

15 In *R. v. Jackson* (1977), 21 N.S.R.(2d) 17; 28 A.P.R. 17, the facts were that a thirty-eight year old policeman with over ten years service, struck and killed a girl while driving a motor vehicle. He was off duty at the time. He left the scene of the accident and tried to conceal his complicity by misleading police investigators. He was charged with, and convicted of, leaving the scene of an accident contrary to s.233 (2)(c) of the *Criminal Code*. The trial judge sentenced him to thirty days' imprisonment. On a cross-appeal this Court increased the sentence to imprisonment for one year. There, as here, rehabilitation and reformation of the accused was not really a material consideration. MacKeigan, C.J.N.S., in delivering the judgment of the Court said (p.20):

> I suggest that the relative weight or mix of the three basic factors -- deterrence of the offender, deterrence of others and rehabilitation and reform -- varies not only with reference to the nature, history and character of the offender, but also with the kind of offence. And to the mixture in any given case must often be added a fourth factor often similar in its influence but by no means identical to 'deterrence', namely, the need to express social repudiation and abhorrence of a particular crime by, to use a largely outmoded word,

'punishment' of the offender. Some crimes by their nature, and the nature of the offender, require little element of deterrence or punishment when it comes to sentence; many so-called crimes of passion may fall in this category, such as *The Queen v. Cormier* (1975), 9 N.S.R.(2d) 687, where this Court upheld a suspended sentence for manslaughter of a husband by his wife, a sentence imposed by Chief Justice Cowan.

Conversely, other crimes, and, I respectfully include the hit and run offence in this category when personal injury or death has occurred, are recognized by Parliament and society as requiring a large measure of imprisonment, even though, almost always, the offender requires no reform from criminal ways and where the horror of the event and trial alone largely deters him from any repetition.

16 In my opinion there are varying degrees of culpability envisaged by s.110(c). By that I mean that it seems to me that a government official who directly demands a commission, etc., from some one who has dealings with the government on the pretext that unless such commission is forthcoming he will sidetrack such dealings, has committed a more serious breach of the section than say, Mr. Tanguay. (*R. v. Tanguay* (1976), 24 C.C.C.(2d) 77), who accepted a colour television set valued at $305.00 from a contractor doing business with Central Mortgage and Housing Corporation (of which Mr. Tanguay was assistant director). In his case the Quebec Court of Appeal substituted an absolute discharge for the suspension of sentence ordered by the trial court. The court was obviously influenced by the fact that anything less than an absolute or conditional discharge would result in Mr. Tanguay's loss of employment. He had approximately twenty-five years government service.

17 I would emphasize what the trial judge said and what I mentioned earlier, namely, that in the Crown's case bribery is not a factor here. All that the facts reveal and all that the Crown alleges, is that the respondent accepted a total of $1,000.00 from Mr. Boudreau without first obtaining the consent in writing of the head of the branch of government that employed him.

18 This matter has received wide publicity through the news media and, no doubt, the great majority of civil servants are aware of it. If it consisted only of the respondent receiving Christmas presents of relatively small value then it would not

demand overly severe sanction. It well may be argued that the facts here indicate that what occurred transcends the mere giving and accepting of Christmas gifts. In four successive years the respondent accepted from Mr. Boudreau, at Christmas time, envelopes containing respectively $200.00, $200.00, $300.00 and $300.00. The suspicion of course is that these were not gifts at all but rather payments for services rendered, or to be rendered, by the respondent to Mr. Boudreau. There is, however, no evidence to confirm such suspicion.

19 The purpose of general deterrence is to bring home to others the serious consequences attendant upon certain criminal conduct. Such deterrence can be accomplished, or achieved, in some cases without the imposition of a custodial sentence. In *R. v. Morrissette* (1971), 1 C.C.C.(2d) 307, Culliton, C.J.S., said at p.310, "...it may be in exceptional cases that the effects which result from the prosecution itself constitute sufficient punishment." If that be so then surely in some cases the prosecution itself and the effects thereof will meet the need for general deterrence.

20 In the present case the main consideration is to impress upon government officials and employees (and indeed those who have dealings with the government) that if they accept anything (without the written consent of their department head) from people doing business with the government, they have breached the criminal law.

21 As a result of accepting money from Mr. Boudreau, without the required consent, the respondent has lost his employment with the government, a fact apparently not definite when he was sentenced by Judge O Hearn, and has acquired a criminal record which may adversely affect his ability to acquire new employment. Certainly I think it fair to assume that he will not again be employed by any government. All these circumstances no doubt are now well known to other civil servants. If such do not act as a deterrent to others in the government service then I frankly doubt whether the addition of a term of imprisonment will do so. This, to me, is the crux of the matter.

22 As this Court pointed out in *R. v. Melanson* (1976), 18 N.S.R.(2d) 189; 20 A.P.R. 189 at p.192:

> Section 614 of the *Criminal Code* imposes an obligation on courts of appeal to consider the fitness of the sentence appealed against and a duty to go into the mat-

> ter fully and to consider each appeal from sentence with the utmost care even though the sentence on its face does not shock the court by its excessiveness or its inadequacy.

23 This I have done. Putting suspicions aside, what the respondent has been shown to have done here does not, in my view, manifest the same criminality as the actions of Mr. Jackson in *R. v. Jackson, supra,* or show the corruption potential that existed in the *McKendry* case, *supra.*

24 I must confess that this case has caused me deep concern. Indeed, I initially felt that the sentence was so inadequate as to be wrong and that a jail term should be imposed. My difficulty, quite frankly, has been to divorce from my mind the element of bribery. I have great trouble in accepting the fact that a man in the government position the respondent held would be given and would accept, the amounts of money involved here unless such were clandestine payments -- in other words, bribes. I repeat again, however, that it is not the position of the Crown that these were bribe payments. There is also no evidence that the respondent did, or had the power to do, anything to facilitate the granting of a tavern license or to do anything else in connection with liquor licenses and allied matters in return for any of the cash gifts he received from Mr. Boudreau. I can, and shall, but consider the matter in the light of the charge, the provisions of s. 110(c) of the *Code* and the facts submitted.

25 Bearing in mind that the purpose of imprisonment here would be solely to deter others from doing what the respondent did, I cannot with certainty say that it is impossible to achieve such purpose without imprisonment. As I have already said, it well may be that general deterrence has been accomplished by the publicity resulting from the apprehension and conviction of the respondent and his resulting loss of employment, and therefore that those in government service who would not be deterred from doing what the respondent did by knowing what has happened to him to date, would probably not be deterred by the imposition of imprisonment on him now.

26 In *R. v. Cormier* (1975), 9 N.S.R.(2d) 687, I had occasion to say (pp.694-5) in relation to the powers of this Court on sentence appeals as set forth in s.614 of the *Criminal Code*:

> ...this Court is required to consider the 'fitness' of the sentence imposed, but this does not mean that a

sentence is to be deemed improper merely because the members of this Court feel that they themselves would have imposed a different one; apart from misdirection or non-direction on the proper principles a sentence should be varied only if the Court is satisfied that it is clearly excessive or inadequate in relation to the offence proven or to the record of the accused.

27 It well may be that the trial judge was too lenient in light of the charge, the facts and the other matters I have referred to. I cannot, however, be sure that he was. This case on its facts appears to fall somewhere between the *Tanguay* and *McKendrey* cases, supra. Justice, of course, must always be tempered with mercy, giving proper weight to such principle and divorcing from my mind and sinister suspicions yielded by the facts, I do not think that it can be said that the trial judge committed any error in principle or that the sentence is clearly inadequate.

28 In the result I would grant leave to appeal because the matter is certainly arguable, but for the reasons I have given, would dismiss the appeal.

Appeal dismissed.

Editor: D.C.R. Olmstead
rmb

#171

Nova Scotia Supreme Court, Appeal Division
Coffin, Hart and Macdonald, JJ.A.
November 2, 1978.

CRIMINAL LAW - TOPIC 410

Offences against the administration of law and justice - Corruption of officials - Acceptance by government officials of benefits from persons dealing with the government - What constitutes dealings with the government - The accused, a tax collection officer, accepted an air hockey game from an operator of an automatic amusement machine business - The operator of the business was in arrears in his remittances of sales tax and the operator negotiated through the accused an adjustment of the arrears - The Nova Scotia Court of Appeal held that the operator had dealings with the government for purposes of s. 110(c) of the Criminal Code of Canada (see paragraph 33).

CRIMINAL LAW - TOPIC 4431

Verdicts and discharges - Conditional discharge in lieu of conviction - The accused, a tax collection officer, was convicted of accepting a benefit from persons dealing with the Nova Scotia government - The accused had no criminal record, the benefit conferred was an isolated instance, and the accused received inadequate and uninformed advice from his superiors prior to his acceptance of the benefit - The Nova Scotia Court of Appeal affirmed a conditional discharge of the accused in lieu of a conviction pursuant to s. 662.1 of the Criminal Code of Canada.

Summary:

This case arose out of a charge against a government official of accepting benefits from persons dealing with the Nova Scotia government. The trial judge sitting with a jury found the accused guilty but granted the accused a conditional discharge in lieu of conviction pursuant to s. 662.1 of the Criminal Code. The Crown appealed from sentence to the Nova Scotia Court of Appeal. The accused cross-appealed.

The Nova Scotia Court of Appeal dismissed the cross-appeal and also dismissed the Crown's appeal from sentence.

CASES JUDICIALLY NOTICED:

R. v. Kolstad (1959), 123 C.C.C. 170, ref'd to. [para. 30].
R. v. Cooper (No. 2) (1977), 35 C.C.C.(2d) 35; 14 N.R. 181 (S.C.C.), ref'd to. [para. 31].
R. v. Dalton (1977), 18 N.S.R.(2d) 555; 20 A.P.R. 555,

ref'd to. [para. 45].
R. v. Fallofield (1974), 13 C.C.C. 450, ref'd to. [para. 45].
R. v. Sanchez-Pino (1973), 11 C.C.C. 53, ref'd to. [para. 45].
R. v. Tanquay (1975), 24 C.C.C.(2d) 77, ref'd to. [para. 47].
R. v. Sinasac (1977), 35 C.C.C.(2d) 81, ref'd to. [para. 50].
R. v. Cormier (1974), 9 N.S.R.(2d) 687, ref'd to. [para. 51].
R. v. Boudreau (1978), 25 N.S.R.(2d) 63; 36 A.P.R. 63, ref'd to. [para. 52].
R. v. Ruddock (1978), 25 N.S.R.(2d) 77; 36 A.P.R. 77, ref'd to. [para. 53].
R. v. Jackson (1977), 21 N.S.R.(2d) 17; 28 A.P.R. 17, ref'd to. [para. 54].

STATUTES JUDICIALLY NOTICED:
Criminal Code of Canada, R.S.C. 1970, c. C-34, s. 662.1.

COUNSEL:
REINHOLD M. ENDRES, for the Crown,
JOEL E. PINK, for the accused.

This appeal was heard by COFFIN, HART, and MACDONALD, JJ.A., of the Appeal Division of the Nova Scotia Supreme Court at Halifax, Nova Scotia on October 10, 1978.

The judgment of the Nova Scotia Court of Appeal was delivered by COFFIN, J.A., on November 2, 1978.

1 COFFIN, J.A.: This is an application by the Crown for leave to appeal from sentence and if granted an appeal from sentence. There is also a cross-appeal by the respondent, Reginald Roy Williams, against conviction.

2 The appellant was tried by a judge sitting with a jury and on March 21, 1978 found guilty by the jury on a charge that he "at or near Halifax, in the County of Halifax, Nova Scotia between the 8th day of November, 1976 and the 1st day of January, 1977 did, being an employee of the government of Nova Scotia, to wit: Chief Collections Officer, Health Services Tax Department, unlawfully accept from a person having dealings with the said government to wit: Arthur Boudreau, a commission, reward, advantage or benefit and more particularly, an air hockey game, without the consent in writing of the head of the branch of government that employed him, contrary to Sec-

tion 110(1)(c) of the *Criminal Code*."

3 On March 29, 1978 the trial judge, after hearing representations by counsel on sentencing, proceeded to sentence the respondent.

4 He granted a discharge, conditional upon the respondent's complying for a period of one year with the standard conditions of a probation order as set forth in s. 663(2) of the *Criminal Code*.

5 The section under which the respondent was charged and found guilty by the jury is as follows:

> 110. (1) Every one commits an offence who
>
> . . .
>
> (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; . . .

6 The Court was assisted by an agreed statement of facts, which was presented to the jury by Mr. Thomas in his opening address on behalf of the Crown.

7 The respondent, Reginald Roy Williams, was an employee of the Government of Nova Scotia, as Chief Collection Officer, Health Services Tax Division, Provincial Tax Commission.

8 Arthur Boudreau was an officer of Automatic Amusements Company Limited, which carried on business in Nova Scotia and which was a registered vendor under the *Health Services Act*. The Act required that the Company collect health services taxes as agent for the Minister of Finance and forward them to the Provincial Tax Commission.

9 Section 11 of the *Health Services Tax Act*, R.S.N.S. 1967, c. 126, as amended by Stats. of N.S. 1969, c. 49, s. 1, provides that such a company "... shall be deemed to be an agent for the Minister and as such shall levy and collect the

tax . . .".

10 In 1972 Automatic Amusements was assessed for $30,819.80 for tax collected, but not remitted to the Crown. He was allowed to pay in instalments, but in October, 1976 when this amount had been reduced to $12,000.00 Arthur Boudreau sought ministerial relief and called the respondent, Reginald Roy Williams, suggesting that the interest already paid in the monthly instalments on the assessment be applied to reduce the principal.

11 The subsequent history of the matter as set out in the agreed statement of facts, is as follows:

> 1. Arthur Boudreau sent a typewritten proposal to the respondent who in turn sent a copy of that proposal to the Provincial Tax Commissioner, D. K. Currie, and the Director of Health Services Tax Administration, R. R. Dompierre.
>
> 2. The proposal was rejected by the Commission and Mr. Boudreau was so advised by the respondent.
>
> 3. On November 9, 1976 Arthur Boudreau sent another letter to the respondent, who prepared a summation of the account for the Minister of Finance and the Provincial Tax Commission.
>
> 4. On November 25, 1976 the Minister agreed to settle the account for $5,000 and apply the interest already paid to the outstanding principal, the money to be paid not later than the 31st of December, 1976.
>
> 5. On December 22, 1976 Arthur Boudreau with the consent of the respondent sent an air hockey game to the respondent's residence in care of A. K. Williams, his 8-year old son.
>
> 6. No payment was made for this game.

12 There was some question as to the exact instructions which the respondent Williams received from his superiors in this matter.

13 Mr. D. K. Currie on direct examination said that Mr. Williams had asked him about the policy in the matter of gifts. Mr. Currie said that he checked with the Minister of Finance

and as a result, he advised the respondent that the policy was not to take gifts.

14 In cross-examining Mr. Currie, Mr. Pink suggested that what he had said to the respondent was:-

> Off-hand Roy, I can see nothing wrong with it, because it's probably the way that you have explained the facts to me. Mr. Boudreau is really giving it as an act of appreciation, and as you have not nor are you in any position to do any favours for him, and anything that you have done has been presented by yourself to me, and authorized by the Minister of Finance.

