ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Volume 83

Held: September 12, 1988, at the St. Thomas Aquinas Church Hall, Halifax, Nova Scotia

Before: Chief Justice T.A. Hickman, Chairman
Assoc. Chief Justice L.A. Poitras and
The Honourable G. T. Evans, Q.C., Commissioners

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David Orsborn: Commission counsel

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Mr. Ronald N. Pugsley, Q.C.: Counsel for Mr. John F. MacIntyre

Mr. Donald C. Murray: Counsel for Mr. William Urquhart

Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for Donald MacNeil estate

Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P. and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and MacAlpine

Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel for Staff Sgt. Wheaton and Insp. Scott

Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for the Union of Nova Scotia Indians

Mr. E. Anthony Ross: Counsel for Oscar N. Seale

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black United Front

Court Reporting: Margaret E. Graham, OCR, RPR

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1

2 MR. MacDONALD

3 Good morning, My Lords. When we broke or adjourned the
4 hearings in June we had contemplated the requirement to issue a
5 subpoena or attempt to have a subpoena issued out of
6 Newfoundland to secure the attendance of Mr. Harris. As a result
7 of the cooperation now between counsel and on Mr. Harris's behalf
8 he is appearing voluntarily this morning to give evidence.

9 The agreement reached between counsel and the
10 understanding on which Mr. Harris appeared voluntarily conforms
11 with your Lordships' decision which was given on May 31st, when
12 you indicated that there was one area in which you would like to
13 hear evidence from Mr. Harris, and that is whether or not John
14 MacIntyre had deliberately attempted to conceal some documents,
15 and in particular a Patricia Harriss statement from Staff Sergeant
16 Wheaton. We have undertaken to counsel and to Mr. Harris that
17 we would question on that area only and also that if anyone else
18 attempted to question on another area that we would be objecting,
19 subject of course to your Lordships' ruling.

20 MR. CHAIRMAN

21 Fair enough, call Mr. Harris.

22 MR. MacDONALD

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MR. CHAIRMAN

Fair enough, call Mr. Harris.

MICHAEL HARRIS, duly called and sworn, testified as follows:

EXAMINATION BY MR. MACDONALD

Q. Your name, sir, is Michael Harris?

A. That's correct.

Q. And you're the author of the book, *Justice Denied*?

A. Correct.

1 Q. Would you tell the Commissioners, please, in the course of
2 doing your research for that book and in writing the book, on
3 how many occasions you would have met with and
4 interviewed Staff Sergeant Harry Wheaton?
5 A. Probably three to four times during that period.
6 Q. Are you able to tell us over what period of time those
7 interviews would have taken place?
8 A. It was approximately between, in the year between March
9 29th, '82 and May 10th, '83.
10 Q. During each interview, would you be covering specific topics
11 or dealing generally with Staff Wheaton's involvement?
12 A. Well, there are two types of talks that we had. We had taping
13 sessions in which we got down to brass tacks on particulars of
14 the investigation and other factual matters that I was
15 interested in. And there were general talks... If you're talking
16 about meetings that took place prior to formal tapings, that
17 might happen after a court session. And these were the
18 occasions when I was basically saying to him, "I need to talk
19 to you. I'd like to talk to you." And I was haring back from
20 him what his response and openness was to that request.
21 Q. But there were occasions when you met with him and taped
22 the interview, is that correct?
23 A. Yes, for the book all sessions were taped.
24 Q. All sessions were taped?
25 A. Correct?

1 Q. And are those tapes still in your possession?
2 A. Yes, I have those tapes.
3 Q. How long would the interviews take when you were taping
4 Staff Wheaton?
5 A. It's tough to be explicit. I would say I have two to three
6 hours worth of tapes, but subject to check.
7 Q. Okay. When is the last time you reviewed the tapes?
8 A. Four years ago.
9 Q. Would it just be you and Staff Wheaton present, or would
10 other people be there?
11 A. Just myself and Staff Wheaton.
12 Q. Now I believe you know, Mr. Harris, the topic of interest to
13 the Commission, I would like if you would for you to tell the
14 Commission whether Staff Wheaton at any time mentioned to
15 you an incident where Sergeant MacIntyre allegedly threw
16 some papers deliberately on the floor?
17 A. Yes, he did mention that to me, actually on more than one
18 occasion.
19 Q. Would you tell the Commissioners what it is Staff Wheaton
20 said to you?
21 A. To the best of my recollection, Staff Wheaton made the point
22 that, in his opinion, Chief MacIntyre had concealed some
23 information that Staff Wheaton and his partner had needed to
24 complete the documentary side of their investigation into the,
25 the reinvestigation into the Marshall case.

1 Q. Did he identify what information?
2 A. Yeah, he said that, I believe it was one of Patricia Harriss's
3 statements, I think the first statement. But, again, subject to
4 checking it. It was dropped on the floor and kicked under a
5 desk.
6 Q. Was this at a time... I'm sorry. Did the incident allegedly
7 occur at a time when Staff Wheaton had been seeking
8 information from the Chief?
9 A. Yes, I think the problem was, or the allegation was that Staff
10 Wheaton had asked for all the files with respect to the case
11 and was finding difficulty it getting all those files. And this
12 was an example of lack of cooperation, I suppose, for want of
13 a better word.
14 Q. You were aware in the course of your research that an order
15 had been issued from the Attorney General's office directing
16 the Chief of Police to turn over all information to Staff
17 Wheaton.
18 A. Yeah, I believe that was Attorney General How.
19 Q. Was there any reference to you by Sergeant MacIntyre... I'm
20 sorry, by Staff Wheaton that the incident occurred at a time
21 when Wheaton was picking up the materials in response to
22 that order from the Attorney General?
23 A. I believe so.
24 Q. Would these references to that incident by Staff Wheaton
25 have occurred during your taping sessions?

1 A. Yes.
2 Q. And do I understand then that you would have in your
3 possession today tape, tapes of those interviews?
4 A. I would expect so. I won't be categorical because during the
5 taping sessions, we would occasionally stop and discuss points
6 off of tape. But it was certainly during those taping sessions
7 that the issue was raised.
8 Q. Are the tapes that you have identified by person?
9 A. I beg your pardon?
10 Q. Are the tapes that you have in your possession identified so
11 that you could easily get to the tapes of your interviews with
12 Staff Wheaton?
13 A. I'm sorry, I don't follow your question.
14 Q. The tape recordings that you've done of the interview with
15 Wheaton, is it something that you could pick up easily, or
16 would you have to listen to hours and hours of tape?
17 A. I'd have to review the tapes.
18 Q. You don't have particular tapes that are marked "Interview
19 with Wheaton," interview with somebody else.
20 A. Oh, of course, I see what you mean. Yeah, of course, they're
21 marked as to name, but I'd have to review the tapes
22 themselves in order to find the pertinent parts.
23 Q. And you think there's a couple of hours of those tapes?
24 A. Yes.
25 Q. You haven't obviously made an attempt to do that.

1 A. To do which?
2 Q. To review the tapes, to refresh your memory in preparation
3 for giving this evidence today.
4 A. No, I haven't reviewed the tapes because I have a very good
5 recollection of the one issue that was of interest to the
6 Commission.
7 Q. Okay, so you do have very good recollection of that.
8 A. Yes.
9 Q. Who was present or was anyone present with Wheaton and
10 MacIntyre at the time of this incident? Did Wheaton tell you
11 anyone was present?
12 A. I believe the other officer was Herb Davies.
13 Q. And you believe that Wheaton told you that?
14 A. Yes.
15 Q. Did you ever interview Davies?
16 A. No, I didn't.
17 Q. Did you ask to interview Davies?
18 A. No, I didn't.
19 Q. You said your recollection is that Staff Wheaton told you this
20 on more than one occasion, told you about the incident?
21 A. Yes. I'm not sure if those were always formal interview
22 situations, but certainly in conversation subsequent to the
23 first time, it was raised again.
24 Q. Did you interview anyone other than Wheaton with respect to
25 those allegations?

A. No, the only other person who was able to be interviewed wouldn't grant an interview.

Q. That was?

A. Staff Sergeant... Sergeant MacIntyre, or Chief MacIntyre.

Q. Well, Davies would be somebody who obviously would have some...

A. Yeah, that's true. That's true as well. But I guess to anticipate the question, maybe I ought to tell you that the purpose of the book was certainly not to establish other matters which could be construed as criminal and in seeking advice, both from Osler Hoskins who vetted the entire book for MacMillan and an Ontario judge, who is a friend of mine, with respect to the fairness issue, everyone felt that this was interpretive matter. That is, whether a person is hiding or merely dropping a piece of paper is a very tough thing to resolve. And since the main story of the book had to do with the course of justice in 1971, the theme of Donald Marshall in the system, that this was an area that I didn't want to get into for those reasons and for the additional reason that I did not have the power to subpoena people and talk to everyone that needed to be talked to and did not want to lose the main thread in an interpretive matter like the St. Phillips[sic] paper shuffle.

Q. The what shuffle?

A. The paper shuffle.

1 Q. You called it the St. Peters?
2 A. Phillips... St. Peters, sorry.
3 Q. I put a word in your mouth there. You said "St. Phillips."
4 A. No, I know the place.
5 Q. St. Peter.
6 A. Just the wrong...
7 Q. Why are you referring to or why has someone referred to it
8 as the "St. Peters paper shuffle"?
9 A. I don't know.
10 Q. You're not aware of any connection between St... You know
11 where St. Peters is? It's about 35, 40 miles from Sydney.
12 There's no connection that you're aware between St. Peters
13 and this incident?
14 A. No.
15 COMMISSIONER EVANS
16 Or between St. Peter and...
17 MR. HARRIS
18 A. No, that too.
19 Q. That's perhaps more appropriate with given where we are,
20 My Lord.
21 A. I might add one more point. There were a number of things
22 that came up in the course of doing the book that were
23 similar to this issue. For example, the tapings with John
24 Pratico brought up the issue of whether or not he had been
25 moved with respect to where he viewed the incident from in

1 the park that night and the evidence that was in his mind,
2 brought to his attention by the police was a beer bottle,
3 allegedly with his fingerprints on it. And for the exact same
4 reasons, that is, the allegation against the police would then
5 be obstruction of justice or tampering with the witness,
6 whatever, based on one person's interpretation of event. That
7 event did not appear in the book, even though I knew about
8 it and had a record of it from the Pratico tape.
9 Q. What about the allegation or at least the suggestion that John
10 MacIntyre coerced young people to lie.
11 A. That's different.
12 Q. Why?
13 A. Because there are several people corroborating the same
14 story and doing so in a formal way with affidavits.
15 Q. But you haven't interviewed MacIntyre about it.
16 A. MacIntyre would not be interviewed.
17 Q. Do I understand, and I'm not asking for the advice you
18 received, Mr. Harris, but you did seek legal advice with
19 respect to this particular incident, the St. Peters shuffle,
20 whether it's something you should or should not include in
21 the book?
22 A. That's correct.
23 Q. And did receive advice.
24 A. From several different sources.
25 Q. You used the phrase one time this morning that there was a

