

1 A. Uh-hum.

2 Q. Yes.

3 A. Yes, it was.

4 Q. At the end of that letter you ask for Mr. Coles' further
5 comments with respect to the question of intent and 110(c).

6 A. Yeah, this is the first time really I'd had an opportunity to
7 get that from him.

8 Q. And on page 103 Mr. Coles' responds, correct, in respect to
9 this question of 110(c). Did you discuss the contents of Mr.
10 Coles' letter of January 27th with other people in the force?

11 A. As I recall just with my CIB officer, Inspect...or
12 Superintendent Christen.

13 Q. Are you able to tell us whether or not having read Mr. Coles'
14 letter of January 27th that you were convinced by his
15 argument?

16 A. No, it doesn't really contain anything, in my opinion, that he
17 hadn't said already before in his other one and he really,
18 from my reading of it, he circumvented the crux of the case,
19 the 110, the (c) part that we were talking about.

20 2:27 p.m.

21 Q. Was he then repeating, essentially, what he told you before?

22 A. That's right.

23 Q. Did not provide you with anything new?

24 A. No.

25 Q. And as a result of that you saw no reason to change your

1 mind, is that right? In terms of your analysis of that section.

2 A. That's right, yeah.

3 Q. You then wrote to, in fact it's later in the materials but earlier
4 in time, on page 104, to Mr. Coles concerning the use of Crown
5 counsel. Can you tell us what your concern was there?

6 A. Well, because of what had happened in this particular case
7 where our investigators were not afforded the opportunity to
8 consult with Crown counsel during the course of the
9 investigation, and in view of our Force's policy that there was,
10 that this was one of the facilities that Crown counsel provided
11 for us, I wanted to get clear with Mr. Coles where we stood in
12 the future.

13 Q. In the second paragraph of your letter, on 104, when you're
14 discussing,

15
16 In investigations of a sensitive nature, if it is
17 considered necessary the investigation be
18 reviewed by your office I would request that if a
19 dissenting opinion of either the Crown
20 prosecutor and the investigator is reached, the
21 opportunity for further investigation be made
22 available.

20 A. Yeah, discussion.

21 Q. For discussion be made available.

22
23 If the difference of opinion cannot be resolved
24 through discussion, then I suggest the matter as
25 to whether to proceed with a charge rests with
the police.

1 So you were suggesting to him again that whether or not a
2 charge ought to go ahead was a police decision?

3 A. Um-hmm.

4 Q. And you then again asked Mr. Coles on page 105 for his views
5 concerning this matter.

6 A. Right.

7 Q. And then on 106 through to 108 Mr. Coles responds to that. I
8 just want to ask you some questions about some of the
9 matters referred to in that letter starting in the third
10 paragraph of 107.

11
12 It has not been the policy of the AG of this
13 Province to require the police forces within the
14 Province to consult with his agents, i.e.
15 prosecuting officers, and seek their advice before
16 the laying of charges as I understand to be the
17 policy of at least one of the contracting
18 provinces. Our practice has been to encourage
19 consultation between the police and the
20 prosecutors, and except in routine cases, expect
21 that charges be laid on the advice of persons
22 acting on behalf of the Attorney General
23 wherever practical.

19 Do you agree with that?

20 A. Ah, yes...

21 Q. That that's the normal...

22 A. That's the normal practice.

23 Q. He then goes on in the next paragraph to say,

24
25 There has been, and will continue to be, police

MR. FEAGAN, EXAM. BY MR. SPICER

1 investigations in respect to which the police will
2 be directed to deal with representatives of the
3 Attorney General other than with one of his
4 regularly designated prosecuting officers. This
5 may be the situation in respect to investigations
6 requested by the Attorney General,
7 investigations in a major and complex criminal
8 activity, particular kinds of crimes including
9 conspiracies, cases of possible personal conflict
10 and such other criminal investigations which the
11 Attorney General considers should be attended
12 upon by his Deputy or other designated persons
13 in the Department.

9 Now other than the Thornhill matter that was current at the
10 time, can you give us specific examples of where that
11 situation, in fact, pertained in Nova Scotia, where your people
12 dealt in the first instance with other than Crown counsel.

13 A. I personally was never involved in any of those other ones
14 except the Thornhill case. I understand there were.

15 Q. What do you understand the other circumstances to have
16 been?

17 A. In a particular case, the Deputy Attorney General asked that
18 the report go directly to them rather than...

19 Q. And what case was that?

MR. BISSELL

21 Excuse me, I wonder if we want an answer to that.

COMMISSIONER EVANS

23 Not if it has nothing to do with...

CHAIRMAN

25 Yes. My understanding was that the evidence being

MR. FEAGAN, EXAM. BY MR. SPICER

1 presented this week and next would deal only with two particular
2 cases. I don't propose to allow questions that would start...

3 MR. SPICER

4 There's reference, no, there's reference in the material
5 before Your Lordships concerning one other situation...

6 COMMISSIONER EVANS

7 Without...

8 MR. SPICER

9 No, because it ended up in a conviction and the only point I
10 have of asking Mr. Feagan is if that, in fact, is the only other
11 instance of which he knows. Because you'll remember that the
12 press release earlier issued by Mr. Coles indicated that there was
13 an understood and accepted practice...

14 CHAIRMAN

15 For certain...

16 MR. SPICER

17 For certain categories of cases. And I'm searching from Mr.
18 Feagan to discover, well, what other situations were there and I
19 think he's going to, I think the case that he's thinking of is the
20 only other one that's referred to in these materials and it's
21 already in the public domain.

22 CHAIRMAN

23 All right.

24 MR. FEAGAN

25 A. That case was referred to the Attorney General before my

MR. FEAGAN, EXAM. BY MR. SPICER

1 tenure but it was, the charge was laid after I was there.

2 Q. And is that the case that's referred to in Sergeant Plomp's
3 material, the Rhodenizer case.

4 A. That's right.

5 Q. Other than that case, are you aware of any other
6 circumstances where...

7 CHAIRMAN

8 These are the cases referred to in the opinion...

9 MR. SPICER

10 That's correct.

11 CHAIRMAN

12 Of Plomp.

13 MR. SPICER

14 Yes, that's correct.

15 CHAIRMAN

16 All right.

17 MR. SPICER

18 Q. Any other cases where your investigators have been told not
19 to deal with the Crown but to send material directly to the
20 Attorney General's office?

21 A. I know there were cases but I can't specify those cases.

22 Q. Do you know what they were in connection with?

23 A. One had to do with an investigation of a distillery.

24 CHAIRMAN

25 Of what?

MR. FEAGAN, EXAM. BY MR. SPICER

1 MR. FEAGAN

2 A. Distilleries.

3 CHAIRMAN

4 Distilleries.

5 MR. FEAGAN

6 A. Yeah.

7 CHAIRMAN

8 Apple Jack.

9 MR. BISSELL

10 I think we may be getting into dangerous territory here. It's
11 possible we could be getting into cases that are still before the
12 courts.

13 VOICE

14 [The Commission was going before the court had standing?]

15 CHAIRMAN

16 Pardon?

17 MR. BISSELL

18 No, I don't think that's fair.

19 CHAIRMAN

20 No. No. When I was a student Apple Jack was the only
21 distillery in, anything distilled in Nova Scotia.

22 COMMISSIONER EVANS

23 There may be a lot of private ones...

24 CHAIRMAN

25 That's what I mean. Used to appear at football games.

MR. FEAGAN, EXAM. BY MR. SPICER

1 COMMISSIONER EVANS

2 I don't think we should get into this.

3 CHAIRMAN

4 No.

5 MR. SPICER

6 Q. With respect to commercial crime cases, have there been
7 instances where the officer, or the investigating officers
8 would just go to a Crown?

9 A. Oh, yes.

10 Q. And would that be the routine? Normal...

11 A. That would be the normal way. Unless instructed otherwise,
12 they'd normally go to Crown, a person designated by Mr.
13 Thomas who was the...

14 Q. Chief Prosecuting Officer?

15 A. Chief Prosecuting Officer.

16 COMMISSIONER EVANS

17 Didn't you consider this particular case as a commercial
18 fraud case?

19 MR. FEAGAN

20 A. It is the type of case that comes under the investigation of
21 our commercial crime section.

22 CHAIRMAN

23 That is a distinction, isn't it?

24 MR. FEAGAN

25 A. Government frauds. But those type of investigations are all

MR. FEAGAN, EXAM. BY MR. SPICER

1 handled by the Commercial Crime Section because of the
2 educational background of the investigators.

MR. SPICER

3
4 Q. Is the distinction, where it's government fraud, government
5 fraud cases...

6 A. A distinction from other fraud...

7 Q. A distinction whether it would go to the AG's Department as
8 opposed to a Crown.

9 A. I don't think so. We'd make the Government aware of what
10 we were doing but...

11 Q. In what way would you make them aware?

12 A. Through the Thursday meetings. We briefed, on any case of
13 any significance, the Director of Criminal was kept aware of
14 what the police were doing.

CHAIRMAN

15
16 Q. Does that apply to Government as well as non-government
17 cases?

18 A. Right, sir.

19 Q. If, for instance, you were in the process of investigating an
20 alleged or suspected embezzlement within the private sector,
21 would that investigation be carried out by your Commercial
22 squad?

23 A. I would think likely it would, yes.

24 Q. And would that be the kind of case that would be reported by
25 the RCMP to the Attorney General on the Thursday, at the

MR. FEAGAN, EXAM. BY CHAIRMAN

1 Thursday meetings?

2 A. Right.

3 Q. Pardon?

4 A. He'd be informed of that I would suspect, yeah, I would think
5 so. These cases were managed, for the want of a better word,
6 by the Criminal Investigation Officer and, therefore, it's
7 difficult for me to say exactly what would happen to a case of
8 that nature because it may depend on the workload in the
9 Commercial Crime Section at that particular time. An
10 embezzlement case may be assigned to an ordinary general
11 investigation member, plain-clothes members. You know, the
12 Officer in Charge of Criminal Investigations had the leeway to
13 assign different cases to different sections of his command
14 depending on who was available and the workloads in the
15 various sections.

COMMISSIONER EVANS

17 Q. But if you needed an investigator with considerable
18 experience in accounting, then I take it that's the type of case
19 that would be referred to him, the more serious...

20 A. The Commercial Crime Section has those type of people in it...

COMMISSIONER EVANS

22 Q. Right.

23 A. And they're educated people, lawyers and accountants...

CHAIRMAN

24 Q. Did the Attorney General's Department of Nova Scotia have
25

MR. FEAGAN, EXAM. BY CHAIRMAN

1 particular Crown Prosecutors who had gained the skills of
2 prosecuting these cases? They're generally very tedious and
3 lengthy and...

4 A. Not so far as I know. Again, I think they'd assign it to one
5 who had the time to put into that particular investigation but
6 I, as far as I know, they didn't have any specially-skilled
7 prosecutor for a special kind of case.

MR. SPICER

8
9 Q. Are you able to tell us from your knowledge whether there
10 were any common elements that would distinguish the cases
11 that went to the Attorney General's office as opposed to a
12 Crown counsel?

13 A. No.

14 Q. Anything common to all of them?

15 A. No, I'm unable to say if there's anything common.

16 Q. I just now direct your attention to page 110, a note of yours
17 of the 3rd of February. And I take it that you're advising
18 your Commissioner at that point that it's the Attorney
19 General's office in Nova Scotia that's going to decide, I'm
20 referring to the last couple of lines of the second paragraph,
21 decide on any difference of opinion between the investigating
22 officer and the AG.

23 A. Yeah, I'm advising the Commissioner of that, yeah.

24 Q. Um-hmm. And sometime later, or do you hear back from
25 Ottawa concerning that issue?

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. I did.

2 Q. There's a memo of Venner's, on page 115, on the 9th of June...

3 A. Right.

4 Q. That seems to refer to both your memo concerning the use of
5 Crown counsel and your one of 81/02/03.

6 A. Right.

7 Q. Did you have any discussions with Venner concerning the
8 substance of his note to you?

9 A. No, I didn't.

10 Q. I'm going to ask you a question about the third paragraph of
11 that letter.

12
13 Force policy is currently under review and
14 although certain facets may change, the
15 underlying theme will not. We do not intend to
16 abrogate what we consider to be our right, role
17 and duty as the ultimate judge of the legitimacy
18 of a criminal charge with the commencer of
19 authority to initiate the criminal proceedings.
20 We will maintain this stance until the Criminal
21 Code is amended to indicate otherwise or case
22 law evolves to the contrary.

19 What did you understand that you were being told by that
20 paragraph?

21 A. My understanding, such as it always was, is that in the final
22 analysis a police investigator can lay a charge if he feels that
23 the necessary ingredients are there.

24 Q. I see. Again, the material is somewhat out of chronology but
25

MR. FEAGAN, EXAM. BY MR. SPICER

1 in February, on page 117, there's a letter from your
2 Commissioner to Harry How, the AG. Did you see that letter
3 before it was sent?

4 A. No, I didn't.

5 Q. Were you copied on that letter?

6 A. No, I wasn't.

7 Q. When was the first that you knew of that letter?

8 A. The first I knew of this letter was when it became public
9 when Mr. How quoted it in the Legislature.

10 Q. Did you expect that you would have heard about this letter
11 before it was tabled in the House?

12 A. Yes, I would have.

13 Q. And why is that, sir?

14 A. It was an oversight, possibly, that I didn't.

15 Q. My question, though, was why would you have expected the
16 letter?

17 A. I'm the Commanding Officer of Nova Scotia. Normally there's
18 consultation between the Commanding Officer and his boss,
19 the Commissioner, on things of this nature where the
20 Commissioner's sending a communication concerning a matter
21 that affects the Division to the Attorney General.

22 Q. When you heard of this letter from your Commissioner, did
23 you do anything?

24 A. Yes, I did. I telephoned the Deputy Commissioner of
25 Operations, Deputy Commission Quintal...

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q. For what reason?

2 A. To inquire as to what prompted the letter and why I hadn't
3 received a copy.

4 Q. And what were you told?

5 A. I was told that he was, he indicated surprise that I had not
6 received a copy.

7 Q. This is Quintal we're talking about.

8 A. Um-hmm.

9 Q. Yes. Anything else?

10 A. And he felt it must be an oversight.

11 Q. After the tabling of this letter in the House in February of
12 1981, was that, except for the material that was just referred
13 to later on in June, was that the end really of the discussion as
14 far as you were aware between the Province and the RCMP
15 concerning what was going to happen in this particular case?

16 A. Yeah, actually insofar as I was concerned, the end of the
17 discussion was when I sent my memorandum to the Deputy
18 AG saying that we weren't going to take any action against his
19 wishes.

20 Q. In December.

21 A. Yeah. This letter of the Commissioner's came unexpected. I
22 didn't expect it.

23 Q. You've had an opportunity to review this letter recently?

24 A. Yes, I have.

25 Q. And is there anything in this letter with which you disagree?

MR. FEAGAN, EXAM. BY MR. SPICER

1 A. One could, I suppose, interpret things that are said here a
2 little differently than what I had understood previously in
3 that in my memorandum to the Deputy Attorney General, I
4 said we weren't, we felt we had enough, you know, that there
5 was a charge applicable.