15 Mr. Currie's reply was that he did not recall the conversation but parts of what had been put to him in the question "... could very well have been said".

16 On direct examination Mr. Currie said that he indicated to Mr. Williams that "if he wanted the game he should pay for it".

17 Mr. Williams stated that he had no power to vary assessments, and that in the years 1972 - 1973 there was no favoritism shown to Arthur Boudreau in the matter of late payments nor did he in any way favor Automatic Amusements.

18 As to the gift itself, the respondent testified that early in November, 1976 he was anxious to purchase an air hockey game for his son Andy for a Christmas present. On being informed by Automatic Amusement, after inquiries, that the price would be $117.50 or $139.50, he advised Arthur Boudreau that he had decided not to purchase the game. In fact he later purchased one from Canadian Tire.

19 Subsequently, Mr. Boudreau told him that he and his sons had met at a directors' meeting and the company had agreed to give the game to his son Andy. This was after the settlement of the assessment.

20 The company was quite insistent that the game be given to the boy and it was on receiving this information that the respondent had his interview with Mr. Currie. It was then that Mr. Currie is quoted by him as using the words - "Off-hand Roy, I can see nothing wrong, as it is probably - as Mr. Boudreau has put it, he is giving the machine out of appreciation ...".

21 Mr. Williams acknowledged that shortly after this conversation Mr. Currie called him on the telephone, and advised him that he was unable to get in contact with Mr. Peter Nicholson, the Minister of Finance, but he had spoken to the Deputy Minister, Mr. Leo Lacusta, who replied that "... due to government involvements of the day and public opinion, it may be best that I not accept the machine."

22 The respondent explained why he finally agreed that the machine should be sent to the boy. He said it was the persistence on the part of the company - he had turned down the machine 25 or 30 times - and he felt that there was a "liaison" built up between the Provincial Tax Commission and Automatic Amusement -

> The account was in up to date, and everything was in order, and I didn't want to see this deteriorate.

23 The other game was returned on December 28, 1976 to Canadian Tire.

24 All this material was before the jury, who brought in the verdict of guilty.

25 I propose to consider the cross-appeal first.

26 Only two of the grounds set out in the notice of cross-appeal were before this Court:

> 1. That the learned trial judge erred in law in interpreting s. 110(1)(c) in that he held as a matter of law that Automatic Amusements Co. Ltd. was a person having dealings with the government pursuant to said section.
>
> 2. That the learned trial judge erred in law in his interpretation of the required *mens rea* necessary for a charge made under s. 110(1)(c).

27 As to the first ground, Mr. Justice MacIntosh instructed the jury that the word "dealings" is synonymous with the phrase "dealings of any kind", which appears in s. 110(1)(b) and that both phrases connote an unrestricted and an unqualified application.

28 He further told the jury that dealings concerning the reduction of the assessment with Boudreau were dealings with the

government.

29 In my respectful opinion, the Crown must succeed on this point. I accept the respondent's argument that Automatic Amusements Co. Limited and Arthur Boudreau did not act as "agents" of the Minister of Finance in seeking ministerial relief. The Agency was limited to the collection and the remitting of the tax. Otherwise the position of the company was merely that of a debtor.

30 Counsel for Reginald Roy Williams referred us to *R. v. Kolstad* (1959), 123 C.C.C. 170, where Macdonald, J., said that the words in s. 110(1)(b) "dealings of any kind" indicate that Parliament did not intend the word "dealings" to be construed in a narrow sense.

31 Mr. Pink urged us to conclude from that paragraph that we must construe s. 110(1)(c) in a narrow and restricted sense. I accept the argument on behalf of the Crown, who referred us to the comments of Arnup, J.A., in *R. v. Cooper (No. 2)* (1977), 35 C.C.C.(2d) 35; 14 N.R. 181 (S.C.C.), at pp. 36-37, that there is a close relationship between s. 110 (1)(b) and s. 110(1)(c).

> Section 110(1)(b) is part of a section found in the *Criminal Code* beneath the heading 'Frauds upon the government'. It is a section which has been in the same terms for many years. In our view it creates a serious offence. Its purpose is to ensure and maintain the complete integrity of the public service. It does so by providing that any person having dealings of any kind with the Government who confers a benefit of any kind upon an employee or official of the Government 'with respect to those dealings' commits an offence punishable by imprisonment for five years. 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, directly or indirectly, from a person who has dealings with the Government.
>
> It has been urged by counsel for the Crown that the paramount consideration in this case is one of general deterrence. We agree with that submission. In our view, it is important for the business community to realize the seriousness of the offence which s. 110(1)(b) creates. It is equally important that the public at large should understand that the law stands ready to

punish severely persons who breach the section, and in appropriate cases to punish those officials or employees of the Government who accept benefits of the kind prohibited, and thereby contravene the provisions of s. 110 (1)(c).

32 In *Cooper*, the Court of Appeal reduced the sentence from a term of 18 months to one of 12 months.

33 In my respectful opinion it is impossible to say that the negotiations between the company and Arthur Boudreau on the one hand and the officer of the Minister of Finance on the other were not dealings within the meaning of s. 110(1)(c).

34 As to the second ground in the cross-appeal, it is clear that the learned trial judge in his instructions to the jury pointed out that the section forbade an employee such as Reginald Roy Williams in the absence of the consent in writing from the head of his branch to accept any benefit from a person he knows has dealings with the government.

35 When the trial judge said to the jury that the person must know that the benefactor had dealings with the government, he indicated clearly that knowledge was an element in the offence. Again, earlier in his charge to the jury he said that the Crown must prove beyond a reasonable doubt that the "accused *knowingly* accepted from Arthur Boudreau an air hockey game". [emphasis added]

36 I would therefore reject this second ground of the cross-appeal.

37 The Crown's appeal on sentence is based on the argument that there is an inequity between the sentence imposed on the respondent and that imposed on others in other courts.

38 Mr. Endres urged that there was not sufficient emphasis on general deterrence nor was there adequate consideration to condemnation of offences of this type.

39 It should be said here that there is some distinction between the facts in the *Cooper* case and those under consideration in this appeal. In the first place, Cooper was charged under s. 110(1)(b) and the benefits which he had conferred on the employee in question consisted of four separate return air fares to Florida, and hospitality at the appellant's ranch on four weekends, on two of which the employee's wife also at-

tended. The government employee had more power than the present respondent in that he had approved and recommended large grants to two of the companies which the appellant controlled. I realize that this is not a vital distinction because as Arnup, J.A., clearly points out an offence under s. 110(1)(c) is very serious. However, the gift to the respondent's son was very small compared to the benefits in other cases.

40 There is a similarity in the two cases in that Cooper had no prior record of conviction, nor did the respondent Williams. In fact the evidence discloses that Williams up to the time of this offence was a man of impeccable character. As a matter of fact, Mr. D.K. Currie in the cross-examination was asked about his character and the following exchange appears in the evidence:

> Q. Is it not a fact Mr. Currie that you always felt and to this very day do feel that Reginald Roy Williams is a competent, honest, and a faithful civil servant?
> A. I do.

41 This question and answer came immediately after Mr. Currie had stated that although he had been with the government since 1955, he had no knowledge of the existence of the sections of the *Criminal Code* in question.

42 As Mr. Endres pointed out in his argument, there were two Dree grants of $617,000 and $119,970 in the *Cooper* case. There was nothing wrong with the grants per se, and there was apparently no corruption involved. The total benefits received by the government official in the nature of the trips to which I referred amounted to $1200. McKendry, the official, was also described as a man of impeccable character.

43 The Crown in the present appeal makes the point that there is not sufficient distinction between the positions held by McKendry, the official in the *Cooper* case, and the respondent, Mr. Williams. The test is the "appearance of honesty and integrity in dealings by government employees ...", and it is immaterial whether or not the official in question had any decision making power. The offence under s. 110(1)(c) is the acceptance of a benefit without having first obtained the consent. No other intent is required under that specific subsection.

44 I have already mentioned the Crown's submission that the sentence does not adequately reflect the element (a) of general

deterrence and (b) of condemnation. This was the phrase used by His Honour Judge Lyon in the Ontario County Court Judges' Criminal Court in the judicial district of York in the *Queen v. McKendry*, unreported and dated September 16, 1977. McKendry had pleaded guilty to an offence under s. 110(1)(c) on the same facts which appeared in the *Cooper* case. Judge Lyon said that he did not consider that it was in the public interest to grant a discharge "... on the twin grounds that the element of general deterrence and condemnation by the courts would not be satisfied by such a disposition."

45 It is true that this Court has not always approved a conditional discharge. For example, in *R. v. Dalton* (1977), 18 N.S.R.(2d) 555; 20 A.P.R. 555, where the charge was possession of marihuana contrary to s. 3(1) of the *Narcotic Control Act*, MacKeigan, C.J.N.S. gave careful consideration to such cases as *R. v. Fallofield* (1974), 13 C.C.C. 450, and the remarks of Farris, C.J.B.C., at pp. 454-5 and also *R. v. Sanchez-Pino* (1973), 11 C.C.C. 53, - particularly the comments of Arnup, J.A., at p. 59. Chief Justice MacKeigan said at pp. 560-561:

> As indicated by Mr. Justice Arnup, some cases of very young first offenders of good character charged with mere possession of marihuana may be candidates for discharge, but only, I suggest, where not only is the offence trivial but the offender is young, immature or impetuous. Then in the discretion of the trial judge discharge might be considered appropriate--but I emphasize, with Chief Justice Farris and Mr. Justice Arnup, that no fixed category can or should be defined. We can only suggest general guidelines, realizing that relevant factors may vary greatly and may often be indefinable and must be left to be applied by the instincts and judgment of a wise trial judge.

46 In *Fallofield* the Court set aside a provincial court judge's refusal to grant a discharge on a guilty plea of unlawful possession of some scraps of carpet valued at $33.07. In *Sanchez-Pino* - a shop-lifting situation, the Ontario Court of Appeal refused to interfere with the trial judge's discretion.

47 I should mention *R. v. Tanquay* (1975), 24 C.C.C.(2d) 77. This was a conviction under s. 110(1)(c) where the trial judge suspended the passing of sentence. The gift in question was a colour television set, the cost of which was $305.

48 Owen, J.A., took into consideration the fact that if the appeal against sentence were dismissed, the appellant would in all probability lose his position and benefits accrued since 1950, which would not be the case if he were granted an absolute discharge. The appeal from sentence was allowed and an absolute discharge was granted.

49 The respondent before us has already lost his position.

50 In *R. v. Sinasac* (1977), 35 C.C.C.(2d) 81, the Ontario Court of Appeal set aside an absolute discharge where benefits for which the charge was laid under s. 110(1)(c), amounted to $28,000 and the offences were committed over a lengthy period of time. Fines totalling $1,000 were imposed.

51 It is well established that our duty is to consider the "fitness" of the sentence. As Macdonald, J.A., said in *R. v. Cormier* (1974), 9 N.S.R.(2d) 687, at pp. 694-5:

> . . . apart from misdirection or non-direction on the proper principles a sentence should be varied only if the Court is satisfied that it is clearly excessive or inadequate in relation to the offence proven or to the record of the accused.

52 *R. v. Boudreau* (1978), 25 N.S.R.(2d) 63; 36 A.P.R. 63, was mentioned in argument. Here there were four charges, two under s. 110(1)(d) and two under s. 110(1)(b). The trial judge imposed a sentence of consecutive three-month terms of imprisonment on each charge. The reasons for the dismissal of the appeal from sentence in the *Boudreau* case and the emphasis on deterrence were clearly set out in the judgment. Macdonald, J.A., at p. 73 distinguished both *Tanguay* and *Sinasac*.

53 In *R. v. Ruddock* (1978), 25 N.S.R.(2d) 77; 36 A.P.R. 77, the factual situation was similar to that in this appeal, but there were important differences. The past record of the respondent Ruddock had been good, but he did accept Christmas gifts of sums of money in individual envelopes from Arthur Boudreau over a period of four years totalling $1,000. The charge was under s. 110(1)(c) of the Code and the sentence from which the Crown appealed was a fine of $2,000.

54 Macdonald, J.A., reviewed the authorities, including some of those which I have already mentioned. He referred at length to *R. v. Cooper (No. 2)*, supra and *R. v. Jackson* (1977), 21 N.S.R.(2d) 17; 28 A.P.R. 17, but nevertheless concluded that the sentence of a fine of $2,000 should not be disturbed.

55 In the case now under appeal, the trial judge gave a very full and careful statement of his reasons for dealing with the sentence of the respondent in the manner which he adopted. He quoted most of the authorities to which I have referred in these reasons and just before he imposed sentence, he made the following significant statement:

> Here we have no fraud, no bribery involved, no attempt to conceal the gift to his son, *the seeking of advice from superiors*, and the consequent inadequate and uninformed advice as to the criminal ramifications involved, and even - as stated by learned Crown prosecutor - the words, or the effect of the words were 'It might be best not to accept the gift.'
>
> As I have stated before, if such advice had been a clear and unequivocal 'no' to the acceptance of any gift, I am sure the accused would not be before this Court today, and I trust that more effective steps have since been taken to impress upon all government employees the seriousness and the scope of Section 110(1)(c) of the *Criminal Code*.

56 In my view in granting a conditional discharge, the trial judge did not err in principle, nor can it be said that the sentence was not fit.

57 I would dismiss the cross-appeal, grant leave to the appellant herein to appeal and dismiss the appeal.

Appeal dismissed.
Cross-appeal dismissed.

Editor: Eric B. Appleby
edp

Chief Judge How responds to Story article

EDITOR'S NOTE: The following letter was submitted to this newspaper Monday in response to an Alan Story article in Saturday's Toronto Star.

I have just read a full page article in the Toronto Daily Star edition of Saturday, April 9, 1988 ascribed to one Alan Story.

It purports to review the Thornhill case. In my view, it is not a fair representation of the matter and I therefore feel that I should have the right to reply, and the public the opportunity to read it. I am therefore enlisting the assistance of your newspaper for that purpose. Accordingly, I have written the following and would only ask that you print it as I have written it.

Back in 1980 Mr. Gordon Coles, Q.C., as Deputy and I as Attorney General went before the media and explained fully how we had reached the conclusion that no charges were warranted against Mr. Thornhill.

The case simply put was that he had become indebted to several banks in this province. He didn't have the money to pay these debts in full and employed a very reputable accountant here in Halifax to negotiate a settlement.

Suggestions then began to be made that because he was a minister of the Crown this settlement process somehow violated Section 110(1)(c) of the Criminal Code. The RCMP investigated these allegations as they properly should. Likewise the Chief Superintendent of Banks in Ottawa investigated. Both reported they found no wrong doing on the part of Mr. Thornhill or the banks.

