

P R E S S

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#4

**ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION**

Volume 84

Held: September 13, 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

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Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
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Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
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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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MR. QUINTAL, EXAM. BY MR. MACDONALD

Tuesday, September 13, 1988

1 MR. CHAIRMAN

2 Before we start, I regret what apparently is the unavoidable
3 delay in commencing this morning. We, as I said yesterday,
4 intend to keep the schedule that has been allocated for the next
5 two weeks. According to the schedule, we have two witnesses
6 today that we will hear. I'm aware that the press have certain
7 deadlines, but I'm sure they will appreciate our unswerving
8 devotion to duty demands that we carry on until we finish these
9 two witnesses. So we may very well keep going until late in the
10 evening, unless the examination and cross-examination is succinct
11 and to the point, and then I'm sure we'll be out early.

12 Mr. MacDonald?

13 MR. MACDONALD

14 Thank you, My Lord. Just for a little guidance, given the fact
15 that we're starting now at quarter to twelve...

16 MR. CHAIRMAN

17 Well, also we're going to sit until one o'clock today.

18 MR. MACDONALD

19 That's what I was going to ask you. Will you just take just a
20 one-hour break?

21 MR. CHAIRMAN

22 We'll probably compromise at an hour and 15 minutes.

23 MR. MACDONALD

24 Thank you. The next witness, My Lord, is Mr. Quintal.
25

MR. QUINTAL, EXAM. BY MR. MACDONALD

1
2 RAYMOND QUINTAL, duly called and sworn, testified as follows:

3
4 EXAMINATION BY MR. MACDONALD

5 Q. For the record, sir, what is your name?

6 A. Raymond Quintal.

7 Q. Your last name is spelled Q-U-I-N-T-A-L.

8 A. Yes.

9 Q. I'll apologize in advance, but Cape Bretoners have trouble, and
10 I may call you a different name from time to time.

11 MR. CHAIRMAN

12 In Newfoundland, it's pronounced "can-tle", which means
13 112 pounds. It takes two to make a draft of salt cod.

14 MR. MACDONALD

15 Q. At the present time, Mr. Quintal, you reside in Ottawa, do you,
16 sir?

17 A. Yes, in the City of Gloucester.

18 Q. And you are retired from the R.C.M.P.?

19 A. Yes.

20 Q. When did you retire?

21 A. In July, 1981.

22 Q. What was your rank when you retired?

23 A. Deputy Commissioner.

24 Q. Would you just briefly for the Commissioners tell us, trace
25 your career path in the R.C.M.P., so we'll have some idea what

MR. QUINTAL, EXAM. BY MR. MACDONALD

1 you've done in your career?

2 A. Well, I joined in June, 1948. After basic training, I was
3 posted to New Brunswick in 1949, where I served in different
4 capacities at the detachment level until 1961, and then I
5 moved to divisional headquarters in '61 and remained there
6 until '63. I was transferred then to the Province of Quebec
7 and to Montreal. I was commissioned in 1964 and then I
8 served in the Province of Quebec until July, 1970, at which
9 time I moved to headquarters in Ottawa and served in
10 various capacities in headquarters until I retired in 1981.

11 Q. When were you appointed Deputy Commissioner?

12 A. In 197... I think it was the first of January 197...

13 Q. Seventy?

14 A. 1978.

15 Q. 78, thank you. Is there only one Deputy Commissioner?

16 A. No, I don't know how many there are now but, in those days,
17 there were three at headquarters. One responsible for
18 administration, one responsible for Canadian Police Services,
19 and one responsible for operations. Also, there was a Field
20 Deputy Commissioner in British Columbia.

21 Q. What were you responsible for as Deputy Commissioner?

22 A. At first, I was responsible for Canadian Police Services, and
23 then for operations, and that's what I was at the time I
24 retired.

25 Q. And early in 1980, what would you have been responsible

MR. QUINTAL, EXAM. BY MR. MACDONALD

1 for?

2 A. I'm not sure. I think it was in 1980 that I moved from the
3 Canadian Police Services to operations.

4 Q. Canadian Police Services, does that include the negotiation for
5 and the administration of the contracts entered into?

6 A. No, that's administration.

7 Q. Pardon?

8 A. That's administration.

9 Q. Okay. Who would you report to as Deputy Commissioner?

10 A. The Commissioner.

11 Q. And who, in turn, would be reporting to you?

12 A. In my capacity as operations?

13 Q. Yes.

14 A. The Directors of Criminal Investigations, what we call "P
15 directorates," which was protective policing, and the
16 directorate of criminal intelligence.

17 Q. All right, you're aware, Mr. Quintal, that we are concerned
18 with the involvement of the R.C.M.P. in a case involving
19 Roland Thornhill?

20 A. Yes.

21 Q. Would you tell the Commissioners when you first became
22 aware of that case and the R.C.M.P. involvement in it?

23 A. I think it was in... I think it was in June, 1980 when I
24 received an internal document from the Director of Criminal
25 Investigations, who was Tom Venner at the time.

MR. QUINTAL, EXAM. BY MR. MACDONALD

1 Q. Tom Venner?

2 A. Yes.

3 Q. We've had marked here, Mr. Quintal, the document as I've put
4 in front of you, Exhibit 165. Let me ask you to turn to page
5 nine of that document, please. Can you identify for me, first
6 of all, the persons involved here? At the top of that, it says
7 "To" and then it has "ADCI Federal, OIC, CCB." Who would that
8 be?

9 A. "ADCI Federal" is the Assistant Director of Criminal
10 Investigations for the federal. We had also contract policing,
11 and that's the distinction made.

12 Q. Would you be able to say who, what person this would have
13 been in 1980?

14 A. The initials, I think it's Chief Superintendent Riddell.

15 Q. Riddell?

16 A. Yes.

17 Q. And it's coming from... What's that over on the side?

18 A. DCI, which is the Director of Criminal Investigations.

19 Q. Is that an Ottawa thing as well?

20 A. Yes, that would be Assistant Commissioner Venner.

21 Q. Would Venner be someone who would report to you?

22 A. Yes.

23 Q. Let me take you through some of the comments in this and
24 ask you to either... Let me back up and say it appears that the
25 date is, the total date is cut off, but I believe this is written in

MR. QUINTAL, EXAM. BY MR. MACDONALD

1 April of 1980. Would that be the normal way to write the
2 year, then the month, and then the day?

3 A. Yes.

4 Q. Do you recall ever seeing this document before?

5 A. I don't. I may have, but I don't see my initials on it, so I can't
6 say for sure.

7 Q. Let me just take you through some of this and ask you if you
8 were made aware of the contents of the memo; if not by being
9 given the memo, but by being told what was in it. It says:

10
11 Re Roland Thornhill, who was Minister of
12 Development of Nova Scotia. In breach of
13 Section 110 in that he had a substantial debt
14 written off at small per cent of the dollar. Media
15 speculation and government has admitted
16 Minister did settle accounts while a Minister.
17 Debt was over (I don't know if that's 40,000 or
18 400,000) and in return for concessions. Halifax
19 CCB investigating and report will be forthcoming.

20 Halifax CCB is what, Commercial Crime Branch?

21 A. Yes.

22 Q.

23 AG Gale has been told that R.C.M.P. wish to
24 investigate and he agreed they should. There
25 has been attempt to use R.C.M.P. by suggesting
that they have looked at Mr. Thornhill's
transaction and can find nothing wrong. "H"
Division are not prepared to let this be said, so
wish to investigate fully ASAP.

Were you made aware of that, of those events?

A. Probably not at the time.

MR. QUINTAL, EXAM. BY MR. MACDONALD

- 1 Q. What would you expect to happen where the Halifax
2 Commercial Crime Branch is investigating and the report will
3 be forthcoming? Who would it be forthcoming to?
- 4 A. A copy would probably, would normally be sent to the
5 Commercial Crime Branch in Ottawa.
- 6 Q. That's a normal...
- 7 A. Procedure.
- 8 Q. Procedure, is it? All right. Let me take you to page 11. Is
9 that a memo from Mr. Venner to you?
- 10 A. Yes.
- 11 Q. As Deputy Commissioner?
- 12 A. Yes.
- 13 Q. And, again, I apologize, the date isn't fully on there but it
14 appears to have been written in June, is that correct on the
15 date?
- 16 A. Yes.
- 17 Q. And that, I believe what you said earlier, you think it was
18 June that you were made aware of these events?
- 19 A. That's right.
- 20 Q. What do you recall being told? What were you told? What
21 generally do you recall being advised in June? What was
22 brought to your attention?
- 23 A. I don't recall anything except I would have read this.
- 24 Q. Let me take you through this then, Mr. Quintal. "I think the
25 time..." **[POWER INTERRUPTION.]**

1 12:13 p.m.

2 MR. CHAIRMAN

3 I've been asked to request that whenever those involved
4 speak be sure and turn on the mike. Hopefully we can proceed
5 now with the utmost dispatch. It's a bad day.

6 MR. MacDONALD

7 Q. We were trying, Mr. Quintal, to look at page 11 of Exhibit
8 165. This is from Mr. Venner to you where he says, "I think
9 the time has come to draw the line," there's a blanked out
10 portion, and for the benefit of your Lordships these
11 documents have been blanked out to take out reference to
12 cases and materials that are not relevant to this particular
13 issue.

14
15 I think the time has come to draw the line and
16 for other reasons with the Attorney General of
17 Nova Scotia. Either we are running the police
18 force and directing the conduct with
19 investigations or they are. And if the latter is the
20 case then a police force other than the RCMP
21 must be what they should have.

22 COMMISSIONER EVANS

23 Then, the word "then".

24 MR. MacDONALD

25 Then, "other than the RCMP."

Q. "I would like to discuss with you and some of my "C" division
officers." Who are "C" division, is that head office?

1 A. That's "C" directorate.

2 Q. Okay. Is that the head office?

3 A. That's a...no, yes. That's the directorate of criminal
4 investigation.

5 Q.

6 The prospect of meeting with AG, Deputy AG,
7 etcetera, such a meeting not to exclude the
8 possibility of threatening to recommend non-
9 renewal of policing agreement if we can't reach a
10 better understanding. They had been pushing
11 and pushing and I don't see how we can keep
12 backing up without losing credibility and
13 integrity.

14 Now that appears to be pretty serious stuff, would you agree
15 with that?

16 A. Yes.

17 Q. Was there such a meeting with the Attorney General and his
18 officials?

19 A. No.

20 Q. Was the possibility of non-renewal of the policing
21 agreement ever raised with the Attorney General or any of
22 his officials in Nova Scotia?

23 A. Not to my knowledge.

24 Q. What action, sir, did you take or did the force take in
25 response to this memo from Mr. Venner?

A. The last sentence is my writing where I directed that he
develop the policy position and a control system.

Q. That is your writing then on the bottom?

1 A. Yes, sir.

2 Q. And did, in fact, Mr. Venner develop a policy position?

3 A. This was done, I'm not sure whether it was done and
4 completed before I left or not.

5 Q. Was it in the works?

6 A. It was initiated and developed because we were having
7 problems in various provinces with regards to our
8 relationship with the Attorney General and the Crown
9 counsel.

10 Q. What do you mean by control system?

11 A. I would take it, and it's difficult eight years later to recall
12 exactly what that would mean, but I would take it it would
13 probably refer to the clarification of responsibilities
14 between the force and the Attorney General's Department
15 with regards to investigation.

16 MR. CHAIRMAN

17 Are the responsibilities of the RCMP, vis-a-vis the Attorney
18 General of the province, set forth in the policing agreement
19 between the Government of Canada and the Government of the
20 province concerned?

21 MR. QUINTAL

22 Yes, I think, Your Lordship, there are some sections in the
23 agreements that deal with that.

24 MR. MacDONALD

25 And those agreements are filed with...

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 MR. CHAIRMAN

2 I appreciate that.

3 MR. MacDONALD

4 Q. Was the contract with Nova Scotia for the provision of RCMP
5 services being negotiated at this time?

6 A. I couldn't say whether they were actually underway. I
7 think the contracts were eventually signed after my
8 departure in 1981. They may well have had some
9 preliminary discussions but that would be handled by the
10 Deputy Commissioner, administration and the Commissioner.

11 COMMISSIONER EVANS

12 Aren't the agreements for five year...a term of five years or
13 how long are they?

14 MR. QUINTAL

15 I think the last one was for ten years.

16 COMMISSIONER EVANS

17 Ten years.

18 MR. CHAIRMAN

19 And aren't they negotiated collectively, the eight...the eight
20 contracting provinces.

21 MR. QUINTAL

22 I think so, sir.

23 MR. CHAIRMAN

24 You don't do it province by province.
25

1 MR. QUINTAL

2 No, sir.

3 MR. CHAIRMAN

4 The eight provinces gang up on the Solicitor General and try
5 to get the best deal possible.

6 MR. QUINTAL

7 Yes, sir.

8 MR. CHAIRMAN

9 And then they all sign.

10 MR. QUINTAL

11 I think so, sir.

12 MR. MacDONALD

13 Q. What type of problems were being experienced at this time
14 with the Nova Scotia Attorney General's Department?

15 A. I can't recall specifically what they were.

16 Q. Can you assist us in telling us what was meant by "They
17 have been pushing and pushing"?

18 A. I'm sorry, but I can't.

19 Q. You indicated to me earlier that it was at this time you
20 became aware of the Thornhill matter. There's no reference
21 in this particular document to Thornhill, at least not
22 specifically I don't believe.

23 A. Oh, it probably came with the Thornhill file.

24 Q. It was probably at that time you were given the Thornhill
25 file, and perhaps I can give you a little chronology that may

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 be of assistance to you. I understand the report, at least the
2 final report of the RCMP on the Thornhill matter was not
3 delivered to the Attorney General's office, was not delivered
4 until August 29th.

POWER FAILUREMR. CHAIRMAN

7 Why don't we break for lunch and come back at 1:45.

LUNCH BREAK- 12:21

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MR. QUINTAL, EXAM. BY MR. MacDONALD

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2 final report of the RCMP on the Thornhill matter was not
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POWER FAILUREMR. CHAIRMAN

7 Why don't we break for lunch and come back at 1:45.

LUNCH BREAK- 12:21

9 2:50 p.m.

CHAIRMAN

11 Mr. MacDonald.

MR. MacDONALD

13 Q. Mr. Quintal, when we broke we were referring you to page 11
14 and I was asking you if you would tell the Commissioners
15 what it is you were advised about the Thornhill matter and
16 there is nothing directly dealing with Thornhill in that
17 particular memo.

18 A. I don't recall exactly, but as I said, I think that this would
19 have come with the file that we had at that time, whatever
20 material was contained in it.

21 Q. What is your best recollection today about what you knew in
22 the summer of 1980 concerning the investigation of the
23 Roland Thornhill matter?

24 A. Not very much except that there was an ongoing investigation
25 at that time.

1 Q. Were you aware that your investigators were not to have
2 access to a Crown Prosecutor for advice?

3 A. I don't know if it was at that time but I certainly became
4 aware of it later.

5 Q. Turn to page 12, sir, in that book. This has been identified as
6 a memorandum to file by Inspector McInnes of the "H"
7 Division. And I'm not suggesting that you had it but I want to
8 refer to some of the things in here and see if you were
9 familiar with these questions. This took place in July. You
10 see at the beginning it says, "At 3:45 p.m. on July 24, 1980..."
11 so this is after you were aware something was going on in
12 Nova Scotia that is causing Mr. Venner concern anyway.

13 A. Mmm.

14 Q. So in July Inspector McInnes was informed by Gordon Gale
15 that he was extremely displeased because your investigator
16 had met with the Crown Prosecutor. And he said that the
17 investigator should not have approached counsel bearing in
18 mind that the Attorney General's Department did not wish
19 them to do so until after the investigation was completed and
20 his Department members has the opportunity to review the
21 file. Were you aware of that?

22 A. At that time I'm not sure. I can't say.

23 Q. You were at some time?

24 A. Yes. Certainly by the meeting we had in November.

25 Q. And is that something that caused you concern?

1 A. Yes. It was not normal practice, although it's a, it had
2 occurred, that some cases the Attorney General would ask
3 that the investigator's results be made available to his
4 Department.

5 Q. Without the investigator having any access to a Crown
6 Prosecutor?

7 A. Well the staff of the Attorney General's Department are
8 Crown Prosecutors or you mean local Crown Prosecutors.

9 Q. Local Crown Prosecutors. The day-to-day guy down in the
10 trench.

11 A. Yeah.

12 Q. That fellow.

13 A. Yeah.

14 Q. Are you aware of other cases where the investigators had
15 been denied access to that type of Crown Prosecutor?

16 A. I can't tell you of a specific case.

17 Q. Mr. McInnes, or Inspector McInnes went on to say in the
18 second paragraph,

19
20 I informed Mr. Gale that I was not in any
21 position to instruct our members not to see
22 Crown counsel, bearing in mind that it is normal
23 practice when investigations are conducted,
24 whether they be minor or major. Personally I
25 feel that their advice to us not to seek views of
Crown counsel in this particular investigation
was tantamount to obstruction.

Are you aware of that view by Inspector McInnes?

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. I was certainly familiar with this in November. I...

2 Q. Do you agree that the advice which apparently was given by
3 Mr. Gale, or through him to the investigator, that he was not
4 to seek the views of Crown counsel in this particular
5 investigation was tantamount to obstruction.

MR. SAUNDERS

7 Bearing in mind, of course, if the witness said that and
8 "views of Crown counsel" meant the local Crown.

MR. MacDONALD

10 Yes.

MR. SAUNDERS

12 Yes.

MR. MacDONALD

14 Certainly. I understood that to be the case.

15 A. Obstruction, it seems to me is a pretty strong word. I don't
16 know whether the fact that they don't have access to local
17 Crown would prevent them from continuing their
18 investigation.

19 Q. Why do police officers, in particular, members of the RCMP
20 wish to have access to local Crown?

21 A. Well I think it's explained further on with, look for advice
22 with regards to the importance of the evidence and this
23 indicates if you've already done some investigative work to
24 come up with some evidence whether there is a need for
25 certain areas, additional areas to be covered because of the

1 weaknesses that may be present in their cases and, or other
2 questions of law. I think it's a, and then what procedures are
3 followed from there.

4 Q. Now given that, and you've read the, and I believe that's from
5 the RCMP manual, isn't it?

6 A. Yes.

7 Q. Now given that fact, if that's the purpose of having access to
8 local Crown Prosecutors, or to Crown counsel, would you say
9 the denial of that access to the RCMP investigating officer
10 would be tantamount to obstruction?

11 A. I don't know.

12 Q. It certainly would not be the normal practice, would it?

13 A. Not normally no.

14 Q. Were you ever advised that your investigating officer had, in
15 fact, been instructed that he could consult if he wanted to
16 with Mr. Gale or Mr. Coles rather than with a local Crown?

17 A. I think there were instructions from the Deputy Attorney
18 General at the time that they were to consult his office or to
19 report directly to his office.

20 Q. They were to report to the Head Office. But are you aware of
21 any instruction given to your investigators that they could
22 consult, that they could consider Mr. Gale or his boss the
23 equivalent of a Crown attorney, Crown Prosecutor, and consult
24 with him to obtain the type of advice that's normally
25 available from a local Crown?

1 A. I don't, I'm not aware that these were actually said to the
2 investigator, Corporal House.

3 Q. Let me take you to page 18. That's a letter from Mr. Gale to
4 Inspector, or Superintendent Feagan. Have you ever seen
5 that letter before?

6 A. Yes.

7 Q. When would you have seen that, sir?

8 A. I don't recall exactly when but it would probably be in the
9 fall of 1980.

10 Q. These were the instructions as relayed in this letter, if I can
11 just read them to you. It's about halfway through the
12 paragraph,

13
14 Those instructions were that no charges were to
15 be laid nor was any contact to be made with
16 prosecutors concerning this matter until you
17 have finished your investigation and forwarded
18 a report to this Department so that the matter
19 could then be examined and the Attorney
20 General fully apprised of the evidence. Your
21 investigators are to cease to have contact with
22 the prosecutors concerning this investigation and
23 to concentrate on getting their long-awaited
24 report in to the Department summarizing the
25 evidence and the charges proposed based on the
evidence so that it can be reviewed and then
forwarded for prosecution if the evidence
supports charges.

24 Do you take that to be an invitation to the members of your
25

1 Force to consult with anybody in the Attorney General's
2 Department?

3 A. No.

4 Q. And in fact, do you take it be a direction that you are not to
5 consult with anybody.

6 A. No.

7 Q. Do you take it to be that instruction?

8 A. No. According to this is that they are not to consult with...

9 Q. And how does the investigating officer get the type of
10 assistance he needs as set out in your operating manual which
11 is reported on page 13? At least the extracts are on page 13.
12 It says, "Operating..." at the top,

13
14 Operational Manual [and it gives the number]
15 look to counsel for these reasons. Advice
16 regarding the importance of evidence available.

17 Where were your inspectors going to get that advice in
18 investigating this particular matter?

19 A. Well in this case if they needed it they would have to get it
20 from the Deputy Attorney General or his staff.

21 Q. And "Advice regarding the importance of obtaining
22 additional information."

23 A. Same thing.

24 Q. And "Advice on questions of law."

25 A. Same thing.

Q. And do you take the invitation, or the instruction from Mr.

1 Gale, that I've just read to you on page 18, to be an invitation
2 to come to him for that type of advice?

3 A. No.

4 Q. Would you agree with me that, in effect, what's happened
5 here is the RCMP is being denied access to legal advice?

6 A. In the normal sense, yes.

7 Q. Thank you. Now on page 20, Mr. Quintal, there's a
8 memorandum from Mr. Christen, from Inspector Christen I
9 guess, to the Commission. Would you have had this memo?
10 Would this have been given to you?

11 A. Yes, I would have seen that.

12 Q. And I would like to direct you to the second paragraph where
13 it says,

14 Mr. Gale advised the purpose in wishing to
15 review the evidence prior to assigning a
16 prosecutor was, firstly, to determine the
17 evidence available and if evidence to support a
18 charge was present, the Department would then
19 select appropriate counsel to handle this
20 particular case. In view of Mr. Thornhill's
21 position in the Provincial government, it would
22 be the wish of the Attorney General to brief the
23 Premier concerning any decision to prosecute.

24 Did you consider that would be a normal and appropriate
25 thing to do?

26 A. Well, I think yes.

27 Q. And why would that be?

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. The, when it involves a Minister, whether it be provincial or
2 federal, I think it is proper to inform the Premier or the
3 Prime Minister.

4 Q. At what time would that decision, would the advice be given
5 to the Premier or the Prime Minister, sir?

6 A. I would think when the investigation is pretty well complete.

7 Q. Would it be after a decision had been made to prosecute or
8 before?

9 A. Well it could be either one but...

10 Q. It could be either one.

11 A. Yes.

12 Q. Did you see anything wrong in advising the Prime Minister or
13 a premier that an investigation of one of his ministers was
14 being carried out and there may be charges going to be laid
15 but no decision has been made as yet?

16 A. I'm sorry, I missed that.

17 Q. Do you see anything wrong, or would there be anything
18 wrong in your view, if a premier or a prime minister were
19 advised that one, an investigation was being carried
20 inspecting one of his ministers and that charges may be laid,
21 but no final decision has yet been made?

22 A. Would it be improper to let him know? Not if the
23 investigation is completed.

24

25

2:10 p.m.

1 Q. As long as the investigation is completed, you see nothing
2 improper in advising the head of a government that charges
3 may be laid, no decision having been made as yet, no final
4 decision.

5 A. It would be preferable to have the decision made first and
6 then inform the authorities accordingly.

7 Q. Yes, it may be preferable but I understood from your
8 evidence that you would see nothing improper in having
9 advised the Premier first.

10 A. No.

11 Q. Wouldn't you be concerned that the Prime Minister may be
12 able to exert some pressure on his Cabinet colleague, the
13 Attorney General, not to lay charges?

14 A. Well, normally the advice to the Premier or Prime Minister
15 would be done by the Attorney General.

16 Q. Yeah. I'm not concerned who is the actual carrier of the
17 news.

18 A. No.

19 Q. My concern, sir, is that if the head of government is advised
20 before the actual decision is made to prefer a charge or to
21 lay a charge that there at least is the possibility of some
22 political influence being brought to bear on the Attorney
23 General.

24 A. No, no, because you have, you know, when you obtain search
25

1 warrants, for instance, to search offices or residences or the
2 business of Cabinet Ministers, this then becomes in the public
3 area which the Premier can very well become aware of, and
4 that's way before a decision is made with regards to
5 prosecution.

6 Q. But something public has happened there.

7 A. Yes.

8 Q. There's been an issuance of a search warrant.

9 A. Uh-hum.

10 Q. But nothing public has occurred when the RCMP has carried
11 out an investigation of an alleged criminal activity, has
12 there?

13 A. Well, in this particular case there was quite...there was some
14 publicity in the early stages when there was a press release
15 issued by the division that they were not going to carry out
16 a further investigation and then I think this was in April.

17 Q. But that may be, but my concern is this, that normally when
18 the RCMP are carrying out an investigation, that's private,
19 isn't it?

20 A. Yes.

21 Q. That's confidential.

22 A. Well.

23 Q. And the advices given to the Attorney General are
24 confidential.

25 A. Yes.

1 Q. And how could there ever be an excuse or a reason that the
2 Attorney General, before any public charge is laid, for the
3 Attorney General to breach that confidentiality and advise
4 the Premier or the Prime Minister?

5 A. Well, it would be up to the individual Attorney General to
6 decide.

7 Q. But in any event, you as a deputy commissioner of the RCMP
8 would see nothing wrong with an Attorney General doing
9 that.

10 A. No.

11 Q. Thank you. If I could finish this paragraph that I referred
12 you to on page 20. Mr. Gale advised that there was no
13 intent to interfere with our investigation, and if any advice
14 or direction was required, it would be provided by their
15 office rather than a local Crown prosecutor. So I take it from
16 that that indeed Mr. Gale did advise at least Mr. Christen
17 that if the investigating officer needed any assistance he
18 should go to Gale, or at least someone in Mr. Gale's office.

19 A. Yes.

20 Q. Do you know if that advice was passed along to the
21 investigator?

22 A. If I know.

23 Q. Do you know?

24 A. Not personally I don't.

25 Q. Thank you.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. Although I see there's a note there a copy was sent to the
2 officer in charge of the commercial crime section.

3 Q. And would that be a Halifax...

4 A. Yes.

5 Q. ...person? Thank you. You did obtain a copy, I think you
6 said in the normal course, of the report that was filed by the
7 investigating officer in Halifax and delivered to the Attorney
8 General, a copy of that would have been forwarded to
9 Ottawa as well?

10 A. Yes.

11 Q. And would that be the same with any interim reports that
12 were made available?

13 A. Well, yes, I would think so with most of the reports.

14 Q. Thank you. Give the witness Exhibit 164, please, that's the
15 statement of facts. Mr. Quintal, for your information, sir, an
16 agreed statement of facts or a statement of facts has been
17 prepared and filed here and on page 4 of that Exhibit
18 164...do Your Lordships not have your copies?

