

EXHIBIT 164 - STATEMENT OF FACTS.

EXHIBIT 165 - BOOKLET OF DOCUMENTS.

MR. HUGH FEAGAN, duly called and sworn, testified as follows:

EXAMINATION BY MR. SPICER

Q. Your name is Hugh Feagan. And in 1980, you were the C.O. of "H" Division in Halifax, is that correct?

A. That's correct.

Q. Could you speak up a little bit for us?

A. That's correct, sir.

MR. CHAIRMAN

How do you spell your last name?

MR. FEAGAN

My last name is spelled F-E-A-G-A-N.

COMMISSIONER EVANS

I didn't get the position that you occupied in 1980.

MR. FAGAN

A. I was the commanding officer of "H" Division, which is Nova Scotia.

Q. As of 1980, Mr. Feagan, for how many years had you held that position?

A. I had held the position from September, 1977.

Q. When did you terminate your employment as C.O. of "H" Division Halifax.

A. In September, 1981.

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q. Where did you go from Halifax?

2 A. I went from Halifax to Yellowknife, Northwest Territories. I
3 was the Commanding Officer of the Northwest Territories.

4 Q. For how long were you there?

5 A. I was there until my retirement from the force in, on the 31st
6 of August, 1985.

7 Q. Prior to Halifax, had you been C.O. in P.E.I.?

8 A. I was the commanding officer of Prince Edward Island, yes.

9 Q. For how many years?

10 A. For three years.

11 Q. I believe your career with the R.C.M.P. spans about 34, 35
12 years?

13 A. 35 years, plus about four months.

14 Q. And you retired as C.O. from Northwest Territories?

15 A. The Northwest Territories, right.

16 MR. CHAIRMAN

17 What was your rank when you were commanding officer of
18 "H" Division?

19 MR. FEAGAN

20 A. Chief superintendent.

21 Q. As chief superintendent and C.O. in Halifax, who reported
22 directly to you?

23 A. The officer in charge of the criminal investigation branch.

24 Q. That would be the person we've come to know as "C.I.B.
25 officer"?

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. That's right.

2 Q. would that be Doug Christen?

3 A. That was Supt. Christen, yeah.

4 Q. Anybody else who reported directly to you?

5 A. Yes, the admin. officer in the division.

6 Q. Who would that have been?

7 A. I had two or three while I was here. It would be, at that
8 time, I think, Supt. Brooks.

9 Q. As C.O. in Halifax, did you have any investigative
10 responsibilities yourself?

11 A. No, I didn't have any investigation responsibilities.

12 Q. Who was the senior investigating officer in the Division?

13 A. I guess Supt. Christen was the senior officer in the Criminal
14 Investigation Branch, which meant that he would oversee any
15 investigations. I can't recall him ever doing any investigation
16 himself.

17 Q. Were you kept advised of the nature of the investigative
18 work being carried out by the members in "H" Division?

19 A. Yes, I was. I was kept apprised of what was going on by Supt.
20 Christen.

21 Q. Would that be on a day-to-day, week-to-week basis or on
22 what basis?

23 A. On a day-to-day basis, more or less. Anything of any
24 significance he briefed me on. The ordinary run-of-the-mill
25 cases, I wasn't concerned about.

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q. Going up the ladder now, to whom would you report?

2 A. I reported to the Commissioner direct.

3 Q. And in 1980, that would have been whom?

4 A. Commissioner Simmonds.

5 Q. Did you have any direct reporting responsibility to any other
6 superior officers of the R.C.M.P. in Ottawa?

7 A. No direct reporting responsibility. I sent reports to other
8 branch heads in Ottawa, but always addressed to the
9 Commissioner for the attention of those individuals.

10 Q. And you considered that your responsibility insofar as
11 reporting was directly to the Commission.

12 A. That's right.

13 Q. As C.O. in Halifax, would you be a person who would from
14 time to time attend the Thursday meetings at the A.G.'s office
15 that we've heard referred to?

16 A. I didn't attend those meetings regularly. They were set up
17 between the director of criminal in the A.G.'s Department and
18 the C.I.B. officer. But occasionally I did attend.

19 Q. And from time to time, if the C.I.B. officer was not available,
20 that would be an occasion when you would attend?

21 A. Quite often, yes.

22 Q. If I could just ask you now to turn to page four of the volume
23 you have in front of you. There are, in fact, two versions of
24 that press release, one on page four and one on page five. I
25 think the one on page four is the final version of it and it's a

- 1 did not warrant the commencement of an investigation."
2 Would you agree with that?
- 3 A. Yes. The inquiries apparently didn't warrant a formal
4 investigation to be commenced.
- 5 Q. Okay. Can you tell us what the nature of the inquiries was
6 at that time?
- 7 A. I'm not aware exactly what they were.
- 8 Q. But you were aware that whatever they were they didn't
9 warrant the commencement of an investigation at that time.
- 10 A. Right, that's correct.
- 11 Q. Okay. If I could ask you now to turn to page 5, had you
12 seen this early, I believe it's an earlier draft of that press
13 release, had you seen that?
- 14 A. I don't...I've seen it now, but I don't...
- 15 Q. Yes. Did you see it at the time?
- 16 A. I don't think I saw it before the other one, no.
- 17 Q. Okay. If I could ask you to turn to page 7. It's a file memo
18 of April 10 referring, I believe, to one of these Thursday
19 meetings which you did, in fact, happen to attend.
- 20 A. Right.
- 21 Q. Correct. Can you tell us what happened at that meeting?
- 22 A. I attended this meeting with the director of criminal in
23 accompaniment with Inspector MacInnes.
- 24 Q. Now, who is Inspector MacInnes?
- 25 A. Inspector MacInnes was the assistant officer in charge of the

1 criminal investigation branch. In other words...

2 Q. Would he have reported to Mr. Christen?

3 A. That's right. He was assistant to Superintendent Christen.

4 Q. Okay.

5 A. During the discussion at this meeting Mr. Gale mentioned
6 that the Premier had stated outside the legislature that Mr.
7 Thornhill had accepted financial benefits while holding the
8 office as Minister.

9 Q. If I could just stop you there. Was it the case that up until
10 that point in time you didn't know whether or not that
11 benefit had been accepted during a time when he was a
12 Minister?

13 A. That's correct.

14 Q. Okay. And what difference did that make to you?

15 A. That now made the difference that there could well be an
16 offence.

17 Q. Under section 110.

18 A. Under section 110 (c).

19 Q. (c) okay. The note says in the last few...three or four lines,

20
21 Thornhill had accepted financial benefits while
22 holding officer as a Minister. Since the
23 statement alluded to the fact that there was a
24 possible conflict of interest, Chief Superintendent
25 Feagan informed Mr. Gale we would be
proceeding with investigation to which he
agreed.

1 A. Yes.

2 Q. Does that fairly represent...

3 A. That's right.

4 Q. ...Mr. Gale's response.

5 A. Yeah, that's right.

6 Q. He said, "Go ahead investigate."

7 A. He agreed, yeah, that we should commence an investigation.

8 Q. And indeed, earlier in the note it seems as if it was Mr. Gale
9 himself who brought the matter up.

10 A. Who raised the matter, that's right.

11 Q. Yes. Then on the next page, on page 8, there is a note from
12 MacInnes in substance forwarding that information on to
13 Ottawa, is that correct?

14 A. That's right.

15 Q. And at this point in time that note is dated April 15, 1980.

16 A. Uh-hum.

17 Q. Do you know whether or not the RCMP had caused an
18 investigation to be commenced?

19 A. Not until...we hadn't caused an investigation to commence
20 until the time this was written.

21 Q. Yes. But at or about that time is when the investigation...

22 A. At or about, right.

23 Q. Can you tell me what's the difference between gathering
24 information, which is what you indicated you had been
25 doing earlier in March or so, and actually commencing an

1 investigation?

2 A. I don't think they had formally gathered any information, it
3 was just a matter of making a few casual inquiries to find
4 out what the rumours were about.

5 Q. But at this stage of the game in mid-April there's no
6 question an investigation is now going to be commenced.

7 A. That's right.

8 Q. Okay. There is some notes on page 12 which deal, that I
9 believe are notes that were made by MacInnes.

10 A. That's correct.

11 Q. Those deal, amongst other matters, with the RCMP's
12 relationship with Crown counsel. I just want to draw them
13 to your attention now. I think we'll come back to them
14 later because this topic comes up on a number of occasions
15 through the course of this material. Why though would
16 MacInnes at this point be commenting on your relationship
17 with Crown counsel?

18 A. Because of the fact that Mr. Gale had objected to our
19 members contacting Crown counsel.

20 Q. Okay. And that that was on, as the note indicates, on the
21 24th of July.

22 A. Right.

23 Q. Okay. Between the middle of April or so and July, had you
24 had any day-to-day involvement, were you being kept
25 advised as to what was going on with the investigation

1 itself?

2 A. Between April and July.

3 Q. Let's pick, if you want to turn to page 18, it's a letter
4 addressed, I believe, to yourself from Gordon Gale of July
5 25th and refers to the discussion concerning the role of
6 Crown counsel. Up until that point in time, up until this
7 issue of Crown counsel came up, had you been being kept
8 advised of the day-to-day goings on in the investigation?

9 A. No.

10 Q. No.

11 A. No, not all of it.

12 Q. Okay. I just want to spend a couple of minutes and go
13 through this letter of July 25th. About six lines in to that
14 letter there's a sentence that after having indicating that
15 Blue had had discussions with Crown counsel the sentence
16 begins,

17 Such action by Inspector Blue is directly
18 contrary to the instructions of the Deputy
19 Attorney General, Mr. Coles, relayed through me
20 to Superintendent Christen, Chief Superintendent
21 Feagan and Inspector MacInnes.

22 Had you received any instructions from the Deputy Attorney
23 General through Mr. Gale in respect of your contact with
24 Crown counsel?

25 A. As the best I can recall we received instructions that the

1 report was to go to the Deputy Attorney General's office, but
2 I can't recall that we were given instructions not to contact
3 Crown counsel.

4 Q. With respect to the report being, with your direction that
5 the report should go to the Deputy Attorney General's office,
6 had you received that direction though prior to July 25th?

7 A. I think likely we had. I can't say for sure.

8 Q. Okay. Let's just continue through the letter.

9
10 Those instructions were that no charges were to
11 be laid nor was any contact to be made with
12 prosecutors concerning this matter until you had
13 finished your investigation and forwarded a
14 report to this department.

15 Do you remember any such direction from anybody in the
16 Attorney General's Department prior to this issue of your
17 contact with Crown counsel coming up?

18 A. Yes, I think so. I do remember that we were to forward the
19 report to them, but I can't recall them saying not to use
20 Crown counsel as we normally did for advice during the
21 investigation.

22 Q. The letters go on to provide,

23 Your investigators are to cease to have contact
24 with the prosecutors concerning this
25 investigation and to concentrate on getting their
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.

Now did you have the idea from reading this letter that the
Attorney General's Department was indicating to you that
they were going to make the decision as to whether or not
charges should be laid?

A. They...my impression was that they were going to assess the
report when they got it and quite likely discuss it further
with us and together decide whether there was charges or
not.

Q. Did you have any sense then at this time in July that the
Attorney General's Department was indicating that it was
going to be their call as to whether or not a charge ought to
be laid?

A. No, not their call alone.

Q. Not their call alone.

A. No.

Q. Did you have any idea at that time if there was a difference
of opinion between the RCMP and the Attorney General's
office whether the AG's office thought they would be the
ones to make the decision?

A. Not really, no.

Q. Not in July.

A. I felt it would be a...there would be dialogue before any
decision was made.

1 Q. I see. But if a dec...let me just follow that up. If a decision
2 was going to be made, if the RCMP had said "We want to
3 charge," and the Attorney General's Department had said,
4 "We don't want to charge," did you have any idea in July
5 that the Attorney General's office thought that they had the
6 right to make that final decision?

7 A. It's difficult for me to answer what they thought.

8 Q. What was your impression?

9 A. My impression was that they would no doubt guide us or
10 give us some reasons if they didn't want to lay a charge.

11 Q. And to follow up on that, if they gave you some reasons and
12 you were to say to them, "Well, we still think there ought to
13 be a charge here."