Despite these findings which I reported to the legislature, the Opposition requested that I make a further investigation and I obliged and asked the RCMP to re-examine the matter which they did. This time they came back with the suggestion that Thornhill, in making settlement of his debts, may have committed a breach of Section 110. With that I discussed the matter with my deputy, Mr. Coles, a very able and honourable lawyer appointed in 1973 to that position by the former premier, the Honourable Gerald Regan, and asked him to review the whole matter. Because he was a permanent civil servant and not a colleague of Mr. Thornhill, as I was, I instructed him that he was to make a totally objective finding, leaving aside any consideration of his relationship to me as deputy, and give me his completely impartial opinion and recommendation as to whether or not a charge or charges should be laid against Mr. Thornhill and I would act on his recommendation.

He and the other senior legal staff did as I asked and later came back to advise that in their view no criminal wrong doing was anywhere to be found on the part of Mr. Thornhill or the banks and therefore the essential element of mens rea or guilty mind necessary to support a criminal charge against anyone under the Criminal Code was not present and thus no charge was warranted. Both Mr. Coles and I explained this at a news conference we asked for, and I explained it in the Legislature as well. I felt that under the circumstances it was not appropriate for me to make the decision whether or not to prosecute and I took the next and most objective and in my view the most honourable way to determine the matter. Moreover, I never discussed the matter with Mr. Thornhill, the premier or the cabinet because such decisions are, in the British tradition, the perrogative of the Attorney General alone. The premier and Mr. Thornhill respected my position and the tradition behind it.

Sometime later, and quite to my surprise, and I may add — pleasant surprise — I was advised by the head of the RCMP in Ottawa, Commissioner Robert Simmonds, that in view of the division of opinion among those in the RCMP who had been involved, as to whether a charge or charges were warranted, that he had ordered a complete review of the facts and law by his senior staff, of the Thornhill case. This resulted in the conclusion that no charges were warranted. I asked him if he would consider putting this in writing and without hesitation, he said he would and eventually I received from him the attached letter. I would only ask that you print it in photo-stat form in its entirety, along with this response.

In the face of all this, Mr. Story and apparently others for reasons known only to themselves, seem determined to resurrect the matter and implicitly to suggest something improper and dishonourable in my conduct and that of Mr. Cole. If you will please print this as I have written it I am content to let the public be the judge.

Thanking you
Yoers sincerely
Harry W. How

Royal Canadian Mounted Police

81.02.25.

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

Dear Mr. How:

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 will 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 -

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

SUBJECT: POLICY STATEMENT -
NEGOTIATIONS WITH DEFENCE COUNSEL
CONCERNING PLEA AND SENTENCE

#174

Periodically, a Prosecuting Officer may be approached by Defence Counsel who offers to plead his or her client guilty either:

(a) in return for the Crown reducing the charge to a less serious, included offence, or

(b) in return for a specific recommendation by the Crown to the sentencing Judge as the quantum of sentence, or

(c) in return for the Crown withdrawing another charge

With respect to situation (a) above, the decision as to whether to enter into the arrangement proposed must be one for the Prosecuting Officer in the first instance, except where the offence charged is first or second degree murder. He or she must be satisfied that a plea to a reduced charge will not bring the administration of justice into disrepute. In reaching such a conclusion, the Prosecuting Officer may wish to consult with the Assistant Director or Director (Criminal). Where the charge is murder, it will be necessary to seek the approval of the Department where Defence Counsel offers to enter a plea of guilty to the included offence of manslaughter.

Any arrangement proposed which goes beyond the Crown agreeing to reduce the charge to a less serious, included offence, must be approved by the Assistant Director or Director (Criminal). This would encompass situations where in return for a guilty plea, the Crown is asked to make a specific recommendation as to the quantum of sentence or where the Crown is asked to withdraw one or more of multiple charges in return for an accused entering a plea of guilty to another of the charges laid.

.../2

Nova Scotia

Attorney General
Province of Nova Scotia

PO Box 7
Halifax, Nova Scotia
B3J 2L6

902 424-4044
902 424-4020

File Number **23-87-0003-06**

October 2, 1987

The Honourable Edmund L. Morris
Minister of Social Services
Halifax, Nova Scotia

Dear Mr. Morris:

Re: Federal Department of Justice Study
Legal Needs of Native People

Attached is a copy of a memorandum dated October 1, 1987 from R. Gerald Conrad to me. I am inclined to agree with the recommendation of our officials and, subject to your concurrence, I will advise Mr. Conrad to take the action which has been recommended.

May I please hear from you.

Yours very truly,

Terence R.B. Donahoe, Q.C.

attachment

Assistant Prosecuting Officers are advised that they must seek the approval of the Prosecuting Officer for the County prior to concluding any negotiations with the Defence concerning plea and sentence.

The Appeal Division of the Supreme Court of Nova Scotia has stated that "plea bargaining" is not to be regarded with favour. However, the Court has recognized that the Crown and Defence Counsel will enter into such arrangements from time to time. It must always be kept in mind that any agreement by the Crown on a specific recommendation to be put forward as to the quantum of sentence must accord with the principles of sentencing and the range of sentences ennunciated by the appellate courts for the particular type of crime involved.

Nova Scotia

Department of Attorney General

Crown Prosecutor's Office

Memorandum

November 22, 1985

To All Prosecutors

From David W. Thomas, Q.C.

Re: Plea Bargaining

Your attention is directed to Section 7.21 of Volume 1, Advice to Prosecuting Officers, wherein you will note that Assistant Prosecuting Officers

> "are advised that they must seek the approval of the Prosecuting Officer for the County prior to concluding any negotiations with the defence concerning plea and sentence."

Section 7.20 sets out the procedure to be followed by the Prosecuting Officer.

As a general statement of policy to be followed by Assistant Prosecuting Officers in Halifax County, it is my view that the position you should take is that you will recommend either local or federal time and that you should not be specific as to the length of time.

You may go a step further and indicate that you feel lengthy local or federal time would be appropriate, or alternatively, a short local term or a term in a federal institution. Sentence is a matter for the court. If either party feels aggrieved by the sentence the appropriate remedy is to appeal same.

D.W.T.

DWT/rrp

cc: Martin Herschorn

E+ 175

R. v. MORRISON

Nova Scotia Supreme Court, Appeal Division
Crown Side
MacKeigan, C.J.N.S., Cooper and Macdonald, JJ.A.
October 6, 1975.

CRIMINAL LAW - TOPIC 5859
SENTENCE - CHARGE OF FRAUD - 30 YEAR OLD MALE LAWYER - THE NOVA SCOTIA COURT OF APPEAL IMPOSED A SENTENCE OF IMPRISONMENT OF 2 YEARS.

BARRISTERS AND SOLICITORS - TOPIC 2041
DUTY TO THE PUBLIC - SPECIAL DUTY OF A LAWYER TO THE PUBLIC - A LAWYER WAS CHARGED AND CONVICTED OF FRAUD - IN CONSIDERING SENTENCE THE NOVA SCOTIA COURT OF APPEAL STATED THAT A LAWYER HAS A SPECIAL DUTY TO AVOID CRIMINAL CONDUCT - SEE PARAGRAPH 13.

CASES JUDICIALLY NOTICED:
R. v. Grady, 5 N.S.R. (2d) 264, folld. [para. 18].
Osachie v. The Queen, 6 N.S.R. (2d) 628, folld. [para. 18].
R. v. Cormier, 9 N.S.R. (2d) 687, folld. [para. 18].

GRAHAM W. STEWART, for the appellant,
WILLIAM E. KELLEHER, for the respondent.

This appeal was heard by the Appeal Division on September 17, 1975. Judgment was delivered by the Appeal Division on October 6, 1975.

The judgment of the Appeal Division was delivered by MacKEIGAN, C.J.N.S.

1 MacKEIGAN, C.J.N.S.: We should grant the Crown leave to appeal from the suspension of passing of sentence for two years on three charges of fraud to which on May 28, 1975, the respondent pleaded guilty before His Honour Judge R.F. McLellan in the County Court Judge's Criminal Court for District Number One.

2 The respondent is thirty years of age, a graduate of Dalhousie University in Arts and Law, and a member of the Bar of this province since March 1972. Married in 1967, he and his wife had been separated for several months prior to his trial. They have three young children.

3 After admission to the Bar, he practiced law for a year at Halifax as an employee of F.H. FitzGerald, Q.C.

He then established his own practice, largely in the field of mortgages and real estate, at Bedford, Nova Scotia. By December 1973, he had opened a branch office at Dartmouth, in the same building as important new clients, Associates Financial Services Limited, and its mortgage affiliate, Associates Realty Credit Limited, clients whom he lost in April 1974.

4 He was then in serious financial difficulties resulting from extravagance and overspending by him and especially by his wife. He had a large, luxurious home, fully mortgaged for about $120,000.00, and expensively furnished. He had two cars, nothing but the best for his wife and children, and many large bills outstanding.

5 On about May 18, 1974, a thief broke into the Dartmouth office of Associates and stole at least two numbered cheque blanks of Associates Financial Services Limited, blanks for use with its account at a Bank of Montreal branch at Toronto. The theft was soon discovered by Associates who placed a stop payment on the two cheques with the Toronto bank. The cheque blanks found their way into Morrison's possession.

6 Morrison was, of course, familiar with the signatures and procedures of his former client, including the fact that as appeared from argument, any cheque debit would normally be cleared to the Indiana head office and might well not be questioned for some time. Not knowing of the stop payment he, on May 27, 1974, deposited to his account in Halifax one of the stolen cheques, having made it payable for $18,739.43 to himself in trust for one Legace, a former mortgage client, and having forged the signature of the signing officer. The Toronto bank failed to put the stop order into effect, and the fraud was not discovered until some months later. None of this sum has been repaid, the full loss being borne by the bank, because of its failure to stop payment.

7 Meanwhile, two months later, Morrison forged and deposited the second stolen cheque to his account at Bedford, again for $18,739.43, made payable this time to one J.J. Keough, whose endorsement was also forged. A few days later on July 8, 1974, his bank was informed by Toronto that the cheque was forged, and promptly retrieved the money from his accounts, so that no loss was suffered.

8 Disclosure of these two crimes did not deter him from other crime, but apparently made his actions more frantic. Over three months later, on October 28, 1974, the

respondent opened an account in a false name, "Richard Martell", at a Canadian Imperial Bank of Commerce branch in Halifax, depositing $10.00. He then drew a false cheque against the Martell account for $11,000.00 and deposited it to his own account at Canada Trust Company, Halifax. The Commerce did not honour the cheque despite a phone call from "Martell", promising that another cheque for $14,000.00 would be deposited to cover it. (Such a cheque, apparently another false cheque drawn on a dummy account at Rockingham, Nova Scotia, was deposited, but not credited.) By the time Canada Trust discovered the fraud, Morrison had drawn about $2,000.00 from the $11,000.00 "deposit", of which he later paid back about $1,300.00, leaving a net loss, not yet repaid, of about $700.00.

9 Informations were sworn December 10, 1974, against the respondent, alleging six offences, three of fraud contrary to s. 338 of the *Criminal Code*, and three of uttering forged documents contrary to s. 326, in respect of each of the three above-described transactions. Charges under s. 326 were not proceeded with, following his guilty pleas under s. 338.

10 After the charges were laid, the respondent was forced to turn his practice over to a trustee for the Bar Society. It is expected that the criminal convictions will result in his disbarment in due course. He separated from his wife, who has their children, and is driving a taxi in Halifax to earn a living.

11 The offences committed are most reprehensible. They cannot in my opinion be equated to breaches of trust by an accountant or lawyer who, under pressure of expensive habits or an extravagant wife, might "borrow" from trust accounts in the vain hope of repayment. They are much more serious offences. Reprehensible as are breaches of trust by professional persons, which have been usually recognized by the courts as necessitating substantial terms of imprisonment, usually penitentiary terms, the Morrison offences involved the added feature of forgery. They are not isolated or semi-voluntary impulsive "borrowings", but carefully planned crimes of a sophisticated sort, committed over a period of nearly six months. He planned frauds totalling nearly $50,000.00, of which he has retained over $19,000.00 which has not been paid back.

12 His counsel before us urged that his offences were not committed *qua* lawyer, that no breach of trust occurred, and no client was defrauded. Respectfully I cannot

agree. In his attempts to defraud Associates, he used information obtained while he was acting for them, and it was not his fault that they did not lose any money.

13 Furthermore, even had no client been involved, we must especially denounce crimes of fraud and forgery committed by a member of the Bar, a sworn officer of this Court. Such a man has a special duty. We must deal with a breach of that duty temperately, mercifully and without undue righteousness, but at the same time firmly and to warn others.

14 The learned trial judge was impressed, and properly so, by extensive evidence prior to sentencing, by the respondent's secretary, by his mother, by his former employer, Mr. FitzGerald, by himself, and especially, by Dr. Leslie Kovacs, a psychiatrist who treated him for about six months, after the charges had been laid against him. The theme forcefully illustrated by all witnesses was that Morrison had been induced, persuaded and, indeed, forced by the constant pleas, importunities, unreasonable demands and naggings of his wife, reinforced by feigned illnesses, to try to support her in a fantastically extravagant way of life.

15 Dr. Kovacs testified that he was convinced, although he saw the respondent only after the events, that the respondent was seriously upset by the pressures of his wife, and, as I understand the doctor's evidence, was almost an automaton in trying, by illegal means, to find a solution for their financial problems. He believed that the respondent had had his personality restored in strength by his psychiatric treatment and that he thought no chance existed of the respondent committing similar offences again.

16 In result, as Judge McLellan fully appreciated, the psychiatrist's evidence did not excuse Mitchell Morrison but did make it clear that no sentence of incarceration was required either to rehabilitate him or deter him from committing such offences again. This I entirely accept.

17 The learned trial judge also interpreted Dr. Kovacs as saying that "the effect of confinement could destroy his personality. He could not now take the stress of incarceration." I cannot help but feel that he misinterpreted the doctor's evidence. I interpret Dr. Kovacs as merely saying that the growth in personality maturity achieved during his treatment *might* or *could* be lost if Morrison were imprisoned. He said, as to *any* period of imprisonment:

> No, it could destroy his personality. It could destroy what he achieved through difficult experiences. This personality growth that I talk about, I believe it has occurred... But I think it would not only be jeopardized but it could be destroyed because when I mentioned that he's able to take stresses, now he's going to take stresses but not the stress of being incarcerated.

18 The learned trial judge in a thorough and conscientious judgment reviewed the evidence he had heard and the principles respecting sentencing, quoting from *The Queen v. Grady*, 5 N.S.R. (2d) 264, *Osachie v. The Queen*, 6 N.S.R. (2d) 628, and *The Queen v. Cormier*, 9 N.S.R. (2d) 687. He concluded, quite properly, that no imprisonment was necessary to rehabilitate or deter Morrison himself. He quoted with approval the following statement by Professor Alan Grant who was the rapporteur for Group D of the persons who attended the National Conference on the Disposition of Offenders in Canada. The report is entitled "Report of the Proceedings of the National Conference on the Disposition of Offenders in Canada", held at the Centre of Criminology, University of Toronto, on May 14 to 17:

> ...the public...must decide the tolerance level of antisocial conduct at which it is proper for the criminal sanction to be imposed, and the humanitarian level beyond which steps to check such behavior must cease.