19 COMMISSIONER EVANS

20 Not yet, it's coming.

21 MR. MacDONALD

22 Q. On page 4, paragraph number 17, what that is an extract
23 from the final report which was submitted by the
24 investigating officer and forwarded to Mr. Gale on
25 September 11th of 1980. Do I understand the procedure

1 either one.

2 Q. By the time it gets to the Attorney General's Department
3 though it's been looked at by two or three levels in the
4 division.

5 A. Yes.

6 Q. What about when it gets to Ottawa? Is it something that's
7 looked at up there?

8 A. Yes.

9 Q. And who would be looking at it up there?

10 A. Well, it would be the staff in the commercial crime branch, it
11 would probably go to the officer in charge of the branch. He
12 may decide to refer it to, what at that time was his
13 immediate supervisor, which was the DCI federal and, or it
14 could go directly to the DCI.

15 Q. And what are they looking for when they review it?

16 A. They look at the investigative report to see whether in their
17 judgement the investigation is complete or whether there
18 are areas that may be lacking that they could be further
19 investigated and to provide necessary instructions to the
20 division if need be.

21 Q. Can we assume, therefore, that when the report is delivered
22 to the Attorney General it's been looked at by sufficient
23 number of people in the RCMP that any...that the RCMP are,
24 in fact, endorsing what is contained in the report?

25 A. Unless there are comments to the contrary.

1 Q. Thank you. Now here is what was said then and it's in
2 paragraph 17. It's said in the report, and I'm just going to
3 concern myself with recommendations if I can. The
4 investigating officer said, "I would like to make the
5 following recommendations. First, that I have established a
6 *prima facie* case of section 110(1)(c) Criminal Code against
7 Mr. Thornhill." Do you have that, sir?

8 A. Yes.

9 Q. "Therefore a prosecutor should be appointed to take this
10 matter before the courts." That's his first recommendation.
11 Secondly, "That I have shown some evidence that Mr.
12 Thornhill obtained funds by false pretences and I would like
13 to further discuss this matter with a prosecutor," and he
14 refers to the relevant sections of the Criminal Code. Third,
15 that the four chartered banks involved in this settlement
16 had violated the Criminal Code. And he is referring to
17 Sections 110(1)(c) and section 21(1)(b) of the Code, and I
18 understand what that is is, in effect, someone who is an
19 accomplice to the commission of a crime, isn't that correct?

20 A. I haven't read the Code since.

21 Q. Okay. "And consideration should be given to charging
22 them," and finally, "That there was evidence that the four
23 chartered banks, Mr. Thornhill, et al, have conspired to have
24 Mr. Thornhill receive a benefit." And he goes on to say, "I
25 would like to discuss the matter with a Crown prosecutor to

1 get certain things." And that's to get the advice or the
2 information and the assistance that your operation's manual
3 contemplates an investigating officer can get from a Crown,
4 isn't it?

5 A. Yeah.

6 Q. Now what did you anticipate would happen or what could
7 normally happen with such a report being delivered to the
8 Attorney General?

9 A. Well, normally it would...I would expect it would be
10 reviewed by the staff in the Attorney General's Department
11 and evaluated.

12 Q. Would you expect that the Attorney General would appoint
13 a prosecutor as asked for by the RCMP?

14 A. They would if they felt that there was evidence to
15 prosecute.

16 Q. Would you expect they would make the prosecutor available
17 for the purposes of the investigator discussing the matter
18 with him further to get his advice regarding the importance
19 of seeking additional evidence, regarding the importance of
20 the evidence available, his advice on questions of law?

21 Would you expect that a prosecutor would be appointed for
22 that purpose or those purposes?

23 A. Um. Those cases are rather few, that's not...that's not the
24 normal course of events and, well, I can't recall other cases
25 where this has occurred so I don't know what the practise

1 would be, although these would be the sort of a senior
2 Crown counsel's within the, ah, law offices of the province, I
3 guess it would be up to their discretion whether they wish
4 to appoint another prosecutor to review that or do it
5 themselves.

6 Q Now, Mr. Quintal, it's your operations manual that says your
7 investigating officers, the RCMP operations manual, it says,
8 "An investigating officer should be able to have access to a
9 Crown for the following reasons."

10 A. Yes.

11 Q A report is submitted to the Attorney General's office which
12 has been reviewed or normally we can assume has been
13 reviewed by various levels.

14 A. Yeah.

15 Q Of the RCMP in which the investigating officer has asked
16 "Let me have access to a prosecutor to discuss these points."

17 A. Um.

18 Q Wouldn't you expect that a prosecutor would be appointed
19 for that reason?

20 A. It should, normally I don't see why the province would
21 object.

22 Q Do you have any example of any other case where the RCMP
23 has asked for access to a prosecutor for the purpose of
24 getting that type of assistance and has been denied, in any
25 province?

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. Oh, I don't know, personally I don't know.

2 Q But you know that's what happened here.

3 A. Yes.

MR. SAUNDERS

4
5 My Lord, I hesitate to rise when my friend is doing his
6 direct examination, and I recognize that he has been trying to at
7 times get into cross-examination, but I think in fairness, my
8 friend ought to put the cover letter that came from the CO of "H"
9 division with the report in which Mr. Feagan, who testified last
10 day, made requests of my department and asked them whether it
11 was their wish that a local Crown prosecutor be appointed to
12 handle it. And I urge my friend to put to this witness page 24.
13 Surely that's what my department would have been expected to
14 respond to.

MR. CHAIRMAN

15
16 But I presume that's coming in time, isn't it?

MR. MacDONALD

17
18 Yes, My Lord, I don't know if I had or not but I certainly
19 don't object to putting the question from page 24 to Mr. Feagan,
20 Mr. Quintal, sorry.

21 Q What is on page 24, Mr. Quintal, is a covering letter from Mr.
22 Feagan which sends along the final report from the
23 investigating officer. Had you seen that before?

24 A. I can't recall.

25 Q But you did see the report that was prepared by the

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 investigating officer.

2 A. Yes, I've...

3 Q. Were you surprised?

4 MR. CHAIRMAN

5 And presumably this letter of September the 11th from
6 Chief Superintendent Feagan to the Deputy Attorney General
7 encloses the report of August 29th.

8 MR. MacDONALD

9 That's correct, My Lord, yes, at least that's my
10 understanding that that was enclosed.

11 MR. CHAIRMAN

12 Yes.

13 MR. MacDONALD

14 Q. Were you surprised, Mr. Quintal, that no prosecuting officer
15 was appointed or no one was designated from the Attorney
16 General's office to be made available to your investigator to
17 discuss the points raised in the report and to obtain the type
18 of advice that your investigator wanted to obtain?

19 A. If you ask if I was.

20 Q. Yes.

21 A. Surprised. The problem is I don't...I can't remember exactly
22 when this came to my knowledge, prior to the meeting in
23 November because not all files at headquarters are
24 necessarily referred to the Deputy Commissioner of
25 operations.

1 Q. But in June you had been told by your...by Mr. Venner that
2 there appear to be problems in Nova Scotia.

3 A. Yes.

4 Q. That the AG was, to use his words, "pushing and pushing".
5 Would you not have been keeping on top of what was
6 happening with the controversial matters in Nova Scotia?

7 A. Well, at headquarters you pretty well rely on your support
8 staff to bring matters to your attention which they feel is...

9 Q. Okay, thank you. On page 31 there's a copy, it's the first
10 page of a memorandum from Mr. Coles to the Attorney
11 General, and on page 39 is a covering letter from Mr. Coles
12 in which that memorandum is sent to Chief Superintendent
13 Feagan. Would you have ever seen this memorandum?

14 2:30 p.m.

15 A. Yes.

16 Q. Are you able to tell us when in the course of things you
17 would have seen it?

18 A. No. But...

19 Q. But you did at some time.

20 A. Yes.

21 Q. Can I suggest this to you that at least you would have seen it
22 in November of that year or very close to November.

23 A. Yes.

24 Q. We'll come back to that. Were you aware that the Attorney
25 General's Department issued a press release on October the

1 29th, 1980, stating that there would not be any charges laid
2 against Mr. Thornhill or the bank?

3 A. Yes.

4 Q. And how did you learn of that?

5 A. I don't recall.

6 Q. Would it be fair to suggest that your local people, your
7 Halifax people, were quite upset about the actions being
8 taken by the Attorney General without consultation with
9 them?

10 A. Yes, that's what led ...that's what led to the meeting of the...

11 Q. That's what led to the meeting in Ottawa.

12 A. On November the 5th.

13 Q. Now who convened that meeting?

14 A. I tried to think, I can't recall exactly how it was convened. I
15 don't have any notes in that regard and I can't tell you. I
16 don't know whether it was division or it was ourselves who
17 requested it. I...

18 Q. Who would decide who was going to be present?

19 A. Oh, the...out in the division CO, Chief Superintendent Feagan
20 would decide who would come up from "H" division in Nova
21 Scotia and DCI would decide which one of the staff he would
22 bring to the meeting.

23 Q. Mr. Feagan described these people yesterday giving
24 evidence here that "They were all our specialists in that
25 field with lots of experience and what went on across

1 Canada in commercial crime investigations." Would you
2 agree with that description of the people present?

3 A. I would think so.

4 Q. Now this is a meeting of people who have a lot of experience
5 and, in fact, are your specialists in commercial crime
6 investigation in Canada. Yes.

7 A. Yes.

8 Q. On...

9 A. In Canada, ah, the people in Ottawa would probably have a
10 better idea of what was going on across Canada than would a
11 particular division.

12 Q. And the people who were here, look at page 55, there's a list
13 of who was present. There's yourself as Deputy
14 Commissioner of Criminal Operations. And then there is
15 Venner and who is that, Chief Superintendent Riddell?

16 A. Yes.

17 Q. Would they both be experienced in criminal or commercial
18 crime investigations?

19 A. Ah.

20 Q. Or be aware of such...

21 A. Certainly they...I don't know what their actual background
22 was at the time, but they certainly... DCI would be
23 responsible for the commercial crime branch, the ADCI
24 would be their immediate supervisor.

25 Q. What about Staff Sergeant Jay, legal? He's from Ottawa, is

1 he? Or, no, he...who is he?

2 A. I don't know. I don't recall him.

3 Q He's noted to be "Legal C Director."

4 A. Well, we had at that time a legal branch at headquarters.

5 Q A legal branch at headquarters?

6 A. Yes, which were made up of members of the force who had
7 law degrees.

8 Q And you have Chief Superintendent Feagan, Superintendent
9 Christen.

10 A. Yes.

11 Q Inspector Blue.

12 A. Yes.

13 Q All from Halifax, all experienced officers in commercial
14 crime investigation.

15 A. I...they would be familiar. Blue would probably have more
16 experience in the commercial crime investigative field than
17 would have Christen or Feagan. I don't think that they
18 themselves worked as commercial crime investigators.

19 Q Okay. Sergeant Plomp, legal division, did you know him?

20 A. No.

21 Q Was there legal staff in Halifax?

22 A. Not per se, no, it's...probably we had in our commercial
23 crime section a mixture of people with different
24 backgrounds, some in accounting, some in legal.

25 Q I see. Then you have Corporal House, he's the investigating

1 officer.

2 A. Yes.

3 Q Superintendent Roy, who is he?

4 A. He was the officer in charge of our commercial crime branch
5 in Ottawa.

6 Q Would he be the head, head man for commercial crime in
7 Canada?

8 A. In Ottawa, yes.

9 Q And all the divisions would report to him.

10 A. Through that branch, yes.

11 Q Inspector, how do you pronounce that name, koz-ick.

12 A. Kozij, yeah.

13 Q Who is he?

14 A. He was one of the officers in the commercial crime branch in
15 Ottawa. I see here has "Policy and admin".

16 Q And then we have Inspector McConnell.

17 A. Yes.

18 Q Who is...what's he do?

19 A. I'd say he's in charge of government frauds within the
20 section within the commercial crime branch in Ottawa.

21 Q Okay. He's in charge of government fraud?

22 A. Yes.

23 Q And then Staff Sergeant Dillabugh and Sergeant Pratt.

24 A. Yes.

25 Q Who are they?

1 A. Both members of our commercial crime division in Ottawa.

2 Q. Was there anyone in the force available to you readily that
3 you would have wanted to have at this meeting for their
4 expertise that weren't there?

5 A. No, if we had, we would have called on them.

6 Q. Who would have kept the minutes of the meeting?

7 A. I don't know.

8 Q. Would someone be assigned to do that?

9 A. There probably was somebody.

10 Q. You kept your own notes.

11 A. Yes.

12 Q. At some time did you receive a copy of the minutes as
13 prepared and circulated, and that's the final version, I
14 believe, appears on page 55 and subsequent pages. There
15 was an earlier draft on which there were handwritten
16 changes and so on.

17 A. Well...

18 Q. Would you have at least obtained a copy of the final
19 version?

20 A. I don't recall seeing them.

21 Q. When had...when was the first time you had seen them, to
22 your recollection?

23 A. To my recollection is when in preparing for this Commission.

24 Q. Okay. You've given me copies of your own notes and I
25 believe we gave copies around this morning, My Lord, and

1 I'll have those introduced now.

2 **EXHIBIT 167 - NOTES BY MR. QUINTAL**

3 Q. So that's Exhibit 167. Do you remember the meeting?

4 A. Yes.

5 Q. How long would the meeting have lasted?

6 A. I recall it lasted for some time.

7 Q. An afternoon, the morning.

8 A. It was in the afternoon.

9 Q. What do you recall about the meeting?

10 A. Well, we had a presentation from the members from Nova
11 Scotia and...

12 Q. What information was made available to you?

13 A. At the meeting you mean?

14 Q. Yes. Or prior to the meeting.

15 A. It seemed to me we had a brief, but I can't...I don't see any
16 copies of it or whether it was a verbal presentation, I can't
17 recall.

18 Q. Would you know if the file, if we can call it that, the Halifax
19 file would have been available to Ottawa?

20 A. The Halifax file, I'm not so sure. Certainly the headquarters'
21 file would have been available.

22 Q. The headquarters' file would be available. And what would
23 be contained in the headquarters' file?

24 A. I don't recall now what was in it.

25 Q. If you wanted the complete Halifax file, it's something you

1 could have obtained, I assume.

2 A. Oh, I presume, yes.

3 Q. On page 55 there's a statement of the purpose of the
4 meeting. Would you agree that that is a correct summary of
5 the purpose of that meeting, "To discuss in depth the
6 problems derived from the Attorney General of Nova Scotia
7 comments to the media that no charges were warranted," is
8 that one of the purposes?

9 A. Yes.

10 Q. "To provide headquarters with advice and guidance, input
11 into a sensitive discussion in connection with a high profile
12 investigation," was that one of the purposes?

13 A. I think that is not quite correct in the sense that it's
14 headquarters' advice, not headquarters with advice. I think
15 if you look at the handwritten notes of the Assistant
16 Commissioner Venner, that's what it says, it's "headquarters'
17 advice" and not "headquarters with advice."

18 Q. Yeah, on page 51 is the handwritten notes from, part of the
19 handwritten notes of Mr. Venner and down toward the
20 bottom it says, "Add some comment about our discussion on
21 this point. We were meeting to provide headquarters'
22 advice, guidance, input into a sensitive..." So the purpose is
23 for headquarters to be able to provide advice.

24 A. That's right, yes.

25 Q. And then the next purpose was "To test the strength and

1 weakness of the investigation." That was one of the
2 purposes.

3 A. Yes.

4 Q. And then "To plan a course of action on how best to deal
5 with the fact that the provincial Attorney General has stated
6 his opinion to the press without giving the RCMP an
7 opportunity of rebuttal or comment." And that was another
8 purpose.

9 A. That was.

10 Q. Were there any other purposes, to your knowledge?

11 A. No.

12 Q. Now is that how the meeting started, that there was a
13 presentation given by the Halifax group of what this was all
14 about?

15 A. Yes.

16 Q. Let me take you over to page 56. Just before that listing 1,
17 2, 3, 4 in the middle of the page, it says, "A well-prepared
18 submission touched on the essential ingredients of a charge,
19 that is..." and it lists out the ingredients. That's of a charge
20 under section 110(1)(c), isn't it, of the Criminal Code?

21 A. Yes.

22 Q. And it's noted that,

23 The submission and the investigation were
24 queried on all aspects for the investigation had
25 to stand the test of our own internal scrutiny so

1 as to create a united front. Case law and other
2 precedents were cited to support the necessary
3 elements required to support a charge.

4 Is that an accurate reflection of what took place. This wasn't
5 just a glossing over of something. You were...you had your
6 specialists there to look at this, to scrutinize what happened
7 to make certain that there were the necessary elements
8 here to support a charge.

9 A. Yes.

10 Q

11 A discussion developed which fortified our
12 prerogative to lay an information recognizing
13 that it was within the ambit of the provincial AG
14 as to what type of prosecution would be
15 presented if any. A further brief discussion was
16 held on the fact that the force was morally
17 obligated to lay an information if the evidence
18 supported such action.

19 Is that an accurate reflection of what was said at the
20 conclusion of the meeting?

21 A. I don't recall exactly. I know there was some discussion if
22 you follow that where we said, in fact, that this had not
23 always taken place within the force.

24 Q. No, and in fact there had been other examples that the force
25 has had across Canada where having received written
instructions from an Attorney General that they would stay
a charge if it was laid, the force elected not to lay the charge.

A. Yes.

Q. But that's not something that's unique to the force, that's

1 happened before.

2 A. Yes. As a matter of fact, it seemed to me in our policy
3 review in developing a policy, we queried the divisions to
4 determine or to find out what the local procedures were
5 and, now I'm only going by memory, but it seems to me that
6 the replies we got back were...showed various situations in
7 various provinces. They weren't all the same all across the
8 country.

9 2:45 p.m.

10 Q. Let me take you to the conclusions of this meeting. And
11 they're on page 57. "It was concluded that the
12 investigational evidence supported a *prima facie* case under
13 Section 110 (1)(c) against Mr. Thornhill." Is that the
14 conclusion of the meeting?

15 A. I presume it is. We...

16 Q. Let me ask you to look at your own notes that were taken,
17 they're Exhibit 167. Under the subtitle "Heading" of your
18 notes of the 5th of November 1980, under "Decision" it says,
19 "They are to write back to AG and say they feel very strongly
20 about the matter and don't mind their reason why they
21 disagree with the evaluation of the DAG. We feel a charge is
22 warranted under Section 110 (1)(c)." So that was a conclusion
23 of the meeting.

24 A. Yes.

25 Q. Did you consider there was any additional investigation that

1 would have to be carried out, any additional evidence that
2 would have be to gathered to fortify that decision or to
3 support that decision?

4 A. I don't recall specifically but it seemed to me we felt it was a
5 pretty complete investigation. If there had been some it
6 would be in a minor area but...

7 Q. And it goes on in the "Conclusions" to say that, "Some leeway
8 must be given to the Attorney General." That's in the
9 conclusions of the minutes.

10
11 Therefore, a report shall be prepared pointing
12 out our position, outlining the jurisprudence, et
13 cetera, which supported and asking the AG to
14 reconsider his opinion. A report shall be
15 prepared by "H" Division and shall be delivered
16 by hand to the AG after review by Headquarters.

17 And do I take it you were contemplating "H" Division
18 preparing a written report which would be reviewed by
19 Headquarters and then taken to the Attorney General?

20 A. Well this was one of the purposes of the meeting in which
21 was to plan a course of action in the light of the fact that we
22 had not been given the opportunity to rebut our comment on
23 the decision of the Attorney General and this was decided
24 that that would be the course of action to take. Where they
25 were to prepare a written submission to the Attorney
General's Department outlining their reasons and reasoning
for disagreeing with that decision and that was to be done in

1 writing.

2 Q. And then the final conclusion in the minute was that, "The
3 Attorney General of the Province must be informed in writing
4 that it is our intention to pursue a charge against Thornhill
5 under Section 110(1)(c)."

6 A. Well I don't recall that being said at the meeting and I don't
7 think that Division were instructed to do that. As a matter of
8 fact they were to prepare a submission.

9 Q. The draft minutes, and if I can direct you to page 50...Do you
10 see that draft? It's Draft number 2. That handwriting is Mr.
11 Venner's, isn't it?

12 A. Yes.

13 Q. And that draft minute says that the Attorney General must be
14 informed in writing that it is our intention to pursue a charge
15 against Thornhill under Section 110(1)(c) subject to
16 Conclusion number 2." And Number 2 is the one immediately
17 below that. That you're going to give him some leeway. But
18 was it not the decision or the conclusion of that meeting that
19 you're going to give the Attorney General notice, you were
20 going to try and convince him of your view.

21 A. Yes.

22 Q. But that in the end result a charge was going to be laid by the
23 A-, by the RCMP.

24 A. I don't, personally I don't recall making that decision. I don't
25 think I made it at that time because if I had made it then I

1 would have made it in writing to the Division.

2 Q. Why wouldn't you have reached that conclusion if after a
3 complete presentation by the Halifax contingent, which was
4 queried, scrutinized by the specialists in the field, a
5 conclusion being reached that there was sufficient evidence to
6 lay a charge, why wouldn't you have concluded that a charge
7 will be laid? We may have to get around some of our, we
8 may have to mend a few fences or whatever, but we are
9 going to lay a charge.

10 A. Why would not...I felt that we should proceed the way I said
11 we should proceed which...

12 Q. But exactly what were you going to try and accomplish?

13 A. We hoped to convince the Attorney General's Department that
14 the argumentation presented was valid and strong enough to
15 bring him to change his decision.

16 Q. Were you going to let him make the final decision?

17 A. As to what?

18 Q. Whether charges should be laid?

19 A. Ultimately we, it would be our own decision to decide.

20 Q. You had concluded, or the meeting had concluded that there
21 was sufficient evidence to warrant a charge. Yes? We've
22 already agreed to that, haven't we?

23 A. Yeah.

24 Q. What would the Attorney General be able to present to you
25 having gone through the type of exercise you did to change

1 the collective opinion of that meeting that there was sufficient
2 grounds to lay a charge?

3 A. I'm sorry, would you repeat that again?

4 Q. What were you expecting the Attorney General, or his
5 Department could bring to you, could bring to the RCMP, that
6 could possibly change the collective opinion reached at that
7 meeting?

8 A. I don't know. What the consultative process would be
9 afterwards, I don't...

10 Q. Well did you consider the Attorney General might have some
11 evidence that wasn't available to the RCMP?

12 A. No.

13 Q. So you considered you had all the evidence.

14 A. Yes.

15 Q. Necessary. Did you consider the Attorney General might be
16 able to convince you, and when I say "you" I'm talking about
17 the Force, that your legal opinions were wrong?

18 A. Yes. That they, their legal opinion was wrong?

19 Q. No, that yours. You said, it's reported that at that meeting
20 that there was case law and there were precedents presented
21 to the meeting to support the conclusion that there were all of
22 the necessary elements to found a charge here.

23 A. Well the, we felt we had a *prima facie* case.

24 Q. Yes.

25 A. There were other factors, there was one thing that is not

1 mentioned in the minutes here and, which had to do with the
2 presentation which indicated that the proposal itself when it
3 was made was to the effect that all the banks were to accept
4 the proposal. And that nagged me personally from the very
5 outset. I seem to recall asking at the meeting also whether, in
6 fact, this type of proposal was kind of a normal practice for a
7 person found in this type of situation where he was
8 reportedly in a position where he couldn't liquidate his debts,
9 whether that was normal practice for people to make a
10 proposal to try to settle and I was told, yes, that that was a
11 normal procedure.

12 Q. You were told that at the meeting.

13 A. Yes.

14 Q. So notwithstanding that fact, that input, it was still the
15 conclusion of the meeting that all of the elements existed to
16 support a charge.

17 A. Yes.

18 Q. What I'm trying to find out, I guess, Mr. Quintal, and I'll try
19 again, you have agreed at a high level meeting that a charge
20 should be laid or is warranted. Now you're going back to the
21 Attorney General, I'm not quite certain why, are you still
22 subject to the Attorney General saying, "Well we don't care
23 what you think, no charge is to be laid and that the Force will
24 accept that direction."

25 A. Well not necessarily. The, we, you get legal advice and you

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 can accept it or reject it. But you don't do that lightly. When
2 you have three senior Crown law officers who tell you that
3 you don't have sufficient evidence, then you don't go against
4 that unless you feel you have, you're on pretty solid grounds.

5 Q. Was the opinion of the, that was given to the Attorney
6 General by Mr. Coles in this case, we've already looked at it,
7 was that reviewed at the meeting in Ottawa?

8 A. I can't say for sure whether it was or not.

9 Q. In your notes, Exhibit 167, you refer specifically to the fact
10 that you should outline the reason why you disagree with the
11 evaluation of the Deputy Attorney General.

12 A. Yeah. Well we certainly talked about that. But whether we
13 actually made a review of point by point I don't recall.

14 Q. Did your legal people at that meeting in Ottawa make any
15 reference to the quality of the opinion given by the Deputy
16 Attorney General to the Attorney General?

17 A. I don't know.

CHAIRMAN

18 What was the answer?

MR. QUINTAL

19 I don't know, sir.

MR. MacDONALD

20
21
22
23 Q. You were aware that legal advice had been given to the
24 Attorney General by his Deputy.

25 A. Yes.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 Q. And you were getting contrary advice from your legal people.
2 Contrary opinions.

3 A. Yes. Well...

4 Q. Would they not have tried to demonstrate why their opinion
5 of the Deputy Attorney General was not valid in their view?

6 A. When you say we got advice from our legal people, I'm not
7 sure we referred that to our Legal Branch, I don't think we
8 did. We have some of our representatives there...

9 Q. You have at the meeting Staff Sergeant Jay, who was noted to
10 be legal.

11 A. Yes.

12 Q. "C" Division. You have Sergeant Plomp who was noted to be
13 legal. There was a reference to the fact that there were cases
14 and there were precedents cited to support the necessary
15 elements. I suggest to you that the legal issues involved here
16 must have been discussed at that meeting.

17 A. Yes.

18 Q. And that it must have been stated or suggested to you that
19 the legal opinions of the Deputy Attorney General were
20 incorrect.

21 A. I think there was a particularly disagreement with the
22 question of intent under Section 110(c), I think it was.
23
24
25

MR. QUINTAL, EXAM. BY MR. MacDONALD

3:00 p.m.

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Q. Was that section not looked at?

A. Oh, I'm sure it was at that time.

Q. What about the other charges that had been recommended or at least the investigating officer said he would like to get further investigation or some guidance on whether there are other charges that should be laid, that is, a charge of false pretences possibly, charges against the bank, charges for... Was there any discussion about those possible charges at the meeting in Ottawa?