14 A. Uh-hum.

15 Q. Was it your impression in July that the Attorney General's
16 Department thought that they had the right to make that
17 final judgement, if there was a disagreement?

18 A. I can't... I can't recall exactly what my thoughts were
19 whether or not...at that stage whether or not they were
20 going to make the final decision or whether there would
21 be...I felt at least there would be a chance for us to give our
22 arguments.

23 Q. And are you telling us that at this point then in July you
24 hadn't focused on what would happen if there was a
25 standoff?

1 A. No, because I couldn't, I couldn't foresee them, at that
2 particular stage I have to admit that I couldn't foresee them
3 saying there wasn't a charge.

4 Q. You couldn't foresee them saying there wasn't.

5 A. That there wasn't a charge.

6 Q. There wasn't a charge.

7 A. I felt there was and, therefore, I felt it would be a matter of
8 them appointing a Crown counsel.

9 Q. Did you consider that the position being taken by the AG's
10 department with respect to your contacting Crown counsel
11 was unusual in this particular case?

12 A. Yes, I did.

13 Q. And for what reason did you consider that to be unusual?

14 A. Because generally in the course of an investigation an
15 investigator is provided with the...that assistance by the
16 Attorney General's Department of being able to
17 communicate with the Crown, to assist him in shoring up his
18 evidence, what direction he should go for further
19 investigation, that type of thing, even what charges may be
20 appropriate.

21 Q. Were you told by anybody in the AG's department why it
22 was that they didn't want you contacting Crown counsel in
23 this case?

24 A. They wanted to deal with it at a more senior level than
25 normal Crown.

1 Q I understand that that's what they wanted to do. Did they
2 indicate to you why they wanted to do that?

3 A. Because of the nature of the case. It was...

4 Q And...

5 A. ...a politically sensitive case.

6 Q ...what do you mean by the nature of the case?

7 A. It was a politically sensitive type of of matter, commercial
8 crime type investigation.

9 Q Did somebody in the AG's department use those words to
10 you that you just repeated to us, politically sensitive...

11 A. No, I don't.

12 Q ...type case?

13 A. I don't believe they did.

14 Q No. Did you have a sense that that was one of the issues
15 though?

16 A. Yes.

17 Q And what other issues did you have a sense that were
18 operating in here?

19 A. I've...not other than what I've just stated, that it was a high-
20 profile type of case involving a government official.

21 Q Can you tell me with whom in the AG's department you
22 would have had those discussions, when he indicated to you
23 that it was a...

24 A. Gordon Gale, I believe, from day one, the first day we were
25 contacted. I might say at this point that they...this had

1 happened in other cases, not that I was involved in, but I
2 was aware that there had been high-profile cases where the
3 Attorney General's Department asked that they be referred
4 directly to them before they appointed a counsel.

5 Q. Were there any other cases that you had been directly
6 involved in where that had been the case?

7 A. No.

8 Q. If I could ask you now to turn to page 24. Now at that point,
9 this is a letter from yourself dated September the 11th to
10 the Deputy Attorney General but to Mr. Gale's attention. Am
11 I correct that you are then forwarding the RCMP
12 investigative material?

13 A. That's right.
14 10:59 a.m.

15 Q. If I could ask you now to turn to page 24. Now at that point,
16 and this is a letter from yourself dated September the 11th to
17 the Deputy Attorney General but to Mr. Gale's attention. Am I
18 correct that you are then forwarding the R.C.M.P. investigative
19 material?

20 A. That's right.

21 Q. And if you have a look at the agreed statement of facts and
22 take the last paragraph, page... Paragraph 17. It refers to an
23 August 29th report. Would that be the report that was being
24 forwarded?

25 A. That would be the report, yes.

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q. And if I could just ask you about that report itself and, in
2 particular, paragraph, the paragraph that's referred to in the
3 agreed statement of facts. Was it your understanding at that
4 point that your investigators were recommending charges?

5 A. Yes, it was

6 Q. Had you had discussions with your investigators about that?

7 A. I had been briefed on the matter on what was going forward,
8 yes.

9 Q. And you were satisfied that...

10 A. Yes.

11 Q. They were entitled to reach those conclusions.

12 A. Yes, I was.

13 Q. Now on September the 11th, you forwarded that report
14 recommending charges to Mr. Gale and you say in that letter:

15 May I please be provided with your legal views
16 concerning the issues raised by the investigator
17 and whether it is your wish this matter be
18 referred to a Crown Prosecutor.

18 Did you have any idea at this time, sir, whether or not it was
19 going to be the Attorney General's Department who decided
20 whether charges were going to be laid?

21 A. It's normal when we forward a report to counsel, Crown
22 counsel, be it the Attorney General or one of his counsel,
23 appointed counsel, that this is the type of forwarding minute
24 we put on and ask for their views. You know, do we need
25

1 more evidence.

2 Q. But it's not very often that you forward a report to the
3 Deputy Attorney General's office, is it?

4 A. No, usually to Crown, and it's usually not me forwarding it.
5 It's the criminal investigation branch.

6 Q. And if you were forwarding it to a Crown, you're not asking
7 the Crown himself whether or not the matter should be
8 referred to a Crown.

9 A. No, that part of it you're right.

10 Q. Okay, and I'm asking you whether or not when you indicate
11 in your letter whether it is your wish this matter be referred
12 to a Crown prosecutor. You're not saying to the A.G.'s
13 Department, "Let us know whether or not charges are going to
14 be laid."

15 A. No.

16 Q. What are you saying?

17 A. I'm saying, "Are you going to give us somebody to assist us in
18 further investigation, if necessary, or go ahead with these
19 charges?"

20 Q. And at this point in September, did you have the impression
21 that the question of whether or not a charge was going to be
22 laid was a decision that was going to be made by the R.C.M.P.?

23 A. I felt we needed some confirmation, but we had already
24 pretty well decided there was a charge.

25 Q. And was it your view that it was the right of the R.C.M.P. to

1 decide whether or not a charge should be laid?

2 A. That's right.

3 Q. Do you still hold that view today?

4 A. Yes, I do.

5 Q. If it had not been for the request from the Attorney General's
6 Department to forward this report to them, and if you had not
7 had your normal contact with the Crown taken away, would
8 charges have been laid?

9 A. It would depend somewhat on the advice of the Crown that
10 we dealt with. But I felt we had, what you call a *prima facie*
11 case, I guess, and if we could not foresee any defence that
12 might arise that would prevent us from laying the charge and
13 taking it to court unnecessarily, well, then I felt that it would
14 likely go ahead.

15 Q. And would it be fair to say that if this investigation had
16 followed the normal course, that a charge probably would
17 have been laid?

18 A. If the counsel concerned agreed with our, with my people,
19 yes.

20 Q. Okay, we'll come back to that. At this point in time then, in
21 September, you're sending material recommending charges to
22 the A.G.'s office and you're asking, "May I please be provided
23 with your legal views concerning the issues raised by the
24 investigators?"

25 A. Right.

1 Q. That's in September. Then on page, if I could just ask you to
2 flip over to page 39. That's a letter to yourself from Gordon
3 Coles dated October 29th.

4 A. That's right.

5 Q. Now between the date that you sent your material over on
6 September 11th and October 29th, had you had any
7 discussions with anybody in the A.G.'s office as to what was
8 going to happen?

9 A. No.

10 Q. None at all.

11 A. None at all.

12 Q. Are you aware of whether or not anybody else in your
13 division had discussions with anybody in the A.G.'s office?

14 A. Insofar as I am aware or aware, there had been none.

15 Q. There had been none, okay. Then on October 29th, you
16 receive this letter from Gordon Coles and he encloses with
17 that a couple of things. One is "the Attorney General's
18 decision in the above-captioned matter", which is on page 43
19 of that volume. 43 and 44, the press release.

20 A. Right.

21 Q. Did you have any knowledge prior to receipt of this material
22 on October 29th that the press release was going to be made
23 by the A.G.?

24 A. No, I did not.

25 Q. Did it surprise you?

1 A. Yes, it did.

2 Q. Why did it surprise you?

3 A. I thought it was unusual.

4 Q. In what sense?

5 A. That there was no communication between myself or my
6 C.I.B. officer and the A.G.'s Department before such a press
7 release was made.

8 Q. Would you have expected to have been contacted then prior?

9 A. I would have, yes.

10 Q. If I could just ask you now to consider the press release itself
11 for a moment on page 43 in the second paragraph.

12
13 Mr. How stated that upon the report and
14 attachments being fully considered by Mr. Coles
15 and other senior law officers of the Crown, it is
16 Mr. Coles' considered opinion that the nature of
17 the settlement reached did not constitute any
18 criminal wrongdoing on the part of either the
19 chartered banks or Mr. Thornhill and, therefore,
20 there was no evidence to warrant the laying of
21 any charges in the matter.

19 What did you consider was going on there? Did you think
20 that at this point now the A.G.'s office was saying no charges
21 are going to be laid?

22 A. That's exactly what they were saying.

23 Q. Did you think that they had the right to say that?

24 A. No, I didn't.
25

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q So you know certainly by October the 29th that the A.G.'s
2 Department is saying, "It's our decision," as to whether or not
3 a charge is to be laid, is that correct? And you didn't know
4 that up until October the 29th.

5 A. That's right.

6 Q And the first you knew of it was when you saw it in the press
7 release.

8 A. That's right.

9 Q Also contained in the material that was forwarded to you on
10 October 29th, Mr. Coles refers to the copy of his memo to Mr.
11 How, which set out the basis for the opinion of the A.G.'s
12 Department that the facts don't disclose any evidence of the
13 kind of intention necessary. Now that memo is in the
14 materials from pages 31 to pages 38. That's the memo from
15 Gordon Coles to Mr. How. Did you have an opportunity to
16 review that memo, Mr. Feagan?

17 A. Yes, after I received it, yes.

18 Q I just want to draw your attention for a moment to paragraph
19 11 on page 35. Sorry, I'll start with Paragraph 10 on page 34.
20 Was it your view that the Attorney General's Department was
21 right in its view that there wasn't the necessary intention
22 required under Section 110 to proceed against Mr. Thornhill?

MR. SAUNDERS

24 Excuse me, My Lord, before the witness answers the
25 question, I should register an objection to my friend's question. I

MR. FEAGAN, EXAM. BY MR. SPICER

1 think that question, as put, asks this witness to comment on the
2 merits of the opinion given by Mr. Coles forwarded to the
3 Attorney General. By asking this witness what he thought of the
4 opinion, whether he thought it was right, in my respectful
5 suggestion, gets right into the merits or the strengths and
6 weaknesses of the case against Mr. Thornhill, precisely what my
7 friends said that they did not intend to address. We have the
8 opinion contained in the documents. It was obviously received by
9 the force. But for this witness or any witness to be asked what he
10 thought of it, whether he agreed with it, whether he disagreed
11 with it, whether he took exception to it, whether he thought it was
12 right or wrong, I say deals with the merits and is beyond the
13 scope of this Inquiry.

MR. CHAIRMAN

14
15 I didn't interpret that question, Mr. Saunders, as an attempt
16 to elicit from this witness any of the details surrounding the
17 investigation and which would enable him to answer the question.
18 If the question was "Would you now tell the Commission the facts
19 upon which you based the conclusion that you agree or disagree
20 with the legal opinion of the Deputy Attorney General," then that
21 would not be an appropriate question. But this is simply a
22 question asking whether he agreed or disagreed and I think it
23 would be for us to decide as a Commission whether the opinion of
24 an R.C.M.P. officer with respect to the interpretation of the law has
25 the same validity as that of the Deputy Attorney General, who is

MR. FEAGAN, EXAM. BY MR. SPICER

1 the permanent head of the Attorney General's Department.

2 MR. SAUNDERS

3 Just to pursue it one moment, My Lord, with respect, how
4 does it advance the course of this Inquiry's look at the facts and
5 the process for my friend, Mr. Spicer, to ask the witness whether
6 he thought the opinion rendered by Mr. Coles was right or wrong?
7 How would it advance it for Mr. Spicer to ask Mr. Coles if he
8 thought the analysis conducted by the force was right or wrong,
9 weak or strong.