6 Q. Yes.

7 A. But that we weren't going to take the action against his
8 wishes.

9 Q. Yes.

10 A. This letter throw a little bit of a different light on it in that it
11 almost says that by saying the charges were not warranted,
12 one could interpret that as saying that we didn't have
13 evidence to lay a charge.

14 Q. I just direct your attention to page two of the letter, and the
15 second paragraph.

16
17 At the completion of his review [and I take it
18 that's Quintal, the Deputy Commissioner] he came
19 to the same conclusion as had the Deputy
20 Attorney General, that being that the
21 circumstances of the case as reflected in the file
22 combined with evidence in the hands of the
23 investigators, did not warrant the laying of the
24 charge nor the continuation of investigation.

22 A. Yeah, that's what I refer to. I am not aware, however, of
23 what took place in Ottawa between the time that I was given
24 direction to tell the Attorney General we would not lay
25 charges against his wishes and the time that the

MR. FEAGAN, EXAM. BY MR. SPICER

1 Commissioner's letter came out. I'm not aware of what took
2 place as a result of the Commissioner's discussions with Mr.
3 How before he wrote this letter, so it may well be that the
4 final conclusion of people after discussing it further, whatever
5 took place in Ottawa, was as contained in this paragraph. I
6 wasn't provided with any of the, what took place, you know,
7 in between nor what was discussed nor why it came to this
8 conclusion.

9 Q. All right. And just so that we get the timing of this correctly,
10 the time at which you were directed to indicate to the AG's
11 office that you were not going to proceed against their wishes
12 is when you got that letter from Quintal on the 17th of
13 December.

14 A. Um-hmm.

15 Q. And then this letter comes on the 25th of February 1981...

16 A. Right.

17 Q. Between the 17th of December and 25th of February, had you
18 received any contact at all from...

19 A. No, and as far as I was concerned the matter was concluded.

20 Q. And you did not hear from Quintal, you did not hear from
21 Simmonds or from anybody else in Ottawa?

22 A. Nobody.

COMMISSIONER EVANS

23
24 Q. Wasn't that a change in position by Quintal?

25 A. I, it appears to be to me.

1 Q. Well, he was present at the meeting that you had in Ottawa.

2 A. That's correct. And he sent me the communication, the result
3 of which I went to the Attorney General...

4 Q. Right.

5 A. And said we're not going to proceed against your wishes even
6 though we think...

7 Q. You thought you had a good case.

8 A. That a charge...yeah.

9 Q. But now he's saying, in effect, as I read that letter that it did
10 not warrant the laying of a charge.

11 A. No. The Commissioner mentions in this letter though that he
12 had reviews carried out and by those reviews I'm not sure
13 what he is including. He does mention the meeting but there
14 must have been something take place after that.

15 Q. If he were reviewing this, he would be reviewing it as
16 presumably with people who were at the meeting that you
17 attended.

18 A. I would hope so. He would, yes.

19 Q. But something transpired between December the 17th and
20 February the 25th, I suggest to you, to change the, Mr.
21 Quintal's

22 A. Yeah.

23 Q. Viewpoint.

24 A. Mr. Quintal would have to answer that, I don't know.

25 Q. Yes. Well, on the surface that's what it would appear...

MR. FEAGAN, EXAM. BY COMM. EVANS

1 Q. Something came in there to change the direction because he
2 makes it pretty plain here that it did not warrant the laying
3 of a charge nor the continuation of an investigation. And
4 that's quite different than what you got when you left Ottawa.

5 A. It would appear at least that on the surface.

6 Q. Right.

7 A. He may be referring to, didn't warrant to have a confrontation
8 between us and the Attorney General, I don't know but...

9 Q. Because it does not indicate that there was any further
10 investigation, or any further evidence came forward between
11 your appearance in Ottawa and this letter.

12 A. That's right. But I don't doubt there were discussions and
13 reviews before the Commissioner wrote his letter.

MR. SPICER

14
15 Q. Do you have any knowledge, Mr. Feagan, or were you told by
16 anybody as to why it was that Commissioner Simmonds wrote
17 this letter?

18 A. I asked Commissioner Simmonds in a meeting I had with him
19 privately some months later, you know, why he wrote the
20 letter to Mr. How and he replied that Mr. How wanted a letter
21 of this nature and he gave it to him.

22 2:51 p.m.

23 Q. During that discussion with Commission Simmonds about the
24 letter did you discuss any other aspects of this case with
25

1 A. I wouldn't like to say that it was a result directly of my
2 contact with him that the article appeared.

3 Q Uh-hum.

4 A. He contacted me and advised me that he had information
5 which he had obtained from the investigator and the former
6 Crown counsel concerning this case and he linked it to the
7 Marshall Inquiry, and at that point I felt that...I explained to
8 him that I...it was a long time ago and I had very little
9 memory of the case, I didn't know the sequence of events
10 even and so he related the story to me, or not the story as it
11 appeared, but he related the information he had to me.
12 Rather than refuse to listen to him, I did listen to the story
13 because I was concerned whether or not he had good
14 information or not. I didn't like the idea of something
15 appearing in the media that wasn't reasonably correct in
16 relation to the RCMP of which I had been a member for a
17 number of years, and from my past experience I had found
18 that generally in dealing with the media that I was better to
19 explain things and give them the straight facts than to allow
20 them to act on facts that may not be accurate. I, therefore,
21 listened to the story, and as I listened to his information I
22 made the odd comment like, "That sounds to be reasonable.
23 Yes, that's about the way it happened." I did not make any
24 state...when the article appeared I...the statements that he
25 had, the information he had he attributed to me, which I

1 feel was misleading because I had not given him the
2 information. He already had it. I had no idea that he would
3 attribute those statements to me.

4 Q. Subsequent to the article appearing in the Toronto Star you
5 were contacted by Premier Buchanan.

6 A. Yes, I was.

7 Q. And what was the nature of that call?

8 A. Premier Buchanan, I have some notes, I can tell you the date
9 if you wish.

10 Q. Sure.

11 A. Can I refer to... 11th of April.

12 Q. You were contacted by Premier Buchanan.

13 A. Yes. At about 7:45 in the evening.

14 Q. Okay.

15 A. He explained to me that he had seen a television story based
16 on the, ah, Alan Story's article in the Toronto Star and the
17 television interview was with me and that he felt I was
18 being used, more or less, because before I had a chance to
19 complete my answers they were cut off, which gave a
20 different meaning to the whole thing, to the answers to the
21 questions. And he gave me very briefly as he remembered
22 the way the thing happened, which was accurate, and he
23 asked me if I'd like him to send...I told him I wasn't pleased
24 with the article and so he asked me if I'd like him to send a
25 copy of the Commissioner's letter, the one we've just been

MR. FEAGAN, EXAM. BY MR. SPICER

1 discussing.

2 Q Yes. February letter.

3 A. And he said he'd have his Attorney General call me in the
4 morning and send that by photofax.

5 Q All right. Was that the extent of the conversation with the
6 Premier?

7 A. He asked me if I would talk with his Attorney General and I
8 said, "Yes."

9 Q Yes.

10 A. That I'd like to straighten the matter out because it was a
11 mis...

12 Q Did you then talk to the Attorney General?

13 A. Yes, I did, the next morning.

14 Q That was Mr. Donahue.

15 A. Uh-hum.

16 MR. CHAIRMAN

17 Well, am I to assume from what you were saying, Mr.
18 Feagan, that you also were interviewed on television?

19 MR. FEAGAN

20 Yes, I was, via telephone...they had a picture, an old picture
21 of me from here in Nova Scotia apparently and the CBC who
22 contacted me by telephone after the Alan Story [sic] was released
23 asked me some questions on it and I answered them and then she
24 showed my picture on the TV screen and gave this, ah, some of
25 the conversation.

COMMISSIONER EVANS

1
2 Not all of it.

MR. FEAGAN

3
4 Not all of it and not even the complete...I never heard it
5 myself, so I'm going by hearsay when I...but I heard from other
6 persons who did see it that they didn't...I wasn't...even though I
7 had completed my sentence at the time, it wasn't completed on
8 the TV.

MR. SPICER

9
10 Q You had a discussion with the Attorney General?

11 A. Yes, I did.

12 Q Can you tell us the nature of that discussion?

13 A. He sent me by photofax the copy of the Commissioner's
14 letter, which I had a chance to look at and he also sent me a
15 statement for my signature outlining the way from his
16 records the case went or the way he felt it went. I wasn't
17 aware at the time who drafted the letter, but he gave me
18 the opportunity, of course, I could change it any way I
19 wanted to before I sent it back.

20 Q At the time that you were speaking with Mr. Donahue, did
21 you discuss with him the information that was to go in the
22 letter that you were being asked to sign or did he indicate to
23 you, "I'll send you something out; if you can agree with it
24 then send it back." or how did it go?

25 A. There wasn't, very little discussion, if any, it was more on

MR. FEAGAN, EXAM. BY MR. SPICER

1 the basis of the Commissioner's letter that this letter was
2 made up.

3 Q. And did Mr. Donahue then fax out to you a letter for your
4 signature?

5 A. Uh-hum.

6 Q. And did you sign that letter?

7 A. I did.

8 Q. Did you make any changes?

9 A. No, I didn't.

10 Q. Okay. And if you can now have a look at the exhibit that
11 I've placed in front of you, and that is, I believe, your letter,
12 Exhibit 166, as was filed in the House by the Attorney
13 General on pages 1685 and 1686 on April 12th of this year.
14 And I just want to ask you a question on the fourth
15 paragraph on page 1686. Now this is a letter that went
16 under your signature.

MR. CHAIRMAN

17
18 Before you go on, Mr. Spicer, is that first sentence correct
19 when you say "It is not unusual... it is," oh, "Not usual," sorry.

MR. FEAGAN

20
21 Yeah.

MR. CHAIRMAN

22
23 I'm the one that's misreading it. Carry on.

MR. SPICER

24
25 Okay.

MR. FEAGAN, EXAM. BY MR. SPICER

1 MR. CHAIRMAN

2 Pay no attention to me.

3 MR. SPICER

4 Q. It's the paragraph on page 1686, that begins "Initially,"
5 fourth paragraph. "Initially, prior to that review, I was of
6 the opinion that charges could possibly go forward against
7 Mr. Thornhill." He's talking about the review or you're
8 talking about the review by Quintal.

9 A. Uh-hum.

10 Q.

11 Following a complete review it became clear that
12 all the circumstances reflected in the file
13 combined with the evidence gathered by the
14 investigating officers did not warrant the laying
15 of any charge nor the continuation of any further
16 investigation as noted in Commissioner
17 Simmonds' letter to Attorney General How. That
18 was a conclusion with which I agreed.

19 Correct me if I'm wrong, but I thought I had been hearing
20 you to indicate that it really...it wasn't your view that there
21 wasn't sufficient material to go ahead with charges.

22 A. No, but it was my view that charges wouldn't go ahead, you
23 know, that we wouldn't go ahead with charges against the
24 Attorney General's wishes as I was following instructions.

25 Q. Yes. And is that what you would want to take from that
sentence?

A. That's what I would want.

1 Q "That was a conclusion with which I agreed."

2 A. That's right.

3 Q That was the conclusion that no charges were going to be
4 laid, not the reason for it.

5 A. That's right.

6 Q I see.

7 A. You see one can read this a number of ways.

8 Q Yes, and I think I just read it another way, and I was asking
9 you... Your point and the reason that you say you were able
10 to sign this letter was because when you were looking at
11 "That was a conclusion with which I agreed," that was the
12 bare conclusion itself.

13 A. Yeah.

14 Q. No charges were going to be laid.

15 A. The whole crux of the thing was this, I asked my
16 Commissioner and his people in Ottawa for direction, I got
17 that direction, I agree with that, you know, I asked for it
18 and I got the direction, so there's no way that I would want
19 to argue with that.

20 Q. Isn't in substance what you were doing is following the
21 direction you received from Ottawa?

22 A. Yes. I asked for their direction.

23 MR. SPICER

24 Thank you.

25

COMMISSION/COUNSEL DISCUSSION

1 MR. RUBY

2 Let me commence, My Lords, if I may by asking if I could
3 have production of the transcript at least of the live interview
4 that's referred to at the end of the passage reviewed in the
5 Assembly debate, the loose exhibit we have, 166. Mr. Vincent
6 McLean says about four lines from the bottom, "Mr. Speaker, in
7 tabling the memo which is considerably different from the live
8 interview which I had the opportunity to watch last night on
9 CBC...," and so forth, I wonder if anyone has got a transcript of that
10 and if we could see it or if the video tape itself is available.

11 MR. CHAIRMAN

12 This is the CBC video.

13 MR. RUBY

14 Yes. That would be the voice over that, that I think, Mr.
15 Buchanan described.

16 MR. CHAIRMAN

17 I haven't seen it. I don't know if counsel can...

18 MR. MacDONALD

19 Sorry, My Lord.

20 MR. CHAIRMAN

21 Mr. Ruby is inquiring as to whether or not a transcript of the
22 video or the video itself with the CBC, which was referred to by
23 Mr. Feagan in his evidence where he says his statements were cut
24 off, et cetera, whether that is...

25

1 MR. MacDONALD

2 We'll make inquiries, My Lord, we don't have one. We'll
3 certainly make inquiries to see if they could be obtained.

4 MR. RUBY

5 Thank you, Mr. MacDonald.

6 COMMISSIONER EVANS

7 It's apparently an edited version of the conversation
8 between the witness and Mr. Story, as I understand it.

9 MR. RUBY

10 No, I think it's a separate interview done, is that correct?

11 MR. FEAGAN

12 It was a separate interview done. CBC contacted me as...

13 COMMISSIONER EVANS

14 Oh, I see.

15 MR. FEAGAN

16 ...a result of their reading of...

17 COMMISSIONER EVANS

18 Mr. Story.

19 MR. FEAGAN

20 Mr. Story's article.

21 MR. RUBY

22 And there may be an unedited version available or maybe
23 there's nothing available. I think my friend is going to find out
24 and I'm grateful.

25

1 COMMISSIONER EVANS

2 The reason I said that is because one of the honourable
3 members following Mr. McLean said, "It is edited."

4 MR. RUBY

5 Yes, I'm sure it is. The media have a habit of doing that to
6 us and we never like it.

7 MR. CHAIRMAN

8 That's without prejudice.

9 COMMISSIONER EVANS

10 I'm surprised to hear you make a complaint, Mr. Ruby.

11 MR. RUBY

12 [As a jury?] made a complaint. It would not lie comfortably
13 in my mouth, et cetera, et cetera. Now one other introductory
14 matter if I might, as I read the material we've got, there's nothing
15 that establishes that there were banks and loans and banking
16 arrangements between the banks being investigated and the
17 government. I take it that's common ground that took place, that
18 there were, in fact, arrangements in place between the banks,
19 whatever banks they were.