He then concluded that the respondent, having lost his family and his profession, had "suffered enough...or almost enough. I do not consider that society has the right nor indeed the need to exact further retribution from this accused." He then directed suspension of sentence for two years.

19 With much reluctance I must disagree with the learned judge. I am respectfully of the opinion he overlooked the inescapable duty of imposing, for a calculated crime of this sort, a sentence which would reflect a substantial element of deterrence to others. This is so different from the manslaughter in *Cormier* accidentally or impulsively committed by a poor mother of seven children in the middle of a drunken row with an abusive husband. I can find here no element of deterrence to others and no clear warning to others tempted to offend. Here material imprisonment cannot be avoided because, to use the words of the Ouimet Report, no other disposition is appropriate.

20 I regretfully conclude that the appeal should be allowed and the respondent sentenced to two years' imprisonment in a federal institution on each charge, to run concurrently. I trust that he will serve this time at Springhill where he may be able to obtain a continuation of psychiatric treatment if required.

Appeal allowed.

4.52

OCT - 4 1979

S.C.A. 00492

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

MacKeigan, C.J.N.S.; Jones and Pace, JJ.A.

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant

- and -

DENNIS ERNEST PARRY

Respondent

David G. Giovanetti
for the appellant

Luke Wintermans
for the respondent

Appeal Heard:
September 12, 1979

Judgment Delivered:
September 12, 1979

THE COURT (Per oral judgment of MacKeigan, C.J.N.S.): Appeal allowed and sentences for fraud and theft increased to total of twelve months.

The reasons for judgment were delivered orally by:

MACKEIGAN, C.J.N.S.:

This is an application by the Crown for leave to appeal from sentences imposed by His Honour Judge P.J. O Hearn, of the County Court Judge's Criminal Court of District Number One, on charges of fraud and theft. He suspended sentence and placed the accused on probation for a period of two years and ordered partial restitution of the money involved.

Leave to appeal is hereby granted.

The first charge, under s.338(1)(a) of the Criminal Code was for defrauding Halifax Cablevision Limited by appropriating to his own use a cheque for $270.00 in June 1975, and one for $872.00 in February 1976.

The second charge, under s.294(a) of the Criminal Code, was for theft from Rent-A-Bay Limited of two cheques totalling $1,894.95, an offence committed on November 10, 1976. Rent-A-Bay Limited was a company which Mr. Parry had organized and helped to finance.

The third charge, under s.338(1)(a) of the Criminal Code, was for defrauding the Federal Business Development Bank of $34,000.00. This was done by falsely representing the amount of money invested by him in Rent-A-Bay Limited, for which he had applied to the Bank for a loan. The Bank granted a loan of

$34,000.00 and, I understand, advanced $33,500.00. The essential false representation was achieved by placing in the account $5,200.00, which had been stolen by him from other companies. He thus induced his chartered accountant to certify a pro forma statement for Rent-A-Bay Limited showing assets which did not exist and which helped induce the Bank to make the loan. After the loan was made Mr. Parry redeposited the $5,200.00 with the companies from which he had stolen it. Subsequently, Rent-A-Bay Limited went bankrupt and the Federal Business Development Bank suffered a loss of $33,500.00, on which through the bankruptcy it may possibly recover 30 cents on the dollar.

Mr. Parry is now thirty-four years of age. He has no criminal record. He is divorced and under obligation to pay $101.00 a month for the support of his wife and two young daughters. He is obviously an able accountant, very skilled at his occupation and has had no difficulty in obtaining employment, including employment which he now holds. He has clearly exhibited remorse and has undertaken to try to make restitution to those defrauded, including the Bank.

The learned trial judge in passing sentence, following a plea of guilty to the three charges, emphasized that ordinarily offences of this sort would call for substantial terms of imprisonment. He stated, however, that he considered there were exceptional circumstances in this case which warranted imposing the sentence which he did.

We are unable to see that there is anything exceptional about these offences. They were typical so-called whitecollar thefts or frauds. They occurred over a considerable period of time--nearly a year and a half. They obviously involved premeditation. The fraud of the bank in particular required considerable planning and sophisticated arrangements. There is no doubt of this man's otherwise good character and of his repentance. This is not a case where rehabilitation or personal deterrence is concerned.

We must emphasize, however, that those committing this type of offence and others tempted to act similarly must be shown that they cannot escape severe punishment merely by repentance or restitution and that a substantial measure of public deterrence has to be administered.

Having regard to all the circumstances, the appeal from sentence is hereby allowed and the sentences varied to be as follows: (1) three months' imprisonment on the charge under s.338(1)(a) of defrauding Halifax Cablevision; (2) three months consecutive to the first sentence on the charge under s.294(a) of theft from Rent-A-Bay Limited; and (3) six months consecutive to the two previous sentences on the charge under s.338(1)(a) of defrauding the Federal Business Development Bank. The probation order should be varied and a new one issued, placing Mr. Parry on probation for a period of one year following his release, with the same conditions as imposed by Judge O Hearn.

C. J. N. S.

Concurred in:

Jones, J.A.

Pace, J.A.

S.C.C. 01299
S.C.C. 01344

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Clarke, C.J.N.S., Hart and Macdonald, JJ.A.

BETWEEN:

TERRANCE POWER,

Appellant

- and -

HER MAJESTY THE QUEEN,

Respondent

David F. Walker, Q.C.,
for the appellant

Robert E. Lutes,
Brian Newton and
Adrian Reid,
for the respondent

Appeal Heard:
March 11, 1986

Judgment Delivered:
March 11, 1986

THE COURT: Appeals against both conviction and sentence dismissed per oral reasons for judgment of Clarke, C.J.N.S., Hart and Macdonald, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.:

The appellant seeks leave to appeal and, if granted, to appeal from his conviction on July 12, 1985, at Halifax. The Honourable Judge O Hearn of the County Court found the appellant guilty of eleven counts of fraud and theft. These charges arose from and are related to activities with which the now bankrupt investment firm of Atlantic Securities Limited was involved. The appellant Mr. Power was the guiding and directing force behind this company.

Lengthy and detailed written briefs and arguments have been submitted to the Court as well as the several volumes of transcript of evidence recorded at the trial, together with the many exhibits. We have had the opportunity to examine and study all this together with the supplementary oral argument of counsel.

We have concluded that no reviewable error of law exists. It is our unanimous opinion that there is ample evidence to support the conviction entered by the learned trial judge on each of the eleven counts.

We grant leave to appeal from the conviction but the appeal is dismissed.

The Crown seeks leave to appeal from the sentence imposed by the learned trial judge on September 6, 1985. Mr. Power seeks a reduction of the total sentence. On these eleven charges Judge O Hearn sentenced the respondent to a total term of imprisonment of four years in a federal institution. If leave be granted, the Crown submits this sentence should be increased. Mr. Power seeks to have it reduced. Once again, we have had the benefit of lengthy written submissions and the subsequent oral argument of both counsel.

So far as we are aware, four years is the longest sentence imposed in this province against a professional person for offences of this nature. The respondent was a lawyer of some years' standing. He has been disbarred by the Nova Scotia Barristers' Society. He has declared bankruptcy. He and his family have undoubtedly suffered much agony and anxiety as a result of the ill-conceived ventures which led the respondent to this unhappy fate. As a lawyer, he was in a position where much trust and confidence were placed in him by those with whom he had dealings.

Judge O Hearn took these matters into account. He stressed the obvious need for general deterrence. The public must be protected.

After a careful review and study of the reasons for sentence, we are persuaded that the learned trial judge enunci-

ated the proper and appropriate principles. We are satisfi i he committed no error and that the sentence is fit and should not be disturbed.

While we grant leave to appeal from the sentence, we dismiss both appeals.

C. J. N. S.

Concurred in:

Hart, J.A.

Macdonald, J.A.

just like that, as Mrs. D'Amours said, and when she realized what had happened, the theft had already been committed.

In my humble opinion, it is neither because of assault nor following assault that Mrs. Vezina lost her handbag. To repeat the expressions used in Archbold and in Russell, she was simply the victim of a "mere snatching", of a "sudden taking".

After taking a global look at the evidence through the prism of s. 302(*a*) of the *Criminal Code*, I am forced to conclude that the accused stole but without violence or threats of violence either "to extort the property stolen or to prevent or overcome resistance" to the theft on the part of Mrs. Vezina. The fact of pulling an object even suddenly is not in itself an act of violence and if I had any doubt on the question, I would grant the accused the benefit of the doubt.

Conclusion

I hold that the accused did not commit the aggravated theft with which they are charged but committed the offence of simple theft. Consequently, I maintain the charge and find the accused guilty of having, at Montmagny, in the District of Montmagny, on August 23, 1976, illegally stolen from Mrs. Denise Vezina, a handbag, a wallet and a sum of money, the whole worth approximately $26, property of the said lady, contrary to s. 294(*b*)(i) [rep. & sub. 1974-75-76, c. 93, s. 25] of the *Criminal Code*.

Judgment accordingly.

REGINA v. RUDDOCK

Nova Scotia Supreme Court, Appeal Division, Coffin, Cooper and Macdonald, JJ.A. February 14, 1978.

Sentence — Principles — Accused civil servant charged with accepting benefit from person having dealings with Government — Accused administrator of Liquor Licensing Board accepting $1,000 over four-year period — No allegation of bribery or corruption — Accused having no decision-making power — Whether general deterrence primary consideration — Whether sentence of imprisonment required — Cr. Code, s. 110(1)(c).

Sentence — Acceptance of benefit by Government employee — Accused civil servant charged with accepting benefit from person having dealings with Government — Accused administrator of Liquor Licensing Board accepting $1,000 over four-year period — No allegation of bribery or corruption — Accused having no decision-making power — Accused 46 years of age with no prior record and losing job as result of conviction — Whether Crown appeal from fine of $2,000 should be allowed — Whether term of imprisonment required — Cr. Code, s. 110(1)(c).

The accused, the Administrator of the Nova Scotia Liquor Licensing Board, was charged with accepting a benefit from a person having dealings with the Government without the consent of the head of the branch of the Government which employed him contrary to s. 110(1)(*c*) of the *Criminal Code*. Over a four-year period the accused accepted money totalling $1,000 from a person having dealings with the Board. The money was given to the accused at Christmas parties organized by this person. The accused had no decision-making power with respect to the granting or refusing of liquor licences or other allied matters and there were no allegations that the accused did anything on behalf of the person who conferred the benefits which would not have been done in the normal course. The accused was 46 years of age and of previous good character and lost his job as a result of this conviction. A fine of $2,000 was imposed at trial. On appeal by the Crown from the sentence imposed, *held*, the appeal should be dismissed.

There are varying degrees of culpability envisaged by s. 110(1)(*c*) of the *Criminal Code* and an important consideration in this case was that due to the accused's lack of decision-making power he had no power in any way to use his office to assist the person who conferred the benefit. This was not a case involving large sums of public money. Further, there was no allegation of any bribery. Although the factor of major importance in an offence of this kind is that of general deterrence, such deterrence can be accomplished in some cases without the imposition of a custodial sentence. In this case the main consideration was to impress upon civil servants that conduct of this kind is a breach of the criminal law. The fact that the accused had lost his job with the Government, that he now had a criminal record which might adversely affect his ability to obtain future employment, and that he would not obtain employment with the Government must be well known to other civil servants, and if this did not act as a deterrent it was doubtful whether the addition of a term of imprisonment would do so. As it could not be said that imprisonment was needed as a matter of general deterrence it could not be said that the trial Judge erred in principle in imposing the sentence that he did.

[*R. v. Cooper (No. 2)* (1977), 35 C.C.C. (2d) 35, consd; *R. v. Jackson* (1977), 21 N.S.R. (2d) 17; *R. v. Tanguay* (1975), 24 C.C.C. (2d) 77; *R. v. Morrissette* (1970), 1 C.C.C. (2d) 307, 12 C.R.N.S. 392, 75 W.W.R. 644, 13 *Crim. L.Q.* 268; *R. v. Melanson* (1976), 18 N.S.R. (2d) 189; *R. v. Cormier* (1974), 22 C.C.C. (2d) 235, 9 N.S.R. (2d) 687, refd to]

APPEAL by the Crown from the sentence imposed following the

accused's conviction on a charge contrary to s. 110(1)(*c*) of the *Criminal Code*.

R. M. Endres, for the Crown, appellant.

I. H. N. Palmeter, Q.C., and *T. R. B. Donahoe*, for accused, respondent.

The judgment of the Court was delivered by

MACDONALD, J.A.:—The Crown applies for leave to appeal and if granted appeals against the sentence of a fine of $2,000 imposed upon the respondent by His Honour P.J. O Hearn in the County Court Judge's Criminal Court of District Number One following his conviction after a plea of guilty on the following charge:

> that he at or near Halifax in the County of Halifax, Nova Scotia, between the 1st day of December 1973 and the 1st day of January, 1977, did, being an official of the government of Nova Scotia, to wit: the Administrator of the Nova Scotia Liquor Licensing Board, unlawfully accept from a person having dealings with the said government, to wit: Arthur BOUDREAU, a commission, reward, advantage or benefit, and more particularly money; without having the consent in writing of the head of the branch of government that employed him, contrary to section 110(1)(c) of the Criminal Code.

Section 110(1)(*c*) reads as follows:

> 110(1) Every one commits an offence who
>
> . . . . .
>
> (*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;

This section does not involve any elements of fraud, breach of trust or bribery which are expressly covered elsewhere in the *Criminal Code*. The Crown did not allege or prove that the monetary benefits received by the respondent from Mr. Boudreau were given and accepted as bribes. The maximum penalty for a violation of s. 110(1) is five years' imprisonment.

The statement of facts set forth in the factum of counsel for the appellant are:

> During the time of the commission of the offence under Section 110(1)(c) of the *Criminal Code of Canada*, the Respondent, Robert McGee Ruddock, was the Chief Administrative Officer of the Nova Scotia Liquor License Board. As such, he was responsible for the general administration of the Board's affairs, acting under the direction of the Liquor License Board.
>
> The record shows that the Respondent received, over a period of four years, the total sum of $1,000.00 from Arthur Boudreau and his firm, Automatic Amusement Limited. This benefit was bestowed on the Respondent by Boudreau on the occasion of four successive Christmas parties organized by Boudreau in 1973, 1974, 1975 and 1976. On each occasion Mr. Ruddock received an envelope containing cash in the amounts of $200.00, $200.00, $300.00 and $300.00 respectively. In addition, Boudreau and Automatic Amusement Limited favoured the Respondent with other gifts such as chocolates and liquor, delivered to the Ruddock home during the past four Christmas seasons.