10 MR. CHAIRMAN

11 That question so far has been with respect to the practice.

12 MR. SAUNDERS

13 Quite so.

14 MR. CHAIRMAN

15 And the evidence of Mr. Feagan to date indicates that there
16 has been a departure from the practice.

17 MR. SAUNDERS

18 Yes, but I have in mind that my friend is about to get into
19 the paragraphs that he cited which deal with the elements, the
20 essential elements to the offence, and whether this witness
21 thought the opinion rendered was right or wrong and I say that...

22 MR. CHAIRMAN

23 I'm going to allow that question but the weight of the
24 answer will be for us to determine.

25 MR. SAUNDERS

MR. FEAGAN, EXAM. BY MR. SPICER

1 Thank you, My Lord.

2 MR. CHAIRMAN

3 After we've heard, and you have to appreciate, Mr.
4 Saunders, that we are seeing all of this for the first time this
5 morning and I'm finding it somewhat difficult to keep up with the
6 information contained therein.

7 MR. SAUNDERS

8 Thank you.

9 MR. RUBY

10 My Lord, this question is going to arise again and I just want
11 to make it clear that my position is that this kind of questioning
12 and, indeed, some disclosing of detail or analysis of detail will be
13 necessary in order to understand why Superintendent Feagan
14 acted as he did. I mean he looked at this, he read it, he formed
15 some conclusions, and then he did some things. And we won't
16 understand why he did them or what he did unless we can ask
17 him what was going on in your own mind when you looked at this
18 document. So we may have to get into some of these areas,
19 though not for the purpose of assessing what's true and what's
20 false, but to understand the witness's activities.

21 MR. CHAIRMAN

22 Or guilt or innocence.

23 MR. RUBY

24 I'm not interested in guilt or innocence.

25 MR. CHAIRMAN

MR. FEAGAN, EXAM. BY MR. SPICER

1 Carry on, Mr. Spicer.

2 MR. SPICER

3 Thank you, My Lord.

4 Q. I was asking you whether or not you agree with the view of
5 the Attorney General's Department concerning Section 110C.

6 A. The necessary criminal intent.

7 Q. Yes.

8 A. Upon reading this, I caused the people in my commercial
9 crime section, including the legal trained member, to research
10 some more. You know, to make sure that we knew what we
11 were talking about and as a result of that, I disagreed.

12 Q. Let me just ask you about that. You commissioned, I believe,
13 would it have been Mr. Plomp?

14 A. That's right.

15 Q. Now who is Mr. Plomp?

16 A. Plomp was in our commercial crime section at the time. He
17 had his law degree from Dalhousie University.

18 Q. So he was a legally trained member of the R.C.M.P. that you
19 asked to have a look at this question of intent.

20 A. Yeah, to explain it to me, for that matter.

21 Q. And was one of the reasons that you had to do that was
22 because you didn't have the normal contact that you would
23 have with Crown counsel to get legal advice.

24 A. Yes.

25 MR. CHAIRMAN

MR. FEAGAN, EXAM. BY MR. SPICER

1 Was Mr. Plomp stationed in Halifax?

2 MR. FEAGAN

3 A. He was stationed, yes, My Lord. I maybe should explain that
4 Mr. Plomp was overseeing the investigator in this case who
5 was Corporal House, was the investigator and Sergeant Plomp,
6 I believe he was at that time. His rank was a sergeant. He
7 was giving some guidance to the corporal.

8 Q. To Corporal House.

9 A. That's right.

10 Q. And why was it that Plomp was giving that guidance to House
11 in respect to this particular investigation?

12 A. Partially because he was a senior member and legally trained
13 in the commercial crime branch and partially because we
14 didn't have Crown counsel.

15 Q. If you had had Crown counsel, if you had had access to Crown
16 counsel, are you able to tell us whether or not you would still
17 have assigned Plomp to work with House on this?

18 A. He would have likely worked with him. They both would
19 have been in contact with Crown counsel.

20 Q. The press release that we've been discussing on page 43 was
21 issued by the A.G's office on October 29th, page 43. As a
22 result of receiving that press release, what did you do?

23 A. I held a meeting, or at least we got together with the C.I.B.
24 officer.

25 Q. That's Mr. Christen?

1 A. That's Mr. Christen, Mr. Blue in charge of commercial crime
2 branch, and Mr. Plomp, and the investigator and we discussed
3 the case.

4 Q. Okay, let me just stop you there for a minute. Now Blue, who
5 is he?

6 A. He was in charge of the commercial crime branch in Halifax
7 for Nova Scotia.

8 Q. Would he report to Christen?

9 A. He would report to Christen, yes.

10 Q. Would House, in turn, report to Blue?

11 A. Right.

12 Q. So it goes up the ladder -- House, Blue, Christen, yourself.

13 A. That's right.

14 Q. Where does Plomp fit into that?

15 A. Plomp is part of Blue's unit. He is on parallel with House, only
16 a senior official, so...

17 Q. And legally trained.

18 A. And legally trained, yeah.

19 Q. Sorry, you were saying as a result of receipt of this press
20 release, you had a meeting with your people in Halifax.

21 A. That's right.

22 Q. Tell us about the discussion at that meeting.

23 A. Well, as a result of the discussion, I still felt strongly that we
24 had a *prima facie* case or the grounds for a charge to be laid.

25 Q. Was there discussion at that meeting as to the propriety of a

1 press release coming from the A.G.'s office saying there's
2 going to be no charges?

3 A. Oh, yes, no doubt.

4 Q. All right, and what was the nature of that discussion?

5 A. I can't remember the exact nature of it but certainly we
6 agreed that it wasn't the proper route to be following, as far
7 as we were concerned.

8 Q. Okay, and why in your opinion was it not the proper route to
9 be following?

10 A. Mainly because we felt that by making the press release, the
11 Attorney General's Department had now put themselves in a
12 position that it would be very embarrassing for them to
13 change their mind and we would want... We were in a position
14 that we felt they should change their mind but this would be
15 very difficult to bring about now that it had been made
16 public.

17 Q. Did you think it would be more difficult for you to get them
18 then to change their mind?

19 A. That's right, yes.

20 Q. Were you a little bit annoyed when you got this press
21 release?

22 A. Maybe disappointed would be better.

23 Q. As a result of the meeting with your people in Halifax, what
24 then did you do?

25 A. We decided the route to follow now, the only alternative we

1 had was to go to my commissioner in Ottawa, which is general
2 policy that when there's a disagreement or a difference of
3 opinion between a commanding officer of a division of the
4 force, a province, that is, with the Attorney General's
5 Department, the Attorney General or his Deputy, that the
6 proper procedure then is to go to our higher level, who is the
7 Commissioner, to help iron out the matter.

8 Q. Who did you contact in Ottawa?

9 A. We had, as I recall, Inspector Blue contacted Superintendent
10 Roy, who was in charge of the commercial crime branch in
11 Ottawa.

12 Q. Now would Inspector Roy be in charge of commercial crime
13 all across the country?

14 A. That's right.

15 Q. So would he be the senior commercial crime person?

16 A. That's right, and his department oversees commercial crime
17 investigations or did at that time that were, that went on all
18 across Canada.

19 Q. As a result of that contact, what happened?

20 A. A meeting was arranged in Ottawa.

21 Q. In Ottawa for November the 5th?

22 A. To discuss the case, yeah, I believe that's... I'm not sure.

23 Q. If I could just ask you now to turn to page 55. From 55
24 through to 57, are those the minutes of that meeting that was
25 held in Ottawa?

1 A. That's right. Those are minutes drawn up following the
2 meeting.

3 Q. You've had an opportunity to review those minutes?

4 A. Yes, I have.

5 Q. Do those minutes fairly reflect what went on at the meeting?

6 A. Yes, they do. They're an accurate account.

7 Q. Are you able to tell us today whether or not at the time drafts
8 of these minutes had been circulated to you for your
9 comments?

10 A. Some time after.

11 Q. All right, if we could just now go through those minutes. First
12 of all, I would like, if you could, indicate to us... There's a list
13 of the people that were present at the meeting which seems
14 to have been held on the 5th of November at HQ Ottawa, 1:15
15 p.m.

16 A. Right.

17 Q. Now who are the actors here? Who is Quintal?

18 A. Okay, the Deputy Commissioner of Criminal Operations for the
19 force, Mr. Quintal.

20 Q. Where is he in terms of the line of authority in the R.C.M.P.?

21 A. He's right next to the Commissioner.

22 Q. Is he below the Commissioner, does he report to him?

23 A. He's below the Commissioner and reports directly to him. The
24 force at that time was set up so there were three deputies.
25 One was admin., one was criminal office, and one was National

1 Police Services, I believe.

2 Q. So in terms of criminal operations, he is the senior guy in the
3 R.C.M.P.

4 A. That's right.

5 Q. And he reports directly to Simmonds.

6 A. To Simmonds, right.

7 Q. Venner?

8 A. Venner was the director of criminal investigations for the
9 force, right underneath Quintal.

10 Q. And reporting to Quintal.

11 A. And reporting to Quintal.

12 Q. The next person, Riddell?

13 A. Riddell was assistant to Venner, federal. There was a federal
14 and police, provincial contract service, and Riddell is the
15 federal man.

16 Q. Jay?

17 A. And then Jay was legal section at our headquarters.

18 Q. Was he a lawyer?

19 A. Right, yes.

20 Q. Then there's yourself, Superintendent Christen, Inspector
21 Blue, Sergeant Plomp, Corporal House, who was the
22 investigator in the case. Superintendent Roy, who is he?

23 A. Who we referred to before as the officer in charge of
24 commercial crime branch operations in Ottawa.

25 Q. Senior person?

- 1 A. Senior person, yes.
- 2 Q. Kozij?
- 3 A. Inspector Kozij was, he was the officer in charge of the
4 commercial crime branch policy... No, operations. He was in
5 charge of operations. I'm sorry about that. Roy, Superinten-
6 dent Roy is in charge of commercial crime branch overall.
- 7 Q. In Ottawa.
- 8 A. Yeah. Inspector Kozij was in charge of operations in the
9 commercial crime branch.
- 10 Q. Would you describe him as a senior person?
- 11 A. Yes.
- 12 Q. McConnell?
- 13 A. McConnell was the policy and admin. officer in the "C"
14 directorate.
- 15 Q. Sorry?
- 16 A. Commercial crime branch, senior.
- 17 Q. Again, from Ottawa?
- 18 A. That's right.
- 19 Q. Dillabaugh?
- 20 A. Dillabaugh was government fraud specialist.
- 21 Q. In Ottawa.
- 22 A. Yeah, that's right.
- 23 Q. Pratt?
- 24 A. He was just a member of the commercial credit branch in
25 Ottawa, headquarters.

1 Q. Would you consider this to be a meeting of fairly high level
2 people then in the R.C.M.P.?

3 A. Yes, it was

4 Q. Did you have any say in the people who actually attended the
5 meeting?

6 A. No, I didn't. It was arranged by the officer in charge of
7 commercial crime branch.

8 Q. And that was?

9 A. Roy, Superintendent Roy.

10 Q. Do you have any knowledge as to why the Commissioner
11 himself wasn't there?

12 A. He was absent. He wasn't available. He was out of the
13 country, I believe. I have to say I agreed with the people
14 that were there were the right people to be there under these
15 circumstances.

16 Q. And why do you say they were the right people to be there
17 under the circumstances?

18 A. Because they were all our specialists in that field with lots of
19 experience and what went on across Canada in commercial
20 crime investigations.

21 Q. Let's just go through the minutes.

22
23 The purpose of the meeting: To discuss in depth
24 the problems derived from the Attorney General
25 of Nova Scotia comments to the media that no
charges were warranted. To provide
Headquarters with advice and guidance, input

MR. FEAGAN, EXAM. BY MR. SPICER

1 into a sensitive discussion in connection with a
2 high profile investigation. And to test the
3 strength and weakness of the investigation. And
4 to plan a course of action on how best to deal
5 with the fact that the provincial A.G. has stated
6 his opinion to the press without giving the
7 R.C.M.P. an opportunity of rebuttal or comment.