A. I don't personally recall that. I don't see much in here referring to this.

Q. I don't either and I'm just wondering if you have any recollection of why it wouldn't have been discussed.

A. No, I think the focus was certainly on the Thornhill aspect of the investigation.

Q. Was it discussed at the meeting that if you were to lay charges...or if the RCMP were to lay charges against the advice of the Attorney General that could have serious ramifications to the force?

A. I don't recall specifically, but it could have been.

Q. And the reason I ask you that is on page 52, again these are Mr. Venner's handwritten notes having read the draft minutes, if you start on the bottom of 51, we already said,

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 To provide headquarters' advice, guidance, input
2 into a sensitive decision in connection with a
3 high profile investigation. This is a feature of
4 the Commissioner's responsibility to manage the
5 force and to assure that the quality of our
6 criminal investigation activity is of the highest
7 order. Given the obvious ramifications of any
8 charge being laid against the advice of the
9 Attorney General, it rendered it absolutely
10 imperative that merits of the case be examined
11 at the highest possible level within the force.

12 Would you agree that that was one of the purposes and one
13 of the reasons you were going to subject this particular
14 charge to the closest of scrutiny in Ottawa.

15 A. Yes.

16 Q. And having done so, I'm probably repeating myself, it was
17 concluded that all of the evidence necessary to support a
18 charge were there.

19 A. Yes.

20 Q. Okay.

21 A. All of the elements, that there were sufficient elements to
22 initiate a charge.

23 Q. Sufficient evidence to initiate a charge.

24 A. Yeah.

25 Q. Now when was...what was your next involvement with this
matter?

MR. CHAIRMAN

Before we move on I've been having difficulty getting this

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 evidence Mr. Quintal rather succinctly. I'm not sure what Mr.
2 Quintal is saying. Was it...is it your recollection from these
3 meetings that after you had...when you met, whether you had the
4 opinion of the Deputy Attorney General to his Minister or whether
5 you had a summary by those in attendance, you were aware that
6 the Deputy Attorney General had, in his legal opinion, advised that
7 consent was a necessary element.

8 MR. QUINTAL

9 Yes, sir.

10 MR. CHAIRMAN

11 Or not consent, intent.

12 MR. QUINTAL

13 Intent.

14 MR. CHAIRMAN

15 Intent was a necessary element. And that you had an
16 opinion or opinions from members of the RCMP who were lawyers
17 which indicated to the contrary, they concluded that intent was
18 not a necessary element to sustain a charge, is that correct?

19 MR. QUINTAL

20 Yes, under 110(c), I believe.

21 MR. CHAIRMAN

22 So when I look at conclusion two, when you refer to giving
23 some leeway to the Attorney General, it seems to me that what
24 you're saying there is that someone from the force go back to the
25 Deputy Attorney General or the Attorney General or someone in

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 that department and say "Here's our opinion and our reasons why
2 we cannot accept the opinion, the legal opinion of the Deputy
3 Attorney General." Is that correct?

MR. QUINTAL

4 Yes.

MR. CHAIRMAN

5
6 And I would...that was probably...would probably be a
7 prudent and logical thing to do. But are we entitled to assume
8 from paragraph 3 that if after reading, for want of a better word,
9 your rebuttal opinion, the Deputy Attorney General was still firm
10 in his position that his opinion was the correct one at law, that you
11 would go ahead and lay a charge in any event, and advise the
12 Attorney General accordingly?
13

MR. QUINTAL

14 No, sir, I don't think, not on November the 5th.

MR. CHAIRMAN

15 I see. All right. Okay.

MR. MacDONALD

16
17 Q. Well, what would you contemplate would happen if that
18 scenario did develop?

19
20 A. Exactly what happened. We...the further contacts with the
21 Attorney General's Department did take place except that
22 they did not take place in writing in the first instance, they
23 took place verbally.
24

25 Q. Yeah.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. I think on November the 12th, I think. And then the
2 division came back with the memorandum to Headquarters
3 Ottawa asking for our decision, for a decision as to whether
4 charges should be laid or not.

5 Q. But...

6 A. At which time this caused us to take a very close look at the
7 total facts available in order to reach a decision whether we
8 would proceed or not.

9 Q. I thought that's what you did on November 5th. You spent a
10 whole afternoon with specialists looking at it, scrutinizing
11 what happened, they had a complete presentation from the
12 investigating officer and the other people in Halifax and
13 they all reached the conclusion that, in fact, the
14 investigational evidence supported a *prima facie* case. Now
15 are you...perhaps we'll come to it in detail, but are you
16 saying that after the Deputy Attorney General and the
17 Attorney General met with Feagan, there was another
18 intense review of the facts of this case?

19 A. There was a review of all, yes, after, you know, okay, after
20 the memo was received and before we replied, yes, there
21 was a thorough review made before we prepared the reply.

22 Q. Okay. Let me come to that then, sir, if we could in
23 chronological fashion. Let me take you to page 53. This is a
24 memorandum as I understand it from Sergeant Pratt to
25 Dillabaugh on the top part of the page and then the bottom

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 part it's writing...it's the writing of Dillabaugh, is that
2 correct?

3 A. I take it that's his, I'm not as familiar with his writing if that
4 would be, but I would take it that's from Dillabaugh.

5 Q. Did you see this letter or this memo prior to preparing for
6 this case?

7 A. Prior to...

8 Q. Prior to giving...preparing to give evidence before this
9 Inquiry. Did you see at the...

10 A. Oh, yes, oh, before this Inquiry, yes, I did.

11 Q. You did. Now on that page 53 Pratt is saying, the second
12 sentence there:

13 My personal opinion on this matter is that we
14 should proceed with a charge under Section
15 110(1)(c) in this matter. There is one rider,
16 however, and that is if we do so in this case, we
17 must be prepared to proceed in like fashion in
18 all other divisions who are confronted with a
19 similar situation.

20 Do you see that?

21 A. Excuse me.

22 Q. It's on the top of...it's on page 53.

23 A. Oh, I'm sorry, okay. Oh, that's...that's from...that's not from
24 Dillabaugh, that's to.

25 Q. That's from Pratt.

A. That's to Dillabaugh, yeah.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 Q. But somebody is writing to Dillabaugh.

2 A. Yes.

3 Q. And Dillabaugh's reply is saying "I agree with Sergeant
4 Pratt's opinion," that's why I assume that it's Pratt who is
5 writing the above. "On both points and I realize the
6 possible implications of going against the instructions of the
7 provincial Attorney General but I believe that the
8 ingredients are there for charges under 110(c)."

9 A. Um.

10 Q. "And 110(1)(b)."

11 A. Uh-hum.

12 Q. "And it is a matter of principle involved here. I would
13 recommend that before the charges are laid that we inform
14 the Attorney General by written letter," and so on. Were
15 you aware that this memo was written after the meeting in
16 November?

17 A. Yes.

18 Q. And, in fact, after Feagan had visited the Attorney General
19 and the Deputy Attorney General.

20 A. I presume the date is about the 23rd or 24th of November.

21 Q. Yes. If you look down at the bottom part before Dillabaugh's
22 writing, the date is there, 80-11-23. Right there.

23 A. Yes.

24 Q. In your notes, Mr. Quintal, Exhibit 167, you have notes of
25 November the 6th and I'd ask you to look at those because it

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 refers to the press release from the Attorney...Deputy
2 Attorney General from Victoria. Do you see that, sir, down
3 at the bottom?

4 A. Yes.

5 Q. Did you review that press release?

6 A. No, sir, I don't recall it.

7 Q. It's on page 58 of that booklet if you want to look at it.
8 And I want to direct you to the second paragraph where Mr.
9 Coles said, "That although he has not seen the statement
10 attributed to the assistant prosecuting officer, he restates his
11 previous advice," and this is the point I want to refer to,

12
13 That it was clearly understood policy and
14 accepted practise between the RCMP and the
15 Attorney General's Department that in matters of
16 major or involved criminal investigation,
17 particularly those involving allegations of so-
18 called commercial crime and fraud, the police
19 investigation into the fact is referred to the
20 Deputy Attorney General or other senior lawyers
21 in the department experienced in criminal law.

19 And he goes on to say, "It's only after that determination at
20 that level that the necessary ingredients exist that a
21 prosecutor is appointed." Would you say that that is a
22 statement of policy and accepted practise?

23 A. Well, I think the division at that time disputed that
24 statement.
25

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 Q. The division disputed it, and that's what's noted in
2 your...recorded in your notes at the top of page 2, "Division
3 says this is new as a standing policy for all cases." You'd
4 never heard of that policy before, had you?

5 A. No.

6 Q. As Deputy Commissioner.

7 A. Not from Nova Scotia, no.

8 Q. Was it a policy in any other province?

MR. PRINGLE

9
10 I really wonder how relevant it is whether it's a policy in
11 any other province. We're looking at this province right now.

MR. MacDONALD

12
13 I can pass on that.

MR. CHAIRMAN

14
15 Well, it's relevant in this sense that I take it when they say
16 it's...when the note here indicates it's new to the force, that that's
17 all embracing.

MR. PRINGLE

18
19 I think, My Lord, he's saying it's new to "H" division, I
20 believe that's what his notes say.

MR. QUINTAL

21
22 On page 2, sir.

COMMISSIONER EVANS

23
24 New to Nova Scotia.
25

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 MR. PRINGLE

2 Yes, the top of page 2.

3 MR. CHAIRMAN

4 I'm sorry, yes, so it does. Anyway, as far as Nova Scotia is
5 concerned what's your...what's your reaction to the statement of
6 the Deputy Attorney General?

7 MR. QUINTAL

8 Well, from what the...from what Superintendent Feagan told
9 me at the time that was not so.

10 COMMISSIONER EVANS

11 What's you're saying it's incorrect.

12 MR. QUINTAL

13 Yes, sir.

14 MR. MacDONALD

15 Q Now I take it from your notes, Mr. Quintal, that you...you
16 had no notes between November the 6th and December the
17 4th and on your December 4th you note that you had been
18 away to a conference. Were you away from that period of
19 time, sir?

20 A. I think I left on the 8th of November out of the country and
21 then didn't return until about the 2nd or 3rd of December

22 Q Okay. And when you returned, as your note indicates,
23 Feagan had a very stormy meeting with the Attorney
24 General and the Deputy Attorney General and "He made
25 known our views and got rough treatment. They have sent

1 in their proposed reply to the AG. DCI is reviewing and will
2 prepare a memo for me." Did you...were you given any
3 written advice from Feagan as to his reception by the
4 Attorney General or Deputy Attorney General?
3:16 p.m.

5 A. No. I think this was a verbal briefing upon my return from
6 Assistant Commissioner Venner. I think the meeting he's
7 referring there is probably the meeting of the 12th of
8 November.

9 Q. What did you understand that Feagan had told to the
10 Attorney General, that you say "he made known our views"?

11 A. Well, I think that it referred to the fact that we disagreed
12 with his, with the advice that he had provided and wished to
13 further make presentations on the matter.

14 Q. Look at page 63. Those are notes which Chief Superintendent
15 Feagan says he prepared following the meeting with Messrs.
16 Coles and How. Had you ever seen those?

17 A. Just recently. I have no recollection of seeing those before. I
18 don't know whether he would have sent those to Ottawa or
19 these were just notes in the file at the divisional level.

20 Q. And there's a report on page 68 from Inspector Blue to the
21 Officer-in-Charge of C.I.B. in Halifax. Would you have seen
22 that report?

23 A. I'm fairly sure I did, yes.

24 Q. You would have, okay.
25

1 A. Yeah

2 Q. That would have been available to you in Ottawa at the time
3 the final decision was made.

4 A. Yes.

5 Q. Down at the bottom of page 68. Inspector Blue says "It
6 appears evident that there is sufficient evidence and grounds
7 to support the laying of a charge under Section 110(1)C,
8 Criminal Code against Mr. Thornhill. In the laying of a charge,
9 all that is necessary is that there are reasonable and probable
10 grounds to believe that an offence has been committed and
11 reasonable and probable grounds to believe that the person to
12 be charged committed that offence. The determination, once
13 a charge has been laid, as to innocence or guilt of the person
14 charged is a matter for the court to decide. Do you accept that
15 as an accurate statement of the role of the police officer?

16 A. Well, it's not as simple as all that. I think that traditionally
17 the police has exercised discretion and does not lay charges in
18 all cases where there was evidence of a crime.

19 Q. What sort of factors would influence the exercise of that
20 discretion not to lay a charge?

21 A. Oh, there could be a number of factors. I, myself, for instance,
22 am sure I have not charged everybody who have exceeded
23 the speed limit and brought them to court. There are liquor
24 cases in the Province of New Brunswick when they had the
25 days that they had no liquor permits... Well, we didn't

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 prosecute everybody that had a bottle of liquor or beer.

2 Q. What determines, what sort of factors?

3 A. I don't know. There is no clear set of rules. When they say
4 these are the factors you consider, I think you exercise your
5 judgement at the time depending on all the circumstances.

COMMISSIONER EVANS

6
7 Q. But you're not talking about serious cases, are you?

8 A. No.

9 Q. You're not talking about bootlegging cases and speeding cases,
10 but thefts, things like that, or robberies, you're not...

11 A. No. No, sir.

12 Q. There is a distinction, I'm sure, that you draw, some place you
13 draw the line.

14 A. Yes, sir.

MR. MACDONALD

15
16 Q. But you can't tell us where that is.

17 A. No, it's...

18 Q. All right, later on I'm sure we're going to be asking why the
19 discretion was exercised in a particular fashion in this case.

20 Let me take you to page 69, and this is continuing on with
21 Inspector Blue's comments. The first full paragraph:

22
23 It is realized that to so proceed would place our
24 course in direct conflict with the decision
25 reached by the Deputy Attorney General of the
Province of Nova Scotia and his assistant.
However, that is a matter of policy which must

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 be dealt with at a much higher level. That is,
2 whether we abide by their decision or whether
3 we perform our duties and responsibilities as we
4 see them and answer to the law.

5 Would that be, in your view, a correct statement of the
6 dilemma that's facing the R.C.M.P. at this stage, whether
7 you're going to abide by the decision of the Attorney General
8 or perform your duties as you see them.

9 A. Yes.

10 Q. And let me ask you about the next paragraph. This is the
11 man in charge of Commercial Crime in Halifax at the time.

12 In reaching such a decision, it should be pointed
13 out that we have dealt with the Deputy Attorney
14 General's office throughout this matter in all
15 earnestness and complete good faith. Previous
16 instructions to submit reports prior to laying
17 charges and to cease dealing with the office of
18 the Halifax County Crown Prosecutor were
19 followed. However, the reasons given for
20 wanting the report prior to laying charges to
21 cease dealings with the Crown Prosecutor's office
22 and the use of the report dated July 28th, 1980,
23 to make final decisions without further dialogue
24 with this force and the manner in which the final
25 decision by the Deputy Attorney General's
Department was given to this force and then
immediately followed by a press conference
tends to lend itself to circumspection as to
whether the ends of justice have been truly
served in this matter.

Do you take that to be Inspector Blue saying the force has
been dealing throughout in good faith, but I'm not certain

1 about the other guy.

2 A. Yes, that's what is implied here.

3 Q. Did you take that into account when you were making your
4 final decision here?

5 A. I was aware of this, yes.

6 Q. And the final question he puts there in his letter:

7
8 Therefore a decision must now be made as to
9 whether our duty is to be carried out in the
10 manner in which we perceive it or if the decision
11 of the Deputy Attorney General and his assistant
12 is to be followed.

11 That's the decision that had to be made, isn't it?

12 A. Yes.

13 Q. Now attached to that memorandum is a legal memorandum
14 prepared by Sergeant Plomp. Did you see this memorandum
15 prior to making a final determination of whether to lay
16 charges?

17 A. It was included with the correspondence.

18 Q. And in the beginning of that memo, Sergeant Plomp says:

19
20 The purpose of this memorandum is to clarify
21 the law surrounding Section 110 of the Criminal
22 Code and to point out the weaknesses and basic
23 academic and factual flaws in the memorandum
24 from Gordon Coles to Harry How.

23 Did you read it with that in mind? That here is a legal person
24 in the force saying that the opinion from Mr. Coles is weak,
25

1 both academically and factually.

2 A. Yes.

3 Q. Did you review the opinion of Sergeant Plomp?

4 A. In this memorandum?

5 Q. Yes.

6 A. Yes, I would have.

7 Q. Had you ever at any time been given any other legal opinion
8 which would disagree or take issue with what Sergeant Plomp
9 has said in this opinion, other than, of course, the earlier
10 opinion from Mr. Coles?

11 A. Legal opinion? I didn't seek any legal opinion.

12 Q. And would you agree now, and I'll take you through it if you
13 like, but what Sergeant Plomp is saying is that the only intent
14 required in Subsection C of Section 110 is that do knowingly
15 accept a gift from somebody who has dealings with the
16 government. That's the only intent required. Yes?

17 A. Yes.

18 Q. So if somebody who is working for the government knowingly
19 accepts a gift from somebody who has, or a benefit from
20 somebody having dealings with the government, there is a
21 contravention of Section... Subsection C of Section 110.

22 A. Yes.

23 Q. Thank you. Now at page 77, there's a memorandum from
24 Superintendent Christen to C.O. "H" Division. The C.O. would
25 be Feagan, is that right?

1 A. Yes.

2 Q. Would you have seen a copy of this, sir?

3 A. As it would be included with all the other documents.

4 Q. It would be included with the documents sent to your office,
5 okay. At the bottom of that first long paragraph on page 77,
6 he says this:

7
8 It would therefore appear if we are to consider
9 charges in this matter, we would be well advised
10 to obtain an independent legal opinion of some
11 consequence. Mr. Coles has indicated he does not
12 consider legally trained members of this division
13 sufficiently experienced to draw the proper
14 conclusions in this case. Such being the case, I
15 suggest Mr. Coles has opened the door for us to
16 seek more experienced counsel.

17
18 In your experience, does the force ever go outside to get legal
19 opinions?

20 A. The force itself?

21 Q. The force or does the force draw on the Department of Justice
22 to get opinions?

23 A. Go outside the...no....Does the force go outside...

24 Q. Does the force go to the Department of Justice to obtain legal
25 opinion?

26 3:30 p.m.

27 A. The Force itself...

28 Q. Boards of, does the Force draw on the Department of Justice to

1 get opinions?

2 A. Outside, no. Does the Force go outside...

3 Q. Does the Force go to the Department of Justice to obtain legal
4 opinions?

5 A. Well we have gone at times. As a matter of fact now in our
6 Headquarters there is a section of the Justice Department that
7 provides legal advice to the Force.

8 MR. PRINGLE

9 I'm not sure if my friend is putting the question as clearly
10 as he might. He might talk about, with respect, to offences under
11 the Criminal Code in the province. I think that's what the issue is
12 here. But certainly the Department of Justice gives legal advice to
13 the RCM Police.

14 MR. MacDONALD

15 Thank you. That's what I intended to find out, Mr. Quintal.

16 Q. In connection with whether or not there were sufficient
17 grounds to, whether there's been a crime committed in a
18 province, does the Force ever get opinions from the
19 Department of Justice?

20 A. Not that I know of.

21 Q. It always relies on the Department of the Attorney General in
22 the province?

23 A. That's right.

24 Q. Thank you. I want to take you to page 78.
25

CHAIRMAN

1
2 Q Before we leave that, Mr. Quintal, what, in your opinion, is
3 wrong with that suggestion that came from Christen? That
4 where you have two diametrically opposed legal opinions, and
5 I'm sure we have dozens of them every day in Canada
6 amongst practicing lawyers, what would be wrong with going
7 to get an independent opinion? If it sustained your position
8 then you'd be in a very strong position.

9 A. Well I'm not so sure what the, all I know is I have no
10 recollection of any time we have done this.

CHAIRMAN

11
12 Q I appreciate that and I accept it. But I gather from listening
13 to your testimony today that this was a case, a confrontation
14 with the Deputy Attorney General and conflicting opinions
15 that it was not a usual, not a very usual occurrence and the
16 local CIB Officer suggests that you get an outside opinion to
17 try and resolve what appear to be an irreconcilable difference
18 between the law officers of the Crown and your officer in
19 your force.

20 A. Well there's two aspects here. One is you can shop around
21 until you get the opinion you want. Second is the, the second
22 aspect is the financial aspect, is in order for the Force to
23 retain outside counsel they would have to go to the Justice
24 Department in Ottawa to, for them to authorize the funds.
25

MR. QUINTAL, EXAM. BY COMMISSIONERSCHAIRMAN

1
2 Q. Well I don't know anything about the shopping around, That's
3 something's that happened since I've quit practicing.

COMMISSIONER EVANS

4
5 Q. Well following up on that. I think your Department did
6 suggest that the Attorney General of New Brunswick, I'm in
7 the wrong province again, of Nova Scotia, might seek...

8 A. Yes.

COMMISSIONER EVANS

9
10 Q. Outside advice but that your Department was satisfied, your
11 Force was satisfied with the advice that it was receiving
12 within the Force.

13 A. Well we didn't think it would have been proper at that
14 particular time to even suggest that to the Attorney General's
15 Department. I think that the kind of suggestion would have
16 been proper at the initial, and some Attorneys General, I
17 think in some provinces, have seen fit to refer certain cases to
18 outside counsel in order to get a legal opinion.

COMMISSIONER EVANS

19
20 I think there was some suggestion in this book that
21 somebody in your Force was suggesting the Attorney General for
22 Nova Scotia seek outside counsel's advice. Am I wrong on that?
23 Some place or other I think I saw...

MR. MacDONALD

24
25 Oh yes, there's suggestion in here that the, in fact, it was the

MR. QUINTAL, EXAM. BY COMMISSIONERS

1 Department of Justice's advice to the RCMP, I read it, and Mr.
2 Quintal can tell us, but I understand the Department of Justice
3 suggested that that's what should happen. But the RCMP elected
4 not to do that. But we'll come to that. I may be wrong and I
5 certainly give Mr. Quintal the opportunity to comment.

MR. PRINGLE

7 I think Mr. Justice Evans is right. There is something that
8 somebody in the RCM Police made that reference. I'm just looking
9 for it.

MR. MacDONALD

11 Certainly on page 93, My Lords, but it's under Tab 93. If we
12 go back to page 84.

MR. QUINTAL

14 In my letter to the Division, sir.

COMMISSIONER EVANS

16 That's where it is, eh?

MR. MacDONALD

18 Q. We'll come to that, Mr. Quintal. You'll have a full opportunity
19 to comment on it. On page 78...

CHAIRMAN

21 Are you embarking upon another area now?

MR. MacDONALD

23 Yes.

24 BREAK - 3:35 - 3:53 p.m.

1 MR. MacDONALD

2 Q. Mr. Quintal, we were looking at page 78 and I wanted to
3 direct your attention to the second paragraph where it starts
4 out saying, "I further gather from your conversation..." Do
5 you see that?

6 A. Yes, sir.

7 Q. It's the last sentence in that paragraph I want to have you
8 comment on. "It would appear in future any major
9 investigations involving politically prominent persons..." I'm
10 sorry, yeah,

11 ...in future any major investigations involving
12 politically prominent persons the decision as to
13 whether there is evidence to support charges
14 will be made at the Deputy Attorney General's
level.

15 Do you consider that to be an accurate statement of the
16 situation that prevails in Nova Scotia?

17 A. The attitude of the Attorney General's Department.

18 Q. That in investigations involving politically prominent persons
19 in this province the decision, whether there is evidence to
20 support charges, is going to be made by the Deputy Attorney
21 General.

22 A. It would appear that that was their stand at the time.

23 Q. And that's what happened here in the result...

24 A. No.

25 Q. No? Well we'll come to that. Page 79, that is a letter to the

1 Commission from Mr. Feagan. you would have reviewed that
2 letter?

3 A. Yes.

4 Q. Now that is telling me what took place in the meeting with
5 the Attorney General and the Deputy Attorney General which
6 you contemplated was going to occur after the November 5th
7 meeting in Ottawa.

8 A. Yes, sir.

9 Q. And at that meeting, according to Mr. Feagan, in the third
10 paragraph, the Attorney General was saying, or the Deputy
11 Attorney General,

12 He emphasized the result was not a mere opinion
13 but was a decision that no charge would be laid.
14 And this had, in fact, been made the subject of a
15 news release by the Attorney General and,
16 therefore, the matter was closed. He expounded
17 further that his Department was responsible for
18 the people of Nova Scotia for the administration
19 of justice and Feagan had a great deal of gall to
question his decision. And that if we now
considered laying a charge, it would be a very
dangerous step to take.

20 What did you take that to mean?

21 A. I guess it was an education of the consequences that may take
22 place if we were to go ahead and lay a charge.

23 Q. Well what would be the consequence?

24 A. I think it would have rendered our relationship with the
25 Attorney General's Department a very difficult one.

1 Q In what way? Because you stood up for what you believed
2 the Force's decision is.

3 A. I would presume so because it would have made the
4 relationship between the local, our local people here and the
5 Attorney General's Department certainly very difficult.

6 Q Mr. Feagan goes on that "he", that's Mr. Coles, "...indicated he
7 had no intention of altering his decision regardless of any
8 written argument presented to him." Do you take that to be a
9 given? No matter what you tell him, he's not going to change
10 his mind?

11 A. That's apparently what he said at the meeting.

12 Q And down at the bottom of that page, Mr. Feagan again sets
13 out the dilemma facing the RCMP, doesn't he, "provided we do
14 have sufficient evidence to lay a charge." The dilemma then
15 is whether or not "we," the investigating police force, should
16 exercise our right to initiate a prosecution when the Attorney
17 General of the province has ruled no such action be taken.
18 That's now in your hands, you've got to make that decision.

19 A. Yes.

20 Q On the next page, Mr. Feagan refers to the possibility that if
21 the prosecution is unsuccessful for any reason, subsequent
22 civil litigation is a possibility. Would that be a concern of the
23 RCMP?

24 A. Not overly much, no.

25 Q Not if you believe that you had good grounds to lay a charge.

1 A. That's right.

2 Q. And you would only do that if you thought there were
3 reasonable and probable grounds to support a conviction.

4 A. Yes, sir.

5 Q. On page 81, do you know whose writing that is?

6 A. Well that's Assistant Commissioner Venner's.

7 Q. Venner's?

8 A. Venner.

9 Q. Thank you. And then on page 82, this is in November 25th,
10 this is Mr. Kozij?

11 A. Yes, sir.

12 Q. This is written after Feagan met with Coles, isn't it?

13 A. Yes, sir.

14 Q. And Mr. Kozij says,

15
16 I am not in favour of having the case reviewed
17 by counsel. The evidence in this case has been
18 assembled and reviewed by experienced and
19 competent police officers. I have faith in their
20 convictions and opinions. The decision to be
21 made is 'Do we proceed with charges?' I
22 recommend we proceed.

23 You had that recommendation in your hand when you made
24 your final decision.

25 A. [No audible response.]

Q. Now you returned on the 4th of December, and at that time
you knew what had happened with Feagan and Coles, and a

1 decision had to be made at that stage, didn't it, whether
2 charges were going to be laid or not. Now given the fact that
3 in November, at a meeting of some length, all of this was
4 reviewed in great detail, and a decision was made that
5 charges should be laid, what did you do after that before
6 writing your letter to Feagan telling him that charges would
7 not be laid? What did you do?