1 lack of cooperation here. It may have been a lack of
2 cooperation as opposed to obstruction by John MacIntyre.
3 A. Sure.
4 Q. Is that your phrase or is that Staff Wheaton's phrase?
5 A. I couldn't really honestly tell you.
6 Q. And do you know or can you help us out as to when
7 Wheaton said chronologically when the incident is said to
8 have taken place?
9 A. Not with the kind of precision you would need to be helpful.
10 MR. MacDONALD
11 Thank you, Mr. Harris.
12 EXAMINATION BY MR. PUGSLEY
13 Q. Mr. Harris, I'm Ron Pugsley and I act for John MacIntyre.
14 We know each other, I think.
15 A. Um.
16 Q. Mr. Harris, I was trying to take down your words as you
17 gave your evidence. You said in response to a question from
18 Mr. MacDonald it was "An interpretive manner" or you used
19 the word "interpretive," that is to say, the information that
20 Staff Sergeant Wheaton gave to you with respect to the
21 paper could be interpreted in one of two ways, either that it
22 was accidentally dropped on the floor or that it was
23 attempted to be concealed.
24 A. Correct.
25 Q. And as a consequence of the information that you gave...that

1 he gave you, you were not in the position to determine
2 which was the accurate characterization of this particular
3 incident.
4 A. Particularly because, as I recall how the story was related,
5 only one of the RCMP officers saw this happening, and I
6 think it was reported to the other one after the two men left
7 the room.
8 Q. Yes.
9 A. Therefore it was one person.
10 Q. Yes.
11 A. And so I thought that if two people had come to the same
12 conclusion, a little more grounds for perhaps examining it
13 very closely, but the critical thing for the book was to try
14 very hard, not always succeeding, but the effort always
15 being made to say what people had done that you could
16 verify in a reasonable way, rather than to surmise what
17 people might have done.
18 Q. Quite so. And on the basis of the information that Staff
19 Sergeant Wheaton gave to you, it was left to you, or indeed
20 to anyone else, to surmise what, in fact, had happened.
21 A. And that is why it wasn't used.
22 Q. Quite so. And indeed, it was not sufficiently strong, the
23 information given to you by Wheaton was not sufficiently
24 strong to warrant you to talk to Sergeant Herb Davies.
25 A. That's correct.

Q. Yes. How many people, as a matter of interest, did you talk to with respect to writing this book? Roughly.

A. Over a hundred.

MR. PUGSLEY

Thank you. That's all the questions I have.

MR. CHAIRMAN

Mr. Orsborn.

MR. ORSBORN

No questions, My Lord.

MR. CHAIRMAN

Mr. Ross.

*9:52 a.m.

EXAMINATION BY MR. ROSS

There are one or two questions I would like to ask with respect to the investigation and the reporting on Sandy Seale, if it will be permitted by this Commission.

MR. CHAIRMAN

The only questions that will be permitted are pursuant to the order that we, this Commission, made on May 31st, and the order was very specific, that Mr. Harris was to be questioned only with respect to the allegations made, particularly by Staff Sergeant Wheaton with respect to one of the statements of Patricia Harriss.

MR. ROSS

Well, yes, My Lord, and I don't propose to be argumentative.

I would just like to point out that this witness apparently had an opportunity to speak to one of the police officers involved at the time, which is Constable Mroz. The evidence of other police officers was that this man took extensive notes, and my questions were going to be directed just to that because Mroz is dead. The only reason, that's the only area.

MR. CHAIRMAN

Now the ruling of the Commission is very specific, Mr. Ross, to the line of questioning.

MR. ROSS

Then I've got no questions then.

MR. CHAIRMAN

Mr. Wildsmith.

MR. WILDSMITH

No questions, My Lord.

MR. CHAIRMAN

Mr. Murrant.

MR. MURRANT

Nothing, My Lord.

MR. CHAIRMAN

That's all. Thank you very much, Mr. Harris, for coming over. We'll rise for a short while.

BREAK

MR. CHAIRMAN

Now, Mr. MacDonald, are you ready?

MR. MACDONALD

Yes, My Lord. My Lords, at this stage, with three possible exceptions, all relevant evidence concerning the handling of the Donald Marshall, Jr. case has been presented. Depending on the decision of our courts, additional evidence may be required and, if so, will be presented to Your Lordships from Cabinet Ministers and the members of the Appeal Division of the Supreme Court of Nova Scotia. In addition, we have been advised by Mr. Ross that he may wish to make an application or he may... He has asked Commission Counsel to consider calling some additional evidence on a fairly restricted area and we will confer with Mr. Ross this week, and if Commission Counsel is not prepared to agree to his request, then he may be making an application to you. Subject to those three areas, all of the evidence has now been presented.

We now move to the final phase of evidence to be presented in this Inquiry. Your Lordships have indicated on several occasions your interest in learning how the administration of justice in this province operates generally and expressed your concern in making recommendations for change based on the evidence which occurred in one case. Extensive evidence has already been presented concerning the normal or the expected way the system will operate. There has been suggestion,

however, that the system operates differently when dealing with prominent persons. To enable Your Lordships to test this thesis, we intend to present evidence of the manner in which the Attorney General's Department and the Royal Canadian Mounted Police have dealt with two cases involving prominent persons and institutions. We emphasize that it is not our desire to ask you to make a finding whether such persons or institutions actually committed any illegal acts. Indeed, that would be totally outside the terms of your mandate to suggest that you could make such a finding. Rather, we are concerned only with the manner in which cases involving these persons were treated and handled by the appropriate officials within the administration of justice system.

We will present evidence dealing with the actions of the Attorney General's Department and the R.C.M.P. leading to the ultimate decision not to lay an information charging Roland Thornhill and four chartered banks with a breach of certain sections of the *Criminal Code*. We will also present evidence of the manner in which the Attorney General's Department and the R.C.M.P. handled the investigation charging and subsequent sentencing of Billy Joe MacLean, arising out of his claims for expenses incurred in performance of his duties as a Member of the Legislature. We will deal with these cases consecutively and that necessarily will require the recalling of certain witnesses. We do consider, however, that that will be less confusing in the long run for Your Lordships.

We will proceed with the Roland Thornhill matter first. In

recognition of our concerns that Mr. Thornhill and the banks not be prosecuted now before this Commission when it was decided eight years ago that no charges were warranted, we wished to limit the disclosure of confidential information wherever we considered the disclosure would not be of assistance to Your Lordships in your deliberations.

The Attorney General's Department and the R.C.M.P. have cooperated fully with Commission Counsel and have disclosed to us all of the information and documents in their possession and have permitted us to interview any representative of their departments who we ask to interview. Following our review of those documents, Commission Counsel prepared a statement of facts which we considered were supported by the documents and which would eliminate the necessity of filing publicly a large volume of documents. We have obtained the agreement from Counsel for the Attorney General and the R.C.M.P. that the documents do support the facts which are contained in the statement.

The statement of facts, which has now been introduced as **EXHIBIT 164** in this Inquiry, is a summary of the relevant events which occurred to August 29, 1980, when an R.C.M.P. report was received by the Attorney General's Department. If you just look at that statement for a moment, My Lords, Exhibit 164, which has been placed in front of you, we have, as I've indicated, prepared this statement based on the documents which were made available to us. You will note that the statement sets a

general background and then deals with phases which occurred. There was a preinvestigative stage occurring in January through March, 1980 an investigation by the R.C.M.P. which commenced in April and concluded on April the 29th. From our point of view... August 29, I'm sorry. 1980 is a jumping off point, if you will. At that time, as disclosed in the final paragraph in the Statement of Facts, a final report was delivered by the R.C.M.P. to the Attorney General's Department. In that report, it was concluded by the Investigating Officer that the *prima facie* case was available or had been established against Mr. Thornhill and he asked that a prosecutor be appointed. He also went on to say that there was sufficient evidence to justify considering whether to lay charges against chartered banks and, again, he asked for the appointment of a Crown Prosecutor who he could confer with in order to make a final determination.

Now we consider at this stage you have reached a point where you are into the system. An investigation has been carried out. The investigating officer has reached certain conclusions and asked to go or to have a prosecuting officer appointed for his benefit. That's our jumping off point and we want to know what took place from that point forward. We do not want to investigate and we will avoid, if we can in all events the facts that led this officer to that conclusion. The fact is that he considered there were sufficient facts to justify in his mind the laying of charges. Whether or not there were is really not of our concern.

Now we have also prepared, My Lords, a booklet of

documents, which has now been filed as **EXHIBIT 165**. Some of the documents which are in this booklet are referred to in the Statement of Facts. But in the main, these documents deal with events which occurred after the filing of the August 29, 1980 report. Evidence from various witness will be presented and all of these documents in this booklet will be referred to by some or all of the witnesses. The following witnesses will be called in the Thornhill matter.

The first witness will be Hugh Feagan, who was the Commanding Officer of "H" Division for the R.C.M.P. Following him, will be Deputy Commissioner Quintal, former Deputy Minister Quintal. Now it is our wish that he will follow Mr. Feagan. Because of travel arrangements, it may be necessary to change the order a little bit. But assuming he is here at the appropriate time, Mr. Ken Towle will be second. We will then follow with David Thomas, who is Chief Prosecutor for Halifax. We will then follow Martin Herschorn. Your Lordships heard evidence from Mr. Herschorn already, and then Gordon Coles, Judge Harry How, who was the Attorney General at the time of these incidents, Superintendent Simmonds of the R.C.M.P., and finally, Gordon Gale.

The only other point, My Lord, I would mention at this stage is, for the record, Mr. Thornhill did apply for and was granted standing by Your Lordships to be represented at this phase of the hearings and that he is represented here today by John Merrick as his counsel.

The first witness then, My Lords, will be Mr. Feagan.

EXHIBIT 164 - STATEMENT OF FACTS.

EXHIBIT 165 - BOOKLET OF DOCUMENTS.

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

EXAMINATION BY MR. SPICER

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

A. That's correct.

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

A. That's correct, sir.

MR. CHAIRMAN

How do you spell your last name?

MR. FEAGAN

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

COMMISSIONER EVANS

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

MR. FAGAN

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

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

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

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

A. In September, 1981.

MR. FEAGAN, EXAM. BY MR. SPICER

1 Q. Where did you go from Halifax?
2 A. I went from Halifax to Yellowknife, Northwest Territories. I
3 was the Commanding Officer of the Northwest Territories.
4 Q. For how long were you there?
5 A. I was there until my retirement from the force in, on the 31st
6 of August, 1985.
7 Q. Prior to Halifax, had you been C.O. in P.E.I.?
8 A. I was the commanding officer of Prince Edward Island, yes.
9 Q. For how many years?
10 A. For three years.
11 Q. I believe your career with the R.C.M.P. spans about 34, 35
12 years?
13 A. 35 years, plus about four months.
14 Q. And you retired as C.O. from Northwest Territories?
15 A. The Northwest Territories, right.
16 MR. CHAIRMAN
17 What was your rank when you were commanding officer of
18 "H" Division?
19 MR. FEAGAN
20 A. Chief superintendent.
21 Q. As chief superintendent and C.O. in Halifax, who reported
22 directly to you?
23 A. The officer in charge of the criminal investigation branch.
24 Q. That would be the person we've come to know as "C.I.B.
25 officer"?