20 MR. SPICER

21 That material is set out in the agreed statement of facts.

22 MR. RUBY

23 I didn't think I saw that...

24 MR. MacDONALD

25 As I understand my friend's question is that there were

COMMISSION/COUNSEL DISCUSSION

1 | dealings between the banks and the Province of Nova Scotia, I
2 | understand that's the substance of your question? I believe my
3 | friend is correct, My Lord, there is nothing in the statement of
4 | facts which would disclose that and neither is there anything in
5 | the materials that we have considered which would disclose that
6 | there was, in fact, dealings between the banks and the Province.
7 | I've just take that as a given that banks deal with the Province or
8 | other Crown corporations, but I don't have any actual information
9 | that I could place before the Commission to substantiate that.

MR. RUBY

10 |
11 | I'm prepared to proceed on the footing that that's so, but I
12 | want to make certain we have it on the record that that was so so
13 | that the cross-examination would be intelligent.

MR. MacDONALD

14 |
15 | Certainly all of the information we've seen it never arose.
16 | There were, I've just taken that as a given that the banks do deal
17 | with the Province.

MR. CHAIRMAN

18 |
19 | You're saying the chartered banks throughout Canada, all
20 | chartered banks deal with government, provincial governments
21 | and/or their Crown corporations or agencies.

MR. RUBY

22 |
23 | And particularly the four that are in question here. I'm not
24 | even sure which ones they are, but those four were, in fact,
25 | dealing with the government, it's simply one of the foundations

1 for the...

2 MR. CHAIRMAN

3 Yeah, I would assume so.

4 MR. RUBY

5 Then I'll proceed on that footing.

6 EXAMINATION BY MR. RUBY

7 Q. Let me ask first, sir, with respect to page 5 of the material, I
8 don't understand the difference between an investigation
9 and an inquiry. You'll see that those two terms are used in
10 contra distinction one of the other in that press release.

11 What is the difference?

12 A. It's...there isn't a great deal of difference. It depends what
13 sort of context you use either one in. I think maybe the best
14 way of putting it is inquiries are just sort of casual... just
15 that, questions of various people as to what was going on,
16 whereas a formal investigation they start taking statements,
17 getting search warrants, this type of thing.

18 Q. Was there ever an investigation of the Thornhill case as
19 defined by you now?

20 A. Oh, yes, but later on, this...what I'm referring to here.

21 Q. Now referring to here...

22 A. This was when rumours were circulating and at that time it
23 wasn't all...

24 Q. And the inquiries you say in the sixth-last line on page 5,
25 "Were made and such information which inquiries did not

MR. FEAGAN, EXAM. BY MR. RUBY

1 warrant the commencement of investigation."

2 A. No.

3 Q. That was the considered view of you at the time.

4 A. At the time, yeah. Again, I wasn't involved at that stage. I
5 was aware of what was going on but I wasn't very closely
6 involved.

7 Q. I don't understand how it could be that the inquiries didn't
8 warrant an investigation, do you? Can you explain that to
9 me?

10 A. The, ah, at that...you know, I may not be exactly right on
11 with this, but Mr. Thornhill, I think it was something to do
12 with the time that was he a public official at the time he
13 made this settlement with the bank.

14 Q. Okay. Well, the period when he was a public official would
15 be a matter of public record and anyone could figure that
16 out with an inquiry.

17 A. That's right. And see by making, not inquiries, or, you
18 know...

19 Q. Look at the record.

20 A. Yeah.

21 Q. Okay. So the only question is whether or not the benefit
22 was received during that period?

23 A. Uh-hum, something like that, yeah.

24 Q. Well, how could you make inquiries and not uncover that?
25 And once you did uncover it surely and this is the second

MR. FEAGAN, EXAM. BY MR. RUBY

1 part of the question I'm asking you, once you did uncover it,
2 surely there's going to be an investigation.

3 A. You'd have to go to the banks and find out when this
4 settlement was made, et cetera, and to do that you would
5 have to have a search warrant.

6 Q. Then why would the inquiries not warrant an investigation,
7 a search warrant. You know he received a benefit, you're
8 not sure if it was received during his tenure as Minister or
9 not, why wouldn't you find out as part of an investigation or
10 as part of more informal inquiries?

11 A. You know, I'm not that close to the investigation, like I said
12 before, I was...until such time as the Premier stated that
13 Thornhill was a Cabinet Minister when he made the
14 settlement, there wasn't anything to go on.

15 Q. Okay. And certainly no one thought of going to Mr.
16 Thornhill and asking him.

17 A. Eventually.

18 Q. Mr. Thornhill...

19 A. He eventually was interviewed in the course of the
20 investigation.

21 Q. But at that stage no one thought of doing that.

22 A. Well, I don't know if they thought about it or not, but they
23 didn't do it.

24 Q. And if you don't ask, of course, then you're not going to get
25 any information that would warrant the commencement of

MR. FEAGAN, EXAM. BY MR. RUBY

1 an investigation, are you?

2 A. No. You know, I don't...again, I don't remember the
3 sequence of some of the things that happened, but there
4 were certainly communications between that time and
5 between the time we started the investigation too from
6 people not exactly anonymous, but wrote to Members of
7 Parliament and said there should be something done about
8 this.

9 Q. Okay. Would that comment indicate to you that that
10 investigation was pretty slow off the mark as investigations
11 go? Was there some reluctance to investigate this Cabinet
12 Minister?

13 A. The way we ...what usually causes an investigation is when
14 somebody complains to us about something.

15 Q. Right.

16 A. We didn't receive a complaint in this case until I met with
17 Gordon Gale and he raised the point and said we should do
18 an investigation.

19 Q. So investigations are slower when there's no complaint and
20 you have to find the information yourself.

21 A. Uh-hum.

22 Q. And it sounds here from that press release as if the
23 inquiries were made and, gee, they didn't warrant any
24 investigation, it sounds like it wasn't going anywhere as a
25 result of the inquiry.

1 A. I'm afraid that I can't enlighten you on the nature of the
2 inquiries.

3 Q. Um.

4 A. Because I'm not aware of them.

5 Q. Thank you. Page 12 of materials, it's a memorandum, now
6 who is this from?

7 A. Inspector MacInnes wrote these notes.
8 3:14 p.m.

9 Q. Right. And it's discussing Mr. Gale's views about
10 approaching Crown counsel and he says at the bottom of
11 that page, last two lines on page 12, "Personally I feel that
12 their advice...", "they" being Mr. Gale and, I guess Mr. Gale.

13 A. Uh-hum.

14 Q. "Not to seek views of a Crown counsel in this particular
15 investigation is tantamount to obstruction."

16 A. Uh-hum.

17 Q. Did you agree with that?

18 A. That's his opinion as stated here.

19 Q. I know that, I want to know if you agreed with it.

20 A. Not entirely, no.

21 Q. Why not?

22 A. Because it was an accepted thing that when they gave
23 direction to have a report forwarded to them, to the
24 Attorney General's Department, that we do that. Maybe
25 I'm... On the other hand, looking at it again you are talking,

1 I thought it was talking about the report going to the AG's
2 department, but what really we're talking about here is
3 access to Crown counsel.

4 Q. Yeah.

5 A. Yeah. It's obstruction..., you know, I mean, I think we
6 should have had access to Crown counsel and even let's say
7 after this we couldn't do that, but normally on an informal
8 basis, we could discuss things with any Crown counsel, even
9 if he wasn't assigned to the case.

10 Q. And in this case, that cost you dearly as I understand your
11 evidence. You felt that lack of that from the beginning to
12 end.

13 A. Well, yeah. We may...if, in fact, there was evidence lacking
14 that should have been there, we may have been able to pick
15 that up had we had advice from Crown counsel.

16 Q. And a chance to act on it.

17 A. During my career when I was an investigator I often would
18 pick up the phone and call a Crown counsel about any
19 particular little thing in the...in that case, ask him one
20 question today and two tomorrow, see him the next day and
21 give him what I got in between and he'd say, "Well, now you
22 better go and get some more of this," or...that's the type of
23 thing that an investigator looks for with Crown counsel, is
24 guidance during his investigation as well as advice as to
25 what would be the appropriate charge.

1 Q. I take it in your view, based on your experience, the system
2 of justice from an enforcement point of view works when
3 best when that kind of contact and liaison is available.

4 A. Exactly.

5 Q. And there's a risk of it not working, and that's the
6 obstruction we're talking about, when it's not available.

7 A. Yeah. Obstruction sounds like a strong word, but yes.

8 Q. Okay. At page 18 we're back again in a letter from Gordon
9 Gale, "There is to be no contact made with the prosecutors."

10 A. Uh-hum.

11 Q. And you've said, I think, that that was an unusual or
12 "unusual letter" I think was your phrase.

13 A. Uh-hum.

14 Q. And my friend tried to explore with you in what other
15 circumstances this sort of thing happened, where you were
16 told, first of all, never to talk to a Crown prosecutor about it,
17 an ordinary line prosecutor. Were there other cases where
18 that part of the instruction was given?

19 A. I'm not sure.

20 Q. There's two parts here.

21 A. I would just assume that that would be included in some of
22 these other cases where we're told to report directly to the
23 AG's Department, quite likely before a Crown counsel was
24 appointed.

25 Q. So you're melting both parts of it together.

1 A. Uh-hum. Again, this is the only case I was involved in Nova
2 Scotia here in my capacity as a CO. Other cases stopped at
3 the CIB officer's level. We have in the force sort of a
4 pyramid system and if things can't be ironed out down here,
5 you go to the one next.

6 Q. The other cases that we're talking about, I'm trying to figure
7 out how many were there roughly?

8 A. I wouldn't want to guess.

9 Q. Five hundred.

10 A. Well, more like the five than the five hundred.

11 Q. A small number.

12 A. Yes, a small number.

13 Q. Were they for the most part cases involving political
14 allegations or allegations involving political figures?

15 A. I would guess that.

16 Q. So that's the distinction he's really creating here, isn't it?

17 A. I don't know.

18 Q. Does it not appear to you now, and did it not appear to you
19 then, that he's making a distinction for political cases? "This
20 is how we're going to handle political cases, fellow, they
21 come to us, not to the line prosecutors." Do you agree?

22 A. I think there are other cases outside the political, as well,
23 but yes, some.

24 Q. For the most part that's so.

25 A. Could very well be.

- 1 Q You agree with that for the most part.
- 2 A Well, I'm not familiar with the other cases, so I...in this...
- 3 Q The ones you know about.
- 4 A In this case I might agree with you.
- 5 Q All right. The ones you know of are all political. The ones
6 you've heard of.
- 7 A Yeah, there's only one that I know anything about.
- 8 Q And the others you've heard about.
- 9 A Yeah.
- 10 Q Are all political.
- 11 A And I don't...I can't quote what year they happened or who
12 was involved.
- 13 Q So you're saying...you're saying that there may well be some
14 that are not political, but the ones I've heard of are all
15 political.
- 16 A Yeah, well, this is it, the one I've heard, there is politics
17 involved here, yes.
- 18 Q Yeah. And in the other cases, the ones you weren't involved
19 in but you've heard about, talked about, one of them you
20 mentioned was the distilleries.
- 21 A Yeah.
- 22 Q I don't want to know more about it, but they're all political
23 cases, right?
- 24 A There could be political ramifications in each one.
- 25 Q That was a case of payoffs to a political party, was it not?

1 A. I don't know.

2 Q. Allegation of that.

3 A. I don't know anything about that investigation.

4 Q. You knew it would have political implications that
5 investigation though.

6 A. I think it did, yeah.

7 Q. You don't know of any case where this rule has been applied
8 where there's not been political implications.

9 A. I don't personally know of any, no.

10 Q. Or that you heard of.

11 A. No, not that I can recall.

12 Q. If this is a rule designed for political cases it would be
13 wrong, would it not, for the force to accede to it? Wouldn't
14 it be wrong?

15 A. I would prefer that my commissioner answer that.

16 Q. Well.

17 A. He speaks for the whole force.

18 Q. Yes, he does, and he will in due course.

19 A. Uh-hum.

20 Q. But I'd like your perspective as a man with thirty-five years
21 in a pretty senior position in this province.

22 A. I had occasion to deal with people in the AG's department in
23 Prince Edward Island. I had occasion to deal with the
24 Federal Department of Justice who was the Attorney
25 General's Department for the Northwest Territories, also the

1 Minister of Justice for the Territories, who now is more hand
2 in what happens there, and to be forthright about it, I never
3 ran in to anything like this in those places.

4 Q. You've not answered my question and I'm going to put it
5 once more. Is it your view that if this direction is designed
6 to cover political cases, it would be wrong for the force to
7 accede to it?

8 A. If it is, yeah.

9 Q. You've heard of no cases where such a rule has been applied
10 to Indian accused persons.

11 A. No, not in this, not in this province.

12 Q. Would you turn to page 33 with me? Moving to another
13 subject just briefly. In the Coles' memo there's a factual
14 assertion in paragraph 8.

15 A. Page again, please?

16 Q. 33.

17 A. 33. Okay.

18 Q. You'll see the second paragraph with the little indentation,
19 "Mr. Thornhill's overall financial position indicated no
20 prospect of his being able to pay off the indebtedness." I
21 don't want to know about Mr. Thornhill's position, so don't
22 tell me.

23 A. No.

24 Q. But tell me whether or not to your knowledge at that time
25 that was true, no prospect.

1 A. I think that was true.

2 Q. And it points out in the next paragraph that bankruptcy
3 proceedings would jeopardize his source of income. Now
4 was that true to your...as you believe at the time?

5 A. Quite possible.

6 Q. We've got Officer Plomp's response by way of legal
7 memorandum for this one.

8 A. Uh-hum.

9 Q. Did you have conversations with Officer Plomp in person
10 about this Coles' memo?

11 A. I think I likely did as a group, you know, there were others
12 present, but I'm sure that, yes.

13 Q. Without attempting to put words in his mouth, would it be
14 accurate in saying it was Plomp's view that this
15 memorandum was legal nonsense?

16 A. He didn't agree with it.

17 Q. Yeah, I know he didn't agree with it. I can read his
18 memorandum. But did he, in fact, in private conversation go
19 farther and say it was nonsense or words to that effect?

20 A. No, I don't believe he did, but he felt that they were
21 overlooking the main thing here that 110(c) stands on its
22 own.

23 Q. Yeah.

24 A. They're garbling all the others in with it.

25 Q. Yeah. All right. I take it he did tell you that in his view that

1 was a pretty fundamental error.

2 A. Yeah.

3 Q. Pretty basic.

4 A. Yes, something along that line. He...

5 Q. Nothing very sophisticated about that.

6 A. Yeah. It was easy for him to convince me that this was not,
7 you know, the Plomp side of the argument. He had no
8 problem showing me where he was right and they were not.

9 Q. He didn't have problem showing me either. If you turn with
10 me to page 57, we're getting now to the meeting and the
11 notice of it, the headquarter's meeting on November 5th,
12 1980, and I don't understand something and I want you to
13 help me with it.

14 A. Uh-hum.

15 Q. You go 'into' this 'meeting with three possible sets of charges:
16 the 110(c) charges against Thornhill for taking the benefit
17 without having written permission; the 110(1)(b) charges
18 against the banks for conferring a benefit.