8 A. Between the 5th and the 8th nothing particular in relation...

9 Q. Between the 5th and 8th of November.

10 A. November, yes.

11 Q. So you're back on the 4th of December.

12 A. On the 4th. At that time I'm made aware of the latest
13 developments in the case by Assistant Commissioner Venner.

14 Q. And at that time everybody in the RCMP that we've seen, at
15 least according to the documents, were still of the opinion that
16 charges should be laid. Is that correct?

17 A. Everybody? I'm not so sure.

18 Q. Well the documents that we've looked through, Dillabaugh
19 said that...

20 A. Oh yes. Yes, so far.

21 Q. Pratt said that. Kozij said that. Christen, Feagan...

22 A. Um-hmm.

23 Q. The conclusion of the meeting in November. All of those
24 people that were there.

25 A. Yes.

1 Q. Okay. Now what took place after December 4th then which
2 gave rise to your letter directing that charges would not be
3 laid?

4 A. I had discussions with Assistant Commissioner Venner at the
5 time and told him to prepare a memorandum for my
6 signature.

7 Q. Well did you tell him what the conclusions should be?

8 A. We certainly had discussions between the 4th of December
9 and the 16th when he submitted his draft memorandum.

10 Q. But in preparing a draft for your signature does he know
11 what your wishes are?

12 A. Normally we would review the evidence that we had, the
13 facts that we had at our disposal at the time and come up
14 with a direction on which the reply should take. They
15 would have, they probably had done some preliminary staff
16 work before I even arrived there after receipt of the
17 Divisional memorandum of the 19th of November.

18 4:05 p.m.

19 Q. Let me make...understand, that between November 5th, the
20 time of the meeting and the time you were going to sign
21 your letter on December the 16th, there are no further facts
22 come to light, no new evidence.

23 A. No.

24 Q. There's no further legal review.

25 A. No.

1 Q. Then what did you have that prompted you to say we were
2 going to ignore or not accept the recommendation, the
3 collective view of all of those people on November 5th that
4 charges should be laid?

5 A. The...I don't remember exactly the sequence of events, but
6 as I say, there are some staff work must have been done
7 before I arrived. We had discussions, Venner and I, about
8 the case which led to the preparation of a draft memo. We
9 must have discussed the various aspects that came within
10 the first draft that he prepared including some elements
11 that are in the memo and then I personally sat down to
12 review all of this and make up my own mind.

13 Q. What did you review?

14 A. The complete file.

15 Q. The complete file.

16 A. That we had at our disposal at the time and I don't really
17 know, but I would think that from my working habits at the
18 time that I probably took that file home at night on the 16th
19 and reviewed that before I made some changes to the
20 memorandum that had been prepared for my signature and
21 finally came up with a final draft.

22 Q. But did you go back to House, the guy who did the
23 investigation?

24 A. No.

25 Q. Did you go back to Feagan?

1 A. No.

2 Q. What about Dillabaugh and Pratt?

3 A. No.

4 Q. Kozij.

5 A. No.

6 Q. Christen.

7 A. I didn't go back to the division, no.

8 Q. Well, what was it then that came to your attention, what
9 prompted you to say that notwithstanding the conclusion
10 that was reached in November that everything was present
11 to warrant charges that you were directing Feagan no
12 charges would be laid?

13 A. Well, you must realize that on November the 5th as you, you
14 know, in the space of, you know, two or three hours you get
15 a briefing on a complex investigation. Before I wrote my
16 reply, then I sat down and looked at all the aspects in
17 addition to what had been prepared for my signature and
18 came to a final conclusion. I can't tell you any more.

19 Q. Did you conclude that Mr. Thornhill didn't receive a benefit?

20 A. I think the contents of my memorandum which was written
21 at the time when I was much more familiar with events can
22 tell that in a much better way than I could today.

23 Q. Okay. Let's go to your memorandum then.

24 A. Yeah.

25 Q. The memorandum was drafted, as I understand it, by Mr.

- 1 Venner, is that correct?
- 2 A. I don't know whether it was all by Venner himself or by the
3 staff and himself, but he certainly presented the draft to me.
- 4 Q. In any event, it's on page...the first draft is on page 84,
5 starting on page 88 is a draft which has your handwriting on
6 it, I believe, is that correct?
- 7 A. Yes.
- 8 Q. Then the final draft is on page 93.
- 9 A. Is there a difference between 84 and 88?
- 10 Q. No, I'm saying 84 is just a ...is a draft, 88 and the following
11 pages contain your handwriting.
- 12 A. Yes.
- 13 Q. Which are then incorporated in to make the final draft.
- 14 A. That's right.
- 15 Q. Which is on page 93.
- 16 A. Yes, sir.
- 17 Q. Just before we go to 93, on page 92, can you tell me what
18 that is?
- 19 A. Well, that's an A5 from me to Assistant Commissioner
20 Venner, who is in DCI at the time, returning the file with my
21 memorandum to the CO "H" division.
- 22 Q. So that's just returning the file to Venner, is it?
- 23 A. That's right.
- 24 Q. Now the first thing you deal with on your...in you letter to
25 Feagan on page 93 is that his request that outside counsel be

1 obtained will not be accepted, is that fair?

2 A. Yes. There had been some approaches made with the
3 Department of Justice and...

4 Q. Yeah, let me take you back to 84, the initial draft. And in
5 that first long paragraph it says, "We sought the advice of
6 Mr. Rutherford on these points and he, in turn, consulted
7 with the associate Deputy Minister. It was their feeling that
8 the department would probably not authorize such
9 expenditure for the following reasons." He sets out the
10 reasons. Then he says, it's noted in this draft,

11 It would not in a situation such as this one be
12 inappropriate for the police to urge the Attorney
13 General himself to seek advice outside his
14 department,indeed outside his own province, in
15 order that whatever the advice might be, it
16 would stand a better chance of being perceived
17 by everyone concerned as objective and
18 unbiased.

17 Do you know if that's the advice that had been received
18 from the Department of Justice?

19 A. I didn't make those contacts.

20 Q. So you're not able to tell us.

21 A. No.

22 Q. And then it goes on to say, "In these particular
23 circumstances, however, given the known attitude of the
24 Attorney General and his officials and considering what all
25

1 MR. CHAIRMAN

2 What position had they made very clear? What was the
3 position that they made very clear?

4 MR. QUINTAL

5 Where they're...on November the 12th, sir, when they said
6 that their legal opinion, you know, they stood and that was it.

7 MR. CHAIRMAN

8 How...I guess looking at page 3 of your notes, the top of the
9 page, those your notes apparently made by you on the 10th day
10 of December, which would be some days before this opinion was
11 written or memorandum of instructions, and there you indicate
12 that you had...that Feagan said to you that the Attorney General
13 never said we could not lay the charges, but that it would be very
14 serious in light of the legal review made by three top legal brains
15 in his department, as well as himself.

16 MR. QUINTAL

17 Yes.

18 MR. CHAIRMAN

19 That doesn't look to me as meaning that the door was shut
20 at the time you wrote that third paragraph.

21 MR. QUINTAL

22 Well, sir, then I didn't read it that way at the time because
23 the division itself never even sent a written submission to the
24 Attorney General's department because they felt it would be no
25 use, that Cole would have said that regardless of any written

1 argument he would receive, it would not change his mind.

2 MR. CHAIRMAN

3 I see.

4 MR. QUINTAL

5 And if I recall, I think that Superintendent Christen in his
6 memorandum said that he didn't feel it would be...would serve
7 any purpose to send a written opinion that had been prepared at
8 their level.

9 MR. MacDONALD

10 Q. Because he didn't think that the members of the force had
11 sufficient legal experience that you could rely on their
12 opinion.

13 A. Well, that was Mr. Coles' opinion.

14 Q. That's what Christen said.

15 A. Yeah.

16 Q. But you wouldn't even go back to him and say, "Well, if you
17 don't accept what the force's legal people say, why don't you
18 get an outside opinion? Let's put this to somebody else, let's
19 get an answer." You weren't even prepared to do that.

20 A. I don't think it would have served a purpose at that time.

21 Q. What would the purpose be?

22 A. The...well, my reading of the situation was that we wouldn't
23 get any more favourable replies from the Attorney General's
24 Department.

25 Q. But what if he got an outside opinion saying that this outside

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 expert, whoever he might be, agrees with Plomb.

2 A. Well...

3 Q. Would you then have gone on and laid charges?

4 A. That's a pretty tough question to answer.

5 4:19 p.m.

6 Q. One way to avoid answering is don't get the opinion, isn't it.

7 A. No, it's not that. There is, I think, in my estimation, you
8 know, you can get opinions, but there comes a time when you
9 must make up your own decision.

10 Q. Okay. Let me go on Mr. Quintal. On page 2, on page 94, which
11 is page 2 of your letter. You say, "Turning to the material
12 provided you by Mr. Coles in his seven-page memorandum..."
13 and that's Mr. Coles' legal opinion, right at the very top of the
14 page. "I must agree that while it makes some relevant points
15 with respect to the position of the banks and the effect of
16 Section 110(b) of the Criminal Code , it fails to address in an
17 informed thus convincing fashion, the position of Mr.
18 Thornhill, vis-à-vis, the unique requirements of Section
19 110(c)." Now are you saying there that the intent required
20 here in order to convict the banks of a violation of Section,
21 subsection (b) of that Code is really something entirely
22 different than the intent required for Thornhill. And, indeed,
23 there may not be evidence to support a conviction of the
24 banks.

25 A. Yes.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 Q But it's a recognition that the intent required to support a
2 conviction of Mr. Thornhill under subsection (c) is entirely
3 different.

4 A. It's different.

5 Q But Coles didn't differentiate at all between those two levels
6 of intent, did he?

7 A. No. And I think the, it was suggested to the Division that they
8 go back to him and I think they did and he came back in a
9 further letter on that very point.

10 Q Okay. And then you conclude that paragraph...

CHAIRMAN

11 Well the next sentence certainly indicates that this witness
12 was cognizant of the difference between these two
13 subsections, isn't it.
14

MR. MacDONALD

15 Yes, exactly, My Lord.
16

CHAIRMAN

17 "Nor does it pay sufficient heed to the deliberate differences
18 which exist between these two subsections and the reason for
19 those differences as they seem to be set out in jurisprudence."
20 Which I conclude what he's saying is that intent may very
21 well be an element under (b) but not under (c).
22

MR. MacDONALD

23 Q And that's a fact, isn't it.
24

25 A. Yes, sir.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 Q. You knew that, and we established this earlier you and I, the
2 only intent required under subsection (c) is that a member of
3 government, or an employee of government, knowingly
4 accepts a benefit from someone who has dealings with the
5 government. That's the only intent.

6 A. Yes.

7 Q. But an entirely different intent, you must establish criminal
8 intent before you can convict the banks under subsection (b),
9 that's a different intent all together.

10 A. Yes.

11 Q. Thank you. Now you go on to conclude in this first paragraph
12 that "A careful study of the materials your investigators
13 (that's Feagan's investigators) have put forward, convinces us
14 that at least no overlooked automatic defence or justification
15 for such behaviour on the part of Mr. Thornhill exists. Some
16 reasonable and probable grounds to lay a charge appear to be
17 present." So there were grounds to lay the charge and there's
18 certainly no automatic defence or justification available to Mr.
19 Thornhill. That's what you're telling Feagan in that sentence,
20 isn't that correct?

21 A. Yes, sir.

22 Q. Now we go on and suggest, you say, having concluded that
23 there is grounds for a charge, I'm going to exercise my
24 discretion to say that charges will not be laid. Is that fair
25 explanation of what you're doing?

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. No, I go on to explain my reasoning process in arriving at the
2 decision that I made.

3 Q. But you start out by saying there are reasonable and probable
4 grounds to lay a charge.

5 A. Right.

6 Q. Now I'm going on to say why we're not going to lay a charge
7 here. You express the view that sometimes even though
8 there are reasonable and probable grounds, police officers
9 have to exercise discretion.

10 A. Yes.

11 Q. Isn't that what you're saying?

12 a. Yes.

13 Q. And then do you go on and say, and in this case our discretion
14 is going to be exercised in favour of the accused?

15 A. I think in this paragraph sort of is a reply to what the Officer
16 in Charge of Commercial Crime Branch had said that all that
17 was necessary, I think he said, well it's quoted there.

18 "Reasonable grounds to lay a charge." And I believe that our
19 obligations went beyond that.

20 Q. And in what way did they go beyond that?

21 A. Well the...

22 Q. Aren't you saying that even though in some cases there are
23 reasonable and probable grounds to warrant the laying of a
24 charge, you shouldn't lay them?

25 A. In this particular case we were faced with the legal opinion

1 which told us different and, therefore...

2 Q. What legal opinion?

3 A. From the Attorney General's...

4 Q. You've said up at the top of this page, sir, that that legal
5 opinion totally ignores the distinction between subsection (b)
6 and subsection (c) and you know that's the case. You weren't
7 being influenced at all, I suggest, by any legal opinion here.

8 A. Well, in terms of the evidence that was available, they also...
9 it was their evaluation that the evidence did not support the
10 warrant, the laying of a charge.

11 Q. Whose evaluation?

12 A. The Attorney General's Department.

13 Q. But you know that was based on the statement that there had
14 to be criminal intent to support the charge.

15 A. And also that there had to be a benefit received.

16 Q. But you concluded there were all of the elements available.
17 And so did everybody else in the RCMP that we've seen.
18 Every name we've seen. But I don't want to question the
19 decision. What I'm trying to find out is what you mean. You
20 say reasonable and probable grounds do exist here, that's
21 your conclusion.

22 A. Yes.

23 Q. But, and I'm trying to find out but what. Reasonable grounds
24 exist but we're not going to lay a charge. Why?

25 A. I'm afraid I can't explain it better than what's in there. To try

1 to put myself back eight years ago and at that time where the
2 events and the facts related to a case were much more
3 familiar to me than they are today.

4 Q. Fine. So let me take you back then to words of you... they're
5 words in your own letter.

6 A. Um-hmm.

7 Q. In the second paragraph you say, "Having said that (that
8 being that there are reasonable and probable grounds) we do
9 not agree with the position of (this would be, I think it's
10 Christen) who says, "All that is necessary is that there are
11 reasonable and probable grounds to believe that an offence
12 has been committed and reasonable and probable grounds to
13 believe that the person to be charged committed that offence"
14 before proceeding. We believe our obligations as peace
15 officers go beyond that. And if they do not, then the
16 discretion which we have all executed from time to time in
17 the proper performance of our duties has been misplaced.
18 Now that's what I'm trying to find out. How do your
19 obligations go beyond that? If you establish that there is
20 reasonable and probable grounds to lay the charge and to
21 support a conviction, your obligations go beyond that. In
22 what way?

23 A. Well that's my point. At the time is I wasn't sure that the
24 evidence supported a conviction.

25 Q. But you said even if you believed there are reasonable and

1 probable grounds to lay a charge and you do believe that
2 there is no automatic defence or justification, then you must
3 have concluded that there's no reasonable... that there are
4 reasonable and probable grounds to support a conviction. You
5 must have. That's what you're saying.

6 A. Well, we look at the... you say about the probable defence and
7 I think that the considerations on paragraph, on page 95
8 explain what we considered at that time in reaching that
9 decision.

10 Q. Are you suggesting that what you've listed on page 95 would
11 be a defence to a charge under subsection (c) of Section 110?

12 A. Yes.

13 Q. The fact that he accumulated the debts over a long period of
14 time during which he took some initiative to pay them off.
15 What does that have to do with whether he received a benefit
16 knowing...

17 A. Well, I don't think you can take them individually. It's all in
18 the whole context. All his debts were accumulated over a
19 period of time before he became a Minister of the Crown.

20 Q. Yes.

21 A. It was established at that time that he was pretty well
22 financially bankrupt and couldn't liquidate his debts within,
23 with the basic income that he had at the time. And then he
24 decided to make a proposal in which he got the backing from
25 his brother-in-law. If the brother-in-law had not agreed to

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 underwrite those, this proposal, it would never have been
2 made because he, himself, would not have been able to make
3 it. He specified that all the banks were to accept it or else it
4 was no go. And bankruptcy, although I'm not an expert on
5 bankruptcy myself, but the staff at Headquarters who also
6 are involved in the bankruptcy aspects of the...our
7 enforcement responsibilities, felt that bankruptcy might have
8 been cheaper. One bank had, I think, for all intents and
9 purposes, written off their debt. Another one was probably...
10 considered that as a non-collectible loan. These were all
11 factors that would...

12 Q. Go to what?

13 A. Influence whether he would be convicted or not.

14 Q. Whether he'd be convicted or not.

15 A. Yes.

16 Q. But does it influence the conclusion that was reached by
17 virtually every member of the Force, that there were
18 reasonable and probable grounds to support the laying of a
19 charge?

20 MR. PRINGLE

21 My Lords, I hate to interrupt my friend but we're not
22 retrying the events. We've all agreed on that. And whether the
23 decision itself was right or wrong is really not the point. I thought
24 my friend would be looking to see what influences, if any, there
25 were, of what improper motives, if any, there were. And not

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 going into a detailed examination of the ingredients of the
2 offence.

MR. MacDONALD

4 I'm trying to determine, My Lords, this...

CHAIRMAN

6 I don't, so far there's been no evidence that gets into the
7 ingredients of the defence, of the offence. That clearly is not
8 admissible.

MR. PRINGLE

10 We're pretty close.

CHAIRMAN

12 Dangerously close. I'm watching it very carefully.

MR. PRINGLE

14 That's fine.

CHAIRMAN

16 And there can be no evidence of the, you know, the,
17 impinges upon the guilt or innocence of individuals. I repeat what
18 I said earlier. The purpose of this exercise is to examine the
19 practice and procedures and this goes to the practice and
20 procedure followed by the RCMP dealing with this particular case.

MR. PRINGLE

22 Yes, My Lord, but I understood the thrust of it to be the
23 practices and procedures of the RMC Police as influenced if, at all,
24 if at all, I emphasize, if at all, by the provincial Attorney General's
25 Department.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 CHAIRMAN

2 Right. Yes. I mean it, obviously our mandate, our
3 recommendations have to deal with the, should deal with the
4 Department of the Attorney General in the future. That's our, it's
5 only with, on that basis can we, as we must, stay within our
6 mandate. And this, the purpose of this whole exercise is to
7 ascertain what practices are followed, have been followed, by the
8 Attorney General's Department in the Province of Nova Scotia
9 when dealing with investigations carried out by the police.

10 MR. PRINGLE

11 Exactly. I have no quarrel with that, My Lord.

12 CHAIRMAN

13 And so far Mr. MacDonald hasn't strayed, now it's a difficult
14 task to stay within the limits that must be imposed to protect
15 innocent people. But, on the other and, we want to hear evidence
16 that impinges upon the practice and procedures between these
17 two branches of the justice system, namely the Attorney General's
18 Department and Royal Canadian Mounted Police.

19 COMMISSIONER EVANS

20 Q Isn't it, maybe I'm anticipating where you're going and, if so,
21 I'm sorry, but isn't it a fact that you had an opinion from your
22 Force, a legal opinion, that you preferred to that of the
23 opinion of the Attorney General from Nova Scotia?

24 A. Sir, we had the opinion of people in the Force who have
25 attended law school and if you call that a legal opinion...

MR. QUINTAL, EXAM. BY COMMISSIONER EVANS

1 Q. I would think so.

2 A. Then we had that.

3 Q. I take it that's what the people in the Attorney General's
4 office did, too, they attended law school. But you had two
5 legal opinions, let's put it that way.

6 A. Yes.

7 Q. And you were satisfied that the legal opinion provided by the
8 members of your Force was preferable to that of that opinion
9 from the Attorney General's Department.

10 A. Yes.

11 Q. All right. And that there was reasonable and probable
12 grounds to lay a charge under Section 110 (c). That's what
13 your letter says.

14 A. Yes.

15 Q. You agree with that.

16 A. Yes, sir.

17 Q. For some reason you didn't proceed to lay the charge and
18 presumably you exercised your discretion not to proceed to
19 lay the charge.

20 A. To put it as honestly as I can on what I recall now, I was
21 faced with the dilemma, do we proceed or not, knowing very
22 well the consequences. So I carefully weighed all the facts
23 that I had at that time to determine whether, in fact, we had
24 a sufficiently strong case to go and lay a charge in spite of the
25 directives received from the Attorney General's Department.

MR. QUINTAL, EXAM. BY COMMISSIONER EVANS

1 My evaluation at the time was we didn't have, we did not
2 have a sufficiently strong case and, therefore, I didn't think
3 we should proceed.

4 Q. You said that you were sort of afraid of the consequences that
5 were going to flow from the proceeding in the face of the
6 directive from the AG's office.

7 A. In terms of the difficulty of the relationship between the
8 Attorney General's Department and our Force...

9 Q. Yeah, but that's really the reason that you didn't proceed is
10 because you foresaw some future difficulties with... in your
11 relationship, isn't that so?

12 A. Not quite, sir. If I had been convinced that we could have
13 obtained a conviction, I would have gone ahead regardless of
14 the consequences.

15 Q. Well, do you have to concern yourself as to whether you're
16 going to obtain a conviction or do you only concern yourself
17 as to whether you have reasonable and probable grounds to
18 lay the charge?

19 A. Well, I felt in this particular case that we had to consider
20 whether, in fact, a likelihood of getting a conviction was there.

21 Q. Well, I think you had already been told by Feagan that if you
22 proceeded with a charge that the AG was going to stop
23 proceedings anyway, is that the idea?

24 A. No, sir, I wasn't told that.

25 Q. You weren't told that. I was just trying to find out some basis

MR. QUINTAL, EXAM. BY COMMISSIONER EVANS

1 for you exercising your discretion because I thought that your
2 letter, the next paragraph, indicated that there was, from time
3 to time, "...and the discretion which we have all executed from
4 time to time in the proper performance of our duties has been
5 misplaced." And I thought that's what you were basing your
6 decision on. The exercise of your discretion.

7 A. That's right, sir. Whether we go ahead or not.

CHAIRMAN

8
9 Q. But you obviously were concerned from this letter, you
10 obviously were concerned about the consequences of an
11 acquittal. Because you say, these, referring to a charge having
12 been laid, you said, "These consequences would be even more
13 serious and completely predictable if the charge was laid, a
14 prosecution took place, and the case was dismissed."

15 A. Yes, sir.

COMMISSIONER EVANS

16
17 That's in the next paragraph.

CHAIRMAN

18
19 Yeah. On page 94.

COMMISSIONER EVANS

20
21 The last paragraph.

CHAIRMAN

22
23 Q. The last paragraph, second sentence. And I gather what
24 you're saying when you come over and you list all these
25 items, what you're really saying is these areas would

MR. QUINTAL, EXAM. BY CHAIRMAN

1 undoubtedly be raised, let's say before a jury, by any
2 competent counsel for the accused, which brings me back to
3 my concern as to what the consequences would be if there
4 was an acquittal. And the question Mr. Justice Evans has just
5 put to you is , is that a proper consideration for the police,
6 having been satisfied that the grounds are there to... there are
7 many strong cases of... where there've been reasonable and
8 probable grounds, where an accused person has been
9 acquitted. But do consequences to the RCMP naturally flow
10 therefrom or ever flow therefrom?

11 A. Not always, but I felt that in this particular case, since we're
12 dealing with this case, it is because of what had taken place
13 because of the public stand that had been taken by the
14 Attorney General and on the advice of his senior staff, that if...
15 it was predictable that if we went against that advice, there
16 would be some consequences in terms of the relationship
17 between those people and ourselves.

18 Q. Well, maybe. You probably would come out then having
19 made a public statement as you pointed out, and say, well, I
20 told you so. What more could follow, would follow beyond
21 that?

22 A. Well I, I think that it would have gone beyond that in terms
23 of the day-to-day relationship between the commanding
24 officer and the Attorney General which is in a contact division
25 is fairly frequent. And his senior staff. And I think they

MR. QUINTAL, EXAM. BY COMMISSIONERS

1 made no bones about that by saying so.

COMMISSIONER EVANS

2
3 Q. But doesn't it work the way as well? The morale of your staff
4 would be damaged to some extent or considerable extent I
5 suggest to you because doesn't this have the appearance of
6 buckling under to the views of the Attorney General or the
7 threat, really, of the Attorney General?

8 A. Oh, I well aware at the time, sir, that my decision would not
9 be a popular one within my own staff.

COMMISSIONER EVANS

10
11 Q. You communicate...

12 A. And as a matter of fact in a subsequent conversation with Mr.
13 (Truesome?) and then Feagan, I offered to come down to
14 Halifax to explain why and at that time he said that, no,
15 although my notes say he said that they had sort of now
16 accepted it and that he saw no point in me coming down here
17 to explain that, although I did come..

COMMISSIONER EVANS

18
19 Q. Once a decision had been made in Ottawa because of the
20 military set-up in your Force, you would expect him to agree
21 with it, wouldn't you?

22 A. Yes, I would.

COMMISSIONER EVANS

23
24 Q. Yes.

25 A. Although in... then it becomes an administrative matter

MR. QUINTAL, EXAM. BY COMMISSIONERS

1 within the Force.

2 CHAIRMAN

3 We may be jumping the gun but it's probably all in page 97.

4 COMMISSIONER EVANS

5 I probably ran ahead of you...

6 MR. MacDONALD

7 No, My Lords, I can follow any path. Are you taking him to
8 page 97, My Lord?

9 CHAIRMAN

10 No, I said that the matters that we've been talking about
11 seem to come up again on 97.

12 MR. MacDONALD

13 Q. Mr. Quintal, would you agree with this, sir? That all of the
14 considerations you listed on page 95 were all well known and,
15 in fact, probably discussed in November when you met in
16 Ottawa with the whole group of people.

17 A. I would think so.

18 Q. Yes. And notwithstanding all of those considerations the
19 unanimous conclusion of that meeting was that charges
20 should be laid. Or these charges were warranted.

21 A. All warranted, yes.

22 Q. And isn't it a fact that really what happened in December was
23 you decided, all right, there's a *prima facie* case here, but I
24 don't think it's strong enough to buck the AG.

25 A. Well...

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 Q. Yes?

2 A. That's...

3 Q. Thank you. And that's, in fact, what I believe, what Chief
4 Superintendent Feagan told us yesterday. That's what he
5 took your letter to be saying.

6 4:45 p.m.

7 Q. Thank you. And that's, in fact, what I believe what Chief
8 Superintendent Feagan told us yesterday. That's what he
9 took your letter to say. There are grounds there but it's not
10 strong enough to go against the wishes of the Attorney
11 General. He took from your letter, if my recollection of his
12 evidence is correct, exactly what you meant to tell him.