A. That's right.

Q. would that be Doug Christen?

A. That was Supt. Christen, yeah.

Q. Anybody else who reported directly to you?

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

Q. Who would that have been?

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

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

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

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

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

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

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

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

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

1 Q. Going up the ladder now, to whom would you report?
2 A. I reported to the Commissioner direct.
3 Q. And in 1980, that would have been whom?
4 A. Commissioner Simmonds.
5 Q. Did you have any direct reporting responsibility to any other
6 superior officers of the R.C.M.P. in Ottawa?
7 A. No direct reporting responsibility. I sent reports to other
8 branch heads in Ottawa, but always addressed to the
9 Commissioner for the attention of those individuals.
10 Q. And you considered that your responsibility insofar as
11 reporting was directly to the Commission.
12 A. That's right.
13 Q. As C.O. in Halifax, would you be a person who would from
14 time to time attend the Thursday meetings at the A.G.'s office
15 that we've heard referred to?
16 A. I didn't attend those meetings regularly. They were set up
17 between the director of criminal in the A.G.'s Department and
18 the C.I.B. officer. But occasionally I did attend.
19 Q. And from time to time, if the C.I.B. officer was not available,
20 that would be an occasion when you would attend?
21 A. Quite often, yes.
22 Q. If I could just ask you now to turn to page four of the volume
23 you have in front of you. There are, in fact, two versions of
24 that press release, one on page four and one on page five. I
25 think the one on page four is the final version of it and it's a

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

criminal investigation branch. In other words...

Q. Would he have reported to Mr. Christen?

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

Q. Okay.

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

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

A. That's correct.

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

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

Q. Under section 110.

A. Under section 110 (c).

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

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

1 A. Yes.
2 Q. Does that fairly represent...
3 A. That's right.
4 Q. ...Mr. Gale's response.
5 A. Yeah, that's right.
6 Q. He said, "Go ahead investigate."
7 A. He agreed, yeah, that we should commence an investigation.
8 Q. And indeed, earlier in the note it seems as if it was Mr. Gale
9 himself who brought the matter up.
10 A. Who raised the matter, that's right.
11 Q. Yes. Then on the next page, on page 8, there is a note from
12 MacInnes in substance forwarding that information on to
13 Ottawa, is that correct?
14 A. That's right.
15 Q. And at this point in time that note is dated April 15, 1980.
16 A. Uh-hum.
17 Q. Do you know whether or not the RCMP had caused an
18 investigation to be commenced?
19 A. Not until...we hadn't caused an investigation to commence
20 until the time this was written.
21 Q. Yes. But at or about that time is when the investigation...
22 A. At or about, right.
23 Q. Can you tell me what's the difference between gathering
24 information, which is what you indicated you had been
25 doing earlier in March or so, and actually commencing an

1 investigation?
2 A. I don't think they had formally gathered any information, it
3 was just a matter of making a few casual inquiries to find
4 out what the rumours were about.
5 Q. But at this stage of the game in mid-April there's no
6 question an investigation is now going to be commenced.
7 A. That's right.
8 Q. Okay. There is some notes on page 12 which deal, that I
9 believe are notes that were made by MacInnes.
10 A. That's correct.
11 Q. Those deal, amongst other matters, with the RCMP's
12 relationship with Crown counsel. I just want to draw them
13 to your attention now. I think we'll come back to them
14 later because this topic comes up on a number of occasions
15 through the course of this material. Why though would
16 MacInnes at this point be commenting on your relationship
17 with Crown counsel?
18 A. Because of the fact that Mr. Gale had objected to our
19 members contacting Crown counsel.
20 Q. Okay. And that that was on, as the note indicates, on the
21 24th of July.
22 A. Right.
23 Q. Okay. Between the middle of April or so and July, had you
24 had any day-to-day involvement, were you being kept
25 advised as to what was going on with the investigation

itself?

A. Between April and July.

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

A. No.

Q. No.

A. No, not all of it.

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

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

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

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

1 report was to go to the Deputy Attorney General's office, but
2 I can't recall that we were given instructions not to contact
3 Crown counsel.
4 Q. With respect to the report being, with your direction that
5 the report should go to the Deputy Attorney General's office,
6 had you received that direction though prior to July 25th?
7 A. I think likely we had. I can't say for sure.
8 Q. Okay. Let's just continue through the letter.
9
10 Those instructions were that no charges were to
be laid nor was any contact to be made with
11 prosecutors concerning this matter until you had
finished your investigation and forwarded a
12 report to this department.
13 Do you remember any such direction from anybody in the
14 Attorney General's Department prior to this issue of your
15 contact with Crown counsel coming up?
16 A. Yes, I think so. I do remember that we were to forward the
17 report to them, but I can't recall them saying not to use
18 Crown counsel as we normally did for advice during the
19 investigation.
20 Q. The letters go on to provide,
21
22 Your investigators are to cease to have contact
with the prosecutors concerning this
23 investigation and to concentrate on getting their
long-awaited report in to the department
24 summarizing the evidence and the charges
proposed based on the evidence so that it can be
25

reviewed and then forwarded for prosecution if the evidence supports charges.

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

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

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

A. No, not their call alone.

Q. Not their call alone.

A. No.

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

A. Not really, no.

Q. Not in July.

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

1 Q. I see. But if a dec...let me just follow that up. If a decision
2 was going to be made, if the RCMP had said "We want to
3 charge," and the Attorney General's Department had said,
4 "We don't want to charge," did you have any idea in July
5 that the Attorney General's office thought that they had the
6 right to make that final decision?
7 A. It's difficult for me to answer what they thought.
8 Q. What was your impression?
9 A. My impression was that they would no doubt guide us or
10 give us some reasons if they didn't want to lay a charge.
11 Q. And to follow up on that, if they gave you some reasons and
12 you were to say to them, "Well, we still think there ought to
13 be a charge here."
14 A. Uh-hum.
15 Q. Was it your impression in July that the Attorney General's
16 Department thought that they had the right to make that
17 final judgement, if there was a disagreement?
18 A. I can't... I can't recall exactly what my thoughts were
19 whether or not...at that stage whether or not they were
20 going to make the final decision or whether there would
21 be...I felt at least there would be a chance for us to give our
22 arguments.
23 Q. And are you telling us that at this point then in July you
24 hadn't focused on what would happen if there was a
25 standoff?

1 A. No, because I couldn't, I couldn't foresee them, at that
2 particular stage I have to admit that I couldn't foresee them
3 saying there wasn't a charge.
4 Q. You couldn't foresee them saying there wasn't.
5 A. That there wasn't a charge.
6 Q. There wasn't a charge.
7 A. I felt there was and, therefore, I felt it would be a matter of
8 them appointing a Crown counsel.
9 Q. Did you consider that the position being taken by the AG's
10 department with respect to your contacting Crown counsel
11 was unusual in this particular case?
12 A. Yes, I did.
13 Q. And for what reason did you consider that to be unusual?
14 A. Because generally in the course of an investigation an
15 investigator is provided with the...that assistance by the
16 Attorney General's Department of being able to
17 communicate with the Crown, to assist him in shoring up his
18 evidence, what direction he should go for further
19 investigation, that type of thing, even what charges may be
20 appropriate.
21 Q. Were you told by anybody in the AG's department why it
22 was that they didn't want you contacting Crown counsel in
23 this case?
24 A. They wanted to deal with it at a more senior level than
25 normal Crown.

1 Q. I understand that that's what they wanted to do. Did they
2 indicate to you why they wanted to do that?
3 A. Because of the nature of the case. It was...
4 Q. And...
5 A. ...a politically sensitive case.
6 Q. ...what do you mean by the nature of the case?
7 A. It was a politically sensitive type of of matter, commercial
8 crime type investigation.
9 Q. Did somebody in the AG's department use those words to
10 you that you just repeated to us, politically sensitive...
11 A. No, I don't.
12 Q. ...type case?
13 A. I don't believe they did.
14 Q. No. Did you have a sense that that was one of the issues
15 though?
16 A. Yes.
17 Q. And what other issues did you have a sense that were
18 operating in here?
19 A. I've...not other than what I've just stated, that it was a high-
20 profile type of case involving a government official.
21 Q. Can you tell me with whom in the AG's department you
22 would have had those discussions, when he indicated to you
23 that it was a...
24 A. Gordon Gale, I believe, from day one, the first day we were
25 contacted. I might say at this point that they...this had

1 happened in other cases, not that I was involved in, but I
2 was aware that there had been high-profile cases where the
3 Attorney General's Department asked that they be referred
4 directly to them before they appointed a counsel.
5 Q. Were there any other cases that you had been directly
6 involved in where that had been the case?
7 A. No.
8 Q. If I could ask you now to turn to page 24. Now at that point,
9 this is a letter from yourself dated September the 11th to
10 the Deputy Attorney General but to Mr. Gale's attention. Am
11 I correct that you are then forwarding the RCMP
12 investigative material?
13 A. That's right.
10:59 a.m.
14
15 Q. If I could ask you now to turn to page 24. Now at that point,
16 and this is a letter from yourself dated September the 11th to
17 the Deputy Attorney General but to Mr. Gale's attention. Am I
18 correct that you are then forwarding the R.C.M.P. investigative
19 material?
20 A. That's right.
21 Q. And if you have a look at the agreed statement of facts and
22 take the last paragraph, page... Paragraph 17. It refers to an
23 August 29th report. Would that be the report that was being
24 forwarded?
25 A. That would be the report, yes.

1 Q. And if I could just ask you about that report itself and, in
2 particular, paragraph, the paragraph that's referred to in the
3 agreed statement of facts. Was it your understanding at that
4 point that your investigators were recommending charges?
5 A. Yes, it was
6 Q. Had you had discussions with your investigators about that?
7 A. I had been briefed on the matter on what was going forward,
8 yes.
9 Q. And you were satisfied that...
10 A. Yes.
11 Q. They were entitled to reach those conclusions.
12 A. Yes, I was.
13 Q. Now on September the 11th, you forwarded that report
14 recommending charges to Mr. Gale and you say in that letter:
15
16 > May I please be provided with your legal views concerning the issues raised by the investigator
17 > and whether it is your wish this matter be referred to a Crown Prosecutor.
18 Did you have any idea at this time, sir, whether or not it was
19 going to be the Attorney General's Department who decided
20 whether charges were going to be laid?
21 A. It's normal when we forward a report to counsel, Crown
22 counsel, be it the Attorney General or one of his counsel,
23 appointed counsel, that this is the type of forwarding minute
24 we put on and ask for their views. You know, do we need
25

more evidence.