Counsel for the respondent takes no exception to the foregoing statement of facts but says the following items of fact appear in the record and should be considered:

> During the years that the Respondent received the Christmas gifts as admitted, nothing was done for Arthur Boudreau or his firm Automatic Amusement Limited by the Respondent, which was not done or would not have been done for any other person having similar limited dealings with the Liquor License Board. The record further indicates that the Respondent did not have decision-making authority in his employment and submissions made to the Trial Judge on behalf of the Respondent show that the Respondent was on record with the Liquor License Board as being opposed to the use of certain kinds of coin-operated amusement machinery in certain types of licensed establishments. This certainly is not consistent with any suggestion that the Respondent accepted Christmas gifts in exchange for favours or to be given to Boudreau or others.
>
> The record, it is submitted, clearly shows that the circumstances of the offence do not show a "bribery" or "pay-off" situation, and His Honour Judge O Hearn agreed with this in his decision.
>
> It is acknowledged by the Appellant that the Respondent co-operated fully with the police in their investigations into this offence and into the circumstances surrounding other matters and offences related to Arthur Boudreau and his company and other individuals. Submissions are on the record which indicate that the Respondent in accepting these gifts did not think he was doing anything wrong in a criminal sense. It is difficult to understand the naïvete of the Respondent in this situation, particularly in view of his responsible position and his record of faithful and unblemished public service, but the Respondent himself has admitted to his "stupid" and "unthinking" actions. His Honour Judge O Hearn accepted this submission and the record, including the character evidence and the pre-sentence report supports this real lack of "criminal intent" on the part of the Respondent.
>
> The record shows that the Respondent received the gifts at Christmas parties held by Boudreau and his company. Submissions to the Trial Judge and to the police investigators by the Respondent would indicate that it was a habit of Boudreau at such parties to give out envelopes to other persons. This does not in any way take away from the seriousness of the offence to which the Respondent has plead guilty, but it does help in some way to understand the thinking or perhaps the "unthinking" on the part of the Respondent.

After hearing the evidence of several character witnesses called on behalf of the respondent and after having received a pre-sentence report and hearing submissions of counsel the trial Judge imposed the sentence now challenged by the Crown. In his remarks on sentencing the trial Judge said:

> 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 aston-

ished 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.

When we look at this particular instance, however, there are some other considerations that have to be kept in mind. First of all, the gifts consisted of money which I think is most unusual, and not petty cash either. And, they continued over a period of years. So that it's quite clear that even without any Code provision this would have occurred to any person aware of the implications that it wasn't in propriety and not merely a minor one but a fairly substantial one.

. . . . . .

Quite apart from any intention on the part of the accused or the other party involved, it's a precautionary provision of the Code. 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 any element of fraud or breach of trust, or bribery, and without going beyond the ambit of this case one can imagine that it was a preparation, but there is no direct evidence of that. It's just the kind of character that this has, that a man who operates coin-operated machines and other things which are used in taverns and who has business with the government, with this branch of the government, goes out of his way to be pleasant to one of the officers of the government in this particular fashion.

But I want to make it clear that it does not involve bribery or anything that could be called bribery. It is conduct that is absolutely prohibited if the giver knowingly accepts a gift from a person who is dealing with the government, without the permission of the head of his department.

So that . . . I hope to deal with that aspect of any media misinterpretation of it to make clear what the accused has pleaded guilty to.

. . . . . .

Mr. Rudock has been an outstanding citizen of his community and has contributed in many ways to its good. But, this particular kind of act has to some extent destroyed or at least damaged his power to do good in the community. Undoubtedly it will affect some of his relationships in what he has been doing, and, of course, it may result in dismissal from his employment and loss of substantial pension benefits.

This I don't know. Nobody has said anything other than that this is a real possibility. I have to take it into account on that basis.

. . . . . .

But again, here the publicity involved whether it is true or misleading, I don't know, it certainly adds to that, and this is part not only of his punishment, but a part of the damage that he has done by this kind of conduct. And, it is punishment that rarely gets involved in the public account of the punishment or in the . . . even the judicial account of the punishment.

That is to say, the public do not count this as part of the sentence ordinarily. They may in such a case as this if it is given that kind of publicity.

The public ordinarily do not take into account all these losses, nor do the cases cited or the other cases that touch on this usually take into account this kind of thing except very cursorily. What you find cited are sentences of imprisonment, sentences of fines, discharges, and probation things of that kind. And yet this is a very real part, real consequence and therefore a real part of the punishment involved in the conviction of this nature.

The primary purpose of criminal penalties is the protection of the public by eliminating the conduct that is prohibited. This is done incidentally or mediately, that is by the means of various techniques of which the principal are rehabilitation and deterrence. Deterrence applies not only to the accused but to others. In this case, I am quite satisfied that as far as the accused is concerned, deterrence of him personally is no longer required prospectively.

There is, however, an element of deterrence of the public and especially of the people in the employ of the government and those dealing with them which is important here and will have to be taken into account. Although, of course, it cannot absolutely dominate the picture. There is also an element in all criminal proceedings of denunciation of the offence, and that has to be taken into account.

. . . . . .

The accused should have been aware of the impropriety. I cannot understand myself how he could let himself accept them in the circumstances of his employment. Counsel has described it as "stupid" and "unthinking", perhaps that's a way of putting it. But they certainly were grossly improper and extraordinary and a discharge of either absolute or conditional is not appropriate.

. . . . . .

. . . There is no scintilla of evidence before me of any other impropriety, everything else I have heard has been to his credit and I do not think it is an appropriate case for imprisonment . . .

The appellant desires to appeal against the sentence on the grounds that it inadequately reflects the element of deterrence particularly deterrence to others and that it is inadequate having regard to the nature of the offence and the circumstances of the respondent.

The element of deterrence has two aspects. The specific, *i.e.*, to deter the offender and the general, *i.e.*, to deter others. By his conviction the appellant has lost his employment with the Government which he had since February 1, 1968. He doubtless has suffered great humiliation and embarrassment. The pre-sentence report indicates that he has suffered great emotional strain as a result of this matter. He is a man of 46 years of age, married with two grown sons and has no previous criminal record. His conviction for this offence with all the attendant ramifications thereof, some of which I have referred to, has, no doubt, graphically brought home to him the gravity of the matter. In light of his background it seems to me that reformation and rehabilitation are not factors that are of any real significance here. Of major importance, however, is general, or third party deterrence. In *R. v. Cooper (No. 2)* (1977), 35 C.C.C. (2d) 35, Arnup, J.A., in delivering the judgment of the Ontario Court of Appeal said in respect of s. 110(*b*) and (*c*) (pp. 36-7):

> Section 110(1)(*b*) is part of a section found in the *Criminal Code* beneath the heading "Frauds upon the government". It is a section which has been in the same terms for many years. In our view it creates a serious offence. Its purpose is to ensure and maintain the complete integrity of the public service. It does so by providing that any person having dealings of any kind with the Government who confers a benefit of any kind upon an employee or official of the Government "with respect to those dealings" commits an offence punishable by imprisonment for five years. 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, directly or indirectly, from a person who has dealings with the Government.

It has been urged by counsel for the Crown that the paramount consideration in this case is one of general deterrence. We agree with that submission. In our view, it is important for the business community to realize the seriousness of the offence which s. 110(1)(*b*) creates. It is equally important that the public at large should understand that the law stands ready to punish severely persons who breach the section, and in appropriate cases to punish those officials or employees of the Government who accept benefits of the kind prohibited, and thereby contravene the provisions of s. 110(1)(*c*).

The factual situation was summarized by Arnup, J.A., as follows (p. 36):

The facts upon which the conviction was based are summarized in the judgment of this Court: see 22 C.C.C. (2d) 273, 7 O.R. (2d) 429, 29 C.R.N.S. 293. The appellant is 43 years of age and has no prior conviction. The benefits conferred upon the employee of the federal Government consisted of four separate return air fares to Florida, and hospitality at the appellant's ranch for four week-ends, on two of which the employee's wife also attended. It was said by Judge Graburn that there was no suggestion that the Government employee had acted improperly or corruptly in approving or recommending large grants to two companies controlled by the appellant. The jury did, of course, find that the benefits were conferred "in respect of" (the appellant's) dealings with the Government.

The employee of the Government who received the benefits from Mr. Cooper as described above was one Gerald William McKendry. He was charged under s. 110(1)(*c*) of the *Code*, pleaded guilty and was sentenced to six months' imprisonment by His Honour Judge Lyon of the Ontario County Court Judge's Criminal Court in and for the Judicial District of York (September 16, 1977 — unreported). The total benefits received by him amounted to approximately $1,200. The background of the matter is more detailed in *R. v. Cooper* (1975), 22 C.C.C. (2d) 273, 7 O.R. (2d) 429, 29 C.R.N.S. 293, and are that McKendry was employed by the federal Government, in DREE, as a director of the Special Analysis Group. Two of Mr. Cooper's companies had made application for DREE grants in the amounts of $617,000 and $119,970. The latter application was apparently granted by McKendry himself but there was no corruption involved and the approval by McKendry of the $119,970 was entirely legitimate and proper.

At the relevant time Mr. McKendry was 53 years of age. As a result of the charge he was dismissed from the employ of the Government without compensation. He was described by the trial Judge as "a man of impeccable character, highly thought of by very responsible individuals . . . he has been very active in charitable matters . . . and certainly has been much more than what we perhaps might call an average citizen in terms of community participation and in terms of response to community needs . . .".

Judge Lyon, after expressing the view that rehabilitation of Mr. McKendry was not a significant factor, went on to say:

. . . Mr. McKendry occupied what appears to me a relatively high position in terms of his responsibilities, and the trust that was placed in him. No doubt he had a significant influence in terms of applications, whether he was able to approve them or whether it was a question of referring them to his superior. And in his position of processing these applications for Government grants there were large sums of public money involved. The amounts have been referred to in the statement of facts.

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.

. . . . . .

I previously mentioned the high office, the large sums, the nature of the legislation dealing with grants, and considered from that point of view, it is my conclusion that the appearance of total rectitude, probity and honesty is therefore of the greatest importance; it is important to a high degree both to other Government employees and to members of the public, and in particular to the business community who may have dealings with the Government.

. . . some period of incarceration is called for in order to give full weight to the two elements of deterrence and condemnation.

One has to distinguish the positions held by Mr. McKendry and the respondent respectively. The latter had no decision making power with respect to the granting or refusing of liquor licences or other allied matters. Mr. McKendry on the other hand apparently had the power to approve large DREE grants or, at least as Judge Lyon said: "Had a significant influence in terms of applications . . ." This to my mind is a vital distinction and no doubt led Judge Lyon to say "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".

In *McKendry* the possibility of actual corruption existed. In the present case even if the respondent 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.

In *R. v. Jackson* (1977), 21 N.S.R. (2d) 17, the facts were that a 38-year-old police man with over 10 years' service, struck and killed a girl while driving a motor vehicle. He was off duty at the time. He left the scene of the accident and tried to conceal his complicity by misleading police investigators. He was charged with, and convicted of, leaving the scene of an accident contrary to s. 233(2)(*c*) of

the *Criminal Code*. The trial Judge sentenced him to 30 days' imprisonment. On a cross-appeal this Court increased the sentence to imprisonment for one year. There, as here, rehabilitation and reformation of the accused were not really a material consideration. MacKeigan, C.J.N.S., in delivering the judgment of the Court said (p. 20):

> I suggest that the relative weight or mix of the three basic factors — deterrence of the offender, deterrence of others and rehabilitation and reform — varies not only with reference to the nature, history and character of the offender, but also with the kind of offence. And to the mixture in any given case must often be added a fourth factor often similar in its influence but by no means identical to "deterrence", namely, the need to express social repudiation and abhorrence of a particular crime by, to use a largely outmoded word, "punishment" of the offender. Some crimes by their nature, and the nature of the offender, require little element of deterrence or punishment when it comes to sentence; many so-called crimes of passion may fall in this category, such as *The Queen v. Cormier* (1975), 9 N.S.R. (2d) 687, where this Court upheld a suspended sentence for manslaughter of a husband by his wife, a sentence imposed by Chief Justice Cowan.
>
> Conversely, other crimes, and, I respectfully include the hit and run offence in this category when personal injury or death has occurred, are recognized by Parliament and society as requiring a large measure of imprisonment, even though, almost always, the offender requires no reform from criminal ways and where the horror of the event and trial alone largely deters him from any repetition.

In my opinion, there are varying degrees of culpability envisaged by s. 110(*c*). By that I mean that it seems to me that a Government official who directly demands a commission, etc., from some one who has dealings with the Government on the pretext that unless such commission is forthcoming he will sidetrack such dealings, has committed a more serious breach of the section than say, Mr. Tanguay (*R. v. Tanguay* (1975), 24 C.C.C. (2d) 77) who accepted a colour television set valued at $305 from a contractor doing business with Central Mortgage and Housing Corporation (of which Mr. Tanguay was assistant director). In his case the Quebec Court of Appeal substituted an absolute discharge for the suspension of sentence ordered by the trial Court. The Court was obviously influenced by the fact that anything less than an absolute or conditional discharge would result in Mr. Tanguay's loss of employment. He had approximately 25 years Government service.

I would emphasize what the trial Judge said and what I mentioned earlier, namely, that in the Crown's case bribery is not a factor here. All that the facts reveal and all that the Crown alleges, is that the respondent accepted a total of $1,000 from Mr. Boudreau without first obtaining the consent in writing of the head of the branch of Government that employed him.

This matter has received wide publicity through the news media and, no doubt, the great majority of civil servants are aware of it.

If it consisted only of the respondent receiving Christmas presents of relatively small value then it would not demand overly severe sanction. It well may be argued that the facts here indicate that what occurred transcends the mere giving and accepting of Christmas gifts. In four successive years the respondent accepted from Mr. Boudreau, at Christmas time, envelopes containing respectively $200, $200, $300 and $300. The suspicion of course is that these were not gifts at all but rather payments for services rendered, or to be rendered, by the respondent to Mr. Boudreau. There is, however, no evidence to confirm such suspicion.

The purpose of general deterrence is to bring home to others the serious consequences attendant upon certain criminal conduct. Such deterrence can be accomplished, or achieved, in some cases without the imposition of a custodial sentence. In *R. v. Morrissette* (1970), 1 C.C.C. (2d) 307 at p. 310, 12 C.R.N.S. 392, 75 W.W.R. 644, Culliton, C.J.S., said: "It may be in exceptional cases that the effects which result from the prosecution itself constitute sufficient punishment." If that be so then surely in some cases the prosecution itself and the effects thereof will meet the need for general deterrence.

In the present case the main consideration is to impress upon Government officials and employees (and indeed those who have dealings with the Government) that if they accept anything (without the written consent of their Department head) from people doing business with the Government, they have breached the criminal law.

As a result of accepting money from Mr. Boudreau, without the required consent, the respondent has lost his employment with the Government, a fact apparently not definite when he was sentenced by Judge O Hearn, and has acquired a criminal record which may adversely affect his ability to acquire new employment. Certainly I think it fair to assume that he will not again be employed by any Government. All these circumstances no doubt are now well known to other civil servants. If such do not act as a deterrent to others in the Government service then I frankly doubt whether the addition of a term of imprisonment will do so. This, to me, is the crux of the matter.

As this Court pointed out in *R. v. Melanson* (1976), 18 N.S.R. (2d) 189 at p. 192:

> Section 614 of the *Criminal Code* imposes an obligation on courts of appeal to consider the fitness of the sentence appealed against and a duty to go into the matter fully and to consider each appeal from sentence with the utmost care even though the sentence on its face does not shock the court by its excessiveness or its inadequacy.