13 A. Yes.

14 Q. Okay.

15 A. I didn't feel that we had a strong enough case.

16 Q. Okay. Now let me take you, though, back to page 96. Because
17 there is a, I suggest to you a different and perhaps a more
18 serious issue in the second last paragraph on that page. You
19 say:

20
21 It is our further opinion that no false pretence
22 investigation should be pursued against Mr.
23 Thornhill as a result of the information and
24 documentation you have accumulated. There
25 may well be an offence there in connection with
misrepresentation. However, since there is no
indication they wish to complain or lay charges,
it would be perceived as an exercise of dubious

MR. QUINTAL, EXAM. BY MR. MacDONALD

fate.

1
2 Now would you take it upon yourself to tell your staff that
3 they are not even permitted to do a further investigation to
4 determine whether there may have been the commission of a
5 crime?

6 A. Well, I can't say it any better than what I've said there,
7 where I felt that they, to do so would be to sort of saying,
8 well, okay, you blocked us in one avenue and now we're going
9 to go after another avenue. And I don't have the recollection
10 of the facts that we may have had at that time in terms of the
11 false pretences and just exactly at what time it would have
12 occurred, because I seem to recall there were further loans
13 made by the banks in order for Mr. Thornhill to consolidate
14 his debts, and the timing of that I don't recall now.

15 Q. That's got nothing to do whether or not he may have. I'm not
16 suggesting he did. But whether or not he may have obtained
17 funds in the initial instance under false pretences.

18 A. Yeah.

19 Q. And the report of the investigator said he had some evidence
20 to support that and he would like to further discuss it with a
21 prosecutor. But you're telling him not even to carry on the
22 investigation. Why are you doing that?

23 A. Just what I said in my memorandum, that I can't...

24 Q. You don't want to be seen like a dog in the manger, is a
25 phrase we use.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. No, I was, I felt we should tell the Attorney General that's the
2 way we're going to go.

3 Q. Okay. Then you conclude this:

4 I appreciate that your investigators may be less
5 than satisfied with this approach. They have
6 done their work thoroughly and with confidence.
7 The activities of Mr. Thornhill and his associates
8 as well as the practices and procedures of the
9 banks involved here have been brought under
10 appropriate scrutiny.

11 What do you mean by that?

12 A. I'm trying to recall just exactly what I meant.

13 Q. Okay.

14 A. And I would only be speculating now as to what I had in
15 mind at that time when I wrote this.

16 Q. Now you have indicated to us that the consequences to the
17 R.C.M.P. in this case of proceeding with a charge were a
18 relevant factor in making your decision not to proceed, that is
19 the consequences of a daily relationship between the A.G. and
20 the R.C.M.P.

21 A. Well, it was a fact that you could not ignore.

22 Q. Now would you accept that the proper role of a police officer
23 is to uphold the law in accordance with his oath?

24 A. Yes.

25 Q. And that it should be done evenly, no matter who you're
dealing with..

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. Yes.

2 Q. How can the relationship then between the A.G.'s Department
3 and the R.C.M.P. be any factor, any relevance in deciding
4 whether to discharge that responsibility?

5 A. I don't think you can overlook the fact that these were in,
6 you're in a contractual agreement with the province. I don't
7 think the police are completely... independent is not the word
8 I'm looking for, but, you know, the Attorney General is sort of
9 the chief law officer of the Crown and in the province and
10 their Chief of Provincial Police, you can hardly ignore the fact
11 that they have to have a working relationship.

12 Q. Don't you accept the fact that the policeman has a different
13 role to play, a different obligation to discharge than does the
14 Attorney General?

15 A. Yes.

16 Q. What is the proper, in your view, the proper resolution of a
17 conflict where the Attorney... or the police officer believes
18 that charges should be laid and the Crown says he does not
19 accept that. He does not believe charges should be laid. How
20 is that conflict to be resolved?

21 A. Well, if the individual police officer believes that he should
22 lay a charge, he has that ultimate right.

23 Q. Does he have an obligation to do that?

24 A. That would be like saying that in all cases where he's
25 convinced, I guess he has to go by his own conscience and his

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 own convictions.

2 Q. Let me take you to a couple of other documents just quickly,
3 if you can go through them, please. I want to refer you to
4 page 110. Do you see this letter to the Commissioner?

5 A. February?

6 Q. Do you agree with...

7 A. I'm not sure...

8 Q. What is alleged to be Mr. Coles' view, that the Attorney
9 General's role is quite clear. "A final decision as to whether a
10 prosecution is commenced rests with the Attorney General."
11 That's the final sentence in the third paragraph.

12 A. Are you asking me whether that's Coles' view? I think it's
13 correctly stated.

14 Q. Do you accept that that is what has happened in Nova Scotia?
15 That is the practice to be followed in this province.

16 A. Yes, that's what he himself said.

17 Q. That the R.C.M.P. in your term, did the R.C.M.P. accept that
18 policy?

19 A. No, I think you will find in the letter to, from the
20 Commissioner to the Attorney General of Nova Scotia in
21 February where he states otherwise.

22 Q. Well, let me take you to that letter from the Commissioner.
23 Did you draft that letter, by the way? That's on page 117.

24 A. I don't think so, sir. I'm not sure, but I don't think so.

25 Q. Let me take you to page 116 first. Were you aware of

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 discussions being held between the Commissioner and the
2 Attorney General How at this time?

3 A. I don't think so.

4 Q. You said you didn't think so. Did you see the letter which is
5 on page 117 before it was sent?

6 A. I have no recollection that I did.

7 Q. But you have seen it since?

8 A. Yes.

9 Q. And you would have seen it around the time it was sent?

10 A. Yes, I think if you look in my notes, you will find that in
11 March, I... Yeah, the 16th of March, I got a call from Chief
12 Superintendent Feagan regarding a local article in the paper
13 and, obviously, from my comments there, I have seen the
14 letter. I had seen it at that time, which was the 16th...

15 Q. Was that an unusual routing to be following from the
16 Commissioner to the Attorney General without having
17 contacted the Commanding Officer in Nova Scotia, without
18 sending him a copy of the letter?

19 A. Without contacting him, not unusual nor sending him a copy.
20 There was nothing wrong with sending him a copy. As a
21 matter of fact, when you will look at what I've said, that we
22 would send him a copy if this had that already had been
23 done.

24 Q. Let me take you to the letter, the fourth paragraph, the
25 Commissioner says:

MR. QUINTAL, EXAM. BY MR. MacDONALD

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

6 Do you accept that as being a correct statement?

7 A. Yes.

8 Q. So in this case, the Thornhill case, where you did consider
9 there were reasonable and probable grounds, you had the
10 right to lay the charge.

11 A. Yes.

12 Q. Is that what the Commissioner is saying?

13 A. Yes.

14 Q. Now he goes on, the Commissioner, in the next couple of
15 paragraphs to say that he asked that a review of the Thornhill
16 case be carried out, a careful review conducted by you and
17 the... Yes, by you. And he refers to the meeting being
18 convened in Ottawa and so on. Now you've told us everything
19 that was done in the review process, didn't you? We've dealt
20 with that already today.

21 A. I think so. I don't know if I overlooked anything.

22 Q. Now this is the paragraph that I'd like to direct your attention
23 to. It says:

24 At the completion of his review (that's you), he
25 came to the same conclusion as had the Deputy

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 Attorney General, that being that the
2 circumstances of the case as reflected in the file
3 combined with the evidence in the hands of the
4 investigators did not warrant the laying of a
5 charge nor the continuation of an investigation.

6 Is that an accurate reflection of the conclusion you came to?

7 A. Not quite. I would not have said that in those terms.

8 Q. In fact, you came to the conclusion that there were reasonable
9 and probable grounds to warrant the laying of a charge but
10 the case wasn't strong enough to go against the wishes of the
11 Attorney General.

12 A. Yeah.

13 Q. Yes, and the answer was yes. Did the commissioner instruct
14 you to carry out a review in this case? That's what was said
15 on the bottom of page 117, that he instructed you to carry out
16 a careful review.

17 A. He said, "I instructed that the file be carefully reviewed."
18 Whether this was done to me personally or whether it was
19 done to the Director of Criminal Investigation at the time, I
20 couldn't say. And he goes on to say that the review was
21 conducted by myself and the senior staff at headquarters.

22 Q. The Commissioner goes on to say in this letter, though, after
23 the paragraph we just read, which does not accurately reflect
24 what happened here, does it?

25 A. I'm sorry?

Q. We've already agreed that the second paragraph on page 18
doesn't accurately reflect what happened here; that is, that

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 you came to the conclusion that the facts did not warrant the
2 laying of a charge. That's not accurate.

3 A. I... It's hard for me to get... It depends on how you interpret
4 my memo of December the 17th where...

5 Q. I thought we already agreed on that. It was interpreted by
6 Feagan and you said you agreed that the interpretation is
7 correct, that you believed that there were reasonable and
8 probable grounds to warrant the laying of a charge but the
9 case wasn't strong enough to justify going against the wishes
10 of the Attorney General. That was your conclusion following
11 the review.

12 A. Well, I didn't think we should initiate the prosecution under
13 those circumstances.

14 Q. Against his wishes.

15 A. Against the direction of his...

16 Q. Against the direction of the Attorney General.

17 A. No.

18 Q. Okay. But when the Commissioner then says in the second
19 last paragraph of his letter, in the middle of it:

20 What is important, of course, is that this is a
21 judgement reached entirely within the force and
22 without outside influence or direction.

23 That isn't accurate either. There certainly was outside
24 influence or direction which affected the decision you made
25 not to lay a charge.

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 A. I don't... No, I reached my decision myself. Nobody
2 influenced me to...

3 Q. I'm sorry, sir, I don't mean to suggest that anyone
4 deliberately came and influenced you, but I'm saying that
5 your decision was certainly influenced by the decision that
6 was taken by the Attorney General. Had it not been for that,
7 I suggest to you, had it not been for the Attorney General
8 saying "No charges are to be laid," charges would have been
9 laid here.

10 A. Well, that's a hypothetical question. If there had been no
11 disagreement, it would never have come to headquarters in
12 the first place.

13 Q. If the Attorney General had not taken the position and
14 directed that no charges were to be laid, I suggest to you that
15 once you concluded there were reasonable and probable
16 grounds to warrant the laying of a charge, that a charge
17 would have been laid.

18 A. There would have been no disagreement at the divisional
19 level.

20 Q. Okay. How lengthy was your briefing of the Commissioner
21 with respect to this whole thing, this whole review process,
22 what was done, what was in the file, and what led to your
23 conclusions? How detailed was your briefing of the
24 Commissioner?

25 A. I don't recall, but I certainly would have made him aware of

MR. QUINTAL, EXAM. BY MR. MacDONALD

1 the facts as thoroughly as I could.

2 Q. Would you have advised him... Never mind. He would have
3 had a copy of your letter that you sent to Feagan?

4 A. It would be on the file, certainly.

5 Q. And can we assume that he would have read that before?

6 A. I would think so.

7 Q. Advising the Attorney General of what was done by the
8 R.C.M.P.?

COMMISSIONER EVANS

9
10 He says he didn't.

MR. MACDONALD

11
12 I'm sorry, he says he didn't, My Lord? Thank you.

COMMISSIONER EVANS

13
14 Although I did not personally review the file...

MR. MACDONALD

15
16 Q. Yes, or sit with a review team. That's what the Commissioner
17 said.

18 A. Uh-huh.

19 Q. So if he didn't personally review the file, you would have
20 reviewed with him all the salient facts and told him what was
21 happening.

22 A. Yes.

MR. MACDONALD

23
24 Those are all the questions I have, My Lord.
25

MR. QUINTAL, EXAM. BY COMMISSIONERSEXAMINATION BY COMMISSIONERSCOMMISSIONER EVANS

1
2
3 Q. Mr. Quintal, I notice that you did not receive a copy of this
4 letter. Was that unusual? Would that be unusual? Would
5 you have expected to receive a copy of the letter?

6 A. Not necessarily, sir. It would probably be placed on the file
7 and whether it would be sent back through my office or not
8 or sent directly to the Director of Criminal Investigations, I...
9 It could be either one.

10 Q. Thank you.

11 A. There is no indication on the file itself as to just what route it
12 followed.

MR. CHAIRMAN

13
14 Q. Did you ever see this letter before...

15 A. Before it was sent, sir?

16 Q. No, no, but did you...

17 A. Yes, I had, but as I mentioned on, in my conversation with
18 Chief Superintendent Feagan on the 16th of March, I told him
19 I had seen it.

COMMISSIONER EVANS

20
21 Q. Sorry, but that's a long time afterwards. That's a month or so
22 afterwards. No, I'm sorry. It was sent on the 25th of
23 February, I'm sorry.

24 A. Two or three weeks.

25 Q. Yeah, you're right. thank you.

MR. QUINTAL, EXAM. BY COMMISSIONERSMR. CHAIRMAN

Mr. Ruby?

EXAMINATION BY MR. RUBY

Q. Mr. Quintal, there's two items that are confusing to me that I'd like you to assist me if you can. First on page nine, if you could turn to page nine. It's a handwritten note and I don't understand the middle paragraph on the right-hand side. "They," and I'm not sure if that refers to the police or the Crown's office, "They do wish to drag their feet a little," a word I can't understand...

MR. CHAIRMAN

Until.

MR. RUBY

Q. Mine is a little shorter, thank you. "Until the leave to appeal on the blank search warrant matter so that any warrant they execute or apply for will not be accessible to public press..." Et cetera. Do you know what that's about?

A. I don't know for sure but... It seems, I'm only speculating now but it seems to me that there was some question, I don't know whether it was at that time or not, about access to the court records in terms of applications for search warrants.

Q. The Queen v. MacIntyre.

A. You've got me there, I don't know, but I think that may be what it refers to but I don't really know.

5:10 p.m.

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Q. Do you know why they wished to drag their feet to prevent the press and the public from getting access to search warrant executions?

A. No.

Q. At page 78 is a passage that I find confusing as well. In the middle of the first complete paragraph on that page, it's a discussion about... The paragraph opens with a decision about the Deputy Attorney General wishing to release his findings to the press at the time of his release in order the press should have the decision researched by their own counsel before drawing any proper conclusions on their own and the Attorney General was not in favour of that. Do you know what that's about?

A. I'm sorry?

Q. Do you understand what that is about?

A. Well, I can only surmise from the documents that are in here. I think there was a draft press release from Mr. Coles. Yeah, I don't know but there was a draft release and the final release from the Attorney General was a little different. That's all I can tell you about that.

Q. Do you know what is meant by the phrase "The Attorney General is apparently not in favour of this." Does that make any sense to you?

A. Well, I presume it's based on the changes made in the original

media

Margaret E. Graham Discovery Service

298 PORTLAND STREET, DARTMOUTH, N.S. B2Y 1K4

PHONE: 469-5734

September 30, 1988

To: All Solicitors

From: Margaret Graham

Re: Daily Transcripts

In Volume 84, September 13, page 14811, Line 11, the phrase "drawing any proper conclusions" should read "drawing improper conclusions." In Volume 87, September 19, please insert the attached page 15489A which was inadvertently left out.

I apologize for any inconvenience this has caused.



M. Graham

MR. QUINTAL, EXAM. BY MR. RUBY

1 draft press release and the last, the one that actually come
2 out.

3 Q. And then he goes on to say:

4
5 Mr. Gale also advised instructions should be
6 going forward to the Crown Prosecutor appointed
7 to assist us in the Canadian Distilleries
8 investigation, not to include any recommenda-
9 tions as to charges in his report to the Deputy
10 Attorney General. At the conclusion of the
11 investigation, the Deputy Attorney General and
12 his staff will review the file and determine if or
13 what charges are available.

14 Now am I right that the Canadian Distilleries investigation
15 was the Barrow's case?

16 MR. PRINGLE

17 My Lord, I'm not sure if that matter is still not proceeding in
18 some way. I think we'd better be a bit careful.

19 MR. CHAIRMAN

20 I don't even know the case you're talking about.

21 MR. PRINGLE

22 I don't think we want to get into it if it is a case that's
23 presently before the courts. I'm not sure if it is or not, I just have
24 a suspicion that it may be.

25 MR. RUBY

I don't know if it is either.

Q. What I'm trying to get at is the question of whether or not
that was also a political case because it's another example of a

1 case where the Deputy Attorney General doesn't want any
2 recommendation regarding charges, or is it an ordinary case.
3 Do you know? Can you assist us?

4 A. I think the, I think that the Distilleries investigation had to do
5 with some... I don't know if I can remember it now, but I
6 think it had to do with some amounts that had to be paid by
7 companies who had their products on the...

8 Q. That's for listing privileges that you pay off a political party,
9 is that what the allegation was?

10 A. I think so.

11 Q. So that would be a political case as well.

12 A. I don't know who was involved totally within that
13 investigation.

14 Q. I want to turn then to page 94, which is your letter. You've
15 been asked a lot of questions about it, but I have a few more.
16 You said in the second line on the top of page 94:

17
18 I must agree that while it (that's the Coles'
19 memorandum) makes some relevant points with
20 respect to the position of the banks and the
21 effect of Section 110(b) of the Criminal Code fails
22 to address in an informative fashion and so forth
23 the requirements of 110(c).

22 And you ultimately decide not to proceed. You said today
23 when my friend questioned you that you came to the
24 conclusion that there was no intent necessary under
25 110(1)(b) on the part of the banks. You told Mr. MacDonald

MR. QUINTAL, EXAM. BY MR. RUBY

1 just a little while ago. Is that really your conclusion?

MR. CHAIRMAN

2 No, I think you. .. Try it again. Will you ask it again?

MR. RUBY

3 Q. Sure. My note of what you said to Mr. MacDonald was that
4 you concluded with regard to Section 110(1)(b) and the
5 prosecution that was possible of the banks, that requisite
6 intent required under 110(1)(b) was not there vis-a-vis the
7 banks. Is that so?
8

COMMISSIONER EVANS

9 I didn't understand him to say that.
10

MR. RUBY

11 Q. Let me just clarify again. Was that your position?
12

13 A. I think we, if I recall the question, was that the interpretation
14 of intent under 110(b) or the requirements is different than
15 under 110(c).
16

17 Q. Right. And then why did the banks not get charged? What's
18 the answer to that? What was the defect in the proposed case
19 against the banks that caused you not to lay an information
20 against them?

21 A. The banks, their, the proposal that was made for the
22 settlement in September was in an effort to liquidate their
23 debt and they decided to agree to that. And it was a
24 condition by Mr. Thornhill that all of them were to agree that
25 that settlement or else it... And this was a normal business

1 proposition.

2 Q. It was a normal business proposition?

3 A. From a person that, or a normal proposal to be made by a
4 person under debt who he felt couldn't liquidate.

5 A. Yes, on the part of Mr. Thornhill, on the part of the banks,
6 why did you not charge them for settling for 25 cents on the
7 dollar with Mr. Thornhill?

8 A. Well, I didn't think we had the evidence of an intent, I think,
9 intent... You're asking me now to go back eight years, and
10 without having the benefit of looking at the Code, but it
11 seemed to me in 110(b), it has to be related to dealings...

12 Q. With respect to these dealings, that's right.

13 A. Yes.

14 Q. You felt you had no intent on the part of the banks to act with
15 respect to these dealings, is that...

16 A. Well, there were no specific dealings with the government at
17 the time that I was aware of.

18 Q. You were not aware of any.

19 A. No, except that all banks, all those banks did business with
20 the government. But the offer to settle the debts were not
21 related to any specific dealings. That's my recollection now of
22 the facts.

23 Q. And did you think that the Code required that the offer to
24 settle the debts had to relate to the government's business as
25 well as Mr. Thornhill's business? Was that your impression?

1 A. I'm trying to, the only dealings that were taking place at the
2 time were the settlement of the debt.

3 Q. That's with Thornhill's dealings.

4 A. Yes. I don't know of any other dealings with...

5 Q. Dealings with Mr. Thornhill's, not the government's, right?

6 A. Right.

7 Q. Did you read Mr. Plomp's memorandum where he talks about
8 the meaning of those dealings?

9 A. What page is that?

10 Q. Starting at page 70? It's the dealings, I suggest, when you
11 read that, that the government on the part of the banks was
12 concerned. Not the dealings of Mr. Thornhill in a charge
13 against the banks under 110(b). You didn't understand that.

14 A. Now you're asking me that now and eight years ago, I would
15 have been much more familiar with the provisions of the
16 Criminal Code and their requirements.

17 Q. You see at page 72 in the middle of the page there's a quote
18 from Regina v. Williams. Now I'll read in the middle of that:

19
20 Where a person confers a benefit upon a
21 government employee, the [crease?] of the
22 benefit must relate to the dealings with the
23 government but no such restriction is contained
24 in provisions under which the accused under
25 110(c) would be charged.

It's the dealings with the government that are in issue.

A. That's in 110(b).

1 Q. Right, that's the one I'm asking you about. The banks were
2 supposed to be charged. They had dealings with the
3 government, did they not?

4 A. Not specifically related to that settlement.

5 Q. The answer is you thought that the particular benefit had to
6 be related to the particular, to the Thornhill dealings, not
7 dealings with the government, generally. That's why he
8 wasn't charged. Is that correct?

9 A. I'm trying to recall now what I said about the banks.

10 Q. You can see at page 71, the first, second complete paragraph:
11 "Co-status quoted. It is significant that the word 'dealings' is
12 immediately followed by the expression of 'of any kind' That
13 indicates that Parliament did not intend the word 'dealings'
14 to be construed in a narrow restricted sense." And they cite
15 Williams "where dealings included the negotiation of a
16 hospital tax arrears settlement." This was in front of you,
17 was it not?

18 A. Yes.

19 Q. And you reviewed this or should have reviewed this before
20 you made your opinion, correct?

21 A. Yes.

22 Q. All right. Page 95, if you turn back to it in that report. You
23 outline a number of factors here and I want to ask you to
24 consider them with me together so I can understand better
25 what was going on in your mind. You outlined in the first two

MR. QUINTAL, EXAM. BY MR. RUBY

1 paragraphs the history, really. Accumulated the debts over a
2 long period of time and it was his brother-in-law who
3 engineered the final settlement by giving him a loan. Then
4 you say: "Given the fact that (a) bankruptcy might have been
5 cheaper." Do you have any knowledge as to whether or not
6 bankruptcy was cheaper?

7 A. I think I said earlier that the advice I got at the time was that
8 the bankruptcy might have been cheaper and I take that
9 from the experience of our people who are also involved in
10 the bankruptcy side within the commercial crime section.

11 Q. But you didn't know whether it would or wouldn't be, did
12 you?

13 A. No, that's why it says it might have been.

14 Q. And you took no steps to find out, did you?

COMMISSIONER EVANS

16 That's hardly fair, Mr. Ruby. He says that he took the advice
17 of someone in his department who was familiar with bankruptcy.

MR. RUBY

18 That might be. I'm asking him whether he took any steps
19 to find out whether it would be.
20

CHAIRMAN

21 Well, the only way would be is to go bankruptcy, I guess.
22

COMMISSIONER EVANS

23 Yeah, go through it.
24
25

MR. QUINTAL, EXAM. BY MR. RUBYMR. RUBY

1
2 Q. Or to consult your legal counsel, for example. To say, for
3 Thornhill, in this circumstance, would it be cheaper or not,
4 given his income, his job, his assets, give me an opinion,
5 please. You could have done that and you did not, correct?

6 A. I did not do that, no.

7 Q.

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

9 Feagan testified yesterday that was false. That, in fact, they
10 had not written off these debts. You thought they had.

11 A. From the documentation I had read, yes.

12 Q. From the documentation that he gave you, he said no, that
13 they were contemplating it but they never did it. And he
14 pointed out that if they had done it, they wouldn't have had a
15 settlement to receive.

MR. PRINGLE

17 Where is that in that documentation? Can you refer us?

MR. RUBY

19 I don't have it here. I'm talking about Mr. Feagan's evidence.

MR. PRINGLE

21 Well, you just made a reference where you said when the
22 documentation was referred to him, he pointed that out and I
23 don't recall that being in there.
24
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 A. Well, that's the impression I had at the time and I have not
2 indicated otherwise.

3 Q. You knew that the reason why the banks were taking the
4 view they had taken towards these debts was expressed in
5 the quotes that we find at page 40 and following. Have you
6 seen those?

7 A. Yes.

8 Q. And they are replete with references to political prominence
9 and you'll see at the top of page two in the last paragraph:
10 "They considered it a political donation." The motivation is
11 exclusively political from these quotes, you agree? There
12 were the other considerations but these show a political
13 motivation?

14 A. On the part of the banks?

15 5:25 p.m.

16 Q. Yes.

17 A. That...

18 Q. Well, if the whole purpose of Section 110 is to prevent
19 improper advantage being taken or given and you've got all
20 this material indicating political advantage is what's being
21 sought, *inter alia*.

MR. MERRICK

22 Oh, I object, My Lords, there's been no evidence of political
23 advantage being sought at all, in fact, the evidence is contrary to
24 that.
25

14821 MR. QUINTAL, EXAM. BY MR. RUBY

1 MR. RUBY

2 Q. Well, let's go back and take a look at 40 and 41.

3 MR. CHAIRMAN

4 These are internal memos from within the banks.
5 Presumably for them to be motivated, someone else would have
6 to have some knowledge of this, wouldn't they?

7 MR. RUBY

8 Q. Let's take a look then if you would with me, sir, at page 41,
9 the last four lines, for example, of the first quote, second
10 paragraph on that page, "And the fact that Mr. Thornhill
11 may indeed have a very influential role to play as an
12 important Cabinet Minister, we now inquire if you wish us
13 to make a formal approach concerning the position of his
14 debt with us." Does that not indicate to you as a trained
15 police officer, that they are...

16 MR. MERRICK

17 My Lords, I rise in objection again. That's exactly the point
18 that I was raising yesterday. We have no evidence as to what was
19 the final determining factors on the parts of these banks in
20 making whatever decisions they may have. We have a bunch of
21 unattributed statements clipped out of somebody's file, pasted
22 together, on scissors and paste, a couple of pages here, giving us
23 no indication whether it's the bank teller, whether it's an assistant
24 bank manager, and that statement itself indicates "We now
25 inquire if you wish us to make a formal approach concerning the

MR. QUINTAL, EXAM. BY MR. RUBY

1 position of his debt with us." Before Mr. Ruby can begin to
2 suggest, either for the witness or for any of this, that the banks
3 did this, did something for political reasons, he's going to have to
4 have the evidence that that is, in fact, the reason why the banks
5 made decisions and not a collage of quotes clipped out of
6 somebody's files. I'm sure that if you went through files, you're
7 going to find a lot of quotes suggesting all sorts of things but have
8 no relevancy as to why decisions are actually made.

MR. CHAIRMAN

9
10 There certainly is no evidence before us and I'm not sure
11 that the evidence would be relevant in any event, and I ruled on
12 this yesterday with respect to what motivated the banks.

MR. RUBY

13
14 With respect, what there is before us is some evidence that
15 the banks have political motivation. Whether or not it would be
16 conclusive enough to sustain a finding...