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

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

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

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

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

A. No.

Q. What are you saying?

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

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

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

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

1 decide whether or not a charge should be laid?
2 A. That's right.
3 Q. Do you still hold that view today?
4 A. Yes, I do.
5 Q. If it had not been for the request from the Attorney General's
6 Department to forward this report to them, and if you had not
7 had your normal contact with the Crown taken away, would
8 charges have been laid?
9 A. It would depend somewhat on the advice of the Crown that
10 we dealt with. But I felt we had, what you call a *prima facie*
11 case, I guess, and if we could not foresee any defence that
12 might arise that would prevent us from laying the charge and
13 taking it to court unnecessarily, well, then I felt that it would
14 likely go ahead.
15 Q. And would it be fair to say that if this investigation had
16 followed the normal course, that a charge probably would
17 have been laid?
18 A. If the counsel concerned agreed with our, with my people,
19 yes.
20 Q. Okay, we'll come back to that. At this point in time then, in
21 September, you're sending material recommending charges to
22 the A.G.'s office and you're asking, "May I please be provided
23 with your legal views concerning the issues raised by the
24 investigators?"
25 A. Right.

1 Q. That's in September. Then on page, if I could just ask you to
2 flip over to page 39. That's a letter to yourself from Gordon
3 Coles dated October 29th.
4 A. That's right.
5 Q. Now between the date that you sent your material over on
6 September 11th and October 29th, had you had any
7 discussions with anybody in the A.G.'s office as to what was
8 going to happen?
9 A. No.
10 Q. None at all.
11 A. None at all.
12 Q. Are you aware of whether or not anybody else in your
13 division had discussions with anybody in the A.G.'s office?
14 A. Insofar as I am aware or aware, there had been none.
15 Q. There had been none, okay. Then on October 29th, you
16 receive this letter from Gordon Coles and he encloses with
17 that a couple of things. One is "the Attorney General's
18 decision in the above-captioned matter", which is on page 43
19 of that volume. 43 and 44, the press release.
20 A. Right.
21 Q. Did you have any knowledge prior to receipt of this material
22 on October 29th that the press release was going to be made
23 by the A.G.?
24 A. No, I did not.
25 Q. Did it surprise you?

A. Yes, it did.

Q. Why did it surprise you?

A. I thought it was unusual.

Q. In what sense?

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

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

A. I would have, yes.

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

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

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

A. That's exactly what they were saying.

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

A. No, I didn't.

1 Q. So you know certainly by October the 29th that the A.G.'s
2 Department is saying, "It's our decision," as to whether or not
3 a charge is to be laid, is that correct? And you didn't know
4 that up until October the 29th.
5 A. That's right.
6 Q. And the first you knew of it was when you saw it in the press
7 release.
8 A. That's right.
9 Q. Also contained in the material that was forwarded to you on
10 October 29th, Mr. Coles refers to the copy of his memo to Mr.
11 How, which set out the basis for the opinion of the A.G.'s
12 Department that the facts don't disclose any evidence of the
13 kind of intention necessary. Now that memo is in the
14 materials from pages 31 to pages 38. That's the memo from
15 Gordon Coles to Mr. How. Did you have an opportunity to
16 review that memo, Mr. Feagan?
17 A. Yes, after I received it, yes.
18 Q. I just want to draw your attention for a moment to paragraph
19 11 on page 35. Sorry, I'll start with Paragraph 10 on page 34.
20 Was it your view that the Attorney General's Department was
21 right in its view that there wasn't the necessary intention
22 required under Section 110 to proceed against Mr. Thornhill?
23 MR. SAUNDERS
24 Excuse me, My Lord, before the witness answers the
25 question, I should register an objection to my friend's question. I

1 think that question, as put, asks this witness to comment on the
2 merits of the opinion given by Mr. Coles forwarded to the
3 Attorney General. By asking this witness what he thought of the
4 opinion, whether he thought it was right, in my respectful
5 suggestion, gets right into the merits or the strengths and
6 weaknesses of the case against Mr. Thornhill, precisely what my
7 friends said that they did not intend to address. We have the
8 opinion contained in the documents. It was obviously received by
9 the force. But for this witness or any witness to be asked what he
10 thought of it, whether he agreed with it, whether he disagreed
11 with it, whether he took exception to it, whether he thought it was
12 right or wrong, I say deals with the merits and is beyond the
13 scope of this Inquiry.
14 MR. CHAIRMAN
15 I didn't interpret that question, Mr. Saunders, as an attempt
16 to elicit from this witness any of the details surrounding the
17 investigation and which would enable him to answer the question.
18 If the question was "Would you now tell the Commission the facts
19 upon which you based the conclusion that you agree or disagree
20 with the legal opinion of the Deputy Attorney General," then that
21 would not be an appropriate question. But this is simply a
22 question asking whether he agreed or disagreed and I think it
23 would be for us to decide as a Commission whether the opinion of
24 an R.C.M.P. officer with respect to the interpretation of the law has
25 the same validity as that of the Deputy Attorney General, who is

1 the permanent head of the Attorney General's Department.
2 MR. SAUNDERS
3 Just to pursue it one moment, My Lord, with respect, how
4 does it advance the course of this Inquiry's look at the facts and
5 the process for my friend, Mr. Spicer, to ask the witness whether
6 he thought the opinion rendered by Mr. Coles was right or wrong?
7 How would it advance it for Mr. Spicer to ask Mr. Coles if he
8 thought the analysis conducted by the force was right or wrong,
9 weak or strong.
10 MR. CHAIRMAN
11 That question so far has been with respect to the practice.
12 MR. SAUNDERS
13 Quite so.
14 MR. CHAIRMAN
15 And the evidence of Mr. Feagan to date indicates that there
16 has been a departure from the practice.
17 MR. SAUNDERS
18 Yes, but I have in mind that my friend is about to get into
19 the paragraphs that he cited which deal with the elements, the
20 essential elements to the offence, and whether this witness
21 thought the opinion rendered was right or wrong and I say that...
22 MR. CHAIRMAN
23 I'm going to allow that question but the weight of the
24 answer will be for us to determine.
25 MR. SAUNDERS

1 Thank you, My Lord.

2 MR. CHAIRMAN

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

7 MR. SAUNDERS

8 Thank you.

9 MR. RUBY

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

21 MR. CHAIRMAN

22 Or guilt or innocence.

23 MR. RUBY

24 I'm not interested in guilt or innocence.

25 MR. CHAIRMAN

1 Carry on, Mr. Spicer.

2 MR. SPICER

3 Thank you, My Lord.

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

6 A. The necessary criminal intent.

7 Q. Yes.

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

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

14 A. That's right.

15 Q. Now who is Mr. Plomp?

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

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

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

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

24 A. Yes.

25 MR. CHAIRMAN

1 Was Mr. Plomp stationed in Halifax?

2 MR. FEAGAN

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

8 Q. To Corporal House.

9 A. That's right.

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

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

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

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

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

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

25 Q. That's Mr. Christen?

1 A. That's Mr. Christen, Mr. Blue in charge of commercial crime
2 branch, and Mr. Plomp, and the investigator and we discussed
3 the case.
4 Q. Okay, let me just stop you there for a minute. Now Blue, who
5 is he?
6 A. He was in charge of the commercial crime branch in Halifax
7 for Nova Scotia.
8 Q. Would he report to Christen?
9 A. He would report to Christen, yes.
10 Q. Would House, in turn, report to Blue?
11 A. Right.
12 Q. So it goes up the ladder -- House, Blue, Christen, yourself.
13 A. That's right.
14 Q. Where does Plomp fit into that?
15 A. Plomp is part of Blue's unit. He is on parallel with House, only
16 a senior official, so...
17 Q. And legally trained.
18 A. And legally trained, yeah.
19 Q. Sorry, you were saying as a result of receipt of this press
20 release, you had a meeting with your people in Halifax.
21 A. That's right.
22 Q. Tell us about the discussion at that meeting.
23 A. Well, as a result of the discussion, I still felt strongly that we
24 had a *prima facie* case or the grounds for a charge to be laid.
25 Q. Was there discussion at that meeting as to the propriety of a

1 press release coming from the A.G.'s office saying there's
2 going to be no charges?
3 A. Oh, yes, no doubt.
4 Q. All right, and what was the nature of that discussion?
5 A. I can't remember the exact nature of it but certainly we
6 agreed that it wasn't the proper route to be following, as far
7 as we were concerned.
8 Q. Okay, and why in your opinion was it not the proper route to
9 be following?
10 A. Mainly because we felt that by making the press release, the
11 Attorney General's Department had now put themselves in a
12 position that it would be very embarrassing for them to
13 change their mind and we would want... We were in a position
14 that we felt they should change their mind but this would be
15 very difficult to bring about now that it had been made
16 public.
17 Q. Did you think it would be more difficult for you to get them
18 then to change their mind?
19 A. That's right, yes.
20 Q. Were you a little bit annoyed when you got this press
21 release?
22 A. Maybe disappointed would be better.
23 Q. As a result of the meeting with your people in Halifax, what
24 then did you do?
25 A. We decided the route to follow now, the only alternative we

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

Q. Who did you contact in Ottawa?

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

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

A. That's right.

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

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

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

A. A meeting was arranged in Ottawa.

Q. In Ottawa for November the 5th?

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

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

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

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

A. Yes, I have.

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

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

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

A. Some time after.

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

A. Right.

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

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

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

A. He's right next to the Commissioner.

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

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

1 Police Services, I believe.
2 Q. So in terms of criminal operations, he is the senior guy in the
3 R.C.M.P.
4 A. That's right.
5 Q. And he reports directly to Simmonds.
6 A. To Simmonds, right.
7 Q. Venner?
8 A. Venner was the director of criminal investigations for the
9 force, right underneath Quintal.
10 Q. And reporting to Quintal.
11 A. And reporting to Quintal.
12 Q. The next person, Riddell?
13 A. Riddell was assistant to Venner, federal. There was a federal
14 and police, provincial contract service, and Riddell is the
15 federal man.
16 Q. Jay?
17 A. And then Jay was legal section at our headquarters.
18 Q. Was he a lawyer?
19 A. Right, yes.
20 Q. Then there's yourself, Superintendent Christen, Inspector
21 Blue, Sergeant Plomp, Corporal House, who was the
22 investigator in the case. Superintendent Roy, who is he?
23 A. Who we referred to before as the officer in charge of
24 commercial crime branch operations in Ottawa.
25 Q. Senior person?

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

1 Q. Would you consider this to be a meeting of fairly high level
2 people then in the R.C.M.P.?
3 A. Yes, it was
4 Q. Did you have any say in the people who actually attended the
5 meeting?
6 A. No, I didn't. It was arranged by the officer in charge of
7 commercial crime branch.
8 Q. And that was?
9 A. Roy, Superintendent Roy.
10 Q. Do you have any knowledge as to why the Commissioner
11 himself wasn't there?
12 A. He was absent. He wasn't available. He was out of the
13 country, I believe. I have to say I agreed with the people
14 that were there were the right people to be there under these
15 circumstances.
16 Q. And why do you say they were the right people to be there
17 under the circumstances?
18 A. Because they were all our specialists in that field with lots of
19 experience and what went on across Canada in commercial
20 crime investigations.
21 Q. Let's just go through the minutes.
22
23 The purpose of the meeting: To discuss in depth
24 the problems derived from the Attorney General
of Nova Scotia comments to the media that no
charges were warranted. To provide
25 Headquarters with advice and guidance, input

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

Were those the substantial issues that were to be discussed?