19 A. Uh-hum.

20 Q. And the false pretences.

21 A. Possible.

22 Q. Possible charge against Thornhill for obtaining the money in
23 the first place. There's nothing about the latter two charges
24 substance in this memorandum, but at the end of it, you go
25 in with three charges and you come out with one. How did

- 1 it happen?
- 2 A. Because the investigation insofar as this one was concerned
- 3 was complete, you know, in our eyes.
- 4 Q. Right.
- 5 A. And we had a charge. The others, wasn't complete, we
- 6 didn't have the guidance to go on with the investigation.
- 7 Q. What's the guidance you needed?
- 8 A. Well, again Mr. House when we forwarded his investigation
- 9 report to the AG, we asked for advice as to what would
- 10 happen to these others.
- 11 Q. Tell me if I'm correct, what happens here is that the
- 12 Attorney General's opposition to the laying of charges
- 13 against Thornhill causes you to never complete the
- 14 investigations regarding the banks and regarding the false
- 15 pretences for getting the money in the first place?
- 16 A. Without the being able to lay a charge under the Thornhill
- 17 (c) one, the others would be fruitless to go ahead and
- 18 investigate them.
- 19 Q. Why didn't you go ahead and investigate them? You might
- 20 have got perfect evidence on both counts, but you never
- 21 completed the investigation.
- 22 A. No, we were told the investigation stops.
- 23 Q. So the Attorney General's office stopped the investigation
- 24 into charges two and three.
- 25 A. Well, my headquarters agreed with it.

MR. FEAGAN, EXAM. BY MR. RUBY

1 Q Well, they didn't. They don't say a thing about it. They're
2 talking about (c) from here on in.

3 A Well, it was agreed somewhere in here I think you'll find, it
4 was agreed not to go ahead with further investigation.

5 Q Okay. But that's what happened, the investigations were not
6 completed and they got completed, right?

MR. MacDONALD

7
8 In fairness to the witness, My Lords, I'm probably more
9 familiar with the documents than he is, but on page 97, he is told
10 not to carry out any investigation.

MR. RUBY

11
12 Well, that is...that's Quintal's.

MR. FEAGAN

13
14 Yeah, that was the final report.

MR. MacDONALD

15
16 Paragraph (c).

MR. CHAIRMAN

17
18 Page 97.

MR. MacDONALD

19
20 Yes, My Lord.

MR. RUBY

21
22 Q In between those two dates, did you carry on with any
23 investigation of the second groups of charges and the third
24 group?

25 A No, because once the report was submitted, these things

1 started to move, you know, the...once the report was
2 submitted to the Attorney General and the Attorney General
3 decided there would be no charges, that what's started the
4 whole movement of having the meeting in Ottawa, et cetera,
5 and this all came out of the Ottawa review.

6 Q. And you're saying now the Attorney General never had
7 before him a complete investigation with regard to the false
8 pretences and with regard to the charges against the banks,
9 right?

10 A. Part of the material was there, but in my view there likely
11 would have been more investigation have to be done before
12 those matters could have been brought to charges.

13 Q. Over...

14 A. At that point anyway, we didn't have enough grounds to say
15 that we had charges in those cases.

16 Q. You felt they needed more investigation, right?

17 A. Yeah. I would have needed more evidence, let's say, before
18 I could say we'll fight on those charges.

19 Q. So the Attorney General never had before his office, or the
20 Deputy Attorney General never had before him a completed
21 investigation with respect to those two counts.

22 A. Well, he, in his memorandum, he pointed out that he felt it
23 was a complete report and that he had enough.

24 Q. You didn't think that, you knew better, didn't you?

25 A. Well, again, I can't even remember reading all the reports

1 that the investigator put in, but my information came from a
2 briefing from the people who did the investigation.

3 Q. You read the briefing.

4 A. Yeah, well, I was given it.

5 Q. And you knew that the investigations were not complete
6 with respect to those two matters.

7 A. Uh-hum. Because we're talking in terms here of continuing
8 the investigation even in (c), the one from Ottawa we just
9 looked at.

10 3:29 p.m.

11 Q. You thought "C" was finished but you were willing to look at it
12 and get more evidence if someone had come to you from the
13 AG's office and said, "Hey, you need more here or there."

14 A. Yeah, yeah. Sure.

15 Q. But with regard to the other two accounts, they weren't even
16 finished.

17 A. No.

18 Q. Right.

19 A. That's right, I guess, yeah.

20 Q. Um-hmm. And it was the opposition by the Attorney
21 General's office that caused them never to get completed in
22 terms of the investigation, right?

23 A. Yeah, I guess it's fair to say that.

24 Q. At page 57 and you've been asked about this, I think, but I
25 may be wrong, in the second paragraph on page 57, five lines

1 in, it's a sentence beginning, "Given the obvious ramifications
2 of any charge being laid against the advice of the Attorney
3 General..." and so forth, "...it's important we decide this at the
4 highest level." I paraphrase. Now you said obvious
5 ramifications were the future relations with the Attorney
6 General.

7 A. Yeah, and working harmoniously together with the Attorney
8 General to iron out cases and all kinds of things, yeah.

9 Q. Weren't you, in fact, negotiating a further five-year contract
10 for the RCMP with the Province of Nova Scotia at that time?

11 A. I believe our Headquarters was, yes. It wasn't, it never is too
12 much of a concern to us locally in the province.

13 Q. But it is of concern to the Commissioner, isn't it.

14 A. Yes.

15 Q. Terribly, terribly embarrassing if Nova Scotia got... [might
16 trip?] out the RCMP.

17 A. I don't know.

18 Q. You don't know?

19 A. I don't know...

20 Q. Sure you know.

21 A. ...whether it would embarrassing to the Commissioner or not.
22 The Solicitor-General and the provinces work this out and the
23 Commissioner is there, of course.

24 Q. That's not part of what you meant by obvious ramifications,
25 the possibility of a contract being ...

- 1 A. No, no. Really it wasn't. I don't know whether that was
2 meant in the Ottawa people or not, but from my point of view,
3 no. The...
- 4 Q. Was there any discussion at that meeting of the possibility of
5 the contract being terminated?
- 6 A. No, I don't think so.
- 7 Q. Not that you can recall?
- 8 A. Not that I can recollect.
- 9 Q. Thank you. Were you told of any threat by this government
10 to renew over this or any other matter?
- 11 A. No.
- 12 Q. You knew nothing about it.
- 13 A. No. I don't think there was any question in that regard, my
14 own opinion of the way things were, I don't think...
- 15 Q. That was not going to happen, in your opinion.
- 16 A. Oh no, it wasn't.
- 17 Q. At page 59 you'll see the press release issued by the Attorney
18 General's office we've been told on November 11th, 1980.
19 Now in the second page of it, page 59, and it says, "Mr. Coles
20 did not assign or designate any prosecutor to this
21 investigation." I take it that's true.
- 22 A. Um-hmm.
- 23 Q. He was designated in the ordinary course by some local
24 official, correct?
- 25 A. By the Director of Prosecutions.

1 Q. That's Mr. Thomas.

2 A. Right.

3 Q. All right. So it's literally true that he wasn't assigned.

4 A. That's right.

5 Q. The next line is, "It is understood that an investigating officer
6 had some preliminary discussion with an assistant prosecutor
7 during the course of his investigation." What's a preliminary
8 discussion?

9 A. Before we get down to charges. What I talked of before, you
10 know, going to him to get advice as to should I get a search
11 warrant for here or whatever.

12 Q. Got it. The overall impression I get from looking at this
13 memorandum, this press release at 58 and 59, is that what
14 he's saying is, "Look, this is all quite normal and usual." Do
15 you agree that's the import of it?

16 A. What he's saying is that it's quite normal practice.

17 Q. Yeah.

18 A. Accepted practice, he says. Yeah, that's what he's saying.

19 Q. And that wasn't really true, was it.

20 A. It was in cases where he desig-, where he ordered so or said
21 that that's the way he wanted it.

22 Q. Which only occurs in political cases, as far as you know.

23 A. Yeah. You have to remember that we had a very close liaison
24 with the Attorney General's Department, especially through
25 the Director of Criminal, and these weekly meetings, he was

1 kept up to date on investigations and this type of thing, so
2 during those meetings often direction was given to this CIB
3 Officer on cases.

4 Q. Coles' position in his memorandum at this point in time is that
5 there's no evidence of the requisite intent.

6 A. That's right. That's the main theme is the intent.

7 Q. Did you ever say to him "Look, we can go do further
8 investigations here and maybe we can find the requisite
9 intent, that's our job."

10 A. Well, the meeting I had with he and the Attorney General was
11 for that very purpose, to ask them if they would consider
12 further argument and further, the result of our research and
13 what we had deliberated over would...

14 Q. And so because of this position, there was no further
15 investigation, correct?

16 A. There was no further investigation, no.

17 Q. At page 86 there's one version of the Quintal letter from
18 December 16th. Mr. MacDonald, can you help me, is it
19 different from the one at page 90-something? Ending on page
20 97.

21 MR. MacDONALD

22 It you look at, starting on page 88, you'll see a redraft of
23 some interlineations and the final is on, starts on page 93.

24 MR. RUBY

25 Okay.

MR. FEAGAN, EXAM. BY MR. RUBY

1 Q. Can I ask you to look with me then to that letter, and I want
2 to ask you some questions about what's said there.

COMMISSIONER EVANS

4 Which letter?

MR. RUBY

6 Q. If we turn to page 95...the first, one second, I'm sorry. The
7 first of the reasons at page 95 middle. "Mr. Thornhill
8 accumulated these debts over a long period of time during
9 which he took some initiatives, none of them full and
10 complete, to pay them off." What relevance does that have to
11 the issue, in your view, as an investigating officer, as to
12 whether or not there's been an improper payment under 110
13 (1) (c)?

14 A. I'm trying to think why they would have that there. I...

15 Q. I couldn't think of one either. I wondered if you could help
16 me.

17 A. These are supposed defences they're bringing up here and I
18 guess the idea was that the banks allowed him to go on and
19 on having these debts without any real security to pay them
20 off. I don't know.

21 Q. Well, whether or not there was a real security would depend
22 upon whether or not there was false pretences in the original
23 obtaining of the application, wouldn't it?

24 A. I guess, yeah.

25 Q. The bank may have thought they had good security from that

1 information, right?

2 A. Um-hmm. You'd have to get into the case which...

3 Q. I'll ask Mr. Quintal the same questions, but I wanted to see
4 what your view was. I won't...

5 A. I think...

6 Q. You can't...

7 A. This memorandum arose... is after, you know, several more
8 discussions, I imagine, in Ottawa than we had when we were
9 there, so I think it would be fair to ask him.

10 Q. Good. And I will. The second one is,

11 He, with the assistance of his brother-in-law and
12 his accountant, was the one who engineered the
13 final settlement and in the process wound up
14 paying off his debts at \$.25 on the dollar. Given
15 the fact that (a) bankruptcy might have been
cheaper...

16 Was there any evidence that bankruptcy would be cheaper?

17 A. Not that I'm aware of and, furthermore, it would be damaging
18 in some ways.

19 Q. It would cost him dearly in terms of public image and...

20 A. Right.

21 Q. Matters that are not easily...

22 A. That was mentioned in some of the bank...

23 Q. Yeah, that he would lose his source of income which was his
24 MP's salary.

25 A. If he went bankrupt, right.

- 1 Q. So it doesn't seem likely that's the case.
- 2 A. No. Bankruptcy might have been cheaper in that he still
3 owed somebody else money, you know, as a result of this
4 being paid off. The person who paid it off, borrowed. Maybe
5 bankruptcy would be cheaper from the point of view of coins
6 only, you know, money only.
- 7 Q. But you have no evidence as to whether or not a bankruptcy
8 court would let him off cheaper than \$.25 on the dollar...
- 9 A. No.
- 10 Q. Which is what he owes his...
- 11 A. I don't know.
- 12 Q. Benefactor. All right.
- 13 A. Well, he wouldn't have had that because that \$.25 on the
14 dollar was paid by somebody else.
- 15 Q. Yeah, as you say, he incurred an obligation to that person.
- 16 A. That's right.
- 17 Q. So presumably he's going to pay them off...
- 18 A. Um-hmm.
- 19 Q. He's costing, it's costing him \$.25 on the dollar.
- 20 A. Um-hmm.
- 21 Q. You have no idea whether bankruptcy would be cheaper or
22 more expensive than that.
- 23 A. No, I don't know. Personally, I don't.
- 24 Q. So what they're doing here is they're speculating in favour of
25 the accused person, or proposed accused, correct?

1 A. Yeah, they may know something I don't know.

2 Q. Right.

3 (b) One, possibly two of the banks, had already
4 written off these debts.

5 A. Not quite right.

6 Q. Tell me about that.

7 A. They intended to but they, I, from reading through here, I
8 indicate that... or it's indicated that they were, they talked of
9 writing it off but I don't, to the best of my knowledge, I don't
10 think they had actually paid it off, or written them off.

11 Q. Right.

12 A. Well, they must not have because they took the money.

13 Q. It makes sense, doesn't it.

14 A. Yeah.

15 Q. And then, as well, we've got, and I've forgotten which two
16 pages they are, but there's two damning pages of comments
17 of excerpts from the banks in this material.

18 A. Yeah. Right.

19 Q. And the reason why they were thinking about doing that was
20 purely and proper political motive. Clear?

21 A. I don't know.

22 Q. You read those?

23 A. I don't want to guess what the banks were thinking.

24 Q. Well, let's take a look at what the banks were thinking.
25

MR. FEAGAN, EXAM. BY MR. RUBY

1 MR. MERRICK

2 My Lords, I have to rise to object at this stage. We're now
3 going to get into speculation as to what was in the mind of bank
4 officials, eight, nine, ten years ago, during the time that they were
5 handling this matter based purely on the fact that we've got a few
6 excerpts in our material book. Now at some stage the limits of
7 relevancy have to be reached in this hearing, and I would submit
8 that my learned friend has transgressed that limit at this stage.

9 MR. RUBY

10 Let me just ask Your Lordships to look, you may follow
11 along if you like, Mr. Feagan.

12 CHAIRMAN

13 What page are you referring to?

14 MR. RUBY

15 Page 40 of the materials, through page 42 top. It's a little
16 more than two pages, and I assume that because Herschorn and
17 Coles were aware of these, they're part of the police report, that
18 he was also aware of. So I want to test whether or not the
19 political motives disclosed in these categories, "they considered it
20 a political donation." "Mr. Thornhill..."

21 MR. MERRICK

22 My Lord, this is what I'm objecting to. Whether or not the
23 banks, what the banks were doing and for what motivation we'd
24 better have better evidence than this individual who never spoke
25 to the bank officials and can't speak as to why the banks did or

MR. FEAGAN, EXAM. BY MR. RUBY

1 did not actually do something. Now all we have in front of us in
2 the document book are excerpts from materials that some bank
3 official prepared at some point in time. But what my learned
4 friend is now purporting to put to this witness is why did the
5 banks take certain actions that they did and to try to make the
6 connection and impute political connotations to it requires more
7 than this witness.