MR. CHAIRMAN

17
18 Or whether that... you know, the point that's being made is
19 that we have excerpts from documents that were obtained from
20 the bank documentation in the hands or in the files of the
21 Department of the Attorney General. There may be...the next
22 paragraph may follow and say "We think that the only reason
23 why we can do this is the only chance of recovering any money."

MR. RUBY

24
25 Well, let's have the full quotes then. I'm relying on counsel

MR. QUINTAL, EXAM. BY MR. RUBY

1 to give us meaningful quotes and not misleading ones.

MR. CHAIRMAN

3 I'm sure they're not misleading.

MR. RUBY

5 Well, if they're not misleading, then surely we can rely on it
6 as being some evidence of political motivation.

MR. CHAIRMAN

8 It is evidence of a suggested motivation, but I repeat, Mr.
9 Ruby, that we, as we've said a dozen times, that we're not going to
10 admit evidence that will impinge upon a criminality of anyone
11 who is not before us. It is outside our terms of reference. The
12 only reason why these issues are before us now is to enable us in
13 the making of recommendations in this inquiry, otherwise it
14 would not be a very meaningful inquiry if we suddenly made
15 findings of fact as to what caused the...brought on the wrongful
16 conviction of Donald Marshall, Junior. We have been asked to
17 make recommendations presumably, hopefully, so that if they're
18 accepted there will not be a recurrence in the future.

MR. RUBY

20 Well, I want it understood that I don't insist or suggest that
21 this is conclusive evidence of political motivation.

MR. CHAIRMAN

23 No, but it's still...the innuendo is there and these people are
24 not before us and they have really no right to be before us,
25 certainly they haven't asked to be before us, and I think it would

14824 MR. QUINTAL, EXAM. BY MR. RUBY

1 be outside of our reference terms and would not be appropriate to
2 start down another line of...or another avenue which could lead to
3 someone suggesting further injustices.

4 MR. RUBY

5 Well, shall we shut our eyes to the content of these...

6 MR. CHAIRMAN

7 We're not shutting our eyes to the contents.

8 MR. RUBY

9 Can I not refer to them in asking questions of the witness?

10 MR. CHAIRMAN

11 You can refer to them.

12 MR. RUBY

13 How can I refer to them?

14 MR. CHAIRMAN

15 You can refer to them. You can ask this witness, number
16 one, whether or not he has seen these before. Did you see these?

17 MR. RUBY

18 Q. Were they before you?

19 A. Yes, I have.

20 MR. CHAIRMAN

21 No, I know you've seen them now, but did you see them at
22 the time you made your recommendation or your opinion to
23 the...to the Attorney General's Department, your final decision?

24 MR. QUINTAL

25 I can't recall specifically, sir, but if they were in our files, I

MR. QUINTAL, EXAM. BY MR. RUBY

1 have seen them.

2 MR. CHAIRMAN

3 If they were in your files, but it says here they're in the
4 files of Messrs. Herschorn and Coles.

5 MR. RUBY

6 We clarified yesterday from Mr. Feagan that, in fact, they
7 were part of the RCMP files.

8 MR. CHAIRMAN

9 They were. Well, if you had seen these...do you recall seeing
10 them?

11 MR. QUINTAL

12 Not specifically, sir, I'm not...

13 MR. CHAIRMAN

14 Well, what sort of meaningful evidence can he give us on
15 this?

16 MR. RUBY

17 Oh, I think he can help us a great deal, let me try.

18 Q. If you had seen those comments, assuming that you saw
19 them at the time, would you not think it wrong to take into
20 account the bank's view of these debts when their views
21 were at least in part so coloured by the seeking of political
22 advantage.

23 MR. MERRICK

24 My Lords, they don't know what the views are. We're
25 getting in to that area. He insists on getting into this, we have to

1 bring the...

2 MR. CHAIRMAN

3 If Mr. Ruby will use the word "may."

4 MR. RUBY

5 Q. Please take my question as using the word "may". That the
6 banks may have been seeking political advantage.

7 A. I don't know what the banks may have been seeking.

8 Q. You were unable to draw any inference on what the banks
9 were seeking?

10 A. Well, we were looking at a benefit, the benefit was really in
11 terms of a settlement which took place in September '79 or
12 the offer, I think, was made in September '79. These
13 comments sort of, in my estimation, sort of relate to a
14 process of collection of...or noncollection of a debt.

15 Q. Yes. And the reason that's given in these excerpts for non-
16 collection, they may not be the only comments as to reasons,
17 but the reasons given on these excerpts are political
18 advantage being sought, do you agree? You don't agree.

19 A. No, I...

20 Q. What do you take as...what did you take as the meaning of
21 the phrase, in number 5, "We consider it prudent,
22 considering Mr. Thornhill's position as Minister of
23 Development for the Province of Nova Scotia, not to apply
24 too much pressure at this juncture."

25

1 MR. MERRICK

2 My Lords, I rise again. When we start to ask this witness
3 what does he think was meant by some unnamed bank official
4 who wrote something, I don't know how many years ago, that
5 somehow got clipped out and pasted onto these pages, we're into
6 the realm of fantasy. That's not where this Commission should
7 be.

8 MR. CHAIRMAN

9 Well, I have no difficulty interpreting what that meant
10 anyway, any more than, you know, it shows how...when you're
11 dealing with excerpts how careful one has to be because I see
12 down here what also may be a source of an answer to a question
13 you put just a few minutes ago to this witness, Mr. Ruby.

14 MR. RUBY

15 Yes, My Lord.

16 MR. CHAIRMAN

17 About the bankruptcy, you see 7(a), "The debtor, now
18 Minister of Development and chairman of the Treasury Board for
19 the Province of Nova Scotia, is in a bankrupt position financially."

20 MR. RUBY

21 Yes.

22 MR. CHAIRMAN

23 And I would think that no one better than a chartered bank
24 would be able to assess whether a person is bankrupt or not.
25 They've had more experience than the rest of us.

1 MR. MERRICK

2 My Lords...

3 MR. RUBY

4 I can see very clearly from number 7(b) if you turn the
5 page the rest of that letter's extract. "The other competitor banks
6 to whom Mr.Thornhill is heavily indebted have adopted a wait-
7 and-see attitude, and for political reasons we are not pressuring
8 for payment and, in fact, are making no effort to contact him.

9 MR. MERRICK

10 My Lords.

11 MR. CHAIRMAN

12 You know, all that is true. In all this, I don't, you know, I
13 don't need any interpretation from this witness about what all
14 that means.

15 MR. MERRICK

16 In fairness I take it Mr. Ruby is going to read the four or
17 five or six pages of other quotes that talk about the business
18 reasons for doing this.

19 MR. RUBY

20 My Lord, but the witness has now said that he did not take
21 from these excerpts that there was any political motivation at all.

22 Q. Now, that is still your position?

23 A. Excuse me, I think you said were they seeking a political
24 advantage.

25 Q. Yes.

- 1 A. Well, I don't know what advantage they were seeking.
- 2 Q. You couldn't imagine any advantage they were seeking. You
3 thought of none at the time?
- 4 A. All four banks were dealing with the government.
- 5 Q. Fine. And none of this language, looking at 7, read again
6 with me, "The other competitor banks to whom Mr.
7 Thornhill was heavily indebted have adopted a wait-and-
8 see attitude and for political reasons we are...political
9 reasons are not pressuring for payment and, in fact, are no
10 effort to contact him," does not suggest to you any seeking of
11 political advantage by that bank?
- 12 A. I must admit I'm not sufficiently familiar with the dealings
13 of the banks with the government in the business sense to
14 determine what political advantage they would gain when
15 all of them are dealing with the government, and all four
16 had indebt...debts from the same individual.
- 17 Q. All right. And you took no steps to make inquiries with
18 respect to that issue?
- 19 A. I'm sorry.
- 20 Q. You made no inquiries from others in your...from the force
21 with respect to that issue?
- 22 A. No. Except to determine that, in fact, all four were dealings
23 with...were dealing with the government at the time.
- 24 Q. (c), back to page 95. "He now has an obligation to his
25 brother-in-law amounting to twelve yearly repayments of

1 \$3,600 each and has signed over his share of the Thornhill
2 home." How does that assist us one way or the other in
3 determining whether or not a charge would be sustained at
4 trial?

5 A. I'm sorry, I don't get the point.

6 Q. How did this help you when you were assessing the case in
7 deciding whether or not the charge would be sustained at
8 trial, successful at trial?

9 A. Well, he still had an obligation to pay whatever amount of
10 settlement had been proposed.

11 Q. I couldn't hear because the chair moved. Still had an
12 obligation to pay...

13 A. Whatever amount of the proposal that had been made that
14 he still had to pay.

15 Q. He still had to pay the twenty-five cents on the dollar. It
16 wasn't an entirely free trip.

17 A. No, no, but he's...he had to pay it back to his brother-in-law.

18 Q. Yeah. Right. Can you assist me as to how that helps us or
19 helped you in determining whether the charge would be
20 sustainable at trial?

21 A. I can't recall now just exactly what was in my mind at the
22 time we were...we wrote this.

23 Q. You then go on at the top of page 96, "It could be argued
24 that (a) he hardly received a benefit at all." Now, you're
25 familiar with the well-known police discretions with more

1 trifling cases, cases where there's nothing really involved,
2 theft of a hairpin, that sort of thing, you just don't bother
3 prosecuting, right?

4 A. Uh-hum.

5 Q. Is that what you're talking about here, that kind of trifling
6 case?

7 A. No, that's not what I'm talking about. It's not...

8 Q. Because he received a number of benefits. Tell me if you
9 agree with me. One, he kept his job, his public reputation and
10 his position. And he saved \$.75 on the dollar. You knew that,
11 did you not?

12 A. I don't know that he would have lost his job. He could have.
13 I don't know that.

14 Q. He managed to escape any risk to his job. I'll amend my
15 suggestion. You knew all those things?

16 A. I don't know whether his job was in jeopardy as a member
17 and a Cabinet Minister.

18 Q. He's in charge of the treasury of Nova Scotia. Do you think...

19 A. Well, I don't recall that he was in charge...

20 Q. Do you think going in bankruptcy might affect that position...

21 A. Excuse me, I don't recall he was in charge of the Treasury. I
22 thought he was the Minister of Development.

23 Q. He's in charge as a Minister, let's not worry about the detail of
24 it, with large budgets under his control, very large budgets,
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 o.k.? Assume that. Would you not that such a person,
2 reference to Page 41, Minister of Development and Chairman
3 of the Treasury Board for the Province of Nova Scotia. Would
4 you not think that the Chairman of the Treasury Board might
5 be looked askance at if it was discovered he was personally
6 bankrupt it was publicly known?
7

MR. MERRICK

8 My Lord, I'm going to rise again on an objection...

9 A. Well, if...

10 Q. Let me finish my question for a second.

COMMISSIONER EVANS

11 Before you answer it, listen.
12

MR. RUBY

13 Q. And the avoidance of that disclosure would be a benefit to
14 him of great significance. Now don't answer until my friend
15 has a chance to object.
16

MR. MERRICK

17 My Lord, it's one thing to ask this witness, "Did you take that
18 into account, how does that particular aspect influence your
19 decision one way or the other?" It's not within the realms of the
20 relevancy of this commission to now begin to debate whether or
21 not Mr. Thornhill's job was or was not in fact in jeopardy. The
22 sole issue is whether this witness took that account into fact [sic]
23 and if so, how did it influence his decision. We're now going to get
24
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 on another one of Mr....

2 CHAIRMAN

3 Not how it may influence voters, unless we want to take
4 judicial note of things that have been happening.

5 MR. MERRICK

6 And I don't want Mr. Ruby to go off on another one of his
7 flights of supposition on this point because it's beyond the scope
8 of this inquiry.

9 MR. RUBY

10 I understand my question. I don't understand the objection.
11 I want to know if I can, whether the witness is aware that that
12 was a benefit that this man was getting, the avoidance of publicity
13 given his position.

14 COMMISSIONER EVANS

15 Well, did it affect him is what you want to know.

16 MR. RUBY

17 Was he aware of it at the time and the second question is
18 did it affect him?

19 CHAIRMAN

20 Well, that's the only question, did it affect him because...

21 MR. RUBY

22 First of all, he wasn't aware that it couldn't affect him.

23 CHAIRMAN

24 Well, it's purely speculative whether it would or would not.
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 MR. RUBY

2 Quite. But I wouldn't say it was purely speculative.

3 MR. CHAIRMAN

4 It's a speculation that could only be answered properly
5 whenever the next election rolled around as it related to Mr.
6 Thornhill.

7 MR. RUBY

8 Q. Did you first of all know that he was Chairman of the
9 Treasury Board when you made your decision?

10 A. I'm not sure. I knew he was the Minister of Development.
11 Whether I was aware that that included Treasury Board, I
12 can't recall exactly.

13 Q. You've agreed that the passage I read to you on Page 41 was
14 part of the material you would have had before you? If you
15 read it, you would have known that he was the Chairman of
16 the Treasury Board. The bottom of Page 41.

17 A. I probably would have. I can't recall.

18 Q. Either you knew it or you didn't read the file carefully, one or
19 the other, correct?

20 COMMISSIONER EVANS

21 There may be another answer too. Is it accurate? This is
22 some unknown person...

23 MR. RUBY

24 Mr. Thornhill's counsel is here and he can tell me if it's
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 inaccurate, I'm sure.

2 MR. MERRICK

3 I'm not going to speak to the accuracy of a collage of
4 documents containing God knows what bankruptcies...

5 CHAIRMAN

6 Anyway, suffice it to say...

7 MR. MERRICK

8 Which is what Mr. Ruby would like to have his case on.

9 CHAIRMAN

10 Without getting into great arguments as to the prestige and
11 importance of various portfolios within a government, I think we
12 can accept the fact that Roland Thornhill occupied, as a Minister of
13 the Crown, a position of importance in the government of Nova
14 Scotia. So the only question that you have to answer is whether,
15 when you were arriving at your conclusions that are set forth in
16 your opinion, whether or not you took that into account. That he,
17 that it may have affected his position as a Minister of the Crown.

18 MR. RUBY

19 Did you consider it a benefit?

20 COMMISSIONER EVANS

21 Pardon?

22 MR. RUBY

23 Q. Did you consider that to be a benefit? Did you think the
24 publicity which might attend upon it being disclosed that the
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 Minister of the Crown was bankrupt and that avoidance of
2 that publicity would be of benefit.

3 A. There was at that time already a lot of publicity regarding the
4 Thornhill case.

5 Q. There was nothing regarding him being a bankrupt. Did you
6 think that avoiding that publicity might be of benefit?

7 A. No, I didn't consider that aspect, not that I recall.

MR. MERRICK

9 Incidentally, My Lord, I have to rise again. There is no
10 evidence that he wasn't a bankrupt. If we see that reported
11 tomorrow, there will be trouble that will flow from that. This
12 witness merely said that possibly bankruptcy proceedings would
13 have been cheaper.

COMMISSIONER EVANS

14 All we're really concerned with, Mr. Ruby, surely is were all
15 these various things factors that influenced this witness in
16 arriving at the conclusion at which he arrived. You have to
17 enumerate one by one. Were they factors that you took into
18 consideration, the fact that he was a Cabinet Minister, that he was
19 short of money, that he owed the banks. Was that a factor that
20 you took into consideration?
21

MR. QUINTAL

22 A. Well, the fact that he could not liquidate his debts would
23 certainly, as I explained here, it was all part of this. He made
24
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 a proposal. He couldn't liquidate his debts on the basis of the
2 income he had at the time and, therefore, made a proposal to
3 the banks to try to settle his debts.

4 Q Did it make any difference to you that he was a Cabinet
5 Minister? Did that influence your decision?

6 A. No.

7 COMMISSIONER EVANS

8 Is that what you wanted?

9 MR. RUBY

10 Q Yeah.

11 A. No, because, at that time, as I say, this was well known.

12 COMMISSIONER EVANS

13 Q Well, whether it was well known or not, did it influence you,
14 is what we'd like to...

15 A. No.

16 MR. RUBY

17 Q Did you consider whether, not having to pay off 75 cents on
18 the dollar was a benefit? That was the net result of it, was it
19 not, he didn't have to pay off 75 cents on the dollar. Did you
20 consider whether that was a benefit when you said "He
21 hardly received a benefit at all"?

22 A. I forget now what amounts he owed to each of the banks.

23 Q Over a hundred thousand in total.

24 A. No, but in terms of each of the banks and how much had been
25

1 written off and was considered to be written off by the other
2 banks, how much that would total. Because if, in fact, he
3 wrote that off, then his actual indebtedness would be reduced
4 to a corresponding amount.

5 Q. I think what you're saying then is that the amount may have
6 been quite trivial, the amount that he actually saved.

7 A. I didn't say "trivial," but I don't know how much it would
8 exceed the settlement that he finally made. I don't recall now
9 what...

10 Q. Why wouldn't you inquire and find out?

11 A. I think at that time we had the amounts that were owed but I
12 don't recall what they were. And also the fact that he
13 couldn't pay his debts according to his income at that time.

14 Q. Well, that explains to me why the benefit was of particular
15 importance to him, he couldn't pay the debts. But I don't
16 understand how you can say in the face of the fact that
17 you're talking about, how "he hardly received a benefit at all."
18 And I'd appreciate any assistance you can give me on that. I
19 mean, what did you mean by that, "he hardly received a
20 benefit at all"? At the very least he got 75 cents on the
21 dollar. We know from Paragraph (c), that he owes about
22 forty-odd thousand as 25% of the total. So the sum total, the
23 75% must have been quite substantial. How can you say he
24 hardly received a benefit at all?
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 A. Because if he hadn't paid his debts, the settlement that he
2 finally reached was a proposal which he made and had his
3 relative underwrite on his behalf. The alternative to that
4 would have been if he had gone into bankruptcy, what
5 amount would he have been obligated to pay. Now would it
6 be greater or lower than what he actually paid or had to pay?

7 Q. And you think this is first class police work? To sit
8 speculating as to whether it would be lower or higher, making
9 no impression... no request for further information and then
10 concluding he hardly received a benefit at all? Is that first
11 class police work, in your view?

12 A. All I can tell you is that these are the considerations that I
13 made at the time when reaching a decision.

14 Q. Is this the usual standard of the force, in your experience?

COMMISSIONER EVANS

15
16 Is he able to answer what's the usual standard in the force,
17 Mr. Ruby?

MR. RUBY

18
19 The man was head of Criminal Operations of the entire force;
20 he surely would have some knowledge of what the standard is.
21 May I ask that question, My Lord? I don't want to...

COMMISSIONER EVANS

22
23 It's a decision he made.
24
25

MR. QUINTAL, EXAM. BY MR. RUBYMR. RUBY

1
2 Q. That I know. I'm wondering whether this is usual or unusual.
3 Can you assist me?

4 A. Well, all I... All I can tell you is...

MR. PRINGLE

6 My Lord, before the witness answers, I think it is not a
7 proper question, I suggest, to ask him about the standards of the
8 force. This was his decision at the end of a period of time when
9 certain people put information before him. He made it rightly or
10 wrongly and the matters that may have influenced him are
11 certainly very relevant to this Inquiry. But as to how that might
12 compare to another Deputy Commissioner and another assistant in
13 a case in Saskatchewan or whatever is certainly not going to help
14 any of us here.

MR. RUBY

15 Is that the view of the...

MR. CHAIRMAN

17 Yes, that's the view. That's a valid objection.

MR. RUBY

19
20 Q. Let's turn to (b): "If he did, he received it from his brother-
21 in-law, not the banks. " Would you not say rather that he
22 received it both from his brother-in-law and the banks? Isn't
23 that fair and more accurate?

24 A. Well, if his brother-in-law had not accepted to underwrite
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 that, then there would never have been a proposal.

2 Q That's right. And, conversely, if the banks hadn't agreed to
3 accept it, he would never have gotten the benefit either.

4 A. Yes.

5 Q Isn't it fairer to say that the benefit came from both of them?
6 More accurately?

7 A. Well, you could argue that, I suppose.

8 Q You did not consider it could come from both of them.

9 A. In the light of their position at the time, I'm not so sure. They
10 weren't sure at all that they could collect any more than what
11 they collected, and some of them might even have expected to
12 collect less.

13 Q I take it your answer is "no", you did not consider a benefit
14 would come from both of them.

15 A. Oh, I think it could be argued that that was so.

16 Q But that argument didn't cross your mind.

17 COMMISSIONER EVANS

18 Q Did that argument occur to you?

19 A. I can't recall, frankly, but I knew that the banks...

20 Q Well, the question is, did that argument occur to you? Yes, or
21 it didn't?

22 A. Years later, you know, I wished that all these questions had
23 been asked the week after I made this.

24 Q Then is your answer that you can't recall?
25

MR. QUINTAL, EXAM. BY MR. RUBY

1 A. Not specifically, sir.

2 MR. RUBY

3 Q. Let me take you to the time period just before your finished
4 this letter. You said you spoke to Mr. Venner because he
5 drafted the document for you.

6 A. Yes.

7 Q. Did you discuss it with anyone else? You get the request from
8 Feagan for direction. Did you talk to the Commissioner? Did
9 you talk to somebody in Justice? Did you talk to anyone
10 about this matter?

11 A. I did not discuss that with Justice. I did not discuss it with
12 the Commissioner in terms of, prior to making a decision.
13 Whether I discussed it with other people other than Venner
14 among his staff, I don't recall. I can't say for sure. What
15 involvement his staff had in the preparation of the draft, I
16 don't even know either.

17 Q. When you talked with Venner about this subject matter,
18 during the process after Feagan asked you for direction and
19 the time you actually gave it, was there any discussion with
20 him of the consequences and the problems of confrontation?

21 A. The consequences of our decision?

22 Q. Yes.

23 A. Yeah, I think it's, what is in my letter were certainly aspects
24 that were discussed.

25

1 Q. Was the renewal of contract discussed at any time?

2 A. I'm sorry?

3 Q. Was the renewal of the contract for Nova Scotia discussed?

4 A. I don't recall that, no.

5 5:55 p.m.

6 Q. At page 94 you've been asked about the paragraph at the
7 bottom and you've stated all the serious consequences and in
8 a response to a question about that from Mr MacDonald you
9 said that there will be difficulties in the relationship between
10 the RCMP and the Attorney's General Department of Nova
11 Scotia. And that was the consequences you're referring to.
12 You recall that.

13 A. Yes.

14 Q. I'm not a police officer so I don't know, what did you have in
15 mind as, what would be the difficulties? What did you
16 envision would happen if you went ahead despite the
17 direction of the Attorney General? Can you give me example?
18 What was in your mind?

19 A. The Commanding Officer of the Division and his CIB Staff have
20 very frequent contacts with the Attorney General's
21 Department and what we were anticipating if, was a very
22 strained relationship would develop.

23 Q. What does that mean? You mean he would stop talking to
24 you. He wouldn't answer your phone calls. What did you
25 think would happen?

MR. QUINTAL, EXAM. BY MR. RUBY

1 A. Well I think that makes the day-to-day discussions very
2 difficult when people don't get along.

3 Q. Yeah. You might be a bit uncomfortable but what, was that
4 all you're talking about, just discomfort? Hugh Feagan would
5 no longer be relaxed, wouldn't be on a first-name basis?
6 What are we talking about here? What was in your mind as a
7 consequence?

8 A. Well just what I said in terms of their day-to-day contacts.
9 It's...

10 Q. Just discomfort.

11 A. It's, discomfort is not really the word I'm looking for. I think
12 it would be very difficult to do business on a day-to-day
13 rela...

14 Q. Why? What would happen to make it difficult to do
15 business? What would they do?

16 A. Well I would, I can only presume what they would do but I
17 had estimated that, you know, when you go and consult with
18 them and report with them you have a, sometimes you see
19 directions in terms of all the problems, the policing problems
20 you have within the province. It makes it very difficult to
21 operate under those circumstances when people really don't
22 get along.

23 Q. I take it you're unable to assist me any further than this.

COMMISSIONER EVANS

24
25 Mr. Ruby, to be fair to him, the continuation of that

1 paragraph he does not set out what really would be the problems?

2
3 They would be denied the traditional interim
4 step of consultation with a Crown counsel which
5 step is of great assistance in coming to a better
6 appreciation of the evidence, the available
7 defences, the interpretation of the law... et
8 cetera.

9 MR. RUBY

10 Definitely. It says how it happened. In the situation at
11 hand your investigators were denied...

12 COMMISSIONER EVANS

13 That's exactly what happened here.

14 MR. RUBY

15 But it had already happened. I quite agree.

16 COMMISSIONER EVANS

17 On the one case.

18 MR. RUBY

19 Before there was any hostility at all. I mean they did that
20 simply because they wanted to keep control. But is that a true
21 saying, that what would have happened is they would have
22 stopped or cut down on the consultation that you would expect
23 from Crown counsel? Is that one of the consequences or is that
24 what happened?

25 A. It could be but I think there's a lot more in terms of contacts
between a Division CO and the Attorney General and his
Department. It all has to do with the situation of law

1 enforcement in the province and discussions in terms of
2 personnel requirements in terms of law enforcement
3 programs and, you know, there's all kinds of things that are
4 discussed on a daily, I don't know if on a daily basis but
5 certainly on a frequent basis. And it becomes difficult to
6 operate when, in fact, two people are in a very strained
7 relationship. And it was certainly intimated by the people in
8 the Attorney General's Department that that would be the
9 case.

10 Q. Did you think they would stop meeting your requests for
11 personnel and so forth on their merits?

12 A. Oh, I didn't say that. No...

13 Q. What did you say? Would they stop discussing it with you? I
14 mean you raised the subject matter. What did you mean by
15 it?

16 A. Well it could take, it's hard to establish exactly what would
17 happen, but I would think that in terms of your programs,
18 getting answers, getting direction...

19 Q. All right. You thought and you considered the adverse
20 consequences to the RCMP of going against this direction,
21 correct?

22 A. Yes.

23 Q. Did you also consider the adverse consequences to the public
24 if allegations of crime, in the case of a political person, a
25 minister of the Crown, went untried and was never proceeded

1 with. Did you consider that as well?

2 A. The issue at the time was a pretty public one. The public
3 interest is really, in turn, I think the responsibility of the
4 Attorney General's Department, or the Attorney General
5 himself who is responsible to the people of the province in
6 terms of his actions.

7 Q. Doesn't the RCMP have an independent obligation to the
8 public? Doesn't a peace officer have that duty as well?

9 A. We have the duty to enforce the law.

10 Q. It wasn't done in this case, was it. You didn't consider that
11 duty. The duty to publicly lay the information and see that
12 the matter was dealt with even in a case of importance.

13 A. Well I don't agree with you. I have based my decision on the
14 estimation that I didn't think we had a strong case to go
15 ahead with in the first place.

16 Q. When you say strong case, you mean a strong enough case to
17 overcome the objections of the Attorney General to fly in the
18 face of that direction. Right?