A. That's right.

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

A. No, everything evolved around these.

11:25 a.m.

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

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

Why was that a serious problem?

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

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

A. Yes, it was.

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

2

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

10

11 Is that fair representation of what you told the people in
12 Ottawa had happened in Nova Scotia?
13 A. That's right. I repeated it earlier here.
14 Q. And would you say that the normal procedure is
15 consultation with a prosecutor?
16 A. Right.
17 Q. On page 56 in the first paragraph there's reference to this
18 business of section 110 (c) and your views or the views as to
19 what the necessary intent was under 110(c). Did the Halifax
20 contingent convince Ottawa that you had a case on 110(c)?
21 A. Yes, we did.
22 Q. Do you remember any specific comments that were made by
23 anybody at that meeting about that?
24 A. I can't say for certain, but it seems to me that as I recall it
25 Deputy Minister Quintal says "You've convinced us." And

1 the whole meeting was...after quizzing us, you know,
2 quizzing the investigators and everyone else to some length,
3 it was agreed unanimously that there was a charge.
4 Q. There's reference to, before the enumerated listings there,
5 "A well prepared submission touched on the essential
6 ingredients of a charge," and it lists them. The note then
7 says, "The submission and the investigation were queried on
8 all aspects, for the investigation had to stand the test of our
9 own internal scrutiny so as to create a united front." Did
10 this investigation stand the test of your own internal
11 scrutiny?
12 A. Yes, it did.
13 Q. Yes, it did. Then it goes on to say,
14
15 A discussion developed which fortified our
16 prerogative to lay an information recognizing
that it was within the ambit of the provincial AG
17 as to what type of prosecution would be
presented, if any.
18
19 Was it then the consensus that it was the RCMP's right to
20 decide if a charge was laid...to be laid, and the AG's decision
21 as to whether or not it was to be proceeded with?
22 A. That's the general consensus, yes.
23 Q. Further,
24
25 Brief discussion was held on the fact that the
force was morally obligated to lay an

> information if the evidence supported such action.

What was the nature of that discussion?

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

Q. Was that your feeling?

A. Yes, it was.

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

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

Q. The notes goes on to indicate,

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

To what does that...

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

stay the proceedings.

MR. CHAIRMAN

Under what circumstances would that situation arise?

MR. FEAGAN

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

MR. CHAIRMAN

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

MR. FEAGAN

Right.

MR. CHAIRMAN

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

MR. FEAGAN

That's right.

MR. CHAIRMAN

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

1 Canadian citizen who is not high profile, went ahead and laid a
2 charge against the advice of the Crown prosecutor and the Crown
3 prosecutor then in the discharge of his or her duty stayed the
4 proceedings, do you have any view as to what that would do to
5 the innocent victim, the accused?
6 MR. FEAGAN
7 My view is what it would do, harm his reputation you mean
8 as a matter because of the fact there was a charge laid?
9 MR. CHAIRMAN
10 And then stayed.
11 MR. FEAGAN
12 And then stayed.
13 MR. CHAIRMAN
14 I thinking of being laid in a case where you have been
15 advised by a Crown prosecutor that either the facts or the law or a
16 combination of both do not sustain or support the laying of a
17 charge, and the charge is laid and then stayed.
18 MR. FEAGAN
19 Uh-hum. I've never been involved in a case like that, My
20 Lord.
21 MR. CHAIRMAN
22 Can we assume then that the general practise in the RCMP is
23 that if at the end of an investigation you receive a legal opinion
24 from a Crown prosecutor that a charge should not be laid, or
25 alternatively that if laid it would be stayed, that a charge won't

be laid?

MR. FEAGAN

That's right.

MR. CHAIRMAN

Thank you.

COMMISSIONER EVANS

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

MR. SPICER

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

MR. FEAGAN

Yeah, there is something missing here.

MR. SPICER

Yeah.

MR. FEAGAN

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

MR. SPICER

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

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

1 investigation.
2 Q. Were there any other areas that were still left to be
3 investigated?
4 A. It would depend upon whether we were advised that we
5 should investigate further concerning other charges than the
6 110(c).
7 Q. Okay. But with respect to the 110(c).
8 A. I think it was pretty well wrapped up, yeah.
9 Q. On page 57, continuing on in the minutes, there's reference
10 in the first paragraph to Kevin Burke having spoken to TV
11 news about the Thornhill matter, but in the second
12 paragraph and I wanted to ask you on page 57,
13
14 > A matter of equal importance evolved around the *ratio decidendi* and the commissioner's
15 > responsibilities to manage the force and to ensure that the quality of our criminal
16 > investigations be of the highest order. Given the obvious ramifications of any charge being laid
17 > against the advice of the AG, it rendered it
18 > absolutely imperative that the merits of the case be examined at the highest possible levels within
19 > the force.
20
21 Can you tell us what the substance of that discussion was?
22 A. The main thrust of the discussion was the future relations
23 with the AG if we went ahead and laid a charge against his
24 wishes.
25 Q. Can you help us at all with what some of those obvious

1 ramifications would have been?
2 A. Just that I guess, the loss of confidence between the deputy
3 AG, for example, and the CO of the division.
4 Q. Anything else?
5 A. I think just the general relationship is what we're referring
6 to.
7 Q. Are you able to tell us whether or not it was considered to
8 be an appropriate factor to take into account that the
9 relations between the RCMP and the AG's office might be
10 affected?
11 A. Yes, I think in the interests of the administration of justice
12 of the province it's essential for the police force and the
13 Attorney General's Department to work together.
14 Q. And was that your view?
15 A. Yes, it is.
16 Q. Did you understand that to be the view of the meeting?
17 A. Yes.
18 Q. Consensus. Do you consider that it's...that it would be a
19 proper factor to take into account if you thought that the
20 opposition from the...if there was opposition from the
21 provincial AG would that be enough, per se, in other words
22 would you be prepared to say, "Well, there is opposition
23 from the Attorney General's Department and because of that
24 opposition, or I'm prepared to take that opposition into
25 consideration as a factor in deciding whether or not we

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

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

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

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

Q. Yes.

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

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

A. Yes, normally.

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

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

What was the purpose of doing that, sir?

1 A. The purpose of this mainly was so that we could give other
2 arguments to the Deputy Attorney General about his
3 memorandum where he pointed out to some detail the
4 intent, you know, our view on the intent required, for
5 example, and I'm getting into the case which I shouldn't do,
6 our view on what intent was...what constituted intent in this
7 particular type of offence was different than his.
8 Q. Yes.
9 A. We wanted to be able to go to him with further argument in
10 spite of the fact of the press release.
11 Q. And also would that also be in spite of the fact that at the
12 end of the day it was the RCMP's view that you had the right
13 to go ahead and lay a charge?
14 A. Yes.
15 Q. You're giving the AG an opportunity here to have some
16 further discussion.
17 A. That's right. To persuade him, in other words, that we were
18 right and to give us the opportunity to lay a charge.
19 Q. And conclusion three then is that "The AG of the province
20 must be informed in writing that it is our intention to
21 pursue a charge against Thornhill under Section 110(1)(c)."
22 Now was that regardless of the result of your discussion in
23 two.
24 A. No, that follows two.
25 Q. Follows the two.

1 A. Yeah. If we decided in the final analysis to lay a charge in
2 spite of the Attorney General's saying no, well, then we
3 would advise him in writing before we did so.
4 Q. I see. But you were not foreclosing the possibility of being
5 argued out of it by the AG.
6 A. That's right. We weren't foreclosing that.
7 Q. At this point in time though is it fair to say that the RCMP's
8 view was that you were right?
9 A. Yeah, we have a good case.
10 Q. Are you aware of any further investigative work done by
11 the RCMP in connection with this case subsequent to this
12 meeting in November?
13 A. No, other than some research there may have been.
14 Q. Legal research.
15 A. Yeah.
16 Q. But investigative work in terms of going...
17 A. No.
18 Q. ...out and finding out facts.
19 A. No, no further investigations.
20 Q. Was done.
21 A. No.
22 Q. Was there any dissension from those conclusions expressed
23 by anybody at the meeting?
24 A. Not that I'm aware of.
25 Q. Not that you heard.

A. Not that I heard, no.

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

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

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

A. Right.

Q. Okay. The second paragraph,

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

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

It goes on, and then it says,

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

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

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

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

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

1 Crown counsel.
2 Q. But it wasn't something that you understood in advance to
3 be the case.
4 A. No. It wasn't what I'd call a...
5 Q. Policy.
6 A. Understood policy, no.
7 Q. Okay. Then in the next paragraph of the press release Mr.
8 Coles goes on to indicate, "This particular investigation
9 follows this agreed upon procedure."
10 A. Well, in this particular investigation they specifically
11 instructed us to do it.
12 Q. All right. There was an agreed upon procedure only with
13 respect to this particular investigation.
14 A. That's right. And there were others I'm sure.
15 Q. But it was not pursuant to a policy.
16 A. No. It wasn't a routine thing.
17 Q. Right.
18 A. It required him to tell us.
19 Q. Okay. Just continuing on, "And the RCMP understood from
20 the beginning that upon the completion of their
21 investigation they were to forward their report to the
22 Deputy Attorney General."
23 A. I think that's right.
24 Q. Did you understand that from the beginning of your
25 investigation?

1 A. From the day that we saw Gordon Gale, I forget the date.
2 Q. In April.
3 A. In April, I was aware that the report was to go to the AG.
4 Q. Were you aware in April that it was not to go to a Crown?
5 A. No, I wasn't aware that we weren't to contact Crown for
6 information.
7 Q. Right.
8 A. But I knew the report was to go to...
9 Q. But you didn't understand in April...you understood in April
10 that the report was to go to the Deputy AG's office.
11 A. That's right.
12 Q. But you...
13 A. They wanted to assess it before charges were laid.
14 Q. But at that point in time you had not received any advice
15 that you weren't to have the benefit of consultation with
16 Crown.
17 A. That our investigator couldn't contact Crown because often
18 our investigators contact Crown on a personal basis.
19 Q. On page 61 is a follow-up really to that initial press release,
20 again from Mr. Coles?
21 COMMISSIONER EVANS
22 What was the date?
23 MR. SPICER
24 It's around November the 11th, I think, My Lord. There's
25 not a date on it, but I think you'll see if you look on page 60 a

1 note from Mr. Coles to Mr. How on November the 13th, which is
2 when the second version of it was issued, so it's about that time.
3 It may have been the 11th.
4 MR. CHAIRMAN
5 Well, this memo on page 60 is dated November 13th.
6 MR. SPICER
7 Yes.
8 MR. CHAIRMAN
9 And Mr. Coles says, "I have today issued the following
10 statement."
11 MR. SPICER
12 And that would be the one on page 61, that's the second
13 version of it.
14 MR. CHAIRMAN
15 I see.
16 MR. SPICER
17 And the one on page 58 I think is a day or so before that.
18 Q. On page...the one on page 61, again Mr. Coles is making some
19 comments and I'd just like to ask you a couple of questions
20 about them, and particularly in the second paragraph.
21
22 Mr. Coles reaffirms his earlier advice that from
23 the commencement of the investigation it was
24 clearly understood and agreed between the
25 commanding officer H Division and himself that
upon completion of the investigation the report
would be forwarded directly to the Deputy

Attorney General.