MR. MacDONALD

9 My Lords...

MR. RUBY

11 I'm just going to clarify briefly, Mr. MacDonald, what I'm
12 trying to do so we'll at least be all working on common ground.
13 I'm not trying to impute anything to the banks. Assuming that
14 this was what's said by some of the bank material, bank officials,
15 and assuming that the RCMP had this before them when they
16 made their decisions, I want to know whether their decision-
17 making process was an appropriate one when they took into
18 account in mitigation that one, possibly two of the banks, had
19 already written off these debts leaving aside a misstatement in it,
20 when the obvious reason for writing off the debts to the
21 knowledge of the RCMP at that point in time were improper
22 political motives. I'm talking about the RCMP's motive. Why
23 didn't they act knowing what they obviously knew, having before
24 them what they had before them. I'm not trying to try the banks,
25 but I want to know why the RCMP didn't give some weight to the

MR. FEAGAN, EXAM. BY MR. RUBY

1 obvious political flavour and the motives of the banks when they
2 took into account in mitigation that factor. So that's the issue I
3 want to get at, is why was the RCMP not giving this some weight.

CHAIRMAN

4
5 Before you sit down, can you also indicate to the Commission
6 how that line of questioning is related to your client's interest, Mr.
7 Ruby?

MR. RUBY

8
9 It's related in the following way. Arguments against
10 prosecuting are dredged up that are speculative, that ignore facts,
11 that misstate the facts and that ignore obvious political advantage
12 to the government only in a case of the prosecution of important
13 white men. It does not happen when you prosecute Indians...

CHAIRMAN

14
15 We don't know that.

MR. RUBY

16
17 And the contrast is one that I seek to bring forward and
18 have placed before this Commission. That's the relevance to my
19 client.

CHAIRMAN

20
21 We have no, so far, we have no, we only have the evidence
22 relating to one white person.

MR. RUBY

23
24 I'm perfectly willing to take on more. Let's look at more.
25 There are more.

DISCUSSIONCHAIRMAN

1
2 There may very well be but it's not within this Commission's
3 mandate to look at them.

MR. RUBY

4
5 But I don't want to have, the fact that there's only one, be a
6 reason for not looking at that one wholly and fully, that's all I'm
7 saying.

CHAIRMAN

8
9 You wish to respond, Mr. MacDonald?

MR. MacDONALD

10
11 Only My Lord, I was getting ready to rise just before Mr.
12 Merrick did because of the line of questioning, not because of
13 what Mr. Ruby has now explained as his reasoning. I have no
14 difficulty with that. If he's only going to try and establish that
15 this information was within the possession of the RCMP at the
16 time they were making their deliberations and did they look at it,
17 did they consider it, those are, I think, proper questions. But to
18 take, as he did, a conclusion and try and put through the mouth of
19 this witness that the banks were motivated by improper political
20 consideration is wrong and that's what I would object to.
21 3:45 p.m.

MR. CHAIRMAN

22 Counsel for the...

MR. BISSELL

23
24 Yes, My Lord, if I just may make one comment. I listened to
25

DISCUSSION

1 the reasons that my friend advanced for putting the questions to
2 this witness and assuming they are proper questions for Mr. Ruby,
3 considering the client that he represents to put, I would suggest
4 that they are questions that should be addressed to the author of
5 the letter, Mr. Quintal, who will be a witness before these
6 proceedings, and not to this witness, who after all, was not a part
7 to, or a party to the decision that was made not to proceed. He
8 was acting on instructions which he received from Ottawa and I
9 think it's unfair to this witness and unfair to my client that he be
10 asked to speculate why Deputy Commissioner Quintal came to the
11 conclusions that he did, particularly when Deputy Commissioner
12 Quintal will be a witness before Your Lordships.

MR. CHAIRMAN

14 That, I don't quarrel with, but counsel will appreciate that
15 we are looking at these today for the first time and all of this is
16 new to us. The extracts taken from bank documentation
17 presumably was made available to you, Mr. Feagan, on or before
18 October the 29th, 1980. Is that correct?

MR. FEAGAN

20 Yes, they were.

MR. MACDONALD

22 May I perhaps attempt to clarify for Your Lordships the
23 pages 40 through 42 of this document were compiled by
24 Commission counsel.
25

DISCUSSION

1 MR. CHAIRMAN

2 Oh.

3 MR. MACDONALD

4 And the heading is intended to explain that these extracts,
5 or these documents, or documents within the possession of the
6 A.G.'s Department contained these statements. The reason for
7 including it is, if I could take you just for a moment, to the
8 memorandum of Mr. Herschorn starting on page 25. He extracts
9 certain comments from bank documentation. We wanted Your
10 Lordships to be aware and counsel so that full questioning could
11 be carried out that there were, indeed, other statements within
12 documents available to Mr. Herschorn and Mr. Coles at the time
13 they wrote their opinions.

14 MR. CHAIRMAN

15 But is there any suggestion that this information was
16 available to the R.C.M.P.?

17 MR. MACDONALD

18 Oh absolutely, My Lord. It was in the R.C.M.P. files. All of
19 this information was in the R.C.M.P. file, but not in this form.
20 What we have done is taken a large amount of documents and
21 extracted from those documents what we consider to be relevant
22 information to reaching the conclusion whether or not a requisite
23 intent may or may not have been placed.

24 MR. CHAIRMAN

25 So this information was available to the law officer of the

DISCUSSION

1 Crown when they completed or compiled their opinions.

2 MR. MACDONALD

3 And available to the R.C.M.P.

4 MR. CHAIRMAN

5 And available to Mr.... The R.C.M.P. and Sergeant Plomp
6 when he made his opinion, presumably.

7 MR. MACDONALD

8 Well, available to the investigating officer. He collected it
9 all.

10 MR. CHAIRMAN

11 All right.

12 MR. MACDONALD

13 And then it's in the R.C.M.P. file. I think the evidence will
14 show the R.C.M.P. file would have been in the possession of Mr.
15 Feagan and, similarly, right up to the top. And the file
16 was...**POWER INTERRUPTION** ...

17

18

19

20

21

22

23

24

25

DISCUSSION

1 4:02 p.m.

2 CHAIRMAN

3 Now where were we? Oh, there was some objections to the
4 question, I must confess I can't remember the exact wording of it
5 that was put to this witness by Mr. Ruby concerning excerpts
6 shown on page 44, is it, of the...

7 MR. RUBY

8 I think 44, I'm interested...

9 CHAIRMAN

10 42.

11 MR. RUBY

12 ...in why the RCMP...

13 CHAIRMAN

14 Right, I have it now.

15 MR. RUBY

16 ...did not consider it.

17 CHAIRMAN

18 And the question as to whether or not the RCMP, as to why
19 RCMP did not proceed with the charge with this in their
20 possession. That is a proper question. It is not within the
21 competence of this witness to decide whether anyone was
22 politically motivated.

23 MR. MacDONALD

24 Before my friend proceeds, My Lord, I wonder if I can just
25 clear up through the witness what information was in Ottawa

DISCUSSION

1 because I think that's perhaps not clear. And if I could just direct
2 one or two questions to clear that up.

3 MR. RUBY

4 Okay.

EXAMINATION BY MR. MacDONALD

5
6 Q Mr. Feagan, when you had your meeting in Ottawa, on
7 November 5th, 1980, what materials would you have taken to
8 Ottawa with you?

9 A. The full investigation report if it was not already there. Parts
10 of it may have already been there. It's accepted, well, it's the
11 procedure in commercial crime cases that copies of the report
12 go to the Officer in Charge of the Commercial Crime branch in
13 Ottawa.

14 Q The report is a document of how many pages?

15 A. This is a document that we submitted to the Attorney General
16 for him to assess the case.

17 Q With attachments.

18 A. Yeah, with attachments. All the attachments to the report, or
19 the Corporal's report, would all have gone forward to Ottawa.

20 Q And I take it from that that if the materials from which these
21 extracts are taken, the extracts on page 40 and following, if
22 those, if the documentation was in the possession of the
23 Attorney General's Department, it would have been given to
24 the Attorney General's Department by the RCMP in the course
25 of its, filing its report.

MR. FEAGAN, EXAM. BY MR. MACDONALD

1 A. That's right. We forwarded it with the report, yes.

2 Q. And can we then assume that that same information that was
3 in the possession of the Attorney General's Department would
4 also be in the possession of the people in Ottawa?

5 A. Correct.

MR. MacDONALD

7 That's all I, My Lord, thank you.

MR. RUBY

9 I'm grateful to my friend for clarifying that.

CHAIRMAN

11 Mr. Ruby's question to you as I understand it is can you give
12 this Commission any explanation as to why the RCMP, with having
13 available at the time they made their decision the extracts
14 commencing at page 40, why they didn't proceed with their
15 investigation and/or charge.

MR. RUBY

17 That's one area I want to go into, yes.

MR. FEAGAN

19 A. I can't say that but Mr. Quintal possibly can answer that. Like
20 I say, my view was all along that there were charges, that we
21 should lay this charge, but because of the Attorney General's
22 difference of opinion I referred it to Ottawa where the whole
23 review, if you like, was coordinated and under the control of
24 Deputy Commission Quintal.

25

1 MR. RUBY

2 Q. All right.

3 A. Including the meeting we had, including review of all the
4 reports and evidence, et cetera.

5 Q. So the passage on page 86 that I would ask you about in
6 particular...

7 A. Page?

8 Q. Page 86.

9 A. 86.

10 Q. I'm at 86 and you're at 95. Letter (b). They took into
11 consideration that one, possibly two of the banks, as we know,
12 were considering writing off debts.

13 A. Yeah.

14 Q. And I'm asking you now given comments such as those on
15 page 40 to 42, where there is at least some evidence that they
16 did so, number 2 on page 40 "in light of political prominence"
17 or 3(a) "from our point of view, bankruptcy proceedings
18 would be politically unpalatable..." and there are others that
19 you may have had a chance to look at with a similar vein.
20 Why would you give, whY would you as an investigator based
21 on your experience, give any weight at all to the fact that one
22 or two of the banks have written off debts if that was their
23 motive.

24 A. Yeah, as I see it, because they were ready to write off the
25 debts and then all of a sudden they were offered \$.25 on the

1 dollar or whatever it may be, they, therefore, were really not
2 giving the guy a benefit at all because if they'd written them
3 off, he wouldn't have had to pay anything. Now he does have
4 to pay something. So really what... I think the point that's
5 being made here is that they weren't giving him a benefit.

6 Q. Okay.

7 A. Because of the fact that they were ready to write off the
8 debts and then suddenly here he comes along and offers them
9 some money for those debts that they were going to write off
10 completely.

11 Q. Would you agree with me that the whole point of 110 of the
12 Criminal Code is to prevent anything being given with a
13 political motivation...

14 A. Right.

15 Q. Economic advantage in politics.

16 A. Yeah, I agree that that's the intent...

17 Q. But why did you take into consideration a readiness to write
18 off that was based purely on political motives?

19 A. Well, that's looking at it in a little different light.

20 Q. It makes no sense, does it.

21 A. Yeah, well, but I go back to what I said. I think that that's
22 what they were thinking in terms of here but, again, you'll
23 have to ask Mr. Quintal because...

24 Q. Well, he comes to that later on under (a). It could be argued
25 that. But let me just deal with that one. We're now at (c)

1 under the first group of headings. "He now has an obligation
2 to his brother-in-law amounting to 12 yearly replacements of
3 \$3600 each and has signed over his share of the Thornhill
4 home." Why would that be relevant to the question of
5 whether to prosecute or not?

6 A. Again, I think what they're looking at is that really he, the
7 argument could be, possibly be made that the didn't receive a
8 benefit because this is no benefit. He's obligated now to his
9 brother-in-law.

10 Q. He's obligated \$.25 on the dollar.

11 A. It's just that a different person owes the bank, he doesn't.

12 Q. But he's obligated to \$.25 to the dollar which was a problem
13 in the first place, wasn't it?

14 A. Well, earlier on, though, they said he could have been, gone
15 bankrupt and he wouldn't have had to pay any of it.

16 Q. You agree with me that that's not a relevant consideration in
17 (c)? From your point of view. Others might take a different
18 view, but your view.

19 A. I don't know what, what they're getting at here is possible
20 defences. It looks like to me.

21 Q. That's not a possible defence in your experience, is it?

22 A. Well, be it a possible defence or not, it wouldn't matter in my
23 experience.

24 Q. Okay. It's irrelevant, right?

25 A. Yeah.

- 1 Q. So...
- 2 A. I would let him bring up that defence later on but...
- 3 Q. Yeah. But it's irrelevant.
- 4 A. If I have a *prima facie* case and I feel in the interests of the
5 society I lay a charge, then, sure, if the fellow comes up with
6 defences strong enough to sway the court his direction, I lose
7 my case. But I least I had grounds and I laid the case, you
8 know, I laid the charge in good faith.
- 9 Q. And (c) is not a defence in your experience, is it?
- 10 A. Well, again, it depends how the court looks at it when it sees
11 it whether it's an offence or not. I can't, I'm not a judge, you
12 know, I don't like to put my place in, but I have to consider
13 those things...
- 14 Q. Exactly. You wouldn't lay a charge if you saw a good defence
15 there.
- 16 A. Oh, if I knew that there was no use in laying it, I wouldn't lay
17 it but I wouldn't...
- 18 Q. That's not a defence is it, in your experience. The fact that...
- 19 A. My experience with this particular case and I'm not that
20 learned at that but I would be inclined to lay the charge in
21 spite of that indication of a defence, yes.
- 22 Q. You would not consider that a valid defence.
- 23 A. That wouldn't, that didn't and wouldn't, you know, dissuade
24 me from laying the charge.
- 25 Q. Right. Let me come down to it, it could be argued that "(a) he

MR. FEAGAN, EXAM. BY MR. RUBY

1 hardly received a benefit at all." We've covered that. He kept
2 his job, his position, his reputation and \$.75 on the dollar,
3 right?

4 A. Yeah.

5 Q. It's not bad, eh?

6 A. No. It says that here. The next line

MR. MERRICK

8 My Lord, I'm going to rise to object to that. Mr. Ruby is a
9 master of gloss and innuendo. The purpose of this Commission is
10 to prevent injustices being done to people's reputations that aren't
11 deserved and I'd asked Mr. Ruby to please keep those gratuitous
12 comments to himself.

CHAIRMAN

14 We'll be separating the grain from the chaff, Mr. Merrick,
15 and these, I suspect, are an outline of defences that counsel for
16 the accused in a case like that would undoubtedly raise. Probably,
17 I'm sure Mr. Ruby wouldn't but...

COMMISSIONER EVANS

19 You haven't heard Mr. Ruby in court.

CHAIRMAN

21 And that's all I treat that as. And nothing more. It certainly
22 doesn't, in any way, reflect upon the reputation of your client.