19 A. A strong enough case that would lead to a conviction. If I had
20 been convinced of that I would, I would have gone ahead
21 regardless of the circumstances or the consequences. I mean
22 what personally did I have to gain or to lose?

23 Q. Well isn't this a decision you made for the good of the Force
24 and to hell with everybody else? Just let's not embarrass the
25 Force.

MR. QUINTAL, EXAM. BY MR. RUBY

1 A. Oh, I think that, you know, that if I had been personally
2 convinced of that I would have gone ahead of publicly...

MR. RUBY

4 Thank you, sir.

CHAIRMAN

6 Mr. Saunders.

EXAMINATION BY MR. SAUNDERS

8 Q. Mr. Quintal the questions I will pose to you will be on behalf
9 of the Attorney General and his Department, sir. I'd like to
10 begin by referring you to Exhibit 167 which are the notes that
11 you introduced earlier today. I draw your attention first, sir,
12 to the paragraph towards the bottom of the page under the
13 heading "November 5th, 1980" and the paragraph that starts,
14 "They are likely to be questioned about their visit here..."

CHAIRMAN

16 Where's that, I'm sorry?

COMMISSIONER EVANS

18 What page is that?

MR. SAUNDERS

20 Exhibit 167, My Lords. This gentleman's notes, page 1. I'll
21 just wait until you have that, My Lord.

CHAIRMAN

23 I have it.

MR. SAUNDERS

25 Q. And the reference I have given to you, sir, is the sentence

1 that reads, "They are likely to be questioned about their visit
2 here..."

3 A. Yes.

4 Q. And also on the second page, sir, the entry "December 4th,
5 1980" and your remark number 3 "Thornhill file" and the
6 second sentence, "He made known our views..." Do I take from
7 those particular notes, Mr. Quintal, that you expected Mr.
8 Feagan would have notified the Deputy Attorney General of
9 the meeting held in Ottawa on November the 5th.

10 A. I didn't expect the meeting to remain a secret. It wasn't a
11 secret. It was a consultation from our Field Commanders with
12 Headquarters...

13 Q. Yes.

14 A. And I'm not sure who raised that aspect but I think it was the
15 Division, they felt that they would likely be questioned about
16 their coming to Ottawa.

17 Q. I understand that. And my question to you is was it your
18 understanding that Superintendent Feagan would have
19 alerted the people in the Attorney General's Department to
20 the fact that there had been this meeting of senior officers in
21 Ottawa?

22 A. Would he go back to the Attorney General and tell him that
23 he had, I don't know, but there'd be no problem if he did.

24 Q. Thank you. Would it surprise you to learn that Mr. Feagan
25 never advised the Attorney General or his Deputy that there

1 had been a meeting of senior officers in Ottawa on the 5th?

2 A. Am I surprised that he did?

3 Q. Yes. That he did not.

4 A. I don't know what the relationships were but, am I
5 surprised? No, I think that there was something on the
6 news shortly after that, I don't recall now just how long
7 after, but in fact that they had come up to Ottawa to
8 consult.

9 6:10 p.m.

10 Q. Well, quite apart from whatever may have been on the
11 news, I take it that you had no problem with Mr. Feagan
12 informing the Attorney General or his deputy that senior
13 officers of the RCMP had met?

14 A. No.

15 Q. I want to turn your attention, sir, to the notes that Mr.
16 Feagan made of that meeting in Ottawa that begin at page
17 63 of the book, and specifically Mr. Feagan's note to his file,
18 the last line of the page, page 63, this is Feagan writing
19 where he said, "I told him, Mr. Coles, that after discussing
20 the whole matter with my CIB officer," who would that be?
21 Would that be Superintendent Christen?

22 A. Yes.

23 Q. Yes. "And other members closely involved with the
24 investigation." There's no reference in that sentence to
25 there being a meeting in Ottawa or that Mr. Feagan alerted

1 Mr. Coles to that. And then Feagan goes on to say, "I was not
2 completely satisfied that there were no grounds for a charge
3 under Section 110(1)(c) of the Criminal Code." He said, "That
4 I related further that I was having Sergeant Plomp, a legally
5 trained member, research the matter. I was having him
6 prepare some argument which I hoped we could discuss
7 with him, Mr. Coles, at a later date." Do you see that, sir?

8 A. Yes.

9 Q. And I believe I heard you say earlier that the analysis
10 conducted by Sergeant Plomp, that is the legal research and
11 analysis that he prepared was never conveyed by the force
12 to the Attorney General's Department because you thought it
13 would be pointless, is that correct?

14 A. Yes.

15 Q. And indeed, sir, if we were to look at the memorandum of
16 Superintendent Christen at page 78 of the book and the
17 memo starts at page 77. It's dated November 18th, 1980, so
18 this is obviously subsequent to that meeting of superior
19 officers in Ottawa, and Superintendent Christen concludes
20 the memorandum by indicating in his view,

21 I do not feel there is any purpose or advantage
22 to be gained in making a further representation
23 to the Attorney General or his deputy and I
24 suggest when we next discuss this case with
25 them it should be to tell them that we are
proceeding with charges or that we have

MR. QUINTAL, EXAM. BY MR. SAUNDERS

accepted their decision.

1

2

So it's obvious, I suggest to you, sir, from this memorandum of the CIB officer, "H" division, that he saw no point in advancing that further analysis to the department, correct?

3

4

5

A. Well, that was written subsequent to the meeting of...

6

Q. Oh, yes, indeed.

7

A. ...the 12th of November.

8

Q. Yes, that's right. But he saw no point in further representations going forward, correct?

9

10

A. That's right.

11

COMMISSIONER EVANS

12

Mr. Saunders, going back to page 64 again, did you say...I understood you to indicate that Feagan had not said anything to Mr. Coles about...or anybody in the AG's office about the meeting in Ottawa. Didn't he indicate when he said he was having Sergeant Plomp, a legally trained member, research the matter, including case law,

13

14

15

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25

I was having him prepare some argument which I hoped we could discuss with him, Mr. Coles, at a later date. Mr. Coles outlined his perception of the necessity for the element of intent in this case. I told him I was not prepared to argue the merits of the case at this time, but it was our view that it was different. I repeated,

further on,

MR. QUINTAL, EXAM. BY MR. SAUNDERS

1 I repeated, however, that we would be preparing
2 a written argument outlining our views on the
3 matter and asked if he would be prepared to
4 discuss our arguments with us. Mr. Coles
5 continued to support his views of the case at
6 some length,

7 and then he...

MR. SAUNDERS

8 Yes, My Lord.

COMMISSIONER EVANS

9 Does that not indicate that there was some con...some
10 indication to the AG's office that they wanted to discuss the
11 matter further and that there had been discussion with somebody,
12 I just assumed that Plomp was in Ottawa, maybe...

MR. SAUNDERS

13 No, My Lord.

MR. CHAIRMAN

14 Plomp was here.

MR. SAUNDERS

15 Sergeant Plomp was in Halifax, based at "H" division.

COMMISSIONER EVANS

16 I see.

MR. SAUNDERS

17 And that was my point.

COMMISSIONER EVANS

18 Thank you.

MR. SAUNDERS

1
2 Q. And indeed, just to follow up that point of his Lordship, Mr.
3 Quintal, Mr Coles did indicate to Feagan that he would
4 entertain and receive the analysis that was mentioned by
5 Feagan, I draw your attention to page 67, the middle of the
6 page, the sentence, "Mr. Coles replied that he would do so,
7 but he still felt I should not be questioning his judgement
8 and he had no intention of changing his mind." And the fact
9 is, sir, that the analysis prepared by Sergeant Plomp was
10 never referred to the department, correct?

11 A. No, sir.

12 Q. Yes. Now, just to stay with the meeting in Ottawa for a
13 moment, you can't identify the member who prepared the
14 minutes of that meeting which are at page 55 of the book.
15 So I take it that these minutes, whoever prepared them,
16 were circulated among senior officers who were in
17 attendance at the meeting?

18 A. Now... they were circulated within the branch and they went
19 to Assistant Commissioner Venner.

20 Q. Yes.

21 A. Because he made some corrections I understand.

22 Q. And Venner reported directly to you.

23 A. Yes.

24 Q. And there was discussion, was there not, Mr. Quintal, at that
25 meeting among the senior brass as to the authority of the

1 Attorney General to determine whether or not a prosecution
2 would go forward?

3 A. The, oh, the decision was already made at that time that it
4 would not go forward.

5 Q. Yes. But I'm speaking of the principle, that is to say that the
6 Crown office has the ultimate authority to decide, once a
7 charge being laid, whether prosecution will continue.

8 A. Oh, yes.

9 Q. And that was discussed at your meeting, sir.

10 A. I think we discussed the right or the prerogative of a police
11 officer to lay a charge and the Attorney General to stay
12 proceedings.

13 Q. Exactly right, and I draw your attention to the bottom of
14 page 56 of the book, the last paragraph, "A discussion
15 developed which fortified our prerogative to lay an
16 information recognizing that it was within the ambit of the
17 provincial AG as to what type of prosecution would be
18 presented, if any." And do you recall that discussion at that
19 meeting, sir?

20 A. I don't recall it specifically, no.

21 Q. Do you take any exception to that comment in the minutes,
22 that is to say that it's the prerogative of a police officer to
23 decide whether she or he will lay a charge, but it's the
24 prerogative of the Attorney General to decide whether the
25 prosecution would be presented, if at all.

1 A. Yes.

2 Q. Do you accept that, sir?

3 A. Yes.

4 Q. When you prepared your decision, Mr. Quintal, and it's at
5 page 95, sorry, 93 of the book, and it bears the date on the
6 force stationery of December the 17th, 1980, you had
7 considered the file materials available to you, the
8 representations made to you at the meeting held in Ottawa
9 on November the 5th and subsequent discussions that you
10 had had with your Deputy Commissioner Venner, is that
11 correct?

12 A. Yes.

13 Q. And do I have it correctly stated that when you wrote at
14 page 96 of your decision, quote, and I'm at the middle of the
15 page now, "It is our opinion...it is our further opinion that no
16 false pretence investigation should be pursued against Mr.
17 Thornhill as a result of the information and documentation
18 you have accumulated to date on this file," that that was
19 your decision, sir?

20 A. Yes.

21 Q. And four lines from the bottom of that same paragraph
22 where you wrote, "The above also applies to the question of
23 conspiracy," was that your decision, Mr. Quintal?

24 A. I'm sorry, where are you reading from?

25 Q. Yes, the same paragraph.

1 A. Yeah.

2 Q. Four lines from the bottom of that paragraph.

3 A. Yes.

4 Q. Where you write, "The above also applies to the question of
5 conspiracy."

6 A. Yes.

7 Q. That was your decision, was it, sir?

8 A. Yes

9 Q. You spoke earlier today of there being a difference between
10 a police officer believing that he had reasonable and
11 probable grounds to believe that an offence had been
12 committed, that there was a difference between that and the
13 ultimate decision of a police officer to proceed and lay a
14 charge. That it was more than having a *prima facie* case
15 before a police officer decided whether or not to lay an
16 information, is that correct?

17 A. I don't...I'm not sure I said that in...there are the exercise of
18 discretion by the police in terms of whether they would
19 charge a person or not.

20 Q. Yes.

21 A. And in this particular case that's what I did. I reviewed
22 that and didn't think that we should proceed under all the
23 circumstances relating to this particular case.

24 Q. Yes, sir. And at that time that you made that decision you
25 were the second-highest ranking police officer in the

1 country of the RCM Police.

2 A. Yes.

3 Q. It was your decision to make.

4 A. Yes, sir.

5 Q. When one looks at the responsibility of a police officer to
6 consider to lay a charge if he thinks that he has a *prima*
7 *facie* case and contrast that with the oath that you took to
8 investigate and enforce the law without motive based on
9 fear or favour, I take it that that is the thrust or the gist of
10 the police officer's discretion that you were talking about,
11 that is, that a police officer has to exercise something more
12 than just determining if there's a *prima facie* case before
13 deciding to put an accused to trial.

14 A. Yes, I would agree.

15 Q. And when Mr. MacDonald, my friend, asked you whether
16 the right of a police officer to lay a charge if he thought he
17 had a *prima facie* case was an obligation upon a police
18 officer to do that, you said, "No," that it depended upon the
19 judgment and experience and conscience of a police officer,
20 correct?

21 A. It's not an obligation to go ahead.

22 Q. Yes. And so when you reflected for the time that you did
23 and made the decision that you did on December the 17th,
24 1980, did you apply that thirty-two years of experience and
25 judgement and conscience before arriving at your

1 conclusion?

2 A. Obviously.

3 Q. Was there any contact or communication between the
4 Attorney General's Department and you between November
5 the 5th, 1980, and your decision taken on December 17th?

6 A. I don't know the Attorney General, I don't know the ...his
7 deputy, I don't know anybody, I never talked to any of
8 those either people either.

9 Q. Yes, sir. Did you try to be fair and apply independent
10 assessment to your review of the facts in making your
11 decision based not on fear or favour?

12 A. Yes, I was well aware of the sensitivity of the...of this
13 particular case. I was well aware of the feelings within
14 certain members of the force. I was well aware of the views
15 of the Attorney General's Department.

16 Q. Did you exercise any preferential treatment in coming to the
17 decision that you did, sir?

18 A. No.

19 Q. Do you accept responsibility for your decision?

20 A. Yes.

21 Q. And would you do it the same again today?

22 A. Yes.

23 MR. SAUNDERS

24 Those are my questions.

25

6:25 p.m.

1 MR. GAY

2 I have no questions, My Lord.

3 MR. PRINGLE

4 I don't think we have any questions, but just for the record,
5 Your Lordships might be interested in the dates of the police
6 contract, when they were signed.

7 MR. CHAIRMAN

8 Yes, I would be.

9 MR. PRINGLE

10 I refer Your Lordships to that. It's in Volume 40, which is
11 Exhibit 140 at page 29. The contract was entered into on the 3rd
12 day of November, 1981. The previous one had expired, and this is
13 found at page 26 in Exhibit 140, on the 31st day of March, 1981.

14 MR. CHAIRMAN

15 Mr. Merrick?

16 MR. MERRICK

17 My Lords, it's late and I will not be long.

18 **EXAMINATION BY MR. MERRICK**

19 Q. Mr. Quintal, you were examined at some length by Mr.
20 MacDonald as to your appreciation of the distinction, the
21 element of intent required for the offence under Section
22 110(1)(b) and the offence under Section 110(1)(c). And you'll
23 recall that line of questioning.

24 A. Yes.

25

1 Q. You understood, I take it, that under Section 110(b), to charge
2 the banks, there would have had to have been some element
3 of intent that any benefit or favour being done was being
4 done in relation to relations with the government or some
5 aspect of those relations. Is that right?

6 A. Yes.

7 Q. And you reviewed very carefully, I take it, the factual
8 evidence that you had as to the proposition that was put to
9 the banks by Mr. Thornhill in September of 1979, is that
10 right?

11 A. Yes.

12 Q. And reviewing the facts carefully and having your
13 investigator's report before you, I take it you were satisfied
14 that there was no reasonable and probable grounds that the
15 banks at least had any element of that intent. Is that right?

16 A. No.

17 Q. That the element of intent wasn't there.

18 A. Yes.

19 Q. That from the banks, at least, there was no favour or benefit
20 being conferred whatsoever in relation to any dealings with
21 the government.

22 A. No.

23 Q. Is that so?

24 A. No.
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Q. Indeed, I think that you have told us that somebody, and it may have been you, characterized that proposition that Mr. Thornhill made to the banks through his accountant as being "a normal business proposition".

A. Yes.

Q. Do you recall that phrase? I picked it up from your answers to Mr. MacDonald.

A. Well, what I recall it, you know, from memory that, no, I can't say that I remember somebody telling me in those terms...

Q. Let me put it to you this way. In your position, were you satisfied that the proposal that Mr. Thornhill had made to the banks through his chartered accountant could be characterized as a "normal business proposition"?

COMMISSIONER EVANS

You mean in the circumstances then existing?

MR. MERRICK

Q. Yes.

A. Yeah, uh-huh.

Q. And your answer?

A. Yes.

Q. Yes, thank you. Now I presume, as well, in looking at the two charges and under Section 110(1)(b) and 110(1)(c) in deciding whether to proceed, you would want to know whether there was reasonable and probable grounds, whether

1 anybody had put any pressure on the banks. On your review
2 of the file, did you see any evidence that anybody had
3 pressured the banks to make the settlement which they, in
4 fact, did?

5 A. No.

6 Q. In fact, there's no evidence that Mr. Thornhill, or anybody
7 else, did anything other than make a proposal.

8 A. Through his accountant, yes.

9 Q. Yes, thank you. Now we've heard a lot of talk about a "false
10 pretences charge" and that's now again being reported in the
11 paper as a possibility. I take it, Mr. Quintal, that at the time
12 you made the decision not to proceed on any of the three
13 charges, that your reason...

14 COMMISSIONER POITRAS

15 I think you're having problems there with a whole series of
16 leading questions.

17 MR. MERRICK

18 It may be, I think I...

19 COMMISSIONER POITRAS

20 Cross-examining his own witness.

21 MR. MERRICK

22 It will also shorten things up at this hour of the day if the
23 Commissioners, please.

24 Q. Mr. Quintal, at page 96 of the document book, your letter, and
25

1
2 you've been directed to this portion of it before, the second
3 paragraph, you say:

4 It is our further opinion that no false pretence
5 investigation should be pursued against Mr.
6 Thornhill as a result of the information and
7 documentation you have accumulated to date on
8 this file.

9 Do you see that?

10 A. Yes.

11 Q. I take it, sir, that from your review of the file at that stage,
12 there was no reasonable or probable grounds for laying such
13 a charge, is that correct?

14 A. At the time, I was probably satisfied that there was not.

15 Q. Thank you. The charge that is being discussed as to Mr.
16 Thornhill, can I suggest this to you and you tell me whether
17 it's a correct characterization of the evidence you've given? I
18 have, as I read the documents, the impression that from
19 November the 5th on, 1980. This is the date when the
20 meeting is held in Ottawa with the senior R.C.M.P. officials.
21 That from that date on, the major issue that was of concern to
22 the R.C.M.P. was whether the Attorney General's Department
23 had pre-empted any further action by the R.C.M.P. by the
24 press release that had been given. Is that a major concern to
25 the R.C.M.P. from that point on?

 A. It was a major concern in that, in fact, the usual relationship

1 It has never been the rule that suspected
2 offences must automatically be the subject of
3 prosecution and that the public interest is the
4 dominant consideration.

4 I take it you adhere to that proposition, do you?

5 A. Yes.

6 Q. I take it what you mean by that, sir, in your letter that even
7 though a police officer may feel there is reasonable and
8 probable grounds, there is still a discretion that that police
9 officer can exercise as to whether to lay charges in particular
10 circumstances, is that correct?

11 A. I'm sorry, would you repeat that again?

12 Q. I take it what you mean by that is that even if a police officer
13 thinks that there may be reasonable and probable grounds to
14 lay a charge, that doesn't automatically determine that a
15 charge must be laid, that there is still a discretion.

16 A. Yes.

17 Q. And, indeed, Mr. Feagan yesterday refers to an analogy that I
18 found interesting from his Northwest Territories experience,
19 where he said, for example, that it was against the law for a
20 person under 16 to drive a snowmobile. Nevertheless if a
21 youngster was found driving a snowmobile taking food to his
22 parents on the trap line, the police officer might take that into
23 account in deciding whether to charge. And that's the type of
24 thing we're talking about, isn't it?

25 A. Yes.

1
2 Q. Even though reasonable and probable grounds exist there can
3 be other considerations. Sir, you've set out in your letter
4 other factors, and I'm referring now to page 95 and 96, other
5 factors that you say you took into account and you've been
6 examined at some length by Mr. Ruby on that and I won't
7 repeat all of the evidence, or the questions he put to you. But
8 I see on page 96 you make a statement five lines down, six
9 lines down in that main paragraph:

10 It is likely that they would be impressed by such
11 probable defence witnesses as the Premier if, in
12 fact, he is the head of the branch of government
13 who could be expected to testify that he would
14 have willingly authorized Mr. Thornhill's activity
15 had he been asked to.

16 Do you see that statement?

17 A. Yes.

18 Q. I take, sir, that at that point you were referring to the fact
19 that under Section 110(1)(c), that if a piece of paper had been
20 obtained by the Premier, all of this debate would have been
21 academic because no charge, the elements for the charge
22 wouldn't have been there, is that right?

23 A. Yes.

24 Q. I take it, sir, you were also aware that according to the
25 internal documentation that was on the file, and I'm referring
now to page 7 in the document book, a memo to file, which I

1 take to be from Mr. Feagan, and you'll see about five and half
2 lines up from the bottom, a statement:

3
4 During our discussions on the matter, it was
5 mentioned that the Premier had stated outside
6 the Legislature that Mr. Thornhill had accepted
7 financial benefits while holding office as a
8 Minister.

9 So that the Premier knew. Were you aware of that
10 statement?

11 A. Yes, I would be.

12 Q. So that here the head of government knew. It's just that
13 somebody didn't get a piece of paper. Is that what you were
14 considering when you took, when you wrote your letter?

15 A. That's what we refer there in saying that the Premier could
16 have been called to repeat that statement as a defence
17 witness.

18 Q. That's right. So that the only thing that has taken Mr.
19 Thornhill through the public media for the past eight years is
20 that he didn't have a piece of paper.

21 MR. RUBY

22 My friend is getting into the guilt or innocence of Mr.
23 Thornhill and we can explore that at length but I don't think he
24 wants.

25 MR. CHAIRMAN

Right.

1 MR. MERRICK

2 I'll move on to my last point.

3 REPORTER

4 Excuse me, I'm sorry, I didn't get Mr. Ruby's comment.

5 MR. RUBY

6 He's getting into the guilt or innocence of Mr. Thornhill and
7 we can explore that at length, but I don't think he wants to.

8 MR. MERRICK

9 Well, My Lords, I will debate Mr. Thornhill's innocence and
10 with Mr. Ruby...

11 MR. CHAIRMAN

12 Anyway, you're not going to debate here, not in this forum.

13 MR. MERRICK

14 My last point.

15 MR. CHAIRMAN

16 That's what they said about World War I, there was a book
17 written, it said, "All for a scrap of paper."

18 MR. MERRICK

19 Q. My last point, Mr. Quintal. The whole purpose of this Inquiry
20 is to determine if the normal procedures in the R.C.M.P. were
21 not followed and if for some improper reason. Let me ask
22 you the question point blank. Did anybody put political
23 pressure on you to arrive at the decision that you arrived at?

24 A. No.

25

1 Q Mr. Thornhill certainly never communicated with you, did he?

2 A I don't know him.

3 Q And you have no evidence to indicate that Mr. Thornhill was
4 engaged in any of these discussions with the A.G. or the
5 Crown prosecutors or the R.C.M.P.

6 A No.

7 Q And I'll put my question to you that I put to Mr. Feagan
8 yesterday. Based on all the evidence you have, he had to sit
9 home and read about it in the paper just like I did.

10 A Yes.

11 Q All right. I'll come down to my last question. You've told us
12 that notwithstanding the Attorney General's position in
13 relation to this matter, you made your decision not to proceed
14 because "you didn't think there was a strong enough case to
15 lead to a conviction." And that's really what it was, wasn't it,
16 Mr. Quintal?

17 A Yes.

18 Q You didn't believe the evidence was there.

19 A That's right. That I think is the tenure of my memo of the
20 17th.

21 Q And that's consistent with your 32 years of experience as a
22 police officer and that's consistent with your oath of office.

23 A Yes, sir.

24 MR. MERRICK

25

1 Thank you.

2 MR. CHAIRMAN

3 Mr. MacDonald?

4 MR. MACDONALD

5 Only one question, My Lord. I may have been omitted.

6 EXAMINATION BY MR. MACDONALD

7 Q. Mr. Quintal, did you advise the Commissioner of the results of
8 the meeting of November 5th and did you give him a copy of
9 the minutes of that meeting?

10 A. I advised the Commissioner. At what particular time, I don't
11 know really. The minutes themselves, I don't recall seeing at
12 the time. Remember, I was away from the 8th of November
13 until about the 4th of December and the minutes, the final
14 draft is dated the 24th of November. I'm sure we discussed
15 that particular case and I certainly briefed him on the
16 meeting and I certainly briefed him on my decision.

17 Q. And, specifically, you would have briefed him on the
18 conclusions reached at the meeting on November 5th.

19 A. Yes, but just when, I don't recall when.

20 MR. MACDONALD

21 Thank you.

22
23 MR. CHAIRMAN

24 Q. Just one question, and I think I touched on it earlier, Mr.
25

1 Quintal. In your letter to Headquarters when you set forth
2 the final instructions to Chief Superintendent Feagan as to
3 how this matter was to be disposed of, you reviewed with, in
4 response to questions put by Mr. MacDonald and Mr. Ruby
5 and others, your concern about the consequences of vis-à-vis
6 the Attorney General's Department. And I won't take you
7 over these again. But you do seem to, at least you refer to the
8 fact and you're reading it as a whole, you're concerned about
9 the possibility of laying a charge and it being dismissed.

10 A. That's right, sir.

11 Q. And I think you indicated to me earlier today that that really
12 shouldn't be a consideration for a police officer when deciding
13 whether a charge should or should not be made, laid. Did I
14 get that impression from you?

15 A. Ahh...

16 Q. If you conclude that there's sufficient evidence to lay a
17 charge.

18 A. Yes, sir, if you're convinced that you have the evidence to go
19 ahead and obtain a conviction, I think you should.

20 Q. Now you have told us, and we've also had evidence from
21 Feagan, that the press release of the Attorney General of
22 October the 29th, 1980 and the press release wherein he said
23 he relied on the opinion of his Deputy Attorney General, and
24 the subsequent press release of the Deputy Attorney General,
25

1 which concluded that the evidence did not satisfy him. That
2 there had been a commission of any offence. That that sort
3 of, to use the words of counsel "pre-empted" you. Now did
4 you in these consequences that you were concerned about,
5 did you have any concern as to what the position of the
6 R.C.M.P. might be in the eyes of the public if after the
7 statements had been made saying that no offence had been
8 committed, and the charge was laid and then the accused was
9 subsequently convicted. Did that concern you at all?

10 A. At that time, sir?

11 Q. Yes.

12 A. No, sir, I...

13 Q. So your decisions were not influenced or hampered or
14 constrained in any way by these earlier press releases.

15 A. No, because what they, what the press... The press release,
16 they had sort of pre-empt any further, an opportunity to
17 comment and rebut the arguments...

18 MR. CHAIRMAN

19 I see. Okay, that's all. Thank you very much, Mr. Quintal. I
20 would like, we would like to, as I said earlier, keep on schedule. I
21 realize that some are not as young as we are, active, and might
22 find it a bit difficult, but I have to remind counsel and others that
23 the fall term of the courts are upon us and we have other duties
24 to perform and it's essential for that reason and many others, but
25

MR. THOMAS, EXAM. BY MR. MacDONALD

1 from our point of view, that the schedule be maintained. So what
2 I'm proposing is that we rise for, say, 15 minutes, and then
3 proceed.