8 Were those the substantial issues that were to be discussed?

9 A. That's right.

10 Q. Can you think of any other substantial issues that were
11 discussed at that meeting other than those?

12 A. No, everything evolved around these.
13 11:25 a.m.

14 Q. Okay. The next paragraph and we start to get in to what
15 actually happened at the meeting.

16 The meeting began with Superintendent Christen
17 and Corporal House giving a brief resumé of the
18 investigation and its results. The resumé
19 highlighted a serious problem in that the AG of
20 Nova Scotia had made a press release without
21 RCMP consultation that no charges were
22 warranted in this matter.

23 Why was that a serious problem?

24 A. Because we felt it was our prerogative to lay a charge if
25 there the ingredients there.

Q. Was that to your understanding the consensus of the people
at that meeting?

A. Yes, it was.

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q. Yes. The note goes on to say,

2
3 The AG stated that he based the contents of this
4 news release on the opinion of the Deputy AG,
5 Mr. Coles, and other senior law officers, the
6 manner in which circumvented the normal
7 procedure in dealing with these matters. Normal
8 procedure would be to discuss the merits and
9 weaknesses of the investigation, allowing the
10 investigator an opportunity to shore up those
11 areas that may be lacking in substance. This
12 consultation takes place with a prosecutor
13 assigned to the file, but in this case a request for
14 this to be arranged was ignored.

15
16 Is that fair representation of what you told the people in
17 Ottawa had happened in Nova Scotia?

18 A. That's right. I repeated it earlier here.

19 Q. And would you say that the normal procedure is
20 consultation with a prosecutor?

21 A. Right.

22 Q. On page 56 in the first paragraph there's reference to this
23 business of section 110 (c) and your views or the views as to
24 what the necessary intent was under 110(c). Did the Halifax
25 contingent convince Ottawa that you had a case on 110(c)?

26 A. Yes, we did.

27 Q. Do you remember any specific comments that were made by
28 anybody at that meeting about that?

29 A. I can't say for certain, but it seems to me that as I recall it
30 Deputy Minister Quintal says "You've convinced us." And

MR. FEAGAN, EXAM. BY MR. SPICER

1 the whole meeting was...after quizzing us, you know,
2 quizzing the investigators and everyone else to some length,
3 it was agreed unanimously that there was a charge.

4 Q. There's reference to, before the enumerated listings there,
5 "A well prepared submission touched on the essential
6 ingredients of a charge," and it lists them. The note then
7 says, "The submission and the investigation were queried on
8 all aspects, for the investigation had to stand the test of our
9 own internal scrutiny so as to create a united front." Did
10 this investigation stand the test of your own internal
11 scrutiny?

12 A. Yes, it did.

13 Q. Yes, it did. Then it goes on to say,

14
15 A discussion developed which fortified our
16 prerogative to lay an information recognizing
17 that it was within the ambit of the provincial AG
as to what type of prosecution would be
presented, if any.

18
19 Was it then the consensus that it was the RCMP's right to
20 decide if a charge was laid...to be laid, and the AG's decision
21 as to whether or not it was to be proceeded with?

22 A. That's the general consensus, yes.

23 Q. Further,

24 Brief discussion was held on the fact that the
25 force was morally obligated to lay an

MR. FEAGAN, EXAM. BY MR. SPICER

1 information if the evidence supported such
2 action.

3 What was the nature of that discussion?

4 A. That as policemen if the evidence was there and we felt,
5 then we felt morally obligated to society to lay a charge.

6 Q. Was that your feeling?

7 A. Yes, it was.

8 Q. Did you have any feeling that the press release issued by
9 the AG's office at the end of October, did you have any
10 concern that that would compromise what you thought was
11 your moral obligation to lay a charge?

12 A. I...it would hamper it, yes, I would.

13 Q. The notes goes on to indicate,

14 It was noted that the force has not consistently
15 followed this procedure in past years as some
16 divisions have accepted a written submission
17 from the AG's, proceedings would be entered,
18 should a charge be laid. This written decree
19 from the AG has been sufficient to deter the
20 laying of the information.

21 To what does that...

22 A. What this amounts to is if the Attorney General's
23 Department indicates that they're going to stay the
24 proceedings anyway, there isn't much point in laying the
25 charge. But to fill our moral obligations to the...to society, it
was our feeling we should lay the charge and then let them

MR. FEAGAN, EXAM. BY MR. SPICER

1 stay the proceedings.

2 MR. CHAIRMAN

3 Under what circumstances would that situation arise?

4 MR. FEAGAN

5 As I understand it, My Lord, in some...there have been cases
6 where there was a bit of a difference of opinion. The Attorney
7 General's Department wrote to the force, the commanding officer
8 of the division concerned, and said, "If you lay a charge, you
9 know, it's our intention to stay the...to have the proceedings
10 stayed, make a motion for the proceeding to stay," and because of
11 that, the charge never was laid.

12 MR. CHAIRMAN

13 The difference of opinion between the RCMP and the
14 Attorney General would be whether there was...whether the
15 evidence warranted a charge might be laid.

16 MR. FEAGAN

17 Right.

18 MR. CHAIRMAN

19 This is the type of case you're referring to on page 56 at the
20 bottom.

21 MR. FEAGAN

22 That's right.

23 MR. CHAIRMAN

24 If the RCMP, forget the Thornhill case, but a case involving a
25

MR. FEAGAN, EXAM. BY MR. SPICER

1 Canadian citizen who is not high profile, went ahead and laid a
2 charge against the advice of the Crown prosecutor and the Crown
3 prosecutor then in the discharge of his or her duty stayed the
4 proceedings, do you have any view as to what that would do to
5 the innocent victim, the accused?

MR. FEAGAN

7 My view is what it would do, harm his reputation you mean
8 as a matter because of the fact there was a charge laid?

MR. CHAIRMAN

10 And then stayed.

MR. FEAGAN

12 And then stayed.

MR. CHAIRMAN

14 I thinking of being laid in a case where you have been
15 advised by a Crown prosecutor that either the facts or the law or a
16 combination of both do not sustain or support the laying of a
17 charge, and the charge is laid and then stayed.

MR. FEAGAN

19 Uh-hum. I've never been involved in a case like that, My
20 Lord.

MR. CHAIRMAN

22 Can we assume then that the general practise in the RCMP is
23 that if at the end of an investigation you receive a legal opinion
24 from a Crown prosecutor that a charge should not be laid, or
25 alternatively that if laid it would be stayed, that a charge won't

MR. FEAGAN, EXAM. BY MR. SPICER

1 be laid?

2 MR. FEAGAN

3 That's right.

4 MR. CHAIRMAN

5 Thank you.

6 COMMISSIONER EVANS

7 But certainly on the bottom where it says "The proceedings
8 will be entered that a charge will be laid. Does that mean ended
9 or...

10 MR. SPICER

11 It's clearly a mistake. It would be...it doesn't make sense as
12 "entered," it would be a stay at least would be entered.

13 MR. FEAGAN

14 Yeah, there is something missing here.

15 MR. SPICER

16 Yeah.

17 MR. FEAGAN

18 Missed in the minutes here. If they indicate they're going to
19 stay it, we don't lay them.

20 MR. SPICER

21 Q. With respect to the investigation itself were there any gaps
22 in the investigation that were mentioned at the meeting or
23 was it a consensus that your work had been done insofar as
24 the investigative work was concerned?

25 A. There were no gaps insofar as we had gone with the

1 investigation.

2 Q. Were there any other areas that were still left to be
3 investigated?

4 A. It would depend upon whether we were advised that we
5 should investigate further concerning other charges than the
6 110(c).

7 Q. Okay. But with respect to the 110(c).

8 A. I think it was pretty well wrapped up, yeah.

9 Q. On page 57, continuing on in the minutes, there's reference
10 in the first paragraph to Kevin Burke having spoken to TV
11 news about the Thornhill matter, but in the second
12 paragraph and I wanted to ask you on page 57,

13
14 A matter of equal importance evolved around
15 the *ratio decidendi* and the commissioner's
16 responsibilities to manage the force and to
17 ensure that the quality of our criminal
18 investigations be of the highest order. Given the
19 obvious ramifications of any charge being laid
20 against the advice of the AG, it rendered it
21 absolutely imperative that the merits of the case
22 be examined at the highest possible levels within
23 the force.

24 Can you tell us what the substance of that discussion was?

25 A. The main thrust of the discussion was the future relations
with the AG if we went ahead and laid a charge against his
wishes.

Q. Can you help us at all with what some of those obvious

1 ramifications would have been?

2 A. Just that I guess, the loss of confidence between the deputy
3 AG, for example, and the CO of the division.

4 Q. Anything else?

5 A. I think just the general relationship is what we're referring
6 to.

7 Q. Are you able to tell us whether or not it was considered to
8 be an appropriate factor to take into account that the
9 relations between the RCMP and the AG's office might be
10 affected?

11 A. Yes, I think in the interests of the administration of justice
12 of the province it's essential for the police force and the
13 Attorney General's Department to work together.

14 Q. And was that your view?

15 A. Yes, it is.

16 Q. Did you understand that to be the view of the meeting?

17 A. Yes.

18 Q. Consensus. Do you consider that it's...that it would be a
19 proper factor to take into account if you thought that the
20 opposition from the...if there was opposition from the
21 provincial AG would that be enough, per se, in other words
22 would you be prepared to say, "Well, there is opposition
23 from the Attorney General's Department and because of that
24 opposition, or I'm prepared to take that opposition into
25 consideration as a factor in deciding whether or not we

1 ought to go ahead." Or would you want to know why you
2 were getting that opposition?

3 A. Oh, I'd want to know the reasons for the opposition.

4 Q. In this particular case were you ever able to discover the
5 reasons for the opposition?

6 A. Not exactly, no. They...the arguments were put forward by
7 the Deputy Attorney General in his memorandum to me that
8 there wasn't a case.

9 Q. Yes.

10 A. I had difficulty with that but that's where it ended.

11 Q. The conclusions of your meeting, the three of them, the
12 investigation... number 1, "The investigational evidence
13 supported a *prima facie* case under 110(c) against
14 Thornhill." In normal circumstances would a *prima facie* be
15 enough for a charge to be laid?

16 A. Yes, normally.

17 Q. Number 2. "Some leeway must be given to the AG,
18 therefore, a report," sorry,

19 Therefore a report should be prepared pointing
20 out our position outlining the jurisprudence, et
21 cetera, which supports it and asking the AG to
22 reconsider his opinion in this matter. The report
23 should be prepared by H division and shall be
 delivered by hand to the AG after review by HQ.

24 What was the purpose of doing that, sir?

25

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. The purpose of this mainly was so that we could give other
2 arguments to the Deputy Attorney General about his
3 memorandum where he pointed out to some detail the
4 intent, you know, our view on the intent required, for
5 example, and I'm getting into the case which I shouldn't do,
6 our view on what intent was...what constituted intent in this
7 particular type of offence was different than his.

8 Q. Yes.

9 A. We wanted to be able to go to him with further argument in
10 spite of the fact of the press release.

11 Q. And also would that also be in spite of the fact that at the
12 end of the day it was the RCMP's view that you had the right
13 to go ahead and lay a charge?

14 A. Yes.

15 Q. You're giving' the AG an opportunity here to have some
16 further discussion.

17 A. That's right. To persuade him, in other words, that we were
18 right and to give us the opportunity to lay a charge.

19 Q. And conclusion three then is that "The AG of the province
20 must be informed in writing that it is our intention to
21 pursue a charge against Thornhill under Section 110(1)(c)."
22 Now was that regardless of the result of your discussion in
23 two.

24 A. No, that follows two.

25 Q. Follows the two.

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. Yeah. If we decided in the final analysis to lay a charge in
2 spite of the Attorney General's saying no, well, then we
3 would advise him in writing before we did so.

4 Q. I see. But you were not foreclosing the possibility of being
5 argued out of it by the AG.

6 A. That's right. We weren't foreclosing that.

7 Q. At this point in time though is it fair to say that the RCMP's
8 view was that you were right?

9 A. Yeah, we have a good case.

10 Q. Are you aware of any further investigative work done by
11 the RCMP in connection with this case subsequent to this
12 meeting in November?