COMMISSIONER EVANS

24 I think Mr. Merrick's objection is more to the comments that
25 Mr. Ruby makes...

1 CHAIRMAN

2 I appreciate that, I know.

3 MR. MERRICK

4 Quite so.

5 CHAIRMAN

6 But I'm sure that the press are very alert and they don't
7 write down these comments.

8 MR. RUBY

9 Q. "(b) If he did receive a benefit, he received it from his
10 brother-in-law, not the banks." Is that true?

11 A. It depends, directly but indirectly from the banks.

12 Q. Did his brother-in-law give him \$.75 on the dollar?

13 A. His brother-in-law paid that reduced debt off for him.

14 Q. Did the brother-in-law give him \$.75 on the dollar?

15 A. Give him?

16 Q. Yeah. Thornhill.

17 A. No.

18 Q. No, I didn't think so. The banks did it, right?

19 A. The banks gave the person who paid it off, we're getting...

20 Q. You wouldn't consider that a defence, I take it.

21 A. Not sufficient defence to stop a prosecution.

22 Q. Carrying on with the text, the next paragraph is the opposite
23 argument and they give the opposite argument. And then he
24 says in the next sentence, well, the opposite argument, of
25 course, is that he was over \$142,000 in debt one day and only

MR. FEAGAN, EXAM. BY MR. RUBY

1 about \$35,000 in debt the next day. A rather favourable turn
2 of events to be sure. "It seemed very likely however that a
3 jury of 12, no matter how instructed, would ever
4 unanimously agree that a conviction was appropriate." Now
5 you don't share that view, do you? Didn't then and don't now.

6 4:14 p.m.

7 A. No, I... You know, I felt there were grounds for charges and
8 that we were morally obligated to take it before a court and
9 let a court decide.

10 Q. And what he's doing here is he's not letting the court decide.
11 He's prejudging how a court is going to determine it, isn't he?

12 A. Yeah.

13 Q. And doing it in favour of the defence, isn't he?

14 A. Yeah. This was after we were told we didn't have to go, yeah.

15 Q. Right. It's not bad, is it, if you're the accused, posed accused
16 to have the Mounties making arguments in your favour, is it?
17 That's a nice thing to happen. Yes? You're nodding your
18 head.

19 A. Well...

COMMISSIONER EVANS

21 I hesitate to jump in and I don't normally hesitate but since
22 we're going to call, since Mr. Quintal is going to be called, surely
23 he's the man to answer these questions and you're asking this
24 particular witness to speculate and give his views. If Quintal is
25 going to be here, he wrote the letter, he had the opinions, he

MR. FEAGAN, EXAM. BY MR. RUBY

1 expressed them, let him answer for them and not this witness.

MR. RUBY

2
3 What I want to bring out is that this was not a universal
4 opinion. That this man, for example, with his 35 years, did not
5 share it.

COMMISSIONER EVANS

6
7 Oh, absolutely. That's an opinion that he certainly indicated
8 all the way along.

MR. RUBY

9
10 And Your Lordships may have to decide at the end of the
11 day whose opinion is untouched by political influence, this man's
12 or somebody else's. And that's why it's important to bring out
13 what he thinks.

COMMISSIONER EVANS

14
15 Well, he 'said' all along that he thought the man should have
16 been charged. I believe he still thinks he should be charged, as
17 far as I can ascertain, subject to what he has been told by his
18 superior officers.

MR. RUBY

19
20 That's my understanding as well.

21 Q. Let me move to the next item, same paragraph.

22
23 It is likely (he's speculating again on the jury)
24 that they will be impressed by such probable
25 defence witnesses as the Premier if, in fact, he is
the head of the branch of government who could
be expected to testify that he would have

MR. FEAGAN, EXAM. BY MR. RUBY

1 willingly authorized Mr. Thornhill's activity had
2 he been asked to.

3 What do you know about what the Premier was going to say
4 if he got subpoenaed?

5 A. But he hadn't. You know, this is speculation because he
6 hadn't given him the permission in writing so...

7 Q. You mean there was no evidence of what the Premier would
8 have said?

9 A. I beg your pardon?

10 Q. To your knowledge, was there any evidence...

11 A. Yes.

12 Q. Before Quintal what the Premier would have said?

13 A. Well, it was maybe inferred by some comments the Premier
14 made. That's possible but if I may go back to my way of
15 thinking on that, I don't think we can speculate on what he
16 would do or wouldn't do. The evidence was there that he
17 hadn't given permission in writing, which is required.

18 Q. That's right. So it's not a defence, in any event, is it?

19 A. Not in my opinion.

20 Q. And there's no evidence to speculate.

21 A. No. A court may consider that in one way or the other with
22 respect to the conviction or the sentencing, but I still don't
23 think it was sufficient defence.

24 Q. And it's speculative because of factual foundation.

25 A. Right.

1 Q. And, once again, speculation in favour of the proposed
2 accused.

3 A. Right.

4 Q. Dropping to the next paragraph, they deal with the false
5 representations made to the banks to obtain the money in the
6 first place.

7 A. Yes. See, this is where we're covering a question you raised
8 earlier about the other charges.

9 Q. And he says of that proposed charge that the banks, there's
10 no indication that they wished to lay charges themselves and
11 so concludes,

12
13 It will be perceived as an exercise of dubious
14 fate if we were to simply reorient our efforts
15 away from Section 110C upon which the
16 Attorney General has pronounced himself and
17 towards' another Criminal Code section which
18 may or may not be easier to prove.

19 First of all, did you think that it would be "an exercise of
20 dubious fate" to, as you put it, complete the investigation into
21 that charge?

22 A. Well, it's sort of a principle of our investigations that if you
23 lose in one case, you don't turn around and lay a charge and
24 try something else.

25 Q. Right, but here you hadn't laid any charge at all.

A. No, that's true, but they told us... This was the charge we
zeroed in on and since we failed, then proceeding with laying

1 a charge in that particular offence, it would be the similar
2 thing to turn around and now say, "well, then we'll go this
3 direction."

4 Q. But it's not similar, is it? I mean the reason I suggest to you
5 for the rule you espouse is because someone has gone through
6 the indignity of a trial and they have been acquitted. And, at
7 that point, it would be unfair.

8 A. It sure would, yeah.

9 Q. But, in this case, he hasn't been subjected to anything except
10 press release.

11 A. That's true, but...

12 Q. Exonerating him.

13 A. I think it's in that vein, though, that we're speaking here.

14 Q. Do you agree with that? Or is that being too charitable?

15 A. Well, you see, all through this, my sights were set on the 110C
16 and the other charges, since they weren't, I didn't, I wasn't as
17 familiar with what was required for them, et cetera, I zeroed
18 on the 110C and, therefore, I didn't really give much
19 consideration to the other charges.

20 Q. I take it, though, that you didn't agree with this, the "exercise
21 of dubious fate." That was not your view.

22 A. I don't know. I asked for direction and I got it and I abided
23 by it.

24 Q. You don't like second guessing your superiors.

25 A. No, I don't.

MR. FEAGAN, EXAM. BY MR. RUBY

1 Q. I appreciate that and I know I'm calling on you to do it.

2 A. Because I don't know... They were in a position to have more
3 research done than I did. They had the benefit of my opinion.
4 I gave them my opinion and...

5 Q. We'll find out if they had any more research done. We will.

6 A. I beg your pardon?

7 Q. We'll find out if they had any more research done.

8 A. Yeah.

9 Q. We'll ask them.

10 COMMISSIONER EVANS

11 I was trying to suggest that to you for the last 20 minutes,
12 Mr. Ruby, that when you get them here, you ask them.

13 MR. RUBY

14 Thank you, My Lord. Your comments are not lost on me,
15 you see.

16 Q. Were there any other cases in your experience where there
17 was the benefit of so thorough an examination of the case and
18 an argument made so cogently in favour of the accused in
19 your history as an R.C.M.P. officer?

20 A. I know of a lot of cases where we ourselves gave a lot of
21 consideration to the situation of the accused and the value of
22 prosecution in many cases. But those that I recall most
23 vividly were in the Northwest Territories where we were
24 dealing with a native population that I...

25 Q. There were special factors there, right?

1 A. Yes.

2 Q. So the answer, I take it, is not in your experience here.

3 A. No.

4 Q. In the south.

5 A. But as I have stated previously, I had no first-hand
6 involvement with cases here.

7 Q. At page 116, there's a letter that you spoke of in my friend's
8 examination-in-chief. It's the first of two letters that were
9 delivered, I gather, together to Mr. How from the
10 Commissioner. And my friend asked you why this letter was
11 written and you said you made inquiries of Simmonds. We
12 have those. But you had also asked, I think, Mr. Venner. And
13 I wasn't clear on what the answer was when you asked him
14 why.

15 A. No, I didn't ask Mr. Venner. It was Mr. Quintal.

16 Q. Quintal, thank you.

17 A. That I telephoned when this came to my notice through the...

18 Q. What did he say as to why this letter was written?

19 A. I didn't get a response as to why. My main concern at that
20 particular time was why I hadn't been informed of it, and
21 that's an internal thing and I discussed that with him and...

22 Q. Okay, I've got that. Then when you speak to Simmonds, you
23 get told that Mr. How wanted a letter, and I quote your
24 language "of this nature". What's meant by "of this nature"?
25 What did he want exactly?

MR. FEAGAN, EXAM. BY MR. RUBY

1 A. I'm afraid I'm not able to answer that either. The
2 conversation with Mr. Simmonds wasn't such that I got a full
3 answer.

4 Q. Thank you.

5 A. I believe he'll be appearing, too.

6 Q. The chief will no doubt point out some points.

7 COMMISSIONER EVANS

8 I understand he's appearing, isn't he? Simmonds? The
9 former Commissioner, is he appearing?

10 MR. MACDONALD

11 Yes, he'll be here.

12 MR. RUBY

13 Q. Turning to the letter which you wrote and which was put in
14 the Assembly debates, Exhibit 166. Do you have that in front
15 of you loose? My colleague corrects me. This is the letter you
16 signed but not a letter you wrote, is that correct?

17 A. Yeah, I know the one you mean.

18 Q. Have you got it in front of you?

19 A. Okay.

20 Q. At the top of page 1686, the second page, you say:

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

24 A. Yes.

25 Q. Am I correct in understanding you now as saying that isn't

1 the facts or the substance of what was conveyed, but rather
2 the question of whether you had said it or merely affirmed it
3 when someone else put it to you.

4 A. Yeah, mainly that's... I was represented as being the fellow
5 who finally broke my silence and came out and said all these
6 things and actually I had nothing to do with giving the
7 information. I gave responses like "That rings bells", et
8 cetera, and then I was indicated that I'm the guy that was
9 saying all this stuff. The substance, most of it I have no
10 quarrel with.

11 Q. I'm told that that method of getting information from
12 someone is quite common.

13 A. Yeah, I understand.

14 Q. But it may not be in your experience.

15 A. Like I mentioned before, my past experience is that to be
16 frank and forthright has paid off, but it didn't that time.

17 Q. In the middle of this page, you say:

18
19 It is important, I believe, to recall as
20 Commissioner Simmonds pointed out in
21 February, 1981 that my judgement and that of
22 the R.C.M.P. force was reached entirely within
the force and there was no outside influence or
direction.

23 A. Yeah, this is quoting Simmonds, of course, as "my judgement."
24 "My judgement" is, I take that as meaning Commissioner
25 Simmonds' judgement.

1 Q. Yeah, "my judgement" is not true. It was not your judgement.

2 A. No.

3 Q. You were merely following orders.

4 A. Okay, to a certain extent, but I have to say, again, that I asked
5 for their advice. I asked for their guidance. I asked for their
6 direction. And I accepted it.

7 Q. That's right.

8 A. That's the only way the Force can operate. There has to be
9 somebody at the top to make the final decision.

10 Q. See, I read this as a statement that you shared this view. You
11 agreed.

12 A. I shared the view that not go ahead against the A.G.'s wishes
13 as a result of this. I didn't share the view that there wasn't
14 sufficient evidence to lay a charge.

15 Q. You didn't really share that view, I suggest. You accepted
16 that view because it was an order from above.

17 A. Yeah, I accepted it, yeah, all right, I accepted it.

18 Q. Is that accurate?

19 A. In the interests of the R.C.M.P. as a whole in Canada, yeah. I
20 did. I accepted it and...

21 Q. What about the interest of justice in that of Mr. Thornhill?
22 The interest of having a trial and public allegations? The
23 interest of having a stay of proceedings entered publicly so
24 that the whole world knows what's really going on behind the
25 scenes?

MR. FEAGAN, EXAM. BY MR. RUBY

1 MR. BISSELL

2 I object. My friend is making a speech and it was not this
3 gentleman's decision not to lay the charge.

4 MR. CHAIRMAN

5 You're quite right. It's not a proper question. It wasn't a
6 question anyway, it was a statement.

7 MR. RUBY

8 Well, just a second. Let me try and put it as a question.

9 MR. CHAIRMAN

10 You can put this, Mr. Ruby, during argument. We're going to
11 have argument at the end of October and it's within counsel's right
12 to take the evidence that's before us and develop any cogent
13 arguments that's sustained. But it's not appropriate, in my view,
14 to make the kind of statement, particularly to a witness like this
15 who you know can't conceivably offer an opinion that is going to
16 be of benefit to us.

17 MR. RUBY

18 Well, let me try another question to see if it's acceptable to
19 Your Lordship.

20 Q. You stated that this was a decision which was made in the
21 interest of the R.C.M.P. as a whole across Canada. Was it
22 equally in the interests of the public, bearing in mind the
23 interest in having justice administered in public, and I would
24 include by that the public laying of a charge and the public
25 entry of a stay of proceeding, and in the interest of Mr.

MR. FEAGAN, EXAM. BY MR. RUBY

1 Thornhill, having the charges aired thoroughly and in public
2 and without innuendo. Don't answer before Your Lordship
3 rules on that question.

MR. CHAIRMAN

4
5 It's the same question. I don't see how this... Surely that's
6 for us to decide, whether in our view the decision of the R.C.M.P,
7 the practice and procedure, which is only, which is all that we're
8 interested in here. And I repeat, unless somebody may reach
9 some other conclusions, that it is outside our mandate to decide on
10 the guilt or innocence of anyone and I don't think this witness can
11 help us on that.

MR. RUBY

12
13 Those are all my questions.

MR. CHAIRMAN

14
15 Now I've got to straighten out the order of... We've got new
16 faces and... I take it you come next, do you, Mr. Saunders?

MR. SAUNDERS

17
18 I guess I do, My Lord. Does Your Lordship wish I begin
19 now? It's after four-thirty.

MR. CHAIRMAN

20
21 Oh, yes, we're going to... We have a schedule and we are
22 going to try assiduously to meet that schedule, if we can.
23 Otherwise, this Inquiry may go on long beyond what we anticipate
24 and long beyond what we can afford.
25

EXAMINATION BY MR. SAUNDERS

1
2
3 Q Mr. Feagan, I'll take you first to the meeting that you had
4 with two members of the R.C.M. Police and Mr. Gale. That's at
5 page seven of the booklet before you and that's the meeting
6 that was convened on April the 10th, 1980, sir. Mr. Feagan,
7 do you have any notes yourself of what transpired at that
8 meeting?