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

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

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

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

Q. In April.

A. Uh-huh.

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

A. Yes, I did.

Q. Did you kept notes of that meeting?

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

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

A. That's right.

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

A. On the 12th.

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

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

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

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

Q. On the same day.

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

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

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

Q. That was who?

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

Q. You were directed to do this by Venner?

A. That's right.

Q. The first paragraph of your notes indicates that,

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

Had you made the appointment as indicated in the second

1 paragraph to see Mr. How?
2 A. Yes, I had.
3 Q. And Mr. How, I take it from your notes which we'll go
4 through, was present at some point in the meeting but not
5 throughout.
6 A. That's right.
7 Q. Do you remember whether or not you disclosed to Mr. Coles
8 or Mr. How that you had come from a meeting of the R.C.M.P.
9 in Ottawa?
10 A. I'm quite sure I didn't.
11 Q. Why would you not have done that?
12 A. I took upon myself the responsibility to discuss the matter
13 with them and at that stage I didn't think it was fair to draw
14 my headquarters into it.
15 Q. You indicate in the third paragraph on page 63 that you had
16 delivered an envelope from the chief financial officer and
17 listened to his views on contract negotiations. Are those the
18 negotiations for the provincial policing contract?
19 A. That's right.
20 Q. Were those negotiations under way at the time?
21 A. Yes, they were. This was entirely separate from the other
22 discussion though. It had nothing to do with it.
23 Q. And other than the fact that you handed to him...
24 A. I took this opportunity to do that and I recorded here but it
25 had no significance in respect to the matter that we were

1 going to discuss.

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

5 A. That's right.

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

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

11 Q. What was his response to that?

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

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

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

21

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

24 A. That's right.

25

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

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

Q. Is that what he said?

A. That's what I received, anyway.

Q. You go on to say:

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

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

A. After the investigator had, yes.

Q.

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

1 Did you indicate to him during the discussion that, in your
2 view, it was the R.C.M.P.'s prerogative to decide whether or
3 not a charge should be laid?
4 A. Yes, and earlier on, he, in my notes, he even stated that
5 himself, that he realized that we had that prerogative.
6 Q. But was he making an exception with respect to this case
7 insofar as that prerogative was concerned?
8 A. No, he was telling us that he didn't think a charge should be
9 laid. As far as he was concerned, there was no charge. But he
10 also acknowledged the fact that policemen, if a justice does
11 accept it, can lay a charge.
12 Q. Let's go on to the next paragraph.
13 A. He was more or less saying that that would be a ridiculous
14 thing for us to do though.
15 Q. Continue with your note then.
16
17 Mr. Coles became very emotional at this point
18 and stated that his department was responsible
19 for the administration of justice in the province
20 and as a senior official in that department, he
21 would answer for his decisions. He explained
22 that in his opinion the police report reflected a
23 thorough investigation and all the facts
24 contained in it and now that he had made a
25 decision on those facts, it should be no concern of
mine to question his decision.

What was the decision that he was referring to?

A. That there was no charge.

1 Q. Was it that there was no charge or that there was no charge
2 to be laid?
3 A. Well, yeah, both, I think.
4 Q. Was he saying to you that the decision he had made was that
5 there was no charge to be laid here?
6 A. Uh-huh. I should explain that when I say here that "he
7 explained that in his opinion the police report reflected a
8 thorough investigation," I had previous to that mentioned to
9 him that there may have been room for more investigation
10 but we weren't afforded the opportunity to discuss the case to
11 go and get anything more that he may require to make our
12 case.
13 Q. What was his response to that?
14 A. Well, he said that, in his opinion, the police reported
15 everything in it that was needed.
16 Q. Did he indicate to you the basis upon which he didn't want to
17 go ahead?
18 A. That there was no intent shown that this was the main theme.
19 Q. 110 (c).
20 A. That's right.
21 Q. Continue on that paragraph. "Further he questioned the
22 motivation of my advisers within the force." In what sense
23 did he question the motivation?
24 A. What he was inferring, in my opinion, was that I was
25 accepting emotional, maybe, ideas of my inferiors or the

1 people working for me in making up my mind that there was
2 a charge. He wasn't aware, as I mentioned before, that at this
3 stage I had been to Ottawa and had the meeting and really it
4 was my superiors that I was accepting the opinions of. He felt
5 it was my investigators I was listening to.
6 Q. And do I take it from what you told us earlier that you didn't
7 mention the Ottawa meeting, that you didn't set him straight
8 on that fact.
9 A. No, I didn't at this time. I guess I didn't say very much at
10 this meeting.
11 Q. Why was that?
12 A. Because Mr. Coles did all the talking.
13 Q. Continuing on.
14
15 I had a great deal of nerve to suggest that after
16 senior lawyers of his department had reviewed
the matter and come to a conclusion they could
17 be wrong and that if I went so far as to lay a
charge, I was treading on dangerous grounds.
18 Can you tell us, can you elaborate at all on that comment?
19 A. Before doing that, I'd like to go back to the last question.
20 Q. Sure.
21 A. If I may, and say that I felt there was no point at this stage of
22 me arguing the merits of the case. I was more laying the
23 groundwork for us to bring forth argument through written
24 documentation or whatever later on. I wasn't interested, I
25 wasn't prepared to argue at that stage. So I said very little

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

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

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

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

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

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

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

COMMISSIONER EVANS

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

MR. FEAGAN

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

COMMISSIONER EVANS

So it was a personal reflection then.

MR. FEAGAN

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

MR. SPICER

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

A. That's right.

Q.

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

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

A. I didn't, no.

Q. No?

A. No.

Q.

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

1 You then go on to indicate that

2

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

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

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

8 Q. Your note then indicates that:

9

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

16

17

18 Can you elaborate for us on what he said?

19 A. I can't really elaborate on that. I think it's, what he said,

20 what I recalled he said is recorded there to the best of my

21 ability.

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

23

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

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

A. This is what I referred to earlier.

Q. What did you take that comment to mean?

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

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

A. Yes, he does.

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

A. It crossed my mind.

COMMISSIONER EVANS

Just crossed your mind?

MR. FEAGAN

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

COMMISSIONER EVANS

1 That was not knowledge that was in the possession of Mr.
2 Coles?
3 MR. FEAGAN
4 A. No, and it wasn't sure in my mind, either, that I was going.
5 COMMISSIONER EVANS
6 When he suggested to you that you go home and reflect
7 upon it.
8 MR. FEAGAN
9 A. That's right.
10 COMMISSIONER EVANS
11 And then he says "this isn't a threat," what did you think
12 about that?
13 MR. FEAGEAN
14 A. Well, I had had quite a few dealings, I should explain, with
15 Mr. Coles. I knew that he came on strong and I accepted this
16 as one of his ways of getting his point across. It may sound
17 rather serious here. I didn't take it as badly as it may appear
18 because of the fact that I had a good working relationship
19 with Mr. Coles and I knew that he was inclined to come on
20 strong about things that were his opinion and I sat and
21 listened to his opinion on this case. I recorded it after I went
22 home but it didn't overly concerned me.
23 COMMISSIONER EVANS
24 You weren't really concerned.
25 MR. FEAGAN

MR. FEAGAN, EXAM. BY MR. SPICER

A. No.

COMMISSIONER EVANS

Because you knew your position in Ottawa.

MR. FEAGAN

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

COMMISSIONER EVANS

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

MR. FEAGEAN

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

MR. CHAIRMAN

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

MR. FEAGAN

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

MR. SPICER

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

A. No, he didn't.

Q. You go on to say:

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

What are you getting at there?

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

1 Justice.
2 Q. Provincially...
3 A. On many aspects, you know, opening detachments, more
4 personnel. There are all kinds of, these are the type of things
5 I usually dealt with him on. This was the only time I ever
6 dealt with him on a criminal case.
7 Q. This is the only time you had ever had any contact with Mr.
8 Coles in respect of a criminal matter?
9 A. That's right.
10 Q. You go on to say:
11
12 In fact, it was for that very reason that I had
13 refused to talk to the news media about this case
14 and had responded to the media by explaining
15 my communication of the A.G.'s Department was
16 confidential. I nevertheless had principles that I
17 believed in and although I was not a lawyer, I
18 was of the opinion from discussions with my
19 investigators and from reading the reports, et
20 cetera, and through my years of experience, that
21 there was a *prima facie* case against Thornhill
22 and, therefore, I had to live with these
23 convictions.
24 What did you mean by that?
25 A. I meant that I took an oath when I joined the R.C.M.P. that I
would maintain the law without fear, favour or affection
towards any person and I took that oath rather seriously.
Q. Why did you think it appropriate to raise it in the context of
this particular meeting?

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

12:12 p.m.*

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

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

Q. This was.

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

Q. You go on to say,

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

A. Uh-hum.

1 Q. Did you indicate to him at this time that you still felt that
2 the RCMP had the right to go ahead and lay the charge
3 notwithstanding his view?
4 A. Yes, that's the impression I...
5 Q. Is that what you told him?
6 A. I don't know. I can't recall whether I told him yes, you
7 know, we'll go ahead and lay a charge in spite of what you
8 say, I don't think I did, no.
9 Q. Was that what was in the back of your mind though?
10 A. Yes, it was.
11 Q. Regardless of what happens here I can still go ahead and lay
12 a charge.
13 A. It's possible, yeah, if my Commissioner says lay a charge, if
14 that's the direction I get, I'll lay it.
15 Q. And you're thinking then that you had the support from
16 Ottawa to go ahead if you got...
17 A. Uh-hum.
18 Q. ...the go ahead.
19 A. But I had, also I was aware that the result of this approach
20 to the Deputy Attorney General and the Attorney General
21 that I would communicate that to Ottawa.
22 Q. Yes.
23 A. And get their further direction as a result of this, and that
24 was understood from the meeting in Ottawa and the
25 direction I had to start with that I would approach them and

1 see what the...how far I'd get.
2 Q. You go on to say that "Mr. How entered in to the
3 conversation from time to time but did not say anything of
4 significance." What kinds of entries was he making into the
5 conversation? What was he talking about?
6 A. Well, things of the nature that he agreed with what Mr.
7 Coles was saying. Mr. Coles was doing most of the talking
8 and Mr. How stood on the sidelines. He was a real
9 gentleman I might say, and but said, "Yes," you know,
10 sometimes questions were put to him, more or less, by Mr.
11 Coles and he agreed.
12 Q. Do you have any recollection of what those questions were?
13 A. No, I don't, all along the lines of what I've just been
14 recorded here but...
15 Q. You go on to say, "He," I take it that's Mr. How, "...claimed he
16 couldn't understand why we were taking any further action
17 and he said he felt I had received bad advice from the
18 people who worked for me."
19 A. That's right.
20 Q. "...which he intimated did not speak well for them." Can
21 you elaborate at all on that?
22 A. Again, he was, in my opinion, referring to the same thing
23 that Mr. Coles was in my notes earlier on where he felt that
24 I was being influenced by my investigators, that really it
25 wasn't, I hadn't...I didn't, it isn't maybe the right way to put

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

COMMISSIONER EVANS

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

MR. FEAGAN

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

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

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

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

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

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

1 brief the Premier concerning any decision to prosecute."
2 A. Yeah, that seemed very reasonable to me. I would have
3 assumed that anyway.
4 Q. Sorry, you would have?
5 A. I assumed that would be one of the reasons anyway.
6 Q. I see. Were you advised of that yourself directly by Mr.
7 Gale?
8 A. I don't think so. I think through Superintendent Christen.
9 Q. I see. Was there any reference at your meeting with Messrs.
10 How and Coles as to whether or not the Premier was being
11 kept advised?
12 A. Not so far as I recollect. I think I would have written it
13 down had there been.
14 Q. Did you reiterate at the end of your meeting to Mr. Coles and
15 Mr. How that you thought you did have charges or enough
16 information to go ahead and lay charges?
17 A. I had said that earlier in the meeting, no, I don't think I did
18 at the end. As I say, things...it sort of faded and things got
19 on a more affable level at the end of the meeting.
20 Q. Do you have any recollection of how long the meeting took?
21 A. I'd say about an hour and a half, I'm guessing, but close, yes.
22 MR. SPICER
23 Perhaps the end of that report might be as good a place as
24 any to break, My Lord.
25

MR. CHAIRMAN

All right. Two o'clock.