4 BREAK - 6:44 p.m.

5 7:00 p.m.

6 MR. MacDONALD

7 The next witness is David Thomas, My Lord.

8 DAVID THOMAS, duly called and sworn, testified as follows:

9 EXAMINATION BY MR. MacDONALD

10 Q Your name, sir, is David Thomas?

11 A Yes, sir.

12 Q And you're employed by the Attorney General's Department?

13 A Yes, sir.

14 Q What's your present position with the Department?

15 A I'm the Prosecuting Officer for Halifax County.

16 Q And how long have you held that position?

17 A Currently I think about eight years and previous to that two
18 and a half years, I think.

19 Q What are your duties in a general fashion, in a general way?

20 A Well basically to see that the criminal justice system is
21 properly processed through the courts at all levels in Halifax
22 County.

23 Q Is it part of your responsibility to assign prosecutors to
24 various cases in Halifax County?

25 A Yes, sir. Not cases specifically. At times specific cases are

1 assigned, but generally prosecutors are assigned to a
2 particular court.

3 Q. Okay. And so any charge arising in, if it's going to be
4 prosecuted in a particular court, it's done by a particular
5 prosecutor. Normally.

6 A. Generally speaking.

7 Q. What is the relationship generally existing between the RCMP
8 and your prosecutors?

9 A. Well lately it hasn't been too good. I think the rapport is good
10 at the, with the Sackville detachment and our Bedford office.
11 And I think the rapport is good with the Cole Harbour
12 detachment and the Dartmouth office. Generally speaking I
13 think it's good with the Halifax detachment in highway patrol
14 with the Halifax office, but at times the rapport with the GIS
15 Section leaves a bit to be desired.

16 Q. Is there contact, complete from the normal circumstances,
17 between the RCMP and your prosecutors during the time an
18 investigation is going on? In other words, does the RCMP
19 members contact prosecutors for assistance and advice as
20 they carry out their investigation?

21 A. From time to time. It depends a lot on the nature of the
22 investigation.

23 Q. Dealing particularly with commercial crime investigations, is
24 there anything, is there any normal practice that's followed?

25 A. The normal practice that they have been following in that

1 section is to call when they feel they're ready to get some
2 input or advice from a prosecutor.

3 Q. And who would they call?

4 A. They would call me and ask for a prosecutor.

5 Q. And would you assign a prosecutor?

6 A. Yes.

7 Q. And that...

8 A. I may, well, again, depending on the nature of the file, if it's
9 not what we refer to as a "heavy" one, a long time-consuming
10 one, I might refer it up to John Wade who supervises at the
11 Spring Garden Road office. If it's a time-consuming one, I
12 would assign someone specifically to the file.

13 Q. And do you have to get input or permission, if you will, from
14 the senior officials in the Attorney General's office before you
15 can assign a prosecutor in those type of circumstances?

16 A. No.

17 Q. What normally, if there is such a thing, if there's a difference
18 of opinion between the police and a prosecutor whether a
19 charge is warranted, how is that resolved if, in fact, you have
20 any experience in this?

21 A. We rarely have that experience with municipal police forces.
22 We have had it, I have had it personally with the GIS Section
23 of the Mounted Police. As I understand it their operational
24 manual requires them to, if there is a difference of opinion
25 between the investigator and the prosecutor, their operational

1 manual, I think, requires them to have it resolved or,
2 resolved I think at Divisional level or resolved with the senior
3 people in the Criminal Section of the AG's Department.

4 Q. Who are the criminal law experts, if you will, at the AG's
5 Department?

6 A. Experts. I don't think any of us are expert in anything. The
7 people who head up the Criminal Law Section are Gordon
8 Gale, who's the Director of the Criminal Section and Martin
9 Herschorn is the Director of Prosecutions.

10 Q. I want to talk to you about the Thornhill case and the brief
11 involvement that you would have had in it. And I've had
12 marked, Mr. Thomas, as Exhibit 168, copies of notes that were
13 in your file.

14 EXHIBIT 168 - FILE NOTES OF D. THOMAS re THORNHILL CASE

15 A. Yes, sir.

16 Q. And those all in your handwriting, are they?

17 A. Yes, sir.

18 Q. Feel free to refer to those if you like as we go through and at
19 the end I may refer to them in detail. When were you first
20 aware of an investigation being carried out by the RCMP in
21 the Thornhill matter?

22 A. As indicated in my notes, sir, sometime in June or July of
23 1980.

24 Q. And how did you become aware of that?

25 A. I'm using these notes to refresh my memory. They weren't

1 made contemporaneously but a summary of, within a day or
2 two after an item that I heard on the news. So I'm referring
3 to them and I would say I originally heard of the matter from
4 Inspector Blue who, at that time, was the officer in charge of
5 the Commercial Crime Section here in "H" Division.

6 Q. And that would be a normal sort of course of events that you
7 would hear of an investigation from the RCMP who were
8 involved in carrying it out, is that correct?

9 A. Well in a case like this obviously Inspector Blue had called me
10 about it. The particulars of which I don't recall but it would
11 probably have been a situation where he said I have
12 something that I'm going to have an investigator contact you
13 about or something like that. I don't recall anything specific
14 about it eight years later.

15 Q. And your note indicates that Constable House came to see you
16 and you assigned Kevin Burke to the file.

17 A. That's correct, sir.

18 Q. That, again, would be just the normal course of events, would
19 it not?

20 A. Yes, sir.

21 Q. Is there any particular reason that you would have assigned
22 one prosecutor as opposed to another?

23 A. At that point in time Burke was doing frauds to the exclusion
24 of anything else. He was tied up on the time-consuming fraud
25 cases.

1 Q. He was considered by you to be the guy in your office or in
2 your control that would have the most experience in this type
3 of case?

4 A. No, sir. We have two doing frauds. I think Duncan Beveridge
5 and Burke were doing frauds at that point in time or Burke
6 and perhaps Norton. One or the two.

7 Q. Okay. Now subsequent to that assignment of Burke you were
8 advised, I believe, by Mr. Gale that the RCMP were not to
9 have any contact with a prosecutor in this case?

10 A. No, sir, I didn't get any instructions from Mr. Gale.

11 Q. Who did you get instructions from?

12 A. I got a memo from Burke on the 28th of August of 1980, as
13 indicated in my notes, indicating that Inspector Blue, I think,
14 had called him, no he had called House, I guess. He called
15 Constable House to arrange an appointment. House had been
16 in, had had contact with him on previous occasions and he
17 called House to make an appointment to go over the file and
18 then I guess Burke got the word that the Department were
19 monitoring the file and Burke sent me the memo and I sent a
20 copy of the memo to Gale and that was it as far as I was
21 concerned.

22 Q. Okay. Exhibit 165, it's that booklet of documents in front of
23 you, Mr. Thomas.

24 A. Yes, sir.

25 Q. Look at page 22, if you would, first.

- 1 A. Yes, sir, I have it.
- 2 Q. 22 is the memo from Mr. Burke to you.
- 3 A. Yes, sir.
- 4 Q. And that was the first indication that you had of this, the fact
5 that Burke was being called off.
- 6 A. Yes, sir.
- 7 Q. Now Mr. Burke in that first paragraph relates what you've
8 just said, that he was given instructions, and then he said he
9 was to forward his recommendations to you and wait further
10 instructions. Would that be the normal practice?
- 11 A. Yes, sir.
- 12 Q. He notes that he has met with Constable House on several
13 occasions, familiarized himself with the investigation...
- 14 A. Excuse me, sir, that would be the normal course to follow in
15 an investigation of this nature, in a file of this nature. Burke
16 wouldn't forward a report to me on all the files he was
17 working on. But because of who the subject of this
18 investigation, that's the way it would go.
- 19 Q. Because of the...
- 20 A. Because Thornhill was the subject of the investigation the
21 report would come to me.
- 22 Q. And why is that? Because...
- 23 A. Well because I would want to look it over and be aware of
24 what was going on and if charges were contemplated I would
25 refer it to Herschorn.

1 Q. Okay, so the practice, or the, the procedure to be followed you
2 would have expected is from Burke to you to Herschorn?

3 A. Well, it would depend. If I agreed with Burke that charges
4 were warranted, then it would go to Herschorn. If I disagreed
5 with him, then it would go back to him with, or we'd talk
6 about it perhaps, or I'd memo it back to him, memo back to
7 him and indicating why I didn't feel that charges were
8 warranted.

9 Q. And would that, you're confident that Burke would
10 understand that that's the procedure to be followed in a case
11 such as this. Why is that, because you're dealing with
12 someone of, who's known publicly or...

13 A. Well again, I'm talking about this file, yeah.

14 Q. So you would have expected that Burke would first of all,
15 having reviewed the matter with the investigator conclude
16 whether charges, in his opinion, should be laid, then come to
17 you for your assessment.

18 A. I probably told him that that's the way it would go.

19 Q. Okay. And then you would contemplate that if you agreed
20 with Burke, it would then go to Herschorn.

21 A. That's right.

22 Q. Again, for review and assessment?

23 A. Well because of who was involved.

24 Q. And at what stage would charges actually be laid?

25 A. Well that would depend, if it went to Herschorn, they would

1 get their heads together there and we would be advised
2 whether or not charges were to be laid.

3 Q Okay. Is that the same procedure followed when dealing with
4 normal commercial crime investigations?

5 A. No, sir.

6 Q When is it followed or are you able to tell me?

7 A. Well it's a judgement call that I would make, I guess.

8 Q So there's no articulated policy that one could look at, you
9 rely on your own judgement in those cases.

10 A. Well apparently, I've read the copy of this exhibit and
11 apparently there was some agreement between the Deputy
12 and the CO of "H" Division with respect to how this file was to
13 be handled. I wasn't privy to that. I had no knowledge that
14 the, that's the way it was supposed to be investigated. Now
15 that goes back to your question on policy. If that, what I'm
16 saying is if that policy was in place and it appears that it was
17 with respect to this investigation I wasn't aware of it.

18 Q Yeah. And I understand that. What I'm trying to determine,
19 if you can tell me, what type of cases you would say to your
20 prosecutor, "You come to me after you've made your decision,
21 you come to me, I'm going to review it and then I'm going to
22 ask Martin Herschorn or other people in the Attorney
23 General's office to get their concurrence before charges are
24 laid."

25

1 7:15 p.m.

2 A. Well, I didn't say that it would go to them for their
3 concurrence. It would go to them, well, for a final decision
4 and the types of cases would be high profile ones such as
5 this one.

6 Q. Has there been other types of cases like that in your...like
7 this one in your time as prosecuting officer?

8 A. That I referred to Herschorn.

9 Q. That you got a...you had an opinion or a conclusion from
10 your prosecutor, you agree and then you go up to Herschorn
11 or anyone else for a final decision.

12 A. I suppose there have been but I can't recall. I'm just trying
13 to think of that Billy Joe one, whether I got involved in that
14 one or not.

15 Q. I was going to ask you about that. We're going to deal with
16 that next week. But that was prosecuted out of your office,
17 was it not?

18 A. Yes, sir.

19 Q. And do you know if you had to get the decision from Mr.
20 Herschorn or people at that office before those charges were
21 laid?

22 A. I think the dec...before the charges were laid, no, I don't
23 recall that, no, whether I had any... Norman Clair had that
24 file and... I think that that was probably decided by
25 Herschorn and Gale and whomever over there. I don't think

1 I was involved in the laying of that charge.

2 Q. Okay. Thank-you. In this memo from Mr. Burke to you,
3 which is on page 22, he notes in the first paragraph that he
4 had met with Constable House on several occasions and
5 familiarized himself with the investigation and concluded
6 that having examined the materials and discussions with
7 House "That one or, if not more charges could be laid in this
8 matter." That would just be a preliminary view I assume, is
9 that correct, is that the way you took it?

10 A. That's the way I would interpret it, although he said that it
11 was near completion, he must have had a fair amount of
12 evidence before him to conclude that.

13 Q. You forwarded Mr. Burke's memorandum to Mr. Gale.

14 A. Yes, sir.

15 Q. And that's on page 21 of your covering letter, Mr. Thomas.

16 A. Yes, sir.

17 Q. And then, as I understand, your involvement was
18 terminated until the events took place later that fall that
19 gave rise to you making the notes that we've introduced.
20 That's a...

21 A. Yes, sir, I considered it concluded as far as my office was
22 concerned.

23 Q. So when did you next become involved in anything at all to
24 do with this case?

25 A. I think it was November 1980 when I heard something on

1 the radio.

2 Q. If I can refer you to page 58 in that booklet.

3 A. Yes, sir.

4 Q. That is a copy, transcript of a press release given by Mr.
5 Coles when he was in Victoria at some meeting, I think, of
6 Deputy Attorney Generals, and I understand it may have
7 been that press release that prompted your taking some
8 action, is that correct?

9 A. Yes, sir, I heard...if that's the press release that originated in
10 British Columbia.

11 Q. Yes, it is.

12 A. Well, I heard that on the radio I guess it was, I don't know
13 which station it was on, but I heard it on the radio and my
14 reaction to it was that it was making...it appeared that Burke
15 was not accurately saying what had happened with respect
16 to the file. In other words, Burke appeared to be a liar, and
17 that bothered me. So I called...I called Herschorn at home
18 and asked him to get ahold of Coles out in B.C. and get some
19 clarification on that, that the file, in fact, had been in our
20 office. So I guess Herschorn called him because in my notes
21 I have an indication that I called him back.

22 Q. Let me take you to page 3 of your notes, Exhibit 168.

23 A. Page 3 of my notes.

24 Q. Of your notes.

25 A. This is...

MR. THOMAS, EXAM. BY MR. MacDONALD

- 1 Q. Those are numbered on the top of the pages as well.
- 2 A. Okay.
- 3 Q. These notes, as I understood you to say earlier, were made
4 at or about the time this press release was...
- 5 A. That's correct, sir.
- 6 Q. Okay. So you note that, "On 6 November of 1980 the Deputy
7 Attorney General issued a press release to the following
8 effect: First, he denied of assisting an assistant PO," that's
9 prosecuting officer, is it?
- 10 A. Yes, sir.
- 11 Q. "Had been assigned to the Thornhill investigation," and you
12 took issue with that.
- 13 A. Yes, sir.
- 14 Q. "He denied the assistant prosecuting officer had the
15 investigation withdrawn from him." You took issue with
16 that.
- 17 A. Yes, sir.
- 18 Q. "He denied that he had assigned or designated any
19 prosecutor for this investigation. " Had Mr. Coles assigned or
20 designated any prosecutor to the investigation?
- 21 A. Not to my knowledge. I don't think anyone suggested that
22 he did.
- 23 Q. No. In fact, Mr. Coles doesn't assign prosecutors anyway,
24 does he?
- 25 A. Not as a general rule, sir, no.

1 Q. Does he ever?

2 A. I don't know.

3 Q. Has he ever in your experience?

4 A. You mean assign prosecutors to do cases in my office or just
5 generally speaking assign prosecutors?

6 Q. I mean assign prosecutors to handle a particular case, to
7 prosecute a particular case.

8 A. Well, he may have where there are conflict problems in
9 another county or... Well, let's say we have a policeman
10 charged here and because of the association of the
11 prosecutors with that policeman over the years, they don't
12 want to prosecute him, Coles might get involved there in
13 signing a document appointing somebody from Colchester
14 County or Cape Breton County to come in and do it. But, in
15 that context, yes, he has, but in the context of assigning a
16 prosecutor to deal with an investigation normally done by
17 the police in the area, I can't recall him ever doing it.

18 Q. Then you say, "He made reference to a clearly understood
19 policy and accepted practise between the RCMP and the AG's
20 Department re major investigations, particularly commercial
21 crime and fraud cases." If I could take you back to the press
22 release, which is on page 58.

23 A. Yes, sir.

24 Q. The second paragraph there he says,
25

MR. THOMAS, EXAM. BY MR. MacDONALD

1 He restates his previous advice that it was
2 clearly understood policy and accepted practise
3 between the RCMP and the Attorney General's
4 Department that in matters of major or involved
5 criminal investigation, particularly those
6 involving allegations of so-called commercial
7 crime and fraud the police investigation into the
8 fact was referred to the Deputy Attorney General
9 or other senior lawyers in the department
10 experienced in the criminal law to assess the
11 report and determine whether the facts support
12 any allegation of wrongdoing and thereby
13 warrant the laying of charges.

14 Are you aware of any such policy?

15 A. No, sir.

16 Q. Was there any such policy to your knowledge?

17 A. Not to my knowledge, sir, no.

18 Q. And your department has certainly been involved in the
19 prosecution of so-called commercial crime and fraud.

20 A. You said "my department", sir, you mean "my office"?

21 Q. Your office.

22 A. Yes, sir.

23 Q. And, in those cases, police officers investigating have had
24 access to prosecutors in your office that you've assigned?

25 A. Yes, sir. The police in this county have access to a
prosecutor on a twenty-four hour basis. If a policeman
wants to contact a prosecutor, he has a phone number he
can call and a pager and he can get a prosecutor any time.

Q. Are you aware of any case, other than the Thornhill case,

MR. THOMAS, EXAM. BY MR. MacDONALD

1 where the police have been told they are not allowed to
2 discuss the matter with people in your office?

3 A. Well, I can infer from a situation that I observed in the
4 courthouse one day that that may have been the case.

5 Q. In another case.

6 A. In another case that ultimately wound up in our office but
7 the Deputy and a policeman were involved in it initially or
8 would appear to have been involved in it initially,
9 unbeknownst to me.

10 Q. And subsequently it was referred to your office by the
11 deputy?

12 A. No, I think it came in through the policeman.

13 Q. Was that case prosecuted?

14 A. Yes, sir.

15 Q. So it's a public matter, it has been prosecuted.

16 A. I'm just trying to think now. I went to Guysborough on that
17 one and Yarmouth on that one and I don't recall. The
18 subject of that investigation is since deceased but there
19 were three, I think there were three accused in that one, in
20 that file that were ultimately charged.

21 Q. Was it a commercial crime matter?

22 A. Yes, sir.

23 Q. And there were charges laid?

24 A. Yes, sir.

25 Q. And first of all, it was dealt with between the Attorney

1 General's office and the police without any involvement of
2 the prosecutor.

3 A. Well, it would appear so. I don't know where they were in
4 the investigation. But I don't know how long the
5 investigation had been underway, but somewhere along the
6 line, the file wound up in our office.

7 Q. And charges were laid.

8 A. Yes, sir.

9 Q. But you're not able to say whether prosecutions actually
10 were...

11 A. Well, I remember going to Yarmouth. There was a guilty
12 plea in Yarmouth which was a part of that investigation and
13 I was also...I was also up in Guysborough on that one but I
14 don't recall whether ...we didn't have a trial there. Perhaps
15 there was a guilty plea there, and I don't recall what
16 happened in Halifax.

17 7:30 p.m.

18 Q. Why would the Halifax office be involved in Yarmouth and...

19 A. Well, because of where the accused lived and where the
20 offences took place.

21 Q. Back on your page number three of your notes.

22 A. Yes, sir.

23 Q. The last, number five, you say: "He made reference to senior
24 lawyers in the department experienced in
25 the criminal law." Is there any significance to the fact that

1 you noted that?

2 A. Yes, sir. I probably had been at the Bar longer than Mr. Gale
3 or Mr. Herschorn and I'm certainly as experienced in the
4 criminal law as both of them are. And John Wade in my
5 office and Brian Norton, I think at that time, were both what I
6 would deem to be senior counsel experienced in the criminal
7 law.

8 Q. You considered that the people in your office and perhaps
9 Burke, in particular, would not have been capable of dealing
10 with House on this matter and giving him whatever advice he
11 needed?

12 A. Dealing with who?

13 Q. Inspector, Constable House?

14 A. Oh, yes, Burke was qualified to advise House.

15 Q. Were you ever advised by the Deputy Attorney General why
16 he told the R.C.M.P. that they were not to have any contact
17 with your office?

18 A. No, sir.

19 Q. Did you ever ask them?

20 A. I never had any memos from them indicating that the
21 Mounted Police were not to bring that file to our office. No, I
22 never asked him.

23 Q. But you did become aware of that instruction. Were you
24 upset that the Attorney General would take that position?

25 A. No, sir, nothing that went on in there would surprise me.

1 Q. Now you said having heard the press release or learned of it,
2 you called Mr. Herschorn and said...

3 A. Well, I asked Mr. Herschorn if he would... Coles and the
4 Minister were at a conference in B.C. and I asked Herschorn if
5 he would call Coles and have that press release clarified to the
6 extent that a further one would indicate that, in fact, the file
7 had been in our office, just to take the inference that Burke
8 was lying out of it.

9 Q. Now what did Mr. Herschorn do, or what did he tell you?

10 A. I think he called him. I've got a note here somewhere. He
11 called Herschorn... I have a note here, Exhibit 168, page seven,
12 I have a note here, "What time on the 6th of November did
13 Martin talk to Coles conveying my concern for clarification?"
14 And I have a note there "9:30 p.m." So Herschorn must have
15 called him that evening. And then it looks like one of the
16 radio stations, CHNS, talked to Coles on the 6th of November,
17 some time close to 3 p.m., I guess.

18 Q. Well, was Mr. Herschorn able to persuade him to, did he tell
19 you that there would be an amendment to the press release?

20 A. No, I think my recollection of Herschorn's response was that
21 Coles had nothing further to say.

22 Q. Okay, so what did you do after that?

23 A. Well, I made an appointment. I don't know whether the
24 Minister and the Deputy were coming back, that 6th of
25 November. I don't know whether that was a Sunday or

1 Monday or whatever. It must have been on the weekend. I
2 don't know whether they were coming back the following day
3 or the following Monday, but whenever it was, I made an
4 appointment to see both of them. Coles first and then the
5 Minister, because I knew what I was going to get from Coles.

6 Q. What did you know?

7 A. Well, I knew that Coles wasn't going to change his position on
8 it and I went in asked him to clarify it and he wouldn't.

9 Q. So what...

10 A. He said he had nothing further to say.

11 Q. What did you do then?

12 A. Then I went in to see the Minister.

13 Q. And the Minister was Mr. How?

14 A. Yes, sir.

15 Q. What did you and the Minister talk about?

16 A. Well, I don't recall the specifics of it but the message that I
17 was conveying to the Minister was this has got to be clarified.
18 That that file was in our office and they're making Burke out
19 to be a liar. And I don't recall exactly what I said about it.
20 I'm not known for my diplomacy, but I obviously made the
21 point to the Minister that if he didn't do something about it, I
22 was going to do something about it.

23 Q. What were you going to do about it?

24 A. I was going to, I had my secretary line up the media for
25 twelve noon that day and I was going to tell the media how it

1 went.

2 Q. So you were going to advise the media yourself.

3 A. Yes, sir.

4 Q. What time had you seen Mr. Coles and Mr. How?

5 A. Oh, I don't know. I probably had the appointment with Coles,
6 let's say for ten and the Minister at ten thirty.

7 Q. Did you tell them in your own diplomatic way what you were
8 going to do at noon?

9 A. No, sir. I may have conveyed that to the Minister. I don't
10 know what I said to him.

11 Q. What happened?

12 A. Well, obviously, the Minister got the point because shortly
13 after I got back to the office, the second press release was out
14 from Coles admitting that the file had been in our office.

15 Q. And that second press release is on page 61 of that booklet, is
16 that correct?

17 A. Yes, sir.

18 Q. And you were satisfied that that press release at least
19 satisfied, at least overcame your concerns that Mr. Burke was
20 being made out as a liar.

21 A. Yes, sir.

22 Q. Did you have any further involvement?

23 A. No, sir.

24 Q. Have you ever seen any of the opinions given in this
25 particular file, legal opinions on... Other than having read the

1 documents perhaps in preparation for this hearing?

2 A. No, the only material I've seen, sir, is, if this is the one I was
3 given a copy of, this is all I have seen. And I think I saw a
4 letter from one of the banks when the file was in our office. I
5 don't recall which bank it was or what the text of the letter
6 was, but there was something about a letter that a bank had
7 written that was consistent with the way Burke appeared to
8 be thinking and that charges may be warranted.

9 Q. Are you aware of any procedure or policy in the Department
10 today that would prevent you from having one of your
11 prosecutors assigned to a case involving a prominent person
12 to assist the police in their investigation?

13 A. Would you say that or ask that question again, please?

14 Q. Are you aware of any policy within the Department that
15 would prevent you from assigning one of your prosecutors to
16 assist the police who were investigating charges to be laid
17 against prominent people?

18 A. Well, sir, when you use the word "policy", it appears from
19 what goes on with the Mounted Police, that they may strike a
20 policy on a particular investigation that they are aware of
21 with the Mounted Police. But we don't get into that with
22 municipal police departments. Well, the Thornhill file is a
23 good example. Presumably, the Department was made aware
24 of that investigation and struck the policy that was agreed
25 upon for that particular file. I wasn't aware of it and I'm not

1 aware of any general policy like that being in place.

2 Q. Are you aware of any other case where it has, the case has
3 been taken from you or by you from one of your prosecutors
4 after it was assigned to a prosecutor because of a directive
5 from your head office?

6 A. I'm not sure I got that one.

7 Q. Well, in this case, you had assigned Burke to the Thornhill
8 matter.

9 A. Yes, sir.

10 Q. At the direction of head office, he was taken off the case.

11 A. The police came in and got the file.

12 Q. Had it ever happened before, where a prosecutor has been
13 assigned and then taken off?

14 A. Not that I can recall, sir.

15 Q. Did the procedure followed in this case have any effect on you
16 or your staff in any way?

17 A. Well, I suppose the biggest effect that it had on me was a
18 demoralizing one. As I indicated earlier, I probably have
19 more experience than Gale and Herschorn in the criminal
20 law...

21 Q. What about Coles?

22 A. Well, no, Coles is senior to me. Well, I probably have more
23 experience in the criminal law than Coles.

24 Q. Yeah.

25 A. And that's not to downgrade Mr. Coles' ability as a lawyer.

MR. THOMAS, EXAM. BY MR. MACDONALD

1 I'm just talking in my knowledge of him when he was in
2 private practice and he, to my recollection, didn't practice
3 very much criminal law. But it was demoralizing to me in the
4 sense that (a) this is not the sort of thing that Thomas should
5 be privy to, or it would appear that's not the sort of thing
6 Thomas should be privy to and it begs the question why not.
7 With respect to Burke, I suppose it demoralized Burke, I don't
8 know. You'd have to ask him.

COMMISSIONER EVANS

9
10 Q. Would it be fair to say it didn't improve morale in your office,
11 anyway, your Department?

12 A. That's correct, sir. It certainly didn't, no.

MR. MACDONALD

13
14 Q. I understood from what you told me earlier that if Burke had
15 recommended charges, if you would have then reviewed his