9 A. No, I don't.

10 Q This was a regular Thursday morning session, was it?
11 4:32 p.m.

12 A. Yes, it was. Normally it was a meeting between the Criminal
13 Investigation Branch and the Director of Criminal.

14 Q Was it typical or unique for you to have been there that
15 Thursday?

16 A. It wasn't typical because normally the CIB Officer would be
17 there. In this case, it was the Assistant CIB Officer. And I
18 went with him. Every once in a while I attended just to sort
19 of keep in touch.

20 Q And I take it this meeting was not specially convened to deal
21 with the Thornhill matter but it did come up.

22 A. No, that's right.

23 Q And am I right that Mr. Gale was the one who introduced the
24 subject?

25 A. As far as I recall, yes.

MR. FEAGAN, EXAM. BY MR. SAUNDERS

1 Q. That he indicated to you and Inspector McInnes that he
2 wanted the RCM Police to pursue it.

3 A. That's right.

4 Q. And as a result of Mr. Gale raising it and expressing his view,
5 the RCMP did, in fact, commence its formal investigations.
6 Correct?

7 A. Yeah. He mentioned something to the effect that he thought
8 maybe the Minister should request us to do an investigation
9 and I said that, you know, since there is a possible conflict
10 here we will conduct an investigation. I don't need that
11 direction.

12 Q. You didn't need the specific direction from the Attorney
13 General.

14 A. No.

15 Q. There was enough that Mr. Gale raised it and asked that you
16 deal with it so that in the words of a memo it could be cleared
17 up one way or the other.

18 A. Right.

19 Q. Correct?

20 A. Right.

21 Q. Thank you.

CHAIRMAN

22 Q. Before we leave there, Mr. Saunders, Mr. Feagan I got the
23 impression this morning from something you said that if a
24 request came from, say, the Attorney General, well maybe the
25

1 Deputy, I don't suppose the Attorney General would make
2 many requests but the Deputy or a senior prosecutor to you
3 to carry out an investigation, that you would report to the
4 person who, when you completed your investigation you
5 would then report to the person who asked the investigation
6 be carried out?

7 A. Yes. That was, that would be the general practice. Unless
8 during that first discussion when we were asked to do the
9 investigation they said, you know, you can take it to so and
10 so, will be handling the case, you know. But when the request
11 came from them, yes, I would say the report...

12 Q. So that when Mr. Gale, according to this memorandum on
13 page 7, when Mr. Gale suggested to you, or brought to your
14 attention facts and you indicated that you would be carrying
15 out an investigation; would not, under the normal course of
16 events then, would not your report go to him?

17 A. Yes.

18 Q. Well if your report was to go to him, why all the
19 correspondence back and forth or statements as to the
20 procedure to be followed?

21 A. Because they took objection to our member contacting a
22 representative of the Crown for advice.

23 Q. I see.

24 A. We felt, as in any investigation our investigator, in particular
25 an involved one like this where there are search warrants

1 involved and all that type of thing, our investigators like
2 access to advice from a Crown and it was as a result of our
3 investigator going and getting the advice from the Crown that
4 Mr. Gale objected to us doing this.

5 Q. So ordinarily...

6 A. There was no question the report was going to go to Gale.

7 Q. So that ordinarily if Mr. Gale had said nothing to you
8 following this meeting, that even though you consulted a
9 relatively junior Crown Prosecutor or your investigating
10 officer did, the conclusions would have gone to Mr. Gale of
11 your investigation.

12 A. That's right. But maybe a point that's been missed here. Mr.,
13 as a result of our constable going to Mr. Burke, Mr. Thomas
14 designated Burke to handle this particular case.

15 Q. Do you know, Mr. Thomas is being called, but do you know
16 whether or not Mr. Thomas was aware of the instructions that
17 you had received from Mr. Gale?

18 A. He must not have been.

19 Q. I see.

20 A. Well, maybe, I'm sorry. A letter later from Mr. Gale indicated
21 that we were told not to go to Crown counsel, you know, not
22 to liaise with them for information even. Now I don't, Mr.
23 Thomas wasn't aware of that. He was likely aware that we
24 were going to give the report to...

25 Q. Well we'll wait for Mr. Thomas. I'm just trying to get the...

MR. FEAGAN, EXAM. BY CHAIRMAN

1 A. Between, you know, consulting with Crown counsel and where
2 the report went is where maybe there's a bit of...

3 Q. No, I think I understand you now that your practice normally
4 is to where there's been a request, an appropriate request
5 from the senior prosecutor, for you to carry out an
6 investigation, that the investigating officers normally feel free
7 to go to any prosecutor for advice during...

8 A. And often there's one appointed to handle that particular
9 case.

10 Q. But then your conclusions and recommendations go to the
11 Crown Prosecutor who requested the investigation.

12 A. Yes, that's right.

13 Q. Not the person you've been liaising with.

14 A. Yeah, that's, could very well be.

15 Q. All right. Okay. I have enough. Thank you.

16 MR. SAUNDERS

17 Q. Thank you, My Lord. Mr. Feagan, you understood in your
18 experience as Commander of "H" Division that there had been
19 other cases where that same sort of direction had been given
20 by the Department.

21 A. Yes.

22 Q. And do I have it from you, sir, that you recall Mr. Gale's
23 direction at that meeting in April that the report prepared by
24 the RCMP was to be sent to the Department. You're sure of
25 that?

1 A. Mr. Gale's direction.

2 Q. Yes.

3 A. I think so, yes.

4 Q. Thank you. My friend this morning asked you a question a
5 couple of times and as I remember your answer to both times
6 the question was asked you recalled specifically that the was
7 Mr. Gale's direction that the report be sent to the Department
8 but you could not recall whether or not Mr. Gale had said you
9 were not to have discussions with the local Crown.

10 A. That sounds...

11 Q. Is that correct?

12 A. Yeah.

13 Q. Thank you. And when Mr. Gale wrote to you his letter of July
14 25, which is at page 18 of the booklet, sir...

15 A. Page 18.

16 Q. Page 18. And I guess it's fair to say that this letter was the
17 reaction of Mr. Gale upon his discovery that whatever
18 direction he had given had not been followed. Correct?

19 A. Yes.

20 Q. Thank you. And in the letter, sir, it says, I'm reading about
21 seven lines down, the sentence that starts,

22
23 Such action by Inspector Blue is directly
24 contrary to the instructions of the Deputy
25 Attorney General relayed through me to
Superintendent Christen, Chief Superintendent
Feagan and Inspector McInnes.

1 Did you ever, sir, upon receipt of that letter from Mr. Gale
2 contact him verbally or in writing to tell him he was wrong in
3 that assertion?

4 A. I didn't personally but Inspector or Superintendent Christen
5 did.

6 Q. I'll get you to turn first to the memorandum by Inspector
7 McInnes who was the subordinate officer to Superintendent
8 Christen.

9 A. Right.

10 Q. And this is a memo at page 12 and my friend, Mr. Ruby,
11 already drew your attention to the bottom portion of this
12 memorandum from Inspector McInnes. I take it this is
13 nothing more than a memo to file, is that so?

14 A. That's what it is.

15 Q. A memo from McInnes that he would know would be
16 reviewed by his superior officers?

17 A. Yes.

18 Q. It's not a memo from McInnes to Mr. Gale.

19 A. No. No.

20 Q. Mr. McInnes is not telling Mr. Gale directly that in his,
21 McInnes' view, the direction that they not have discussions
22 with local Crowns was in McInnes' view obstruction of justice.

23 A. Um-hmm.

24 Q. Correct?

25 A. Could I have that again, please?

MR. FEAGAN, EXAM, BY MR. SAUNDERS

1 Q Yeah. There's no comment made by McInnes to Mr. Gale that
2 in McInnes' view it was obstruction.

3 A. No, you're right.

4 Q And when I turn, sir, to page 24 of the booklet, and this is
5 your letter to Mr. Gale of September 11, 1980, and that, I
6 guess, is the cover letter that accompanied the whole report?

7 A. The whole report, right.

8 Q The report that was dated, I think, August the 29th?

9 A. Well, yeah, I guess so. I'm not sure of the date of the report.

10 Q In any event...

11 A. Anyway it was the whole investigation report that he had
12 asked for.

13 Q Yes. And in the first sentence of your cover letter to Mr. Gale
14 you are acknowledging receipt of his letter to you of July 25...

15 A. That's right.

16 Q In which he expressed himself. And you do not take
17 exception to the assertions made by Mr. Gale in that letter.

18 A. No.

19 Q All right. And you ask Mr. Gale for his legal views, or the
20 Department's legal views, and whether it's Gale's wish that it
21 be referred on. Is that right?

22 A. Um-hmm.

23 Q Now turning, sir, to the meeting at Headquarters in Ottawa
24 with several senior RCM Police officers, the list of which is at
25 page 55 and the minutes of that meeting in the pages there

1 following, who was the writer of these minutes, Mr. Feagan?

2 A. I don't know who actually was taking, writing the minutes.

3 Although there's some indication here. It would seem that it
4 might be Staff Sergeant Dillabaugh. It was some, one of the
5 members there.

6 Q. Staff Sergeant Dillabaugh?

7 A. Yeah.

8 Q. It would be the second to last name in that list of officers?

9 A. Yeah. I'm not sure that it was him but...

10 Q. You understood at the meeting, sir, that given the seriousness
11 of the nature of the charge and the circumstances of the
12 potential accused, that it was a matter of serious proportions
13 as far as the RCMP was concerned?

14 A. Yes.

15 Q. And that's addressed at page 57 of the minutes where the
16 reference by the writer is to obvious ramifications.

17 A. Yes.

18 Q. And the writer goes on to say that the merits of the case be
19 examined at the highest possible levels within the Force.

20 A. Um-hmm.

21 Q. And did you understand, Mr. Feagan, that following your
22 return from Ottawa to Halifax that this case was going to be
23 seriously considered and reflected upon by superiors to you?

24 A. It was, sure. I was told what to do when I come back to
25 Halifax and whatever the result of that was I knew that they

1 would deliberate over and, yeah...

2 Q. And that such deliberations would be conducted by your
3 superior officers?

4 4:44 p.m.

5 A. That's right.

6 Q. And as I understand...

7 A. Now I was, at this stage, since I put it sort of into their hands
8 through that meeting, et cetera, now I was an agent, if you
9 like, of them, in a sense.

10 Q. And you had the direction from your senior officer, Deputy
11 Commissioner Quintal, to...

12 A. Right.

13 Q. Go back, and if I can put it this way, test it with the Deputy
14 and see if it would be accepted?

15 A. Yes, see if they would not listen to further argument, yeah.

16 Q. See if they will be prepared to listen?

17 A. Uh-huh.

18 Q. And you did test it and then communicated the results of that
19 meeting back to headquarters.

20 A. Yeah, with...

21 Q. And it was your expectation that your report on the results of
22 that meeting would again be considered by your superiors.

23 A. Yes, it sure was, yeah.

24 Q. But you have no personal knowledge of the number of times
25 it may have been discussed or by whom.

1 A. No.

2 Q. I heard you say on direct that Mr. Coles admitted to you
3 during your meeting on November the 12th that the police
4 did have the right to lay charges.

5 A. Yes.

6 Q. And you have confirmed that at the middle of page 64 of the
7 memo that you prepared immediately after you returned to
8 your office.

9 A. Yes.

10 Q. And in Mr. Coles' subsequent letter to you written in January
11 of 1981, in answer to your inquiry in December, Mr. Coles
12 again confirmed the right of a police officer to lay a charge.

13 A. Yeah, could we look at that? Where is that?

14 Q. Yes, I'll find that for you. It's towards the end of the booklet,
15 sir. We have Mr. Coles' letter to you starting at page 106 in
16 answer to your December 30th letter at page 104.

17 A. The general request re Crown counsel, yeah.

18 Q. Yes, and Mr. Coles in his response to your inquiry said that it
19 was the right of a police officer to lay a charge should she or
20 he choose to do so.

21 A. Yes.

22 Q. And do you recall at that meeting, Mr. Feagan, Mr. Coles
23 saying to you, "Hugh," or "Mr. Feagan," or "Superintendent,"
24 however. Were you on a first name basis?

25 A. Yes.

MR. FEAGAN, EXAM, BY MR. SAUNDERS

1 Q. Do you recall Mr. Coles saying to you, "Hugh, if you wish to lay
2 a charge, go ahead, but I expect you to be the informant and
3 I'll see you in court and I'll withdraw it personally"?

4 A. It's possible that he said that. I don't recall it specifically.

5 Q. When you received the copy of the letter from your
6 Commissioner to the then Attorney General Mr. How, I turn
7 your attention to page 118, the penultimate paragraph of that
8 correspondence, where your Commissioner says, and I'm
9 reading four lines down from that beginning of the paragraph:

10
11 What is important, of course, is that this is a
12 judgement reached entirely within the force and
13 without outside influence or direction. Had we
14 come to a different conclusion, we would have
15 sought further discussion with the Deputy
16 Attorney General following which, if differences
17 had not been reconciled, it might have been
18 necessary to present an information and
19 complaint to a justice, well knowing that any
20 subsequent decision as to whether or not
21 prosecution proceed, was a matter entirely for
22 your consideration.

18 And you received a copy of this letter, Superintendent
19 Feagan?

20 A. Eventually, yes.

21 Q. And do you accept that notion that it's the ultimate
22 responsibility of a police office to lay an information just as
23 it's the ultimate responsibility of a prosecutor to decide
24 whether that will be proceeded with?
25

1 A. I still contend that, yes.

2 Q. Mr. Coles, I take it, during your meeting explained the
3 practicality of that and I think you said he suggested it would
4 be ridiculous, were you to have gone ahead and lay a charge,
5 even though it was your right to do so in the knowledge that
6 the Crown would stay it, correct?

7 A. He didn't put it exactly that way, but that's true. But what he
8 said was in spite of the advice and his decision not, that there
9 wouldn't be a charge, that it would be ridiculous for me to lay
10 a charge when he had given me advice, "Don't lay a charge.
11 There's not sufficient evidence."

12 Q. In other words, why would it make sense for a police officer
13 to go to court and swear on information in the knowledge that
14 the Crown was going to attend and withdraw?

15 A. Yeah.

16 Q. Now do I take it from the notes of the meeting at
17 headquarters in Ottawa that there had been similar incidents
18 in other provinces where that had occurred?

19 A. I'm not aware of those first hand but that was discussed, yes.

20 Q. That was discussed.

21 A. When a letter was received saying that they would stay
22 proceedings if a charge was laid, that the charge was not laid.

23 Q. Yes, and some officers attending that meeting were concerned
24 about what effect that might have on their perceived moral
25 duty to lay a charge, is that fair?

1 A. Uh-huh, that's right, yeah.

2 Q. And you still say that you felt you had the moral duty and
3 authority to swear on information in this case.

4 A. Yes.

5 Q. But you never did.

6 A. No, I didn't.

7 Q. Because you wanted to check, I suggest, with your superior
8 officers in Ottawa to see if they would back you.

9 A. That's right. As soon as my opinion was different than that of
10 the Deputy Attorney General, my next step in, according to
11 our policy, has to be to go to Ottawa.