13 A. No, other than some research there may have been.

14 Q. Legal research.

15 A. Yeah.

16 Q. But investigative work in terms of going...

17 A. No.

18 Q. ...out and finding out facts.

19 A. No, no further investigations.

20 Q. Was done.

21 A. No.

22 Q. Was there any dissension from those conclusions expressed
23 by anybody at the meeting?

24 A. Not that I'm aware of.

25 Q. Not that you heard.

1 A. Not that I heard, no.

2 Q. And I believe you indicated to me earlier that at some stage
3 of the game the minutes, the versions of the minutes were
4 distributed.

5 A. I couldn't swear to that but I know I had seen them before
6 here. So either I...they would have had to have been
7 distributed, I guess, for me to see them.

8 Q. Subsequent to that meeting in early November, if you just
9 want to turn to page 58, there's a press release from Mr.
10 Coles and then on page 61 another version of that press
11 release. I just wanted to ask you a couple of questions
12 about the press release. In paragraph 2 of this press release
13 on page 58, Mr. Coles had issued this from... I believe he was
14 at some meetings in Victoria. It's reference to a particular
15 prosecuting officer being assigned to a case and then taken
16 off it, and that is the business with Mr. Burke that happened
17 during the summer, if I understand correctly, right?

18 A. Right.

19 Q. Okay. The second paragraph,

20
21 Mr. Coles said that although he has not seen the
22 statement attributed to the assistant prosecuting
23 officer, he restates his previous advice that it
24 was clearly understood policy and accepted
25 practise between the RCMP and the Attorney
General's Department that in matters of major or
involved criminal investigations, particularly
those involving allegations of so-called

MR. FEAGAN, EXAM. BY MR. SPICER

1 commercial crime and fraud, the police
2 investigation into the facts is referred to the
3 deputy AG or other senior lawyers in the
4 department experienced in the criminal law to
5 assesses the report.

6 It goes on, and then it says,

7 If the facts disclose evidence of the necessary
8 ingredients, a prosecutor is then assigned and
9 the police advised accordingly.

10 Was it your understanding, as a CO in Halifax, that it was
11 clearly understood policy that in matters of major or
12 involved criminal investigations, police investigations, into
13 the facts would go to the Deputy AG's office before you
14 contacted the Crown?

15 A. I wouldn't refer to it as policy because we did this when we
16 were specifically directly to do so in a specific case but not
17 as a matter of routine.

18 Q. Right. It wasn't something that you knew, oh, here we have
19 a matter involving commercial crime and fraud so as a
20 matter of policy we go to the Deputy AG with that.

21 A. We would likely through the Thursday meetings between
22 the CIB officer and the director of criminal raise these, you
23 know, let him...make him aware that these investigations
24 were on. As a result of being aware of it, they sometimes
25 said, "that's one of these...", you know, they didn't say in
those words, but this case you're to bring it to us, not to the

1 Crown counsel.

2 Q. But it wasn't something that you understood in advance to
3 be the case.

4 A. No. It wasn't what I'd call a...

5 Q. Policy.

6 A. Understood policy, no.

7 Q. Okay. Then in the next paragraph of the press release Mr.
8 Coles goes on to indicate, "This particular investigation
9 follows this agreed upon procedure."

10 A. Well, in this particular investigation they specifically
11 instructed us to do it.

12 Q. All right. There was an agreed upon procedure only with
13 respect to this particular investigation.

14 A. That's right. And there were others I'm sure.

15 Q. But it was not pursuant to a policy.

16 A. No. It wasn't a routine thing.

17 Q. Right.

18 A. It required him to tell us.

19 Q. Okay. Just continuing on, "And the RCMP understood from
20 the beginning that upon the completion of their
21 investigation they were to forward their report to the
22 Deputy Attorney General."

23 A. I think that's right.

24 Q. Did you understand that from the beginning of your
25 investigation?

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. From the day that we saw Gordon Gale, I forget the date.

2 Q. In April.

3 A. In April, I was aware that the report was to go to the AG.

4 Q. Were you aware in April that it was not to go to a Crown?

5 A. No, I wasn't aware that we weren't to contact Crown for
6 information.

7 Q. Right.

8 A. But I knew the report was to go to...

9 Q. But you didn't understand in April...you understood in April
10 that the report was to go to the Deputy AG's office.

11 A. That's right.

12 Q. But you...

13 A. They wanted to assess it before charges were laid.

14 Q. But at that point in time you had not received any advice
15 that you weren't to have the benefit of consultation with
16 Crown.

17 A. That our investigator couldn't contact Crown because often
18 our investigators contact Crown on a personal basis.

19 Q. On page 61 is a follow-up really to that initial press release,
20 again from Mr. Coles?

21 COMMISSIONER EVANS

22 What was the date?

23 MR. SPICER

24 It's around November the 11th, I think, My Lord. There's
25 not a date on it, but I think you'll see if you look on page 60 a

MR. FEAGAN, EXAM, BY MR. SPICER

1 note from Mr. Coles to Mr. How on November the 13th, which is
2 when the second version of it was issued, so it's about that time.
3 It may have been the 11th.

MR. CHAIRMAN

5 Well, this memo on page 60 is dated November 13th.

MR. SPICER

7 Yes.

MR. CHAIRMAN

9 And Mr. Coles says, "I have today issued the following
10 statement."

MR. SPICER

12 And that would be the one on page 61, that's the second
13 version of it.

MR. CHAIRMAN

15 I see.

MR. SPICER

17 And the one on page 58 I think is a day or so before that.

18 Q. On page...the one on page 61, again Mr. Coles is making some
19 comments and I'd just like to ask you a couple of questions
20 about them, and particularly in the second paragraph.

21 Mr. Coles reaffirms his earlier advice that from
22 the commencement of the investigation it was
23 clearly understood and agreed between the
24 commanding officer H Division and himself that
25 upon completion of the investigation the report
would be forwarded directly to the Deputy

MR. FEAGAN, EXAM, BY MR. SPICER

Attorney General.

1 Was it your understanding...did you have an understanding
2 with Mr. Coles from the commencement of your investigation that
3 the report would be forwarded directly to the Deputy AG?
4 11:50 a.m.*

5
6 A. I can't recall him specifically saying that to me but I was
7 under that impression, yes, it was going to him.

8 Q. And did you have that impression from the very beginning of
9 the investigation?

10 A. From the time that we met with Gordon Gale, yes.

11 Q. In April.

12 A. Uh-huh.

13 Q. There's some notes that will be introduced later, My Lord,
14 which indicate that that first press release on page 58 was
15 November the 6th. Subsequent to your meeting in Ottawa on
16 the 5th of November then, Mr. Feagan, you came back to
17 Halifax. Did you then subsequently meet with Mr. Coles?

18 A. Yes, I did.

19 Q. Did you kept notes of that meeting?

20 A. I made notes immediately following the meeting, which the
21 next day were typed.

22 Q. If I could just direct your attention to page 63. Are those the
23 notes of your meeting?

24 A. That's right.

25 Q. That meeting took place in Halifax on the 13th of November?

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. On the 12th.

2 Q. On the 12th, and the notes made on the 13th.

3 A. That's right. Typed on the 13th, yes.

4 Q. Did you write up your notes immediately following the
5 meeting?

6 A. I wrote up my notes immediately following the meeting.

7 Q. On the same day.

8 A. Yeah, and the secretary typed them the next day.

9 Q. Had you been directed to go to speak to Mr. Coles or Mr. How?

10 A. Yeah, as a result of a meeting in Ottawa, the director of
11 criminal investigations.

12 Q. That was who?

13 A. Venner, Assistant Commissioner Venner instructed me to go
14 to the Attorney General and inform him of the, that we felt
15 we had a *prima facie* case or sufficient grounds to lay a
16 charge under Section 110 against Mr. Thornhill and request
17 that the Attorney General consider our arguments with
18 respect to this charge.

19 Q. You were directed to do this by Venner?

20 A. That's right.

21 Q. The first paragraph of your notes indicates that,

22
23 This is following account of my meeting with the
24 Attorney General Honourable Harry How and the
25 Deputy A.G. Coles.

Had you made the appointment as indicated in the second

MR. FEAGAN, EXAM. BY MR. SPICER

1 paragraph to see Mr. How?

2 A. Yes, I had.

3 Q. And Mr. How, I take it from your notes which we'll go
4 through, was present at some point in the meeting but not
5 throughout.

6 A. That's right.

7 Q. Do you remember whether or not you disclosed to Mr. Coles
8 or Mr. How that you had come from a meeting of the R.C.M.P.
9 in Ottawa?

10 A. I'm quite sure I didn't.

11 Q. Why would you not have done that?

12 A. I took upon myself the responsibility to discuss the matter
13 with them and at that stage I didn't think it was fair to draw
14 my headquarters into it.

15 Q. You indicate in the third paragraph on page 63 that you had
16 delivered an envelope from the chief financial officer and
17 listened to his views on contract negotiations. Are those the
18 negotiations for the provincial policing contract?

19 A. That's right.

20 Q. Were those negotiations under way at the time?

21 A. Yes, they were. This was entirely separate from the other
22 discussion though. It had nothing to do with it.

23 Q. And other than the fact that you handed to him...

24 A. I took this opportunity to do that and I recorded here but it
25 had no significance in respect to the matter that we were

MR. FEAGAN, EXAM. BY MR. SPICER

1 going to discuss.

2 Q. You indicate in your note that you had read Mr. Coles' memo
3 of October 25th and you go on in your notes to indicate that
4 you weren't satisfied of his analysis of 110(c).

5 A. That's right.

6 Q. What happened then? Tell us how the discussion developed.

7 A. Well, I explained to him that I was having Sergeant Plomp, a
8 legally trained member research the matter further, including
9 case law, and that I asked Mr. Coles if he would consider
10 reading that and considering it with respect to my arguments.

11 Q. What was his response to that?

12 A. He reviewed what he had said in his memorandum and
13 further on in our discussion, he did agree that he would look
14 at the arguments.

15 Q. On page 64 about halfway down, there's a sentence that
16 begins,

17 He (Mr. Coles) stated that he recognized the right
18 of the police to lay charges, but in this particular
19 case, we had asked for his legal opinion and he
20 had given a decision after two senior lawyers of
21 his department, Mr. Gordon Gale and Mr.
22 Herschorn and himself had carefully researched
23 the law.

24 Now did he indicate to you that both Mr. Gale and Mr.
25 Herschorn had been involved in the research?

A. That's right.

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q He said he was amazed that I would argue a legal decision
2 made by senior officials of the Attorney General's Department
3 because by doing so, I was questioning the integrity of those
4 senior officials. Can you elaborate at all on that?

5 A. He may not have said it in those words, but that's... I can't
6 elaborate, no. That's about what he said.

7 Q Is that what he said?

8 A. That's what I received, anyway.

9 Q You go on to say:

10
11 I explained that normally in complex criminal
12 cases we work closely with Crown counsel and
13 obtain advice and opinions from Crown counsel
14 and together came to an agreement respecting
15 charges. But, in this case, he had requested that
16 we deal with the Director of Criminal and/or
17 himself and directed that we not consult Crown
18 counsel.

19 That direction to not consult Crown counsel had come after
20 you had already consulted Crown counsel.

21 A. After the investigator had, yes.

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

MR. FEAGAN, EXAM. BY MR. SPICER

1 Did you indicate to him during the discussion that, in your
2 view, it was the R.C.M.P.'s prerogative to decide whether or
3 not a charge should be laid?

4 A. Yes, and earlier on, he, in my notes, he even stated that
5 himself, that he realized that we had that prerogative.

6 Q. But was he making an exception with respect to this case
7 insofar as that prerogative was concerned?

8 A. No, he was telling us that he didn't think a charge should be
9 laid. As far as he was concerned, there was no charge. But he
10 also acknowledged the fact that policemen, if a justice does
11 accept it, can lay a charge.