LUNCH BREAK - 12:21 p.m.

2:00 p.m.

MR. RUBY

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

CHAIRMAN

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

MR. RUBY

Thank you, My Lord.

CHAIRMAN

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

MR. RUBY

Yes. Maybe it was not necessary. Thank you.

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

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

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

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

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

A. Yes. I did, yes.

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

A. Um-hmm.

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

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

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

A. Yes.

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

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

Q. But he referred to his own...

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

1 Q. I see. And did you take it from what Mr. Plomp had said that
2 he had concluded that Mr. Coles was wrong in his analysis of
3 110(c).
4 A. That's right.
5 Q. Then on the 18th of November, on page 77, there's a memo to
6 yourself from Christen.
7 A. Right.
8 Q. Can you tell us what was the reason that this particular memo
9 was generated?
10 A. Again, this was forwarding to me the material that Inspector
11 Blue had his members put together.
12 Q. All right.
13 A. That's just the normal chain of command like from Blue to
14 Christen to me.
15 Q. Okay.
16 A. And each one always has a chance to put their comments.
17 Q. And do I take it then from the next page, on page 79, where
18 you are forwarding to the Commissioner, material, and the
19 first paragraph of that memo indicates, "The review of this
20 case has now been completed and is forwarded with
21 comments of the Officer in Charge "H" Division, CIB" that those
22 two documents that we've just been talking about, the
23 Christen memo and the Blue memo, would have been the
24 material that was forwarded to Ottawa.
25 A. That's right.

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

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

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

A. No, I didn't.

Q. No.

A. I just forwarded this.

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

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

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

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

Q. Can you be any more particular?

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

Q. You go on to say,

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

What were you thinking about there?

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

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

A. No.

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

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

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

A. That's what it would be.

Q. Okay.

A. Yeah.

Q. You go on to say,

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

A. Um-hmm.

Q.

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

What do you mean by that?

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

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

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

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

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

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

Q. Did you have any discussions with the Commissioner?

A. No, I didn't.

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

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

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

A. That's right.

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

A. No, I awaited their advice.

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

A. No.

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

A. Not that I can recall.

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

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

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

A. Against his wishes, right.

Q. Against his wishes.

A. Right.

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

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

A. Um-hmm.

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

1 A. That's right, yeah. But, if I may go on, but they felt it was not
2 a strong enough case to oppose what the advice had been
3 from the Attorney General. This is the gist I got from it.
4 COMMISSIONER EVANS
5 Could I have that quote?
6 A. He says, the quote here is that, "Some reasonable and
7 probable grounds to lay a charge under Section 110(c) against
8 Mr. Thornhill appear to be present." But to go on from that,
9 my understanding was that they didn't feel the case was
10 strong enough to go against the advice or wishes of the
11 Attorney General.
12 Q. And on page 95 of that, of the volume, there's some
13 discussion in the letter as to the factors which gave rise to
14 that conclusion. I'd just like to ask you, with respect to the
15 last paragraph when it begins, "With respect to Mr. Thornhill
16 the following considerations weighed heavily in our
17 decision..." Are you able to tell us whether or not at the
18 meeting you had in Ottawa in November, whether or not
19 these facts were known?
20 A. These facts were all known at the meeting.
21 2:15 p.m.
22 Q. Right. Are you aware of any new facts contained in this
23 letter that was...of which the meeting was not aware in
24 November?
25 A. No. There may have been more consideration of the facts.

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

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

A. Could I have that again, please?

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

A. No, that's right, yeah.

Q. What would you have done?

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

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

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

Q. Uh-hum.

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

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

A. Uh-hum.

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

A. Uh-hum.

1 Q. Is it your view that charges would have been laid?
2 A. In this particular...that's a difficult...
3 MR. SAUNDERS
4 Excuse me, My Lords. I thought my friend asked the
5 witness that very question this morning and said he'd come back
6 to it and the witness answered it twice that it would depend upon
7 the advice given by the local Crown prosecutor who was
8 consulted. Now I think my friend, with respect, is trying a third
9 time to get a different answer from the witness. The answer is on
10 the record.
11 MR. CHAIRMAN
12 Could you ask the question again, Mr. Spicer?
13 MR. SPICER
14 I guess all I was trying to get...all I'm trying to ask, and if
15 the answer is clear then I won't ask it again, is in the absence of
16 involvement from the AG's Department, in other words, absence of
17 involvement other...higher than a level of Crown counsel whether
18 or not Mr. Feagan can tell us whether or not in his view charges
19 would likely have gone ahead.
20 MR. CHAIRMAN
21 That question was...I thought the answer to that question
22 was given this morning as being "Yes."
23 MR. FEAGAN
24 A. It would depend what Crown counsel advised us.
25 Q. Okay. You were instructed, I take it, Mr. Feagan, from this

1 letter to advise the provincial AG...

2 MR. CHAIRMAN

3 Just before you leave that.

4 MR. SPICER

5 Yeah.

6 MR. CHAIRMAN

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

13 MR. FEAGAN

14 I was never personally involved, My Lord.

15 MR. CHAIRMAN

16 No, I don't mean being involved.

17 MR. FEAGAN

18 I have known of cases, yes.

19 MR. CHAIRMAN

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

23 MR. FEAGAN

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

1 General normally.

2 MR. CHAIRMAN

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

10 MR. FEAGAN

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

16 MR. CHAIRMAN

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

21 MR. FEAGAN

22 That's right. That's right.

23 MR. CHAIRMAN

24 First to the director of public prosecutions.

25 MR. FEAGAN

1 Right.

2 MR. CHAIRMAN

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

5 MR. FEAGAN

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

8 MR. CHAIRMAN

9 All right.

10 MR. SPICER

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

13 A. Uh-hum.

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

15 A. That's right.

16 Q. Regardless of who the potential defendant was.

17 A. That's right.

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

20 A. That's right.

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

24 A. Uh-hum.

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

1 charge under section 110(c) against Mr. Thornhill are
2 present." Do I take it then that as on December 22nd you
3 still were of the view that there were reasonable and
4 probable grounds?
5 A. That's right.
6 Q. You go on to discuss the effect of the 110(c) argument, and
7 have forwarded some material to Coles in order for him to
8 have a look at that, correct?
9 A. Uh-hum.
10 Q. Okay. You then say, "Because of the advice you gave me
11 during our November 12th meeting concerning the
12 consequences of pursuing this case further in the fact of the
13 Attorney General's decision," and I believe you've spoken of
14 that already, the consequences as you understood them to
15 be, "And because my investigators were not afforded the
16 opportunity of a normal consultative process with Crown
17 counsel..." Are you referring there to the fact that you were
18 told not to consult with the Crown...
19 A. That's right.
20 Q. ...and send it on up to the Deputy AG?
21 A. Uh-hum.
22 Q. "And because of my concern over the force's responsibilities
23 in cases of this nature." What do you mean by that?
24 A. The responsibilities of the force to lay a charge when the
25 elements are present, the moral obligation to society to do

1 so.
2 Q. And because of those three matters you referred the matter
3 off to your Commissioner.
4 A. Yeah. I should maybe point out that in consideration of that
5 moral obligation there's always a discretion there. One has
6 to look at various circumstances.
7 Q. What sorts of things are you talking about?
8 A. For example, there may be a regulation in Grise Fjord in the
9 Northwest Territories prohibiting a child under sixteen from
10 driving a ski-doo, but if that child's parents are out on the
11 trap line and need food supplies and he drives one, I think
12 the constable is correct in using his discretion not to lay a
13 charge. There are certain cases like that.
14 Q. You go on then to say, "After careful consideration of all the
15 facts involved, it has been decided that charges against Mr.
16 Thornhill and/or the banks will not be laid in contradiction
17 to the wishes of the Attorney General."
18 A. Right.
19 Q. Did you understand, Mr. Feagan, that the reason that the
20 charges were not going to be laid was they were not to be
21 laid in contradiction to the wishes of the Attorney General,
22 was that the issue as you understood it?
23 A. Yes, from the letter that I received from the Deputy
24 Commissioner office, yeah.
25 Q. And that was your understanding of the reason.

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

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

A. That's right, yeah.

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

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

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

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

A. Yeah, discussion.

Q. For discussion be made available.

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

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.
24
25 Do you agree with that?
A. Ah, yes...
Q. That that's the normal...
A. That's the normal practice.
Q. He then goes on in the next paragraph to say,

There has been, and will continue to be, police

> investigations in respect to which the police will be directed to deal with representatives of the Attorney General other than with one of his regularly designated prosecuting officers. This may be the situation in respect to investigations requested by the Attorney General, investigations in a major and complex criminal activity, particular kinds of crimes including conspiracies, cases of possible personal conflict and such other criminal investigations which the Attorney General considers should be attended upon by his Deputy or other designated persons in the Department.

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

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

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

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

Q. And what case was that?

MR. BISSELL

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

COMMISSIONER EVANS

Not if it has nothing to do with...

CHAIRMAN

Yes. My understanding was that the evidence being

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

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

A. Distilleries.

CHAIRMAN

Distilleries.

MR. FEAGAN

A. Yeah.

CHAIRMAN

Apple Jack.

MR. BISSELL

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

VOICE

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

CHAIRMAN

Pardon?

MR. BISSELL

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

CHAIRMAN

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

COMMISSIONER EVANS

There may be a lot of private ones...

CHAIRMAN

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

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

1 handled by the Commercial Crime Section because of the
2 educational background of the investigators.
3 MR. SPICER
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.
15 CHAIRMAN
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

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.
16 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...
21 COMMISSIONER EVANS
22 Q. Right.
23 A. And they're educated people, lawyers and accountants...
24 CHAIRMAN
25 Q. Did the Attorney General's Department of Nova Scotia have

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.
8 MR. SPICER
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?