This I have done. Putting suspicions aside, what the respondent has been shown to have done here does not, in my view, manifest

the same criminality as the actions of Mr. Jackson in *R. v. Jackson*, *supra*, or show the corruption potential that existed in the *McKendry* case, *supra*.

I must confess that this case has caused me deep concern. Indeed, I initially felt that the sentence was so inadequate as to be wrong and that a jail term should be imposed. My difficulty, quite frankly, has been to divorce from my mind the element of bribery. I have great trouble in accepting the fact that a man in the Government position the respondent held would be given and would accept, the amounts of money involved here unless such were clandestine payments — in others words, bribes. I repeat again, however, that it is not the position of the Crown that these were bribe payments. There is also no evidence that the respondent did, or had the power to do, anything to facilitate the granting of a tavern licence or to do anything else in connection with liquor licences and allied matters in return for any of the cash gifts he received from Mr. Boudreau. I can, and shall, but consider the matter in the light of the charge, the provisions of s. 110(*c*) of the *Code* and the facts submitted.

Bearing in mind that the purpose of imprisonment here would be solely to deter others from doing what the respondent did, I cannot with certainty say that it is impossible to achieve such purpose without imprisonment. As I have already said, it well may be that general deterrence has been accomplished by the publicity resulting from the apprehension and conviction of the respondent and his resulting loss of employment, and therefore that those in Government service who would not be deterred from doing what the respondent did by knowing what has happened to him to date, would probably not be deterred by the imposition of imprisonment on him now.

In *R. v. Cormier* (1974), 22 C.C.C. (2d) 235 at p. 241, 9 N.S.R. (2d) 687 at pp. 694-5, I had occasion to say in relation to the powers of this Court on sentence appeals as set forth in s. 614 of the *Criminal Code*:

> . . . this Court is required to consider the "fitness" of the sentence imposed, but this does not mean that a sentence is to be deemed improper merely because the members of this Court feel that they themselves would have imposed a different one; apart from misdirection or non-direction on the proper principles a sentence should be varied only if the Court is satisfied that it is clearly excessive or inadequate in relation to the offence proven or to the record of the accused.

It well may be that the trial Judge was too lenient in light of the charge, the facts and the other matters I have referred to. I cannot, however, be sure that he was. This case on its facts appears to fall somewhere between the *Tanguay* and *McKendry* cases, *supra*. Justice, of course, must always be tempered with mercy, giving proper weight to such principle and divorcing from my mind the sinister suspicions yielded by the facts, I do not think that it can be said that the trial Judge committed any error in principle or that the sentence is clearly inadequate.

In the result I would grant leave to appeal because the matter is certainly arguable, but for the reasons I have given, would dismiss the appeal.

Appeal dismissed.

REGINA v. BOUDREAU

Nova Scotia Supreme Court, Appeal Division, Coffin, Cooper and Macdonald, JJ.A. February 14, 1978.

Sentence — Principles — Charges of influence peddling and conferring benefits on Government employees with respect to accused's dealings with Government — Accused obtaining money on pretext that he could influence Government Minister and head of Liquor Licensing Board — Accused giving money and gifts to Government employees who dealt with his company — Whether general deterrence paramount consideration — Whether term of imprisonment required — Cr. Code, ss. 110(1)(b),(d).

Sentence — Corruption — Charges of influence peddling and conferring benefits on Government employees with respect to accused's dealings with Government — Accused obtaining money on pretext that he could influence Government Minister and head of Liquor Licensing Board — Accused giving money and gifts to Government employees who dealt with his company — Accused 59 years of age with no prior record and in poor mental and physical health — Whether sentence totalling 12 months' imprisonment proper in circumstances — Cr. Code, ss. 110(1)(b), (d).

The accused pleaded guilty to two charges of influence peddling contrary to s. 110(1)(*d*) of the *Criminal Code* and two charges of conferring benefits on employees of the Government with whom he had dealings contrary to s. 110(1)(*b*) of the *Criminal Code*. The first count involved the acceptance by the accused of $2,000 from landowners on the pretext that he could influence a Government Minister to purchase their land. The second count involved the acceptance of $3,060 by the accused in order to help a tavern owner obtain a liquor licence on the pretext that he could influence the Administrator of the Liquor Licensing Board. The third count was the result of the accused giving $300 to the Administrator of the Liquor Licensing Board at a Christmas party. The fourth count was the result of the accused giving the Chief Collections Officer of the Health Services Tax Division, who was responsible for the account of the accused's firm, a gift in appreciation for a tax settlement which the accused had reached with the Division. The officer had refused to accept the gift but the accused delivered it to his house addressed to his son. At the time of sentencing, the accused, who was 59 years of age and had no prior record, was under psychiatric care for severe depression. On the hearing of the appeal, evidence was led that the accused's psychiatric condition had deteriorated, and that he was psychotic. His physical condition had also deteriorated, the doctor testifying that the accused had arteriosclerosis and that there was the possibility that if sent to jail the accused would give up, might not co-operate in his treatment and might die. A sentence totalling 12 months was imposed at trial and both the accused and the Crown appealed against the sentence. On appeal, *held*, the appeals should be dismissed.

raised on this appeal, I would dismiss the appeal without costs to any party.

Appeal dismissed.

REGINA v. ROBILLARD
REGINA v. CHARBONNEAU

Quebec Court of Appeal, Turgeon, Tyndale and Vallerand JJ.A.
January 7, 1985.

Trial — Procedure — Two accused charged in separate indictments with related offences — Trial of one accused taking place first but ending in mistrial after several days — Trial of second accused then commmencing and accused agreeing that evidence from other accused's first trial be filed — Procedure not improper — Rule against trial of separate indictments together not offended by procedure — Accused not deprived of right to be present at trial.

Phillips and Phillips v. The Queen (1983), 8 C.C.C. (3d) 118, 3 D.L.R. (4th) 352, [1983] 2 S.C.R. 161, 35 C.R. (3d) 193, 50 N.B.R. (2d) 81, 48 N.R. 372, **distd**

Matheson v. The Queen (1981), 59 C.C.C. (2d) 289, 124 D.L.R. (3d) 92, [1981] 2 S.C.R. 214, 22 C.R. (3d) 289, [1981] 6 W.W.R. 277, 12 Man. R. (2d) 375, 37 N.R. 451, **discd**

Other cases referred to

R. v. Chabot (1980), 55 C.C.C. (2d) 385, 117 D.L.R. (3d) 527, [1980] 2 S.C.R. 985, 18 C.R. (3d) 258, 34 N.R. 361

Breach of trust by public official — Proof of offence — Accused assisting public official in committing breach of trust — Fact that accused not himself an official not preventing conviction — Accused liable as party to offence — Cr. Code, ss. 21, 111.

A.-G. Que. v. Cyr et al., [1984] Que. C.A. 254, **apld**

Sentence — Corruption — Accused assistant director of provincial Department of Industry and Commerce directing businessmen who wanted to obtain financial assistance from government to management company run by second accused — Large part of work then directed to company controlled by members of assistant director's family — Offence occurring over seven-month period — Fines of $14,000 and $7,000 varied on Crown appeal to eight months' imprisonment of each accused — Offences involving breach of public trust for personal gain requiring deterrent sentence — Cr. Code, s. 111.

Cases referred to

Marchessault v. The Queen (1984), 41 C.R. (3d) 318; *Kienapple v. The Queen* (1974), 15 C.C.C. (2d) 524, 44 D.L.R. (3d) 351, [1975] 1 S.C.R. 729, 26 C.R.N.S. 1, 1 N.R. 322; *R. v. Loyer and Blouin* (1978), 40 C.C.C. (2d) 291, 85 D.L.R. (3d) 101, [1978] 2 S.C.R. 631, 3 C.R. (3d) 105, 21 N.R. 181

Statutes referred to

Criminal Code, ss. 21, 107, 111, 383, 423(1)(*d*), 613(4)(*b*)(ii) (rep. & sub. 1974-75-76, c. 93, s. 75)

APPEAL by the accused from their convictions on charges of conspiracy and breach of trust; APPEAL by the Crown from the accused Robillard's acquittal on charges of breach of trust, and APPEAL by the Crown from the sentences imposed.

G. Lahaie, for the Crown.
G. Champagne, for accused.

The judgment of the court was delivered by

VALLERAND J.A. (translation):—Charbonneau, who was at the time in question an official with the Quebec Department of Industry and Commerce, was found guilty of 18 counts of conspiring to commit a breach of trust (ss. 423(1)(*d*) and 111 of the *Criminal Code*) and of breach of trust in connection with the duties of his office (s. 111). Robillard was found guilty of seven counts of having unlawfully given money to Charbonneau, an employee of the department, as consideration for having done an act relating to the affairs of his employer (s. 383 of the *Code*).

Charbonneau, by application of the *Kienapple* principle [see 15 C.C.C. (2d) 524, 44 D.L.R. (3d) 351, [1975] 1 S.C.R. 729], was acquitted of various lesser charges (s. 383). Robillard was acquitted of the main charges (ss. 111 and 21; ss. 423(1)(*d*) and 111), on the ground that he personally, was not an *official*.

Charbonneau and Robillard appeal their convictions. The Crown appeals the acquittal of Robillard and the respective fines of $13,900 and $7,000 imposed. No appeal was taken from the acquittal of both accused on the ground of reasonable doubt.

According to the evidence, which is to the same effect and common to all the parties, Charbonneau, while he was assistant director at the provincial Department of Industry and Commerce, on various dates during the year 1979, met with businessmen who wanted to obtain financial assistance either from the government or from a relevant agency. For the purpose of preparing the necessary files, he referred them to the Société de gestion Fermant Ltée (Fermant Management Co. Ltd.) run by Robillard. The latter then distributed a large part of the work to Charbonneau's daughter who was remunerated by payments made to Distributions Trois Etoiles Inc. (Three Star Distributions Inc.). The shareholders of this company were Charbonneau, his wife and his daughter. Fees ranging from $1,000 to $1,625 in each of the

seven cases were used for the personal purposes of the Charbonneau family.

The appeals against conviction

Charbonneau's first ground of appeal

The trial judge erred in law and lost "jurisdiction" by agreeing to try in a single trial two distinct indictments.

Robillard's trial began on February 22, 1982. The judge disqualified himself and withdrew from the case after two and one-half days of hearings. The case was then put over until June 7, 1982.

On June 7th, Chabonneau was arraigned and, on the consent of the parties, the evidence already heard in the *Robillard* trial was filed in the trial proceedings. The remainder of the trial took place without incident.

Charbonneau protested, after the fact, before the trial judge and now protests before this court. He relies on the case of *Phillips and Phillips v. The Queen* (1983), 8 C.C.C. (3d) 118, 3 D.L.R. (4th) 352, [1983] 2 S.C.R. 161, where McIntyre J., writing the unanimous decision of the court, clearly laid down the prohibition against the trying in a single trial of two indictments on pain of loss of jurisdiction, which the accused's consent could not rectify.

In my view, that is not this case. This case appears to be much more like the case of *Matheson v. The Queen* (1981), 59 C.C.C. (2d) 289 at pp. 291-2, 124 D.L.R. (3d) 92, [1981] 2 S.C.R. 214 at pp. 217-8, where again the court was unanimous in its decision, Lamer J. wrote:

> A person may be convicted for an offence only after having been accused of that offence and after a trial at which proof of that person's guilt has been adduced before a Judge (or Judge and jury) having jurisdiction to hear the case. An accused may waive (subject to that waiver being accepted by the Judge) his right to a trial by a plea of guilty. Short of that there must be compliance with the rule that guilt must be established during the trial before the trier of fact. As regards evidence by witnesses, strict compliance means their being sworn or affirmed and heard at the trial before the trier of fact. An accused may, if the Crown consents and the Court accepts, waive *strict* compliance with that rule in many ways and in various degrees; indeed, he may relieve the Crown from proving certain facts by admitting them; he may dispense with the swearing in of witnesses and the taking of their evidence by admitting what their evidence would be as regards certain facts if those witnesses were called; he may, if the evidence has already been adduced at a previous proceeding, accept that the evidence be read or even be deemed to be read into the trial proceedings; he may even accept, when as in this case the trial Judge is the same person before whom the witnesses testified in the previous proceedings, that their evidence be deemed read into the record of his trial without even awaiting the filing of the transcript of their oral evidence. But, whatever be the method chosen for satisfying at least substantial compliance, there are two prerequisites to be met, short either one of which there is no compliance at all (save the exception found in the *Code* at s. 485(3)(*b*)): that the consent by the accused and the Crown departing from strict compliance be conveyed to the Court in the course of the trial, and then that the evidence in some way, be it by the filing of transcripts or even by some reference to previous judicial proceedings, enter the record some time during that trial. In the present case neither was met. As a result the evidence adduced prior to the re-election cannot form any part of the trial.

Undoubtedly, the following comment was noted:

> . . . he may even accept, *when* as in this case *the trial Judge is the same person before whom the witnesses testified in the previous proceedings*, that their evidence be deemed read into the record of his trial without e awaiting the filing of the transcript of their oral evidence.

[Emphasis added] this is not the present case. None the less, I understand that this proposition turns on the words *"without even awaiting the filing of the transcript"* rather than on the words *"their evidence be deemed read into the record"*. This follows from the previous indulgence shown with respect to this procedure by which the accused may admit what the evidence of the witnesses, which he dispenses the Crown from calling, will be. The procedure appears to be the same in both cases, and, obviously, does not require the trial judge to personally hear the witnesses who will not testify in either case.

With respect, I have no difficulty in reconciling the *Phillips* case and the *Matheson* case. In his analysis in the former, McIntyre J., after rejecting an *"ancient practice"* as the exclusive basis of his decision and stating that he would be inclined to reject this practice if it had no real purpose, continued (at pp. 125-6 C.C.C., pp. 170-1 S.C.R.):

> The joinder of two or more indictments or informations for trial raises fundamentally different problems from those which arise in the joint trials of several persons accused under one indictment or information. An elaborate procedure is provided under the *Criminal Code* covering joint trials but no such procedure is to be found to deal with questions arising upon a joinder of indictments. Consider, for example, the application of the rule that an accused person is not compellable as a witness at his own trial. Where two accused are charged on separate indictments or informations and tried together in one proceeding there is nothing to prevent the Crown from calling one accused as a witness to testify with respect to the indictment or information charging the other accused because, in respect of that indictment, he does not enjoy the protection accorded an accused person. The risk of prejudice is immediately apparent and the Crown would in this way obtain an advantage not permitted or even contemplated by the *Code* provisions. It could be argued no doubt that the evidence so given would be admissible only against the co-accused but on what principle it could be so limited may be somewhat obscure.

> Certainly, any protection the witness might claim under s. 5 of the *Canada Evidence Act*, R.S.C. 1970, c. E-10, would be rendered completely illusory. Such protection against the use of the evidence against him applies only to future proceedings and not to those in progress when the evidence is given. One may consider as well the case of an accused charged in two separate indictments or informations with different offences. It may be advantageous for him to testify with respect to one charge but not to the other. Such an advantage is lost if both indictments are tried together. This problem to be sure may arise where an accused is charged with separate counts on one indictment or information, but where this occurs he enjoys the protection of the detailed procedural provisions of the *Code* relating to severance. While in retrospect, that is to say, from the vantage point of the appellate courts, it may be possible in any given case to conclude that no prejudice resulted from a joinder for trial of two indictments or informations, it would be impossible for a trial judge to foresee at the outset of the trial all possible consequences of such a joinder. The dangers then of prejudice and injustice are such that they outweigh any advantage or consideration of efficiency thought to be gained by the joinder.

In this context, where the Supreme Court of Canada completely questioned the purpose of the rule and the basis of its underlying principle, the court found that the risk of infringement of fundamental rights was so great that it was appropriate to make a rule, based on principle, which would go to the very jurisdiction of the court.

The situation was entirely different in the cases mentioned in the *Matheson* decision. In these cases, it is no longer a question of asking what may happen, but only what has already happened. Each accused knew all the aspects of his decision to agree to file in the proceedings evidence already heard elsewhere, or to dispense with having the Crown call such evidence. There is no risk of unforeseen imbroglio which might compromise the accused's fundamental rights or jeopardize the trial. This distinction appears to go to the very essence of the *Phillips* case and renders the *Matheson* decision entirely applicable to the present case.

I would accordingly dismiss the first ground of appeal advanced by the appellant Charbonneau.

Charbonneau's second ground of appeal

He submits that he was unlawfully excluded from part of his trial. This ground is similar to the first ground of appeal and, in my view, must meet the same fate. Part of the evidence, which was taken in *Robillard*'s trail before the judge who later disqualified himself, was filed at *Charbonneau*'s trial with his consent. The Crown had requested, and obtained, the exclusion of the witness Charbonneau at the initial hearing in the *Robillard* case. It is for this reason that Charbonneau complains that he was not present during part of his trial.

It is now established that the trial only begins at the time of the arraignment before *"the trial Court at the opening of the accused's trial, with a Court ready to proceed with the trial"*: *R. v. Chabot* (1980), 55 C.C.C. (2d) 385 at p. 396, 117 D.L.R. (3d) 527, [1980] 2 S.C.R. 985 (S.C.C., *per* Dickson J.).

The first days of the hearing in the *Robillard* trial took place on February 22, 23 and 24, 1982; Charbonneau was only arraigned on June 7, 1982. This means that Charbonneau was not in any manner excluded from his own trial. There is no doubt that he could have, for this reason as well as for many others and even without justifying his opposition, have opposed the filing of this same evidence at his own trial. But he permitted it and what I said above with respect to the *Matheson* case applies with respect to the remainder of this matter.

Other grounds raised by Charbonneau, and also raised by Robillard

It is submitted that the trial judge failed to give proper weight to the evidence concerning the fact that the alleged victims did not know each other at the outset of the affair, the pressure used by Charbonneau to direct clients to Robillard, the continuous presence of Charbonneau during the first meeting of the client with Robillard, the length of the delay promised by Charbonneau to dispose of the application, the quality of the work done by Charbonneau's daughter, and finally, the identity of a company which was a shareholder of Société de gestion Fermat Ltée. In each instance, these inaccuracies and ambiguities concern non-determinative aspects of the case. For this reason, it does not seem merited to analyze the evidence in order to reach a conclusion which, on one or other of the questions, could not alter in any manner the opinion which I have otherwise come to.

I would dismiss these grounds, and in so doing, I would also dismiss the appeal brought by the appellants Charbonneau and Robillard.

The Crown appeal against the acquittal of Jean Robillard on certain counts

The Crown appeals from the acquittal of Robillard on the charges brought under s. 111, which provides that:

> *Breach of trust by public officer*
>
> 111. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

in conjunction with s. 21:

Parties to offence

21(1) Every one is a party to an offence who

(a) actually commits it,

(b) does or omits to do anything for the purpose of aiding any person to commit it, or

(c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

In the judgment under appeal, the trial judge found that:

> The accused Robillard is not an official and the fact that he did something for the purpose of assisting the official Charbonneau commit a breach of trust does not thereby make Robillard an official. I would therefore find that s. 111 can only apply to a person who is an official.
>
> Consequently, the accused is acquitted of counts 1, 2, 5, 6, 9, 10, 14, 15, 18, 19, 21, 22, 25, 26, 29, 30, 32 and 33.

The appellant relies on the decision of this court in *A.-G. Que. v. Cyr et al.*, [1984] Que. C.A. 254. This court held that a body corporate could come within the definition of "*official*" used in s. 107 of the *Code*. In the *Cyr* case, the evidence showed that an official was "*a person who . . . appointed to fulfil a public function*". And this led this court to find against Cyr by application of s. 21 (parties to an offence: every one . . . who does or omits to do something for the purpose of assisting any person to commit it . . .) even though as the principal person interested in the official-company, he was not himself an official.

This principle equally applies in the present case in that the evidence unequivocally shows that Robillard *did something for the purpose of aiding* Charbonneau *to commit* the s. 111 offence.

A review of the evidence shows that had it not been for this error in law, the accused would have been found guilty, as Charbonneau was, on the charges listed, except on counts 15 and 19 where the trial judge also gave Robillard, as he did Charbonneau, the benefit of the doubt. Applying s. 613(4)(*b*)(ii) to this case, I would grant the Crown appeal, set aside the verdict of acquittal and enter a verdict of guilty with respect to the said charges. Then, by applying the *Kienapple* principle, as clarified in *R. v. Loyer and Blouin* (1978), 40 C.C.C. (2d) 291, 85 D.L.R. (3d) 101, [1978] 2 S.C.R. 631, I would substitute a verdict of acquittal for the verdict of guilty on counts 4, 8, 12, 16, 20, 24 and 28, and quash the sentences imposed in respect of these counts.

Crown appeal against sentence

With respect to Charbonneau

The trial judge sentenced Charbonneau to pay fines ranging from $100 to $1,000, for a total of $13,900 within delays ranging from four months to one year and in default thereof, to periods of imprisonment ranging from one month to one year. In dismissing the possibility of imprisonment, he stated:

> I find that the accused has already been severely punished through the loss of his employment and all the benefits flowing therefrom, as well as loss of reputation.

With respect, I cannot adopt this reasoning. My colleague L'Heureux-Dubé J.A., recently wrote in *Marchessault v. The Queen* (July 12, 1984, Montreal C.A. No. 500-10-000035-848) [since reported 41 C.R. (3d) 318 at pp. 321-2]:

> With respect to individual considerations, it is evident that every time a crime is committed by a public figure, a person in authority, a star, etc., all the factors emphasized to us, or almost all of them, are present: the crime and the punishment are given much more publicity, the shame and the disgrace are therefore amplified, the financial loss resulting from the loss of employment is a function of the higher income. In this sense, it is true that for such a person the punishment appears cruel.
>
> Popular wisdom has it that the farther one falls, the more it hurts. More elegantly, the proverb goes: noblesse oblige. Of course, that does not make law, but the law does not ignore common sense and what have been characterized here as mitigating circumstances are rather inevitable consequences to which a person in such circumstances exposes himself, which he must be ready to deal with, and to have been able to appreciate, particularly when there is no question of spontaneity or single offence.
>
> To reason otherwise, in order to be consistent, one would have to adopt the principle that the higher a person is in society or the greater his function i society, the more he is known and the lighter should be his sentence and, conversely, the more humble or obscure a person, the more severe should be his sentence. I do not accept this proposition: the scales of justice must not provide for such unequal treatment. Justice must be the same for all, famous or unknown, rich or poor. I would quickly add however that this does not mean, and must not be interpreted as meaning, that the same sentence must be imposed on all persons for the same crime. The jurisprudence has developed certain criteria, both objective and subjective, which should be considered in order that the sentence imposed be fair and appropriate to the crime committed and to the person who committed it. The mere fact that the crime was committed by a rich or a poor person, by a famous or unknown person, with all the consequences flowing therefrom, must not in my view be one of these factors. Rather, they are non-aggravating circumstances.

In the present case, the crimes are serious. No violence, of course, but on the other hand, they involve the underhanded deceit of a person who, holding a position of confidence in the public service, undermines the system for personal gain. Such

behaviour, in my view, calls for deterrence, which the trial judge did not seem to have considered, and which would give rise to a term of imprisonment. To hold otherwise, would in my view bring the administration of justice into disrepute.

What is more, as the trial judge noted:

> This is not an isolated case, but rather, concerns different instances arising between February and August, 1979. This presupposes premeditation and planning, not with respect to the victims, but with respect to the plan in its entirety.

The *Code* provides for a maximum sentence of five years' imprisonment. In light of the age of the respondent, 53 years, his relatively fragile health, the absence of a previous record, I would substitute, for the fines imposed, a term of imprisonment of eight months for each count of breach of trust in respect of the duties of an official (s. 111), namely, counts 2, 6, 10, 14, 18, 22 and 26, and a term of imprisonment of one month for each charge of conspiracy (ss. 423(1)(*d*) and 111), namely, counts 1, 5, 9, 13, 17, 21, 25, 29, 30, 32 and 33, all to be served concurrently.

With respect to Robillard

The crime is the same and the essential cicumstances are identical. He is 55 years of age and in good health. In 1961, he was granted a suspended sentence in a matter concerning theft and false pretences. But since that time, he seems to have conducted himself without reproach until the present events. I see no reason to be more lenient towards him. His participation in the crime was just as essential as that of Charbonneau and the gravity of the offences are therefore the same.

I would impose a term of imprisonment of eight months for each of counts 2, 6, 10, 14, 18, 22 and 26, and a term of imprisonment of one month for each of counts 1, 5, 9, 21, 25, 29, 30, 32 and 33, all to be served concurrently.

I would therefore dismiss the appeal of appellants Charbonneau and Robillard; grant the Crown appeal against the acquittal of Robillard on counts 1, 2, 5, 6, 9, 10, 14, 18, 21, 22, 25, 26, 29, 30, 32 and 33 and substitute a verdict of guilty on these same counts. However, I would substitute a verdict of acquittal for Robillard on counts 4, 8, 12, 16, 20, 24 and 28 and quash the sentences imposed in respect of these counts. I would grant the Crown appeal against sentence and substitute the following sentences:

With respect to Paul-Emile Charbonneau: a term of imprisonment of eight months for each of counts 2, 6, 10, 14, 18, 22, 26, 30 and 33, and a term of imprisonment of one month for each of counts 1, 5, 9, 13, 17, 21, 25, 29 and 32, all to be served concurrently.

With respect to Jean Robillard: a term of imprisonment of eight months for each of counts 2, 6, 10, 14, 18, 22 and 26, and a term of imprisonment of one month for each of counts 1, 5, 9, 21, 25, 29, 30, 32 and 33, all to be served concurrently.

Appeals by accused dismissed; appeals by Crown allowed.

REGINA v. COURCHESNE

Quebec Court of Appeal, Turgeon, Beauregard and McCarthy JJ.A. December 17, 1984.

Prisons — Penitentiary regulations — Accused guard at penitentiary charged with receiving contraband from inmate — Meaning of "contraband" — Contraband not defined in regulations but only in Commissioner's directives — Breach of directive not constituting offence under Penitentiary Act (Can.) — Accused acquitted — Penitentiary Act, R.S.C. 1970, c. P-6, s. 29 — Penitentiary Service Regulations, C.R.C. 1978, c. 1251, ss. 2, 18, 41.

The accused, an employee of a federal penitentiary, was acting as an escort for an inmate who had been granted a temporary absence from the penitentiary. The evidence indicated that prior to returning to the penitentiary the accused received a cigarette package from the inmate intending to take the package into the penitentiary for the inmate. The accused was charged with offences contrary to s. 41(1) of the *Penitentiary Service Regulations*, C.R.C. 1978, c. 1251, which provides that everyone commits an offence who receives or attempts to receive "contraband" from an inmate or delivers or attempts to deliver contraband to an inmate. The accused was convicted at trial and his convictions were upheld on appeal to the summary conviction appeal court. On further appeal by the accused, **held**, Turgeon J.A. dissenting, the appeal should be allowed and the convicti quashed.

Per Beauregard J.A., McCarthy J.A. concurring: Under s. 29 of the *Penitentiary Act*, R.S.C. 1970, c. P-6, the Governor in Council has the power to adopt regulations and it is implicit in the Act that violation of such a regulation constitutes an offence. While the Act also provides for the establishment of rules by the Commissioner, in order to convict the accused, it was necessary for the Crown to prove that he violated not a Commissioner's directive but a regulation adopted by the Governor in Council. While s. 41(1) of the *Penitentiary Service Regulations* prohibits the receiving of contraband from an inmate, contraband is defined in s. 2 of the regulations only as "anything that an inmate is not permitted to have in his possession". While there was a Commissioner's directive which prohibited the accused from bringing a package of cigarettes inside the penitentiary for a prisoner and the accused knew about such directive, this charge, being a criminal one, could not be based on a directive. This was not merely a disciplinary proceeding but trial of a criminal charge. Such a charge may not be based on a directive which the prison guards may know but which is legally unknown to the public because it has not been published. Moreover, it is the Governor in Council

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Don Giffin- Press Conference - 1984- election

Ladies I have a statement to make.....

This week A.M Cameron the leader of the opposition has made certain charges. First he accused the department of the Attorney General of stopping an RCMP investigation. Second he accused the department of failing to act. These charges are false.

They have impuned my integrity and worst of all they have called into question the administration of justice of Nova Scotia. As Attorney General, I regret very much that these charges have been made. Obviously I am concerned that my own integrity has been attacked and I am outraged that a member of the legislature should make charges which may leave Nova scotians in doubt about the proper administration of justice in our province.

Let me assure all Nova Scotians that the Attorney General's Department and the RCMP have been operating in a manner in which their integrity is beyond question.
No investigation has been thwarted.

A brief outline of the background of this matter is in order.

In the fall of 1983, in the routine discharge of his duties, the Auditor General reviewed the expence claims of all 52 MLAs . I understand that in the course of this review, he spoke informally on two occasions with the RCMP, and that these discussioins concerned the expense claims of only one MLA, because no one from the Attorney General's department was present at those two meetings, I am unable to comment further on what took place at them.

Subsequently a meeting took place among the Auditor General, the Deputy Auditor General and senior officials of the Auditor General's department. Senior officers of the RCMP joined the meeting at its conclusion, and were advised that the matter was to be refererd to the Attorney General's department for their consideration and advice.

The RCMP were in agreeement with this decision. This procedure was in accordance with established practice. Senior officials of the Attorney General's department did thoroughly review the matter. AT their request, the Speaker, and the deputy auditor general met with the MLA involved and reviewed the matter with him.

This review included explanations and further documentation from the MLA about certain expenses. These explanations had not previously been sought by the Auditor General. Based on this review, these senior officials concluded, that there were no facts, no basis, on which an investigation either could or should be commenced. I accordingly wrote a letter on April 18, 1984 to the Speaker and the Auditor General to this effect.