12 Q. Let's go on to the next paragraph.

13 A. He was more or less saying that that would be a ridiculous
14 thing for us to do though.

15 Q. Continue with your note then.

16
17 Mr. Coles became very emotional at this point
18 and stated that his department was responsible
19 for the administration of justice in the province
20 and as a senior official in that department, he
21 would answer for his decisions. He explained
22 that in his opinion the police report reflected a
23 thorough investigation and all the facts
24 contained in it and now that he had made a
25 decision on those facts, it should be no concern of
mine to question his decision.

What was the decision that he was referring to?

A. That there was no charge.

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q. Was it that there was no charge or that there was no charge
2 to be laid?

3 A. Well, yeah, both, I think.

4 Q. Was he saying to you that the decision he had made was that
5 there was no charge to be laid here?

6 A. Uh-huh. I should explain that when I say here that "he
7 explained that in his opinion the police report reflected a
8 thorough investigation," I had previous to that mentioned to
9 him that there may have been room for more investigation
10 but we weren't afforded the opportunity to discuss the case to
11 go and get anything more that he may require to make our
12 case.

13 Q. What was his response to that?

14 A. Well, he said that, in his opinion, the police reported
15 everything in it that was needed.

16 Q. Did he indicate to you the basis upon which he didn't want to
17 go ahead?

18 A. That there was no intent shown that this was the main theme.

19 Q. 110 (c).

20 A. That's right.

21 Q. Continue on that paragraph. "Further he questioned the
22 motivation of my advisers within the force." In what sense
23 did he question the motivation?

24 A. What he was inferring, in my opinion, was that I was
25 accepting emotional, maybe, ideas of my inferiors or the

MR. FEAGAN, EXAM. BY MR. SPICER

1 people working for me in making up my mind that there was
2 a charge. He wasn't aware, as I mentioned before, that at this
3 stage I had been to Ottawa and had the meeting and really it
4 was my superiors that I was accepting the opinions of. He felt
5 it was my investigators I was listening to.

6 Q. And do I take it from what you told us earlier that you didn't
7 mention the Ottawa meeting, that you didn't set him straight
8 on that fact.

9 A. No, I didn't at this time. I guess I didn't say very much at
10 this meeting.

11 Q. Why was that?

12 A. Because Mr. Coles did all the talking.

13 Q. Continuing on.

14
15 I had a great deal of nerve to suggest that after
16 senior lawyers of his department had reviewed
17 the matter and come to a conclusion they could
be wrong and that if I went so far as to lay a
charge, I was treading on dangerous grounds.

18 Can you tell us, can you elaborate at all on that comment?

19 A. Before doing that, I'd like to go back to the last question.

20 Q. Sure.

21 A. If I may, and say that I felt there was no point at this stage of
22 me arguing the merits of the case. I was more laying the
23 groundwork for us to bring forth argument through written
24 documentation or whatever later on. I wasn't interested, I
25 wasn't prepared to argue at that stage. So I said very little

MR. FEAGAN, EXAM. BY MR. SPICER

1 during the meeting. Now I'll go on to this.

2 Q. "If I went so far as to lay a charge, I was treading on
3 dangerous grounds."

4 A. In other words, that by laying a charge against advice
5 received from senior lawyers in the Attorney General's
6 Department would be a very dangerous thing to do.

7 Q. Did he explain to you why it would be dangerous?

8 A. No, but I read into that that if we lost the case, for example,
9 after being advised not to lay a charge by senior officials in
10 the A.G.'s Department, if the case was lost, there may be
11 opening for a civil suit or whatever.

12 Q. Was there any elaboration at all as to what he meant by
13 "dangerous grounds," or were those the words he used?

14 A. Those were the, as I recall it, those were the words he used.

COMMISSIONER EVANS

15
16 Did you take from the conversation at that time when he
17 spoke of it was dangerous, that you were treading on dangerous
18 grounds, that is, you personally?

MR. FEAGAN

19
20 A. Partially. I think it's clarified later on in my minutes here but
21 I do recall him saying something to the... that made me get
22 the message that he and I couldn't work very well together
23 again if we couldn't agree on this because I was ignoring or I
24 didn't have the confidence in him or his people to take their
25 advice.

MR. FEAGAN, EXAM. BY MR. SPICERCOMMISSIONER EVANS

1
2 So it was a personal reflection then.

MR. FEAGAN

3
4 A. A little bit, yes, there was a personal reflection.

MR. SPICER

5
6 Q From your note, Mr. Feagan, in the next paragraph, you
7 indicated "at this point Mr. How arrived." Up until this point
8 in the discussion, had the Attorney General not been present,
9 is that correct?

10 A. That's right.

11 Q

12 And I outlined again to him our feelings that
13 there may be sufficient grounds for a charge
14 against Thornhill. I explained I had no intention
15 of laying a charge until I had presented our
16 arguments to he or his Deputy and had the
17 opportunity to discuss the matter further.

18 Did you indicate to him though that after all that was done
19 that you did still intend to lay a charge?

20 A. I didn't, no.

21 Q. No?

22 A. No.

23 Q.

24 That we were in the process of researching the
25 matter further. Therefore, I was not prepared to
talk about the case today but felt it was only
proper that I should let him know what we were
doing, especially because of the politically
sensitive nature of the case and the current
publicity about it.

MR. FEAGAN, EXAM. BY MR. SPICER

1 You then go on to indicate that

2 Mr. How stated he had not involved himself
3 directly with the Thornhill case because of
4 possible political connotations and had not read
5 the R.C.M.P. report but that his Deputy dealt with
6 the case for him.

6 Did Mr. How elaborate on any of those comments to you?

7 A. No, he didn't. He didn't have very much to say.

8 Q. Your note then indicates that:

9 Mr. Coles then took command of the conversation
10 and dealt at some length on the role of the
11 Provincial Department of Justice and the
12 administration of justice in the province. He
13 pointed out that he and the A.G. were
14 responsible to the people of the province, that he
15 was a senior attorney acting for and behalf of
16 the department, and he had, after careful
17 research, not only given an opinion but had
18 made a decision in the case and by presenting
19 argument about his decision, I was placing
20 myself and the force in a most serious position.

18 Can you elaborate for us on what he said?

19 A. I can't really elaborate on that. I think it's, what he said,
20 what I recalled he said is recorded there to the best of my
21 ability.

22 Q. Okay, so let's go on then.

23 He stated that I had absolutely no business
24 questioning a decision of the Department and he
25 intimated that he and I would not be able to

MR. FEAGAN, EXAM. BY MR. SPICER

1 continue to work together in future if I
2 displayed such a lack of confidence in him.

3 A. This is what I referred to earlier.

4 Q. What did you take that comment to mean?

5 A. That on other matters that I had to deal with the Attorney
6 General on, that I may, if I didn't have the confidence in him
7 for this particular case, likely we'd have trouble in other
8 cases, too.

9 Q. Do you know whether under the Provincial Policing Contract
10 whether the A.G. has the right to have you removed?

11 A. Yes, he does.

12 Q. And was that a thought that was in your mind at all when
13 this discussion...

14 A. It crossed my mind.

COMMISSIONER EVANS

15 Just crossed your mind?

MR. FEAGAN

16 A. I maybe could explain by saying that at this particular time I
17 had made representation to the Commissioner in Ottawa for a
18 move to the Northwest Territories, where I had done most of
19 my work so that I would be there for my last days in the
20 force and that was in the mill. So the fact that I may be
21 removed from the province didn't maybe have the impact on
22 me that it would have had otherwise.
23

COMMISSIONER EVANS24
25

MR. FEAGAN, EXAM. BY MR. SPICER

1 That was not knowledge that was in the possession of Mr.
2 Coles?

MR. FEAGAN

4 A. No, and it wasn't sure in my mind, either, that I was going.

COMMISSIONER EVANS

6 When he suggested to you that you go home and reflect
7 upon it.

MR. FEAGAN

9 A. That's right.

COMMISSIONER EVANS

11 And then he says "this isn't a threat," what did you think
12 about that?

MR. FEAGAN

14 A. Well, I had had quite a few dealings, I should explain, with
15 Mr. Coles. I knew that he came on strong and I accepted this
16 as one of his ways of getting his point across. It may sound
17 rather serious here. I didn't take it as badly as it may appear
18 because of the fact that I had a good working relationship
19 with Mr. Coles and I knew that he was inclined to come on
20 strong about things that were his opinion and I sat and
21 listened to his opinion on this case. I recorded it after I went
22 home but it didn't overly concerned me.

COMMISSIONER EVANS

24 You weren't really concerned.

MR. FEAGAN

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. No.

2 COMMISSIONER EVANS

3 Because you knew your position in Ottawa.

4 MR. FEAGAN

5 A. That's right. I had this backing and I felt as long as I had the
6 backing of my superiors in Ottawa, that even if I had to be
7 removed at some stage, they'd give me some other job.

8 COMMISSIONER EVANS

9 I would think after 30 years they would. But had you not
10 had that backing, what would have been your position when the
11 Deputy A.G. tells you that he'll have great difficulty working with
12 you in the future and for you to go home and think about it?

13 MR. FEAGEAN

14 A. It would have been more difficult for me but, of course, the
15 meeting, the course of the meeting might have been different
16 altogether had I not had the mandate to go to the Attorney
17 General's office to explain to them that we wanted more
18 input.

19 MR. CHAIRMAN

20 Is there any reason why during your meeting with the
21 Attorney General, Mr. How, that according to notes, the Deputy
22 Attorney General was, in effect, doing the arguing? Why would
23 you not have said to the Attorney General, "Well, my opinion is
24 sustained by my superior officers and their legal researchers in
25 Ottawa"?

MR. FEAGAN, EXAM. BY MR. SPICERMR. FEAGAN

1
2 A. I didn't want to get into that much of a confrontation at that
3 stage because I didn't have my research done, my legal
4 research to present to them. I felt this was more or less a
5 meeting to just inform them what we were up to, that we
6 wanted, we were researching the matter and, you know, I
7 knew the time would come when I'd tell them that I had the
8 support of Ottawa.

MR. SPICER

9
10 Q. Did Mr. How intervene at all at this point of the discussion?

11 A. No, he didn't.

12 Q. You go on to say:

13
14 He suggested I go home and reflect on the whole
15 matter. I replied that my interpretation of his
16 remarks was that he was instructing me not to
17 take any further action in the case. He then
18 stated he was not making any threats but he
19 couldn't understand why I would want to take
20 any further action. I told Mr. Coles that I had no
21 axe to grind with anyone, but I took my job as
22 commanding officer of the R.C.M.P. in the
23 province seriously and I recognized the need to
24 cooperate with he and his department.

21 What are you getting at there?

22 A. I'll go back to a statement I made earlier where it's my
23 opinion that the justice system just wouldn't work right
24 unless there is a cooperation between the R.C.M.P. and the
25 commanding officer of the R.C.M.P. and the Department of

MR. FEAGAN, EXAM. BY MR. SPICER

1 Justice.

2 Q. Provincially...

3 A. On many aspects, you know, opening detachments, more
4 personnel. There are all kinds of, these are the type of things
5 I usually dealt with him on. This was the only time I ever
6 dealt with him on a criminal case.

7 Q. This is the only time you had ever had any contact with Mr.
8 Coles in respect of a criminal matter?

9 A. That's right.

10 Q. You go on to say:

11 In fact, it was for that very reason that I had
12 refused to talk to the news media about this case
13 and had responded to the media by explaining
14 my communication of the A.G.'s Department was
15 confidential. I nevertheless had principles that I
16 believed in and although I was not a lawyer, I
17 was of the opinion from discussions with my
18 investigators and from reading the reports, et
19 cetera, and through my years of experience, that
20 there was a *prima facie* case against Thornhill
21 and, therefore, I had to live with these
22 convictions.

19 What did you mean by that?

20 A. I meant that I took an oath when I joined the R.C.M.P. that I
21 would maintain the law without fear, favour or affection
22 towards any person and I took that oath rather seriously.

23 Q. Why did you think it appropriate to raise it in the context of
24 this particular meeting?
25

1 A. To explain why I was coming, where I was coming from
2 with respect to laying charges, not that I had any vendetta
3 against anyone or any axe to grind with anybody. It was
4 my conviction that the case was there and, therefore, I felt
5 obliged to pursue it insofar as I could.