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.

23 What did you understand that you were being told by that

24 paragraph?

25 A. My understanding, such as it always was, is that in the final

26 analysis a police investigator can lay a charge if he feels that

27 the necessary ingredients are there.

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

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...

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?

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

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.
23 COMMISSIONER EVANS
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...

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.
14 MR. SPICER
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

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

Not all of it.

MR. FEAGAN

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

MR. SPICER

Q. You had a discussion with the Attorney General?

A. Yes, I did.

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

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

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

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

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.
17 MR. CHAIRMAN
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.
20 MR. FEAGAN
21 Yeah.
22 MR. CHAIRMAN
23 I'm the one that's misreading it. Carry on.
24 MR. SPICER
25 Okay.

MR. CHAIRMAN

Pay no attention to me.

MR. SPICER

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

A. Uh-hum.

Q.

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

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

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

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

MR. RUBY

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

MR. CHAIRMAN

This is the CBC video.

MR. RUBY

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

MR. CHAIRMAN

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

MR. MacDONALD

Sorry, My Lord.

MR. CHAIRMAN

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

MR. MacDONALD

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

MR. RUBY

Thank you, Mr. MacDonald.

COMMISSIONER EVANS

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

MR. RUBY

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

MR. FEAGAN

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

COMMISSIONER EVANS

Oh, I see.

MR. FEAGAN

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

COMMISSIONER EVANS

Mr. Story.

MR. FEAGAN

Mr. Story's article.

MR. RUBY

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

COMMISSIONER EVANS

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

MR. RUBY

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

MR. CHAIRMAN

That's without prejudice.

COMMISSIONER EVANS

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

MR. RUBY

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

MR. SPICER

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

MR. RUBY

I didn't think I saw that...

MR. MacDONALD

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

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.
10 MR. RUBY
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.
14 MR. MacDONALD
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.
18 MR. CHAIRMAN
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.
22 MR. RUBY
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

for the...

MR. CHAIRMAN

Yeah, I would assume so.

MR. RUBY

Then I'll proceed on that footing.

EXAMINATION BY MR. RUBY

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

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

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

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

Q. Now referring to here...

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

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

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

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

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.

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

Q. Um.

A. Because I'm not aware of them.

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

A. Inspector MacInnes wrote these notes.

3:14 p.m.

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

A. Uh-hum.

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

A. Uh-hum.

Q. Did you agree with that?

A. That's his opinion as stated here.

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

A. Not entirely, no.

Q. Why not?

A. Because it was an accepted thing that when they gave direction to have a report forwarded to them, to the Attorney General's Department, that we do that. Maybe 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.

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?
7 MR. MacDONALD
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.
11 MR. RUBY
12 Well, that is...that's Quintal's.
13 MR. FEAGAN
14 Yeah, that was the final report.
15 MR. MacDONALD
16 Paragraph (c).
17 MR. CHAIRMAN
18 Page 97.
19 MR. MacDONALD
20 Yes, My Lord.
21 MR. RUBY
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

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

Q. You read the briefing.

A. Yeah, well, I was given it.

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

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

3:29 p.m.

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

A. Yeah, yeah. Sure.

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

A. No.

Q. Right.

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

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

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

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

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

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

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

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

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

A. Yes.

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

A. I don't know.

Q. You don't know?

A. I don't know...

Q. Sure you know.

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

Q. That's not part of what you meant by obvious ramifications, 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.

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.
3 COMMISSIONER EVANS
4 Which letter?
5 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
12 He, with the assistance of his brother-in-law and
13 his accountant, was the one who engineered the
14 final settlement and in the process wound up
15 paying off his debts at $.25 on the dollar. Given
16 the fact that (a) bankruptcy might have been
17 cheaper...
18 Was there any evidence that bankruptcy would be cheaper?
19 A. Not that I'm aware of and, furthermore, it would be damaging
20 in some ways.
21 Q. It would cost him dearly in terms of public image and...
22 A. Right.
23 Q. Matters that are not easily...
24 A. That was mentioned in some of the bank...
25 Q. Yeah, that he would lose his source of income which was his
MP's salary.
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

4 (b) One, possibly two of the banks, had already 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

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

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.

8 MR. MacDONALD

9 My Lords...

10 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 what to know why the RCMP didn't give some weight to the

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

CHAIRMAN

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

MR. RUBY

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

CHAIRMAN

We don't know that.

MR. RUBY

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

CHAIRMAN

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

MR. RUBY

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

CHAIRMAN

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

MR. RUBY

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

CHAIRMAN

You wish to respond, Mr. MacDonald?

MR. MacDONALD

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

3:45 p.m.

MR. CHAIRMAN

Counsel for the...

MR. BISSELL

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

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

MR. CHAIRMAN

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

MR. FEAGAN

Yes, they were.

MR. MACDONALD

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

MR. CHAIRMAN

Oh.

MR. MACDONALD

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

MR. CHAIRMAN

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

MR. MACDONALD

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

MR. CHAIRMAN

So this information was available to the law officer of the

Crown when they completed or compiled their opinions.

MR. MACDONALD

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

MR. CHAIRMAN

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

MR. MACDONALD

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

MR. CHAIRMAN

All right.

MR. MACDONALD

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

DISCUSSION

4:02 p.m.

CHAIRMAN

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

MR. RUBY

I think 44, I'm interested...

CHAIRMAN

42.

MR. RUBY

...in why the RCMP...

CHAIRMAN

Right, I have it now.

MR. RUBY

...did not consider it.

CHAIRMAN

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

MR. MacDONALD

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

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.
5 EXAMINATION BY MR. MacDONALD
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.

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

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

A. Correct.

MR. MacDONALD

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

MR. RUBY

I'm grateful to my friend for clarifying that.

CHAIRMAN

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

MR. RUBY

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

MR. FEAGAN

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

MR. RUBY

Q. All right.

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

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

A. Page?

Q. Page 86.

A. 86.

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

A. Yeah.

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

A. Yeah, as I see it, because they were ready to write off the 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.

Q. So...

A. I would let him bring up that defence later on but...

Q. Yeah. But it's irrelevant.

A. If I have a *prima facie* case and I feel in the interests of the society I lay a charge, then, sure, if the fellow comes up with defences strong enough to sway the court his direction, I lose my case. But I least I had grounds and I laid the case, you know, I laid the charge in good faith.

Q. And (c) is not a defence in your experience, is it?

A. Well, again, it depends how the court looks at it when it sees it whether it's an offence or not. I can't, I'm not a judge, you know, I don't like to put my place in, but I have to consider those things...

Q. Exactly. You wouldn't lay a charge if you saw a good defence there.

A. Oh, if I knew that there was no use in laying it, I wouldn't lay it but I wouldn't...

Q. That's not a defence is it, in your experience. The fact that...

A. My experience with this particular case and I'm not that learned at that but I would be inclined to lay the charge in spite of that indication of a defence, yes.

Q. You would not consider that a valid defence.

A. That wouldn't, that didn't and wouldn't, you know, dissuade me from laying the charge.

Q. Right. Let me come down to it, it could be argued that "(a) he

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
7 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.
13 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...
18 COMMISSIONER EVANS
19 You haven't heard Mr. Ruby in court.
20 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.
23 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

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

4:14 p.m.

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

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

A. Yeah.

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

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

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

A. Well...

COMMISSIONER EVANS

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

1 expressed them, let him answer for them and not this witness.
2 MR. RUBY
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.
6 COMMISSIONER EVANS
7 Oh, absolutely. That's an opinion that he certainly indicated
8 all the way along.
9 MR. RUBY
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.
14 COMMISSIONER EVANS
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.
19 MR. RUBY
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

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

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

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

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

A. I beg your pardon?

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

A. Yes.

Q. Before Quintal what the Premier would have said?

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

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

A. Not in my opinion.

Q. And there's no evidence to speculate.

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

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

A. Right.

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

A. Right.

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

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

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

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

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

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

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.

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?

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

Q. Thank you.

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

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

COMMISSIONER EVANS

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

MR. MACDONALD

Yes, he'll be here.

MR. RUBY

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

A. Yeah, I know the one you mean.

Q. Have you got it in front of you?

A. Okay.

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

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

A. Yes.

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 Commissioner Simmonds pointed out in
20 > February, 1981 that my judgement and that of the R.C.M.P. force was reached entirely within
21 > the force and there was no outside influence or direction.
22
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. BISSELL

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

MR. CHAIRMAN

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

MR. RUBY

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

MR. CHAIRMAN

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

MR. RUBY

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

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

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

MR. CHAIRMAN

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

MR. RUBY

Those are all my questions.

MR. CHAIRMAN

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

MR. SAUNDERS

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

MR. CHAIRMAN

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

EXAMINATION BY MR. SAUNDERS

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

A. No, I don't.

Q. This was a regular Thursday morning session, was it?

4:32 p.m.

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

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

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

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

A. No, that's right.

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

A. As far as I recall, yes.

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

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...

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?

A. Mr. Gale's direction.

Q. Yes.

A. I think so, yes.

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

A. That sounds...

Q. Is that correct?

A. Yeah.

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

A. Page 18.

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

A Yes.

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

> Such action by Inspector Blue is directly contrary to the instructions of the Deputy 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?

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 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.

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

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

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

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

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

A. Eventually, yes.

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

A. I still contend that, yes.

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

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

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

A. Yeah.

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

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

Q. That was discussed.

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

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

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

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

A. Yes.

Q. But you never did.

A. No, I didn't.

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

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

Q. Yes.

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

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

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

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

A. Certainly, because I think, I took it... If that was said, I took it as if, well, you know, if you think so much, go ahead and lay your charge and we'll stay it. It was in the vein of argument that it was put, let's put it that way, not a direction. I didn't 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
5 > I nevertheless had principles that I believed in
6 > and, although I was not a lawyer, I was of the
> 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 scond 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 satisifed 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?

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

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

A. Nothing in writing, no.

MR. SAUNDERS

Thank you, Mr. Feagan.

COMMISSIONER EVANS

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

MR. FEAGAN

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

COMMISSIONER EVANS

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

MR. FEAGAN

A. Did I ever see him?

COMMISSIONER EVANS

Yes.

MR. FEAGAN

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

COMMISSIONER EVANS

It was a game play.

MR. FEAGAN

A. That's right.

MR. CHAIRMAN

Mr. Ross?

MR. ROSS

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

MR. BISSELL

We have no questions, My Lord.

MR. CHAIRMAN

Mr. Merrick?

MR. MERRICK

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

EXAMINATION BY MR. MERRICK

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

A. He was never involved.

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

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

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

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

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

A. That's right.

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

A. Uh-huh.

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

A. Yeah, that had that effect, yes.

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

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

Q. Nothing to do with this.

A. Nothing to do with any of those things.

MR. MERRICK

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

MR. CHAIRMAN

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

ADJOURNED TO 9:30, SEPTEMBER 13, 1988

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