12 Q. Yes.

13 A. I don't just lay a charge for the sake of laying a charge.

14 Q. And if Mr. Coles at your meeting in November invited you to
15 be the informant on the charge, you didn't go along with that
16 suggestion but referred it on to your superiors.

17 A. He may have invited me to, but in the vein of the whole
18 conversation that day, it would, if he did say that, I did not
19 take that seriously.

20 Q. No, and you wanted to check with your superiors.

21 A. Certainly, because I think, I took it... If that was said, I took it
22 as if, well, you know, if you think so much, go ahead and lay
23 your charge and we'll stay it. It was in the vein of argument
24 that it was put, let's put it that way, not a direction. I didn't
25 take it as a...

1 Q. No, no.

2 A. I didn't take it as a serious consideration at all.

3 Q. But you decided that you had better find out whether your
4 superior officers agreed with you, correct?

5 A. Remember, this was after the meeting, though.

6 Q. Yes.

7 A. I knew that my superior officers agreed that there was a
8 charge when I was talking to Mr. Coles. But the opposition
9 that he put up to my so doing caused me to go back to my
10 superiors to say, "Look, those ramifications that we foresaw,
11 they're coming about."

12 Q. And as they expected you to report, you went to the meeting
13 and then reported back.

14 A. Exactly.

15 Q. Right.

16 A. And asked for their further direction.

17 Q. Just to pursue an inquiry made of you by the Chief Justice,
18 why didn't you inform either Attorney General How or
19 Deputy Attorney General Coles that it was the view of your
20 superiors that you were echoing rather than the view of your
21 investigating officer, Constable House?

22 A. Because I was the Commanding Officer of the province, I felt
23 it my responsibility to take, to shoulder this argument with
24 advice from elsewhere, but it was me who was dealing with
25 the Attorney General.

1 Q. If I just take you to your notes of that meeting, and at page
2 67 of the memo to file, the sentence begins just at the bottom
3 of page 66, sir.

4 I nevertheless had principles that I believed in
5 and, although I was not a lawyer, I was of the
6 opinion from discussions with my investigators.

7 Is that the thrust of what you said to Messrs. How and Coles
8 that...

9 A. Yeah.

10 Q. You were relying upon the opinion of your investigators?

11 A. And my own.

12 Q. And, at that stage, sir, the only investigator that they would
13 be aware of, having received your report, would be Constable
14 House?

15 A. No, they were quite aware that we had all discussed it.
16 Superintendent Christen, myself, Inspector Blue, and
17 Inspector McInnes.

18 Q. All right, but they were...

19 A. We were all involved.

20 Q. They had no knowledge of the consultation in Ottawa.

21 A. Not as far as I'm aware, no.

22 Q. And I take it from your note to the file, when Attorney
23 General How entered into the conversation, the second to the
24 last paragraph, where he suggested to you that you had
25 received bad advice from the people who worked for you,

1 would indicate his belief that the advice you were getting was
2 from people junior to you, correct?

3 A. Yes.

4 Q. I thought you also answered Chief Justice Hickman with this
5 statement, that you knew there would come a time when you
6 would tell them, that is to say the people in the Department,
7 that you had the support of headquarters.

8 A. Uh-huh.

9 Q. Did that time ever come, sir?

10 A. Yes.

11 Q. When was that?

12 A. When I went back with the memorandum as a result of
13 Quintal's direction to me to say that we would not lay a
14 charge against their wishes.

15 Q. And this was your two-page letter back to the Department.

16 A. Yeah. You'll recall in that I stated that I had taken it to my
17 Commissioner.

18 Q. Yes, indeed, and that the decision was concurred in that a
19 charge not be prosecuted.

20 A. That's right.

21 Q. And would you expect, Mr. Feagan, in a case as serious and
22 notable as this, that it would be considered by the
23 Commissioner or his Deputy?

24 A. Yes, I knew that it would be considered by them when I
25 reported back as the results of my meeting with the Attorney

1 General.

2 Q. And the letter that you received from your superior officer,
3 Mr. Quintal, is at page 93 of the booklet and in that, the
4 Deputy Commissioner, who was the second most senior person
5 in the force?

6 A. Right.

7 Q. Is giving you the decision that you were waiting on.

8 A. That's right.

9 Q. Do you have any idea, sir, why it came to you about a month
10 after your initial request for advice?

11 A. I assume that they were discussing it, researching it more,
12 considering the elements that I had reported back to them.

13 Q. Yes, sir. At page 94, the middle of the page, the Deputy
14 Commissioner for Canada takes exception to a view expressed
15 by an investigator to the effect that all a police officer needs
16 is a prima facie case to lay a charge, correct?

17 A. That all, yeah, all he needs, yeah, okay.

18 Q. Is that fair?

19 A. He's taking exception to the way Inspector Blue worded the...
20 That there are other things to be considered. This is what he
21 says.

22 Q. Other things that go under the category or rubric, police
23 discretion?

24 A. Yeah, right, and moral duty to society, et cetera, et cetera,
25 and...

1 Q. You identified some this afternoon.

2 A. Yeah.

3 Q. As being cost. I think result was another, whether...

4 A. I don't think I mentioned cost but...

5 Q. I'm sorry, I thought you had. Would cost to the community in
6 a prosecution be a feature of a police officer's exercise in
7 discretion?

8 A. I would say you would consider that, yes, along with a lot of
9 other things.

10 Q. Would impact or effect upon an accused person of having a
11 charge laid in force...

12 A. Oh, certainly.

13 Q. Be a consideration?

14 A. Yes.

15 Q. Would potential defences that may be raised by defence
16 counsel be a consideration?

17 A. Yes.

18 Q. Would likelihood of conviction be a proper feature for a police
19 officer to consider before swearing in information?

20 A. Yes.

21 Q. And I suggest to you, sir, that these are features that were
22 addressed by the Deputy Commissioner in his letter to you.

23 A. Uh-huh.

24 4:57 p.m.*

25 Q. You did not, sir, refer a copy of the Deputy Commissioner's

1 letter to you on to the Department of the Attorney General.

2 A. No, I didn't. Instead, I wrote a memorandum of my own.

3 Q. My friend, Mr. Ruby, asked a question and I say, with respect,
4 that some juxta positioning of the portions of the question
5 resulted in this answer, as I noted it, sir. That opposition by
6 the Attorney General's Department caused the other features
7 of the R.C.M.P. investigation never to be completed. And,
8 frankly, I don't understand that. As I read the letter from
9 Deputy Commissioner Quintal and the subsequent letter in
10 February of '81 from Commissioner Simmonds, it's their
11 statements in both reports to you that there were not grounds
12 to pursue an investigation.

13 A. Yes, but had there not been opposition from the Attorney
14 General in the first instance, our investigation would have
15 continued on until it came to its completion.

16 Q. I suggest to you, Mr. Feagan, though, that quite apart from
17 any expression of disagreement or opposition or whatever
18 term you wish to apply to it, it was still within the purview of
19 you as commanding officer of "H" division to decide that the
20 investigation continue, if you saw fit.

21 A. I guess so, in contradiction to what the Attorney General told
22 me to do. If he told me not to, I... The same thing as laying
23 the charge, I'd have laid it against his wishes and...

24 Q. I understand that.

25 A. Continued the investigation against his wishes.

1 Q. I understand that but it's clear...

2 A. It was quite clear to me when he told me don't, there is no
3 charge here and there's no room for any more investigation in
4 Mr. Coles' memorandum to me after the news conference. It
5 fit in the same category, continue the investigation as laying a
6 charge.

7 Q. Well, there were two other matters that were identified by
8 House in his report.

9 A. Uh-huh.

10 Q. And Commissioner Simmonds, who writes the letter at page
11 117 of the brochure, says in the second paragraph that at the
12 completion of his review, and that would be his Deputy
13 Commissioner Quintal, correct?

14 A. Yes, he mentions our review, too, and he's taking in a large
15 gamut here right from the meeting and whatever took place
16 after.

17 Q. And I take your point, because at the very last line of page
18 117, he says, "I instructed that the file be carefully reviewed
19 within the force."

20 A. Yeah.

21 Q. And naturally you don't know what the Commissioner did.

22 A. And I don't know where he's referring to. I don't know
23 where his instruction came in. I don't know whether he's
24 talking about before the meeting or after the meeting. Maybe
25 he's saying I asked for a review after the meeting, after

1 Feagan went to the Attorney General and got the feedback.

2 Now it came back to us, now maybe he's asking for another
3 review. I'm not just sure what he is talking about there.

4 Q. But what we can be sure of when we look at the second page
5 of the letter, sir, is that following the meeting of superior
6 officers in Ottawa, that there was a review conducted by
7 Quintal and then Quintal had a briefing of the Commissioner.

8 A. I assume, yes.

9 Q. And it's clear, is it not, sir, that Quintal's view was that there
10 was not a need or there did not warrant the laying of a charge
11 nor the continuation of an investigation.

12 A. This was after my dialogue with the Attorney General, yes.

13 Q. And after whatever assessment it was that was conducted by
14 the highest ranking officers in the force.

15 A. Yeah. Prior to that, we were waiting on the Attorney General
16 to see whether, what came out of it.

17 Q. Yes.

18 A. To see if we could get further evidence in and when we
19 couldn't, when we couldn't present our further arguments to
20 him, well, then Quintal had a review and decided, well, we
21 can't go ahead.

22 Q. Have you had any discussions, Mr. Feagan, with either with
23 former Commissioner Simmonds or former Deputy
24 Commissioner Quintal about this matter?

25 A. No, I haven't.

1 Q. I remember, as well, Mr. Feagan, that you had suggested that
2 the case be independently considered by outside counsel.

3 A. Yes.

4 Q. Do you recall that, sir?

5 A. That's an idea we came up with, yes.

6 Q. That was your notion?

7 A. I believe it was a C.I.B. officer's idea but I endorsed that.

8 Q. And the reference to it, so that you have it, is at page 79 of
9 the book.

10 A. But I got sufficient explanation back why we shouldn't do that
11 that I was quite satisfied that we shouldn't.

12 Q. Well, the explanation, so that, again, the Commissioners have
13 it, is at page 84. And apparently that suggestion was
14 considered by the Department of Justice.

15 A. No. Oh, in Ottawa, right.

16 Q. Yes, and rejected...

17 A. The federal department.

18 Q. And rejected.

19 A. For a good re... Yeah, they pointed out why and also I was
20 quite satisfied with it.

21 Q. The reason, Mr. Feagan, advanced by the Department of
22 Justice was that the chief law officer of the province was the
23 Attorney General for Nova Scotia.

24 A. That's right.

25 Q. Correct?

MR. FEAGAN, EXAM. BY MR. SAUNDERS

1 A. Uh-huh, and that if anybody retained outside counsel, it
2 should be him. Which I may say that I'm not entirely
3 familiar with, but it's done in some cases. I don't know here
4 in Nova Scotia, but I know other places that often if there's
5 any indication that there may be a conflict because of the
6 Attorney General dealing with his own people, or charges
7 contemplated against his own people, that they appoint an
8 outside lawyer to look after the matter.

9 Q. Following receipt of the decisions of Deputy Commissioner
10 Quintal and Commissioner Simmonds, did you express any
11 disagreement to those officers on the reports and decisions
12 and letters as filed?

13 A. Nothing in writing, no.

MR. SAUNDERS

14 Thank you, Mr. Feagan.

COMMISSIONER EVANS

15
16 When you were having conversation with the Deputy
17 Attorney General and he suggested to you that you lay the
18 information, was it customary for you as the head officer to lay...
19

MR. FEAGAN

20 A. No, and he knew it wasn't.
21

COMMISSIONER EVANS

22 He knew it wasn't. Did you ever see him in court
23 withdrawing a charge?
24
25

MR. FEAGAN, EXAM. BY MR. SAUNDERS

1 MR. FEAGAN

2 A. Did I ever see him?

3 COMMISSIONER EVANS

4 Yes.

5 MR. FEAGAN

6 A. No. As I explained before, though, I had a good working
7 relationship with the Deputy Attorney General and I accepted
8 this for what it was at the time under the circumstances. He
9 was emotional at the time and...

10 COMMISSIONER EVANS

11 It was a game play.

12 MR. FEAGAN

13 A. That's right.

14 MR. CHAIRMAN

15 Mr. Ross?

16 MR. ROSS

17 Mr. Justice Evans asked my questions. Thank you, My Lord.

18 MR. BISSELL

19 We have no questions, My Lord.

20 MR. CHAIRMAN

21 Mr. Merrick?

22 MR. MERRICK

23 My Lord, I have just one or two, if I can work this
24 technological marvel here.

25

EXAMINATION BY MR. MERRICK

1
2
3 Q Mr. Feagan, you've described a series of meetings and
4 discussions that were taking place between the R.C.M.P. and
5 the Attorney General's Department. At no time was Mr.
6 Thornhill ever involved in those discussions, was he?

7 A. He was never involved.

8 Q In fact, to the best of your information and all of the evidence
9 that you've seen, Mr. Thornhill was never involved in any
10 way, either up front or in the background in any of these
11 dealings.

12 A. He was involved in the investigation. I believe he gave a
13 statement.

14 Q Yes, but the point in time that we're now interested in in this
15 Inquiry is from August on, the point where the statement of
16 facts...

17 A. That's right, he was never involved.

18 Q If I were to put to you that he was having to sit back and
19 read about this in the media, just like the rest of us, there's
20 nothing you know of that could dispute anything like that.

21 A. That's right.

22 Q And, as I understand it, you take objection to three main
23 areas or things that you say were perhaps done with
24 irregularity.

25 A. Uh-huh.

MR. FEAGAN, EXAM. BY MR. MERRICK

1 Q If I can use that word. First, that the R.C.M.P. didn't have the
2 same access to Crown counsel that they might have preferred.
3 Secondly, that the R.C.M.P. disagreed with the legal opinion
4 rendered in the memorandums prepared by the A.G.'s
5 Department. And, thirdly, I suppose, that the R.C.M.P. felt
6 that they were pre-empted in any further consideration of
7 this matter, once the press release was issued by the A.G.'s
8 office. Am I fair in summing up your three points of concern?

9 A. Yeah, that had that effect, yes.

10 Q And you know of nothing to indicate that Mr. Thornhill had
11 anything to do with those steps being taken?

12 A. As far as I know, he had nothing to...

13 Q Nothing to do with this.

14 A. Nothing to do with any of those things.

MR. MERRICK

15
16 Thank you. That's all I've got.

MR. CHAIRMAN

17
18 Thank you very much, Mr. Feagan. We will rise until 9:30
19 a.m. on September 13th.

20 ADJOURNED TO 9:30, SEPTEMBER 13, 1988

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22
23
24
25

REPORTER'S CERTIFICATE

I, Margaret E. Graham, Court Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.



Margaret E. Graham

DATED THIS 12 day of September 1988 at Dartmouth, Nova Scotia