6 12:12 p.m.*

7 Q. Did you have any sense at all that any attempt was being
8 made to compromise you on that?

9 A. No, I don't, no, I really don't think so, no. Like I say I knew
10 Mr. Coles fairly well and I just felt this was his strong
11 argument.

12 Q. This was.

13 A. This was his way of arguing, he'd come on quite strong, and
14 we had other arguments with respect to administrative
15 matters that weren't criminal matters that I listened to, you
16 know, we always ended up in good shape afterwards.

17 Q. You go on to say,

18
19 I explained again that in my opinion it would not
20 be proper for me or any of my personnel to lay a
21 charge in this case without first discussing our
22 arguments with him and, therefore, I asked him
23 again if he would entertain discussing our
24 arguments. Mr. Coles replied that he would do
25 so but he still felt I should not be questioning his
judgement and he had no intention of changing
his mind.

A. Uh-hum.

1 Q. Did you indicate to him at this time that you still felt that
2 the RCMP had the right to go ahead and lay the charge
3 notwithstanding his view?

4 A. Yes, that's the impression I...

5 Q. Is that what you told him?

6 A. I don't know. I can't recall whether I told him yes, you
7 know, we'll go ahead and lay a charge in spite of what you
8 say, I don't think I did, no.

9 Q. Was that what was in the back of your mind though?

10 A. Yes, it was.

11 Q. Regardless of what happens here I can still go ahead and lay
12 a charge.

13 A. It's possible, yeah, if my Commissioner says lay a charge, if
14 that's the direction I get, I'll lay it.

15 Q. And you're thinking then that you had the support from
16 Ottawa to go ahead if you got...

17 A. Uh-hum.

18 Q. ...the go ahead.

19 A. But I had, also I was aware that the result of this approach
20 to the Deputy Attorney General and the Attorney General
21 that I would communicate that to Ottawa.

22 Q. Yes.

23 A. And get their further direction as a result of this, and that
24 was understood from the meeting in Ottawa and the
25 direction I had to start with that I would approach them and

1 see what the...how far I'd get.

2 Q. You go on to say that "Mr. How entered in to the
3 conversation from time to time but did not say anything of
4 significance." What kinds of entries was he making into the
5 conversation? What was he talking about?

6 A. Well, things of the nature that he agreed with what Mr.
7 Coles was saying. Mr. Coles was doing most of the talking
8 and Mr. How stood on the sidelines. He was a real
9 gentleman I might say, and but said, "Yes," you know,
10 sometimes questions were put to him, more or less, by Mr.
11 Coles and he agreed.

12 Q. Do you have any recollection of what those questions were?

13 A. No, I don't, all along the lines of what I've just been
14 recorded here but...

15 Q. You go on to say, "He," I take it that's Mr. How, "...claimed he
16 couldn't understand why we were taking any further action
17 and he said he felt I had received bad advice from the
18 people who worked for me."

19 A. That's right.

20 Q. "...which he intimated did not speak well for them." Can
21 you elaborate at all on that?

22 A. Again, he was, in my opinion, referring to the same thing
23 that Mr. Coles was in my notes earlier on where he felt that
24 I was being influenced by my investigators, that really it
25 wasn't, I hadn't...I didn't, it isn't maybe the right way to put

MR. FEAGAN, EXAM. BY MR. SPICER

1 it, that I wasn't using my own discretion, I was taking theirs,
2 their arguments and running with them.

COMMISSIONER EVANS

3 He had already told you that he hadn't read the RCMP
4 report.
5

MR. FEAGAN

6 That's right. This remark from him here came from what I
7 think Mr. Coles said earlier, it's just a reflection of what Mr.
8 Coles had said.
9

10 Q. Through the course of this matter, Mr. Feagan, up to this
11 point in November had you received any information
12 from...either from your own staff or anybody in the AG's
13 department that the Premier was being kept advised as to
14 the investigation?

15 A. I recall Gordon Gale, the director of criminal, mentioning
16 that they wanted to apprise the Premier before any charges
17 were laid.

18 Q. Do you have any recollection of when he would have told
19 you that?

20 A. It might have been right from the very first meeting.

21 Q. There's a note on...if you want to flip back for a sec to page
22 20, on the 5th of August, under Inspector, Superintendent
23 Christen's signature in the second paragraph referring to Mr.
24 Gale, it says, "In view of Mr. Thornhill's position in the
25 provincial government, it would be the wish of the AG to

1 brief the Premier concerning any decision to prosecute."

2 A. Yeah, that seemed very reasonable to me. I would have
3 assumed that anyway.

4 Q. Sorry, you would have?

5 A. I assumed that would be one of the reasons anyway.

6 Q. I see. Were you advised of that yourself directly by Mr.
7 Gale?

8 A. I don't think so. I think through Superintendent Christen.

9 Q. I see. Was there any reference at your meeting with Messrs.
10 How and Coles as to whether or not the Premier was being
11 kept advised?

12 A. Not so far as I recollect. I think I would have written it
13 down had there been.

14 Q. Did you reiterate at the end of your meeting to Mr. Coles and
15 Mr. How that you thought you did have charges or enough
16 information to go ahead and lay charges?

17 A. I had said that earlier in the meeting, no, I don't think I did
18 at the end. As I say, things...it sort of faded and things got
19 on a more affable level at the end of the meeting.

20 Q. Do you have any recollection of how long the meeting took?

21 A. I'd say about an hour and a half, I'm guessing, but close, yes.

22 MR. SPICER

23 Perhaps the end of that report might be as good a place as
24 any to break, My Lord.

25

MR. CHAIRMAN

1 All right. Two o'clock.

2 LUNCH BREAK - 12:21 p.m.

3 2:00 p.m.

4 MR. RUBY

5 I notice that counsel for Mr. Thornhill is present and I'm
6 quite pleased to see him but I've not seen any ruling about
7 standing or any application for funding and a ruling on that. Has
8 one been made and could I see a copy of it?

9 CHAIRMAN

10 There's an application made for standing which was granted.
11 There's been no, that I'm aware, no application made for funding.

12 MR. RUBY

13 Thank you, My Lord.

14 CHAIRMAN

15 Anyway funding is only a power of recommendation, not the
16 right to grant it.

17 MR. RUBY

18 Yes. Maybe it was not necessary. Thank you.

19 Q. Mr. Feagan if we could just go back to the notes of your
20 meeting with Mr. Coles, in particular, the end of those notes,
21 page 67. The last sentence you say,

22
23 Furthermore it is a foregone conclusion that he [I
24 take it that's Mr. Coles] will reject our arguments.

25 You had no doubt about that when you left the meeting.

1 A. That was my opinion when I left the meeting.

2 Q. On page 68 there's a note from Blue, Inspector Blue, to Officer
3 in Charge of "H" Division CIB, did you have occasion to see
4 that?

5 A. Yes. I did, yes.

6 Q. And that was dated November the 17th, 1980?

7 A. Um-hmm.

8 Q. Are you able to tell us why this particular report was put
9 together at the time?

10 A. This was a direct result of the Ottawa meeting to have this
11 material prepared to go forward to the Attorney General, our
12 arguments.

13 Q. And this was a document that was intended to form the basis
14 for the written material that was going to go to the AG's
15 office. Is that right?

16 A. Yes.

17 Q. And then on page 70 through to 75 is the opinion of Sergeant
18 Plomp. And that's dated at the end, 4 November 1980. Do
19 you know whether or not you had access to that opinion at
20 the time of your meeting in Ottawa on the 5th of November?

21 A. I didn't personally see it at that time. Sergeant Plomp may
22 have had this with him, I'm not sure.

23 Q. But he referred to his own...

24 A. A lot of the material in this was given to me by way of verbal
25 briefings and also discussed at the meeting in Ottawa.

1 Q. I see. And did you take it from what Mr. Plomp had said that
2 he had concluded that Mr. Coles was wrong in his analysis of
3 110(c).

4 A. That's right.

5 Q. Then on the 18th of November, on page 77, there's a memo to
6 yourself from Christen.

7 A. Right.

8 Q. Can you tell us what was the reason that this particular memo
9 was generated?

10 A. Again, this was forwarding to me the material that Inspector
11 Blue had his members put together.

12 Q. All right.

13 A. That's just the normal chain of command like from Blue to
14 Christen to me.

15 Q. Okay.

16 A. And each one always has a chance to put their comments.

17 Q. And do I take it then from the next page, on page 79, where
18 you are forwarding to the Commissioner, material, and the
19 first paragraph of that memo indicates, "The review of this
20 case has now been completed and is forwarded with
21 comments of the Officer in Charge "H" Division, CIB" that those
22 two documents that we've just been talking about, the
23 Christen memo and the Blue memo, would have been the
24 material that was forwarded to Ottawa.

25 A. That's right.

1 Q. I just want to ask you a couple of questions about your memo
2 on page 79 and 80. Page 79 seems to be basically a recitation
3 of what happened when you got back to Halifax and...

4 A. Yeah, in short form. It's a concise report of my meeting.

5 Q. Did you forward the actual minutes of your meeting to
6 Ottawa?

7 A. No, I didn't.

8 Q. No.

9 A. I just forwarded this.

10 Q. Okay. You say at the top of page 80, page two of your note,

11 If a charge is laid in the face of the Attorney
12 General's instructions our future relationship
13 with the Attorney General and his Deputy will be
14 difficult regardless of the outcome of court
action.

15 Can you tell us in what respect you thought your future
16 relationship would be difficult?

17 A. It's hard for me to pinpoint in what, you know, the exact way
18 but just our working together on various matters.

19 Q. Can you be any more particular?

20 A. That because of the Attorney General's explanation to me that
21 because I was not accepting his advice that I didn't have the
22 confidence in him that I should have and, therefore, the same
23 would apply possibly on other things.

24 Q. You go on to say,
25

MR. FEAGAN, EXAM. BY MR. SPICER

1 Furthermore, should the prosecution be
2 unsuccessful for any reason subsequent civil
3 litigation is a possibility.

4 What were you thinking about there?

5 A. I was thinking because of the fact that the Attorney General's
6 Department had advised us that we didn't have a case, there
7 wasn't sufficient grounds to lay a charge, that if we did lay
8 one and the court saw fit to dismiss it, that we may be open
9 to a civil action because of that.

10 Q. Had that possibility ever been suggested to you by anybody
11 in the AG's Department?

12 A. No.

13 Q. It's just something, you came up with that yourself?

14 A. Partially. We, among myself and the CIB Officer, you know,
15 when we were talking about. It may even, I think we might
16 have discussed that at that meeting in Ottawa prior to this,
17 too.

18 Q. And that would have been an internal RCMP discussion.

19 A. That's what it would be.

20 Q. Okay.

21 A. Yeah.

22 Q. You go on to say,

23 On the one hand I feel we should exercise our
24 right [your right being the right to charge]...

25 A. Um-hmm.

Q.

1 ...on the matter of principle in this Nova Scotia
2 case. On the other hand, we may well have
3 already set precedent by complying with the
4 instructions of Attorneys General with respect to
5 similar cases in other provinces.

6 What do you mean by that?

7 A. I have no direct information on that. It was something that
8 come up during the course of the discussion at the meeting in
9 Ottawa of various incidents that had taken place in other
10 provinces.

11 Q. In other provinces where the wish of the AG....

12 A. Where there was a difference of opinion between the
13 investigators, the people in charge of the RCMP, vis-à-vis the
14 Attorney General's Department. As I mentioned previously it
15 was in that, it was in the light of that type of discussion that it
16 was discussed where there had, there were cases cited where
17 we suggested a charge should be a laid and they come back
18 and said, "If you lay a charge we would stay the proceedings"
19 so, therefore, the charge wasn't laid.

20 Q. I see. Did you make any recommendation to your
21 Commissioner at this point in time as to what you thought
22 ought to be done?

23 A. No, this paragraph here, my concluding paragraph to him, or
24 the second last one, well and the very last sentence, I was
25 asking for his, here's what happened when I went to the AG

1 with the proposal that my mandate you gave me to go and
2 propose, here's what happened, now may I have your
3 direction.