The RCMP never at any time, started an investigation as they are free to do at any time, and never at any time requested that one be started. Further at no time since my letters has the Auditor General or the RCMP questioned me or any of my officials on any aspect of my letter.

My letter therefore marked the end of the matter as far as the department of theAttorney General was concerned. There were simply no facts to suggest wrong=doing and I told the speaker and the Auditor General so in writing.

Mr. Cameron is therefore totally wrong in saying that the Attorney General's department stopped any investigation. There was no political interference whatsoever in the administration of justice.

In a later press statement, Mr. Cameron shifted his ground, changed his allegation that the Attorney General's Department stopped an investigation and instead, alleged that the department had sat on the issue for a year without doing anything. Again, he is totally wrong.

Normally , I as Attorney General, would simply refuse to discuss in public any aspect of a matter such as this, especially where the result was to exonerate the individual concerned. But because the administration of justice in this province has been brought into disrepute by Mr. Cameron, I feel I must do so.

Contrary to additional charges made this week, concerning other MLAs , at no time did either theRCMP or the Auditor General raise with my department any question concerning any MLA other than the one MLA referred to in my letter of Apr1 18. I feel I have given Mr. Cameron every reasonable opportunity to withdraw his allegations. I deeply regret that he has not done so. With the concurrence of the MLA referred to, in my letter I am now making public copies of that letter.

I'll ask that they be distributed to you now, and I'm prepared to answer any questions.

Will you take civil action against Mr. Cameron?

"The Status of that is that I have instructed my sollicitor to write to Mr. Cameron demanding a withdrawl of his allegations and apology. That letter has been delivered to Mr. Cameron. If he does not withdraw, if he does not apologize I will have no alternative but to commence a legal action against him."

Have you given him a time by which he should make the apology or withdraw the allegations?

"We did not set a date, however it's obvious that since there is a provincial election on Tuesday, and since this is an attack on my integrity and my reputation that any withdrawl and apology to be meaningful would have to be made before then."

Mr. Giffin on page two of your statement,the bottom line you say this procedure was in accordance with established practice. It seems that everytime there is a question involving a politician, established practice seems to be that the Attorney General's department takes over the investigation. In a case like this if the expense statements of perhaps a civil servant were questioned, would that matter go to the Attorney General. I don't think it would the RCMP would look into that themselves without consultation with the Attorney General's department

Let me explain the point to you in this way. It is the department of the Attorney General that deals with the RCMP in Nova Scotia on a wide range of matters as has been mentioned my senior officials meet with them, at least once a week. So if a department required advice in a situation like this, the normal practice is for that department to seek advice from the Attorney General's department, because after all the Attorney General is the lawyer - the sollicitor- for the Government of Nova Scotia, and the determination of whether or not a matter ought to be referred to the RCMP for investigation - for further investigation - is a matter that rests with the department of the Attorney General.

But that doesn't always happen in other cases.

If you can cite examples of that...I can only say to you this, that if there are situations in which for example a civil servant has misappropriated funds, the normal practice would be that the department in question would consult the attorney general's department before contacting any police force about it. Now that may be done at a lower level, it isn't always done at the ~~ministerial level~~, but in a case like that there would be consultation with the sollicitor from the department of the Attorney General who is assigned to that department, and the advice from that sollicitor would then govern whether or not the matter went on for a police investigation. That's the normal practice.

Would you tell me whether or not Gordon Coles was one of the senior officials that approved the ...

Yes. Gordon Coles, who is the deputy Attorney General and Gordon Gale who is the director on criminal matters in the department.

Mr. Giffin getting back to what you say is the established practice- a former member of the crown prosecutor's office, Kevin Burke has expressed dismay that appears to happen, that the Attorney General's department has the authority to approve or disapprove commencement of such investigations, and that they first go to your office for approval before anything else is done.

Well I think you have to understand that I'm the chief law enforcement officer of the province. It is my responsiblity to make those determinations.

You're also a member of the same political party, and there is a certain affiliation that occurs there. It's hardly an arms-length relationship. Why when you're so close.. of a relationship don't you feel there is a possibility of the appearance of conflict?

I think there are two replies to be made to that. One is that I turned the matter over to my senior officials, who are not elected people. They are not partisan politicians. They are responsible, dedicated, honorable civil servants, both with long careers in the public service of Nova Scotia, and I have complete faith in their judgement, their objectivity and their competence.

The second point is that, as Attorney General, in my responsibility for the administration of justice for the province of Nova Scotia, that responsibility is vested in

me, in that office, independently of the cabinet room. My responsibility as Attorney General in the administration of justice in the province of Nova Scotia, is not subject to any political direction whatsoever.

Mr. Giffin did you give the RCMP and the Auditor General the information that Mr. MacLean apparently gave you to justify the expense claims ..the other day were concerned about?

Well, you'll see from reading my letter to the Speaker that we went into this matter in some detail. And as I indicated in my statement, the deputy auditor general, at the request of my staff was present with the Speaker, when the MLA in question was interviewed on these matters and when that documentation was examined.

Why the time frame . It's nearly six months from the time the Attorney General's department was first made aware of this problem, until your letter was written in April. Why a six month thing for what reading your letter seems to be a fairly simple explanation. It definitely appears to be on the suface.

The short answer is this, that we were not simply gathering information in the course of this review, although information was gathered and documentation was examined. It was also necessary for my staff to examine in detail the legislation and the reuglations, governing expense payments to MLAs, and as you will see from the letter, we concluded , they concluded that the regulations were very complicated, very difficult to understand and that there were numerous uncertainties about the regulations, so this took a considerable number of time for my people to examine those regulations and to form their own opinions on the significance of the various regulations. That was the time-consuming aspect of the matter.

There were other names mentioned by the Auditor General, in terms of his examination of MLA expenses. This letter deals with one particular individual. Has similar examination been placed on the other names that were put forward to your department?

No. No. Because no other names were put forward to my department. The only name that was referred to my department was the name of the individual referred to in that letter. The Auditor General at no time asked my department to conduct a review with respect to any other members of the House.

Is the Auditor General the only apolitical watchdog involved in this. Is he satisifed that all ... has questions have been answered.

All I can say to you on that is my letter went to the Speaker and the Auditor General and that since then the Auditor General has not raised any further questions about the matter. The Auditor General has not quarrelled with any of the contents of that letter.

ARe you saying that the RCMP have no investigation file on this matter?

That is corrrect.

Why did Mr. MacLean feel it was necessary to clip the Shieling motel stationary and attach it to his statement?

Oh. I can't get into that kind of detail. All right? What I am describing for you - I think It's important for you to understand this - is the procedure that we followed in dealing with this matter, because the allegation that has been made by Mr. Cameron is first that we stopped an RCMP investigation. That allegation is totally untrue becuase there was never an RCMP investigation in the first place, and if there had been one I would not have stopped it.

The second point I want to make about that is Mr. Cameron's allegation that we sat on the file or the matter and did nothing. That is totally untrue. My senior officials reviewed this matter, they received information and documentation and reviewed the regulations and the legislation, and they came to the opinion - an opinion that I share , because I signed the letter - that there was no wrong doing and there was nothing here that required an RCMP investigation.

Well If you signed the letter you must have tried to satisfy yourself why Mr. MacLean felt it was necessary to submit his expense claims under the Shieling Hotel.

You are misunderstanding the letter, totally. YOu'll have to study it in order to understand what was in the letter. This is a situation- Let me put it this way,..many of us as individuals, are required in connection with our employment and so forth to submit expense claims and I'm sure that many of us in this room have had the experience, of having submitted an expense claim, of then having the employer or the accountant in the office question some item in the expense claim and then it was incumbent upon you to explain the item to the satisfaction of the company. Now, in this case what we had was information in the hands of the auditor general which was not complete, because what the Auditor General had at the first stage of this matter had not involved any explanation of the MLA concerned.

In other words, at that stage, Mr. MacLean had been given no opportunity to explain these matters. It's always been my understanding in a situation like that, that the logical thing is to give the individual in question an opportunity to explain what has happened. When the matter came to my desk that was the first point that struck me was that we were dealing with a situation in which the auditor general did not have all of the relevant information because the auditor general to that point in time had never interviewed Mr. MacLean and had never posed to Mr. MacLean the questions on the Auditor General's mind..

When those questions were posed through the Speaker and the Deputy Auditor General during a reivew of this matter, Mr. MacLean then provided satisfactory explanations on these matters, and those explanations, as far as I'm concerned meant the end of the matter."

Did Mr. MacLean ever offer you any other proof than a letter from his friend that he had paid for $3,000 here in the city outside hotels..

Well he provided that as evidence that the monies had indeed been paid, and that the receipt forms in question

were a record of monies paid. Now that was an explanation that satisifed us and that was an explanation that the Auditor General did not have, during his initial inquiries into this matter.

Has that explanation satisified the Auditor General?

Yes, Yes sir.

Mr. Giffin on page four of the prepared statement, you say that Mr. Cameron is totally wrong in saying that the Attorney General's department stopped any investigation. Would it be accurate to say that the Attorney General's department stopped any investigation from starting? Would that be an accurate statement?

The decision which we had to make in the attorney general's department was whether or not this matter ought to be referred to the RCMP for an investigation. When we completed our review of the matter we were satisfied with the explanations given and there was nothing that had to be turned over to the RCMP. The allegation which Mr. Cameron made was that I as Attorney General had intervened and stopped an RCMP investigation in progress, that allegation is totally untrue.

Mr. Giffin in the Auditor General' sReport tabled in the House this year, he suggested..that there are a number of voids, ambiguities and so on in the regulations that govern expenses, and he said it was his understanding the matter had been referred to the internal economy board for updating and it was his understanding it would be dealt with at that particular level. Can you update us on what's been happening in that particular review.

It's my understanding from the speaker that a reivew of these matters is in progress in conjunction with the office of the auditor general. There is consultation there on the revision of those rules. I'm also told by the Speaker that the report on that should be ready for the next sitting of the house of assembly.

Mr. Giffin it seems to me that when this whole business started there was in fact an auditor general, but as of April 18 this year there was not an auditor general, was there not. There wasn't one there.

There was an acting auditor general

The other question that I have is that it seems to have cast sort of hints of scandale on at least five other people, and I'm wondering if to dispel that the goverment is willing to make public the auditor general';s report, of the audit done on the MLAs.

Making public of anything like that done by the auditor general is the responsibility of the auditor general. The Government of Nova Scotia cannot instruct the auditor general on that because the Auditor General is not a crature of the Government of Nova Scotia, the Auditor General is the servant of the House of Assembly. He is independent of the government.

Well Mr. Giffin would the acting auditor general have had that same protection were he to have brought up any of this during the time he was ..

I don't understand that . YOu're saying the same protection.

Well you're saying the Auditor General's is above and beyond...

Yes , well, when I say Auditor General, I include in that acting auditor general. Sure.

Mr. Giffin there is an adage that justice must not only be done, but must be seen to be done. In light of the reality that you are the Conservative cabinet minister and that judgement was made on another Conservative cabinet minister, would justice not seen to be done best by having an investigation now.

I can only repeat what I said before which is that I referred this matter to the senior non-elected officials in my department for their review and advice.

Are you satisifed that justice appears to be done here?

Yes I am.

Are you confident, sir that the people of Nova Scotia will conclude that?

I have complete confidence in the judgement of the people of Nova Scotia and I have complete judgement in the people of my own constituency.

You say in your statement, sir , that worst of all this matter has called into question the administration of justice in Nova Scotia, along with your own integrity and that of some other people. There has created quite a controversy in this province. A lot of people are talking about it.

There are two things that I would say about it. First, Mr. Cameron has made very serious allegations of criminal misconduct, and yet as all of you know who attended his press conference of Oct. 31, he has not produced one iota of evidence to support those allegations. Secondly , Mr. Cameron having made these very serious allegations of criminal misconduct, on the part of myself and others has not had the courage to say , as he should in accordance with parliarmentary tradition that if he is wrong he will resign his seat.

Sir, would you support a public inquiry into this matter to clear the air.

No. There is no need for a public inquiry into this matter. I have faith in the non-elected senior officials of my department and with their dealing with this matter.

One of the things that bothers me about this , and unfortuantely you're not the attorney general who was in office about four years. About four years ago, there was a similar situation about Mr. Thornhill's bank loan write-off. First we were told there was no investigation. Consequently to that the ATtorney General of the day and senior RCMP officers began to say, yes, there had been an inquiry. Now over a period of time we eventually learned there had been an investigation. The thing that bothers me, -- and unfortunately for you - is that I find you know how are we supposed to merely accept what you say given that sort of background. It makes us suspicious.

Let me put it this way, I would be more suspicious if someone who makes totally unfounded allegations of criminal misconduct and produces no evidence in support of those allegations.

Mr. Giffin you're a lawyer and you've dealt with policemen most of your professional life, how do you think a policeman would have reacted to the type of material that you found with regard to Mr. MacLean's staionery

That's a purely speculative question. I can't answer that.

The documentation Mr. MacLean has put forward, are statements from a hotel owned by a relative of his and statements of a friend of his in Halifax. Did you check either of those sources to see if the exchange of monies he said took place actually did?

As I indicated and there is material in the file on this that we have it in writing that monies were paid. Yes.

Mr. Giffin, Mr. Cameron also accused you of political interference in the Donald Marshall case, what is your comment on that?

Sure. I have no qualms about defending here, or at any other time, my handling of the Donald Marshall case. The great concern that I have had throughout is that we still have serious criminal proceedings in the courts involving Mr. Roy Ebsary. I have had to exercise great care as attorney general that I neither say nor do anything which would either predjudice or appear to predjudice the status of Mr. Ebsary as an accused person before the court.

Did members of your department or yourself every ask the RCMP not to investigate the original police officers who did launch the investigation.

No. Unfortunately, the file that was releasedd about two weeks ago at a press conference does not tell the whole story. Bur for me to go into that now and to deal with other confidential files would mean I'd have to open up to public scrutiny, files which I can't open up. So I'm placed in an impossible situation. Allegations have been made the only way that I could refute the allegations would be to make public files that are completely confidential and can't be made public.

If Mr. Cameron is so wrong in his allegations why is it that neither yourself nor Mr. MacLean has started any civil action or a libel suit...

I fully intend to. Yes, and the first step in an action for defamation of character is to retain counsel which I have done, Kenneth Mathews Q.C., Truro, send a letter to Mr. Cameron demanding a retraction and an apology. I think it's only fair that we give Mr. Cameron a reasonable length of time in which to respond to that. He has not, however that is the first step in the action for defamataion for character. The next step in the absence of a retraction and an apology would be the issuing of a originating notice, and statement of claim.

If Mr. Cameron does come forward with evidence showing that there was an investigation would you resign as Attorney General in this case?

In a situation like this the person making the allegations is the person who has to prove them. You will recall in the case in New Brunswick, involving Mr. Higgins the leader of the Liberal Party that he made allegations of this type, and he was unable to substantiate them and he therefore resigned his seat, but that burden is upon the person making allegations. I'm not making any allegations against Mr. Cameron. He's making allegations against me.

If he does prove them in a court of law , would you resign?

He's not going to be able to prove them because they are totally false.