4 Q Did you have any discussions with the Commissioner?

5 A. No, I didn't.

6 Q And other than this written communication, did you have any
7 discussions with any of your superiors in Ottawa?

8 A. No, I didn't. There may have been discussions and I'm not
9 aware of what they would be, you know, by lower, like the
10 CIB Officer, the man in charge of, Inspector Blue, et cetera,
11 with his people, but not at my level.

12 Q Not at your level. Okay, that's no the 19th of November. I'd
13 ask you now to turn to page 93 and that's a memo from
14 Deputy Commissioner Quintal to yourself.

15 A. That's right.

16 Q Dated the 17th of December. Between the time that you sent
17 the note that we just referred to, November, and your receipt
18 of this letter of 17th of December, did you have any
19 discussions with anybody in Headquarters concerning the
20 Thornhill matter?

21 A. No, I awaited their advice.

22 Q Okay. Were you asked to provide any further information?

23 A. No.

24 Q Were you asked any questions at all by anybody in the
25 RMCP?

1 A. Not that I can recall.

2 Q. Were you advised in advance of receiving this letter what the
3 advice was going to be in it? Did you know it was coming?

4 A. I don't think so. I can't remember for sure. Again, I may
5 have been advised through my own people, in other words,
6 heard from people in Ottawa that this was coming because
7 they, no doubt, would have a hand in the drafting and making
8 up, but I can't say that for sure. Until I got it, I didn't pay, you
9 know, I wasn't, I didn't have any great concern about it until
10 I got it.

11 Q. Okay. We'll go through this later in detail but the long and
12 short of this letter was that you were being told that the AG
13 could be advised that charges were not going to be proceeded
14 with. Correct?

15 A. Against his wishes, right.

16 Q. Against his wishes.

17 A. Right.

18 Q. I'd just ask you to turn to page 94, page two of that letter, in
19 particular, the last sentence of that first paragraph.

20
21 Some reasonable and probable grounds to lay a
22 charge under Section 110(c) against Mr.
Thornhill appear to be present.

23 A. Um-hmm.

24 Q. Was it your understanding then that it was still the view in
25 Ottawa that there were reasonable and probable grounds?

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. That's right, yeah. But, if I may go on, but they felt it was not
2 a strong enough case to oppose what the advice had been
3 from the Attorney General. This is the gist I got from it.

COMMISSIONER EVANS

4
5 Could I have that quote?

6 A. He says, the quote here is that, "Some reasonable and
7 probable grounds to lay a charge under Section 110(c) against
8 Mr. Thornhill appear to be present." But to go on from that,
9 my understanding was that they didn't feel the case was
10 strong enough to go against the advice or wishes of the
11 Attorney General.

12 Q. And on page 95 of that, of the volume, there's some
13 discussion in the letter as to the factors which gave rise to
14 that conclusion. I'd just like to ask you, with respect to the
15 last paragraph when it begins, "With respect to Mr. Thornhill
16 the following considerations weighed heavily in our
17 decision..." Are you able to tell us whether or not at the
18 meeting you had in Ottawa in November, whether or not
19 these facts were known?

20 A. These facts were all known at the meeting.

21 2:15 p.m.

22 Q. Right. Are you aware of any new facts contained in this
23 letter that was...of which the meeting was not aware in
24 November?

25 A. No. There may have been more consideration of the facts.

- 1 Q. Yes.
- 2 A. But...and there may have been more discussions in Ottawa,
3 I'm sure there were, among people there, but there were no
4 more facts given that they didn't already have from us.
- 5 Q. I see. And on page 95 in the middle paragraph Quintal
6 indicates "It is our considered opinion that charges against
7 Mr. Thornhill and/or the banks ought not to be laid against
8 the wishes of the Attorney General and his Deputy Minister."
- 9 A. That's what I referred to earlier, yes.
- 10 Q. Are you able to tell us whether you have any knowledge as
11 to whether or not if it had not been for the wishes of the
12 Attorney General whether charges would have gone ahead?
- 13 A. That's difficult because I would never have referred it to
14 Ottawa.
- 15 Q. And the reason you referred it to Ottawa in the first place
16 was because of the...
- 17 A. There was a difference of opinion.
- 18 Q. Yes.
- 19 A. So having requested Ottawa to handle the matter from here,
20 I was in the position that I was ready to accept their advice.
- 21 Q. Go back though for a sec, are you telling us that if it had not
22 been for the involvement of the AG's department, you would
23 not have referred the matter to Ottawa in the first place?
- 24 A. There would have been no need to.
- 25 Q. And you would have gone ahead and recommended charges

1 be laid in the absence of having sent it up to Ottawa.

2 A. Could I have that again, please?

3 Q. If you hadn't had the involvement of the Attorney General's
4 Department, you indicated to us you would not have sent it
5 to Ottawa.

6 A. No, that's right, yeah.

7 Q. What would you have done?

8 A. We'd have settled it at our own level, division level.

9 Q. And based on your opinion, what would you have done if
10 you had settled it at your own level?

11 A. Well, let's say that it had have been an ordinary Crown
12 counsel instead of the AG's Department we were dealing
13 with, then we go up to the AG's Department.

14 Q. Uh-hum.

15 A. And maybe it would be settled there, you know, between
16 myself and the AG we may be able to settle it. If we can't
17 settle it at that level, then we go to Ottawa.

18 Q. All right. Back off for a moment from that. Forget about the
19 Attorney General's Department beyond the level of Crown
20 counsel getting involved in the case.

21 A. Uh-hum.

22 Q. If there had been no involvement beyond the level of Crown
23 counsel, the normal sort of thing, the normal relationship
24 that you have between the police and the Crown counsel.

25 A. Uh-hum.

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q. Is it your view that charges would have been laid?

2 A. In this particular...that's a difficult...

3 MR. SAUNDERS

4 Excuse me, My Lords. I thought my friend asked the
5 witness that very question this morning and said he'd come back
6 to it and the witness answered it twice that it would depend upon
7 the advice given by the local Crown prosecutor who was
8 consulted. Now I think my friend, with respect, is trying a third
9 time to get a different answer from the witness. The answer is on
10 the record.

11 MR. CHAIRMAN

12 Could you ask the question again, Mr. Spicer?

13 MR. SPICER

14 I guess all I was trying to get...all I'm trying to ask, and if
15 the answer is clear then I won't ask it again, in the absence of
16 involvement from the AG's Department, in other words, absence of
17 involvement other...higher than a level of Crown counsel whether
18 or not Mr. Feagan can tell us whether or not in his view charges
19 would likely have gone ahead.

20 MR. CHAIRMAN

21 That question was...I thought the answer to that question
22 was given this morning as being "Yes."

23 MR. FEAGAN

24 A. It would depend what Crown counsel advised us.

25 Q. Okay. You were instructed, I take it, Mr. Feagan, from this

MR. FEAGAN, EXAM. BY MR. SPICER

1 letter to advise the provincial AG...

2 MR. CHAIRMAN

3 Just before you leave that.

4 MR. SPICER

5 Yeah.

6 MR. CHAIRMAN

7 That last answer, it would depend on what Crown counsel
8 advised. Are you, in your thirty-five years' experience in the
9 RCMP, can you recall any case where a Crown prosecutor, as
10 opposed to a Deputy Attorney General or a director of public
11 prosecutions, recommended against a charge being laid and the
12 RCMP going ahead and laying it in any event?

13 MR. FEAGAN

14 I was never personally involved, My Lord.

15 MR. CHAIRMAN

16 No, I don't mean being involved.

17 MR. FEAGAN

18 I have known of cases, yes.

19 MR. CHAIRMAN

20 Where despite the legal opinion of a Crown prosecutor
21 against laying charges, I'm not speaking of anyone of prominence,
22 but an ordinary citizen.

23 MR. FEAGAN

24 Before that was done we'd likely go one higher, you know,
25 on the Crown counsel's side, you know, maybe to the Attorney

MR. FEAGAN, EXAM. BY MR. SPICER

1 General normally.

2 MR. CHAIRMAN

3 All right. Let me understand what you're saying. That if a
4 police officer, a constable, is investigating a suspected crime, he
5 concludes that charges should be laid, the file is reviewed by a
6 Crown Prosecutor who may be very junior in the department or
7 whatever, but he's a member of the Bar and he concludes that
8 charges should not be laid, that that file would then go to the
9 Attorney General.

10 MR. FEAGAN

11 No, I can't say that for sure, either. It may if the...see, on the
12 constable's side he'd likely refer it to a higher person, you know,
13 his boss who would refer it to somebody else up to the criminal
14 investigation officer in the division, and it would have to be
15 assessed there to see whether or not the charge should go ahead.

16 MR. CHAIRMAN

17 Well, supposing it was assessed there, would it not
18 then...wouldn't you then go back to the, say whatever the
19 equivalent is, the equivalent of the director of public prosecutions
20 then on up the ladder?

21 MR. FEAGAN

22 That's right. That's right.

23 MR. CHAIRMAN

24 First to the director of public prosecutions.

25 MR. FEAGAN

MR. FEAGAN, EXAM. BY MR. SPICER

1 Right.

2 MR. CHAIRMAN

3 If he disagreed with you, presumably then to the Deputy
4 Attorney General.

5 MR. FEAGAN

6 I don't know of a case where it hadn't...hasn't been ironed
7 out, you know, at about his level, the director of prosecutions.

8 MR. CHAIRMAN

9 All right.

10 MR. SPICER

11 Q. And just to finish up that example, Mr. Feagan, if the Crown
12 counsel had thought that charges should be laid.

13 A. Uh-hum.

14 Q. Then there would be no reason not to go ahead.

15 A. That's right.

16 Q. Regardless of who the potential defendant was.

17 A. That's right.

18 Q. Uh-hum. You then advised Mr. Coles on December 22nd, at
19 page 98, of the decision.

20 A. That's right.

21 Q. I'll just take you through your letter, "As explained to you
22 during our meeting," and that's the meeting you had with
23 Coles on the 12th.

24 A. Uh-hum.

25 Q. "I feel some reasonable and probable grounds to lay a

1 charge under section 110(c) against Mr. Thornhill are
2 present." Do I take it then that as on December 22nd you
3 still were of the view that there were reasonable and
4 probable grounds?

5 A. That's right.

6 Q. You go on to discuss the effect of the 110(c) argument, and
7 have forwarded some material to Coles in order for him to
8 have a look at that, correct?

9 A. Uh-hum.

10 Q. Okay. You then say, "Because of the advice you gave me
11 during our November 12th meeting concerning the
12 consequences of pursuing this case further in the fact of the
13 Attorney General's decision," and I believe you've spoken of
14 that already, the consequences as you understood them to
15 be, "And because my investigators were not afforded the
16 opportunity of a normal consultative process with Crown
17 counsel..." Are you referring there to the fact that you were
18 told not to consult with the Crown...

19 A. That's right.

20 Q. ...and send it on up to the Deputy AG?

21 A. Uh-hum.

22 Q. "And because of my concern over the force's responsibilities
23 in cases of this nature." What do you mean by that?

24 A. The responsibilities of the force to lay a charge when the
25 elements are present, the moral obligation to society to do

1 so.

2 Q. And because of those three matters you referred the matter
3 off to your Commissioner.

4 A. Yeah. I should maybe point out that in consideration of that
5 moral obligation there's always a discretion there. One has
6 to look at various circumstances.

7 Q. What sorts of things are you talking about?

8 A. For example, there may be a regulation in Grise Fjord in the
9 Northwest Territories prohibiting a child under sixteen from
10 driving a ski-doo, but if that child's parents are out on the
11 trap line and need food supplies and he drives one, I think
12 the constable is correct in using his discretion not to lay a
13 charge. There are certain cases like that.

14 Q. You go on then to say, "After careful consideration of all the
15 facts involved, it has been decided that charges against Mr.
16 Thornhill and/or the banks will not be laid in contradiction
17 to the wishes of the Attorney General."

18 A. Right.

19 Q. Did you understand, Mr. Feagan, that the reason that the
20 charges were not going to be laid was they were not to be
21 laid in contradiction to the wishes of the Attorney General,
22 was that the issue as you understood it?

23 A. Yes, from the letter that I received from the Deputy
24 Commissioner office, yeah.

25 Q. And that was your understanding of the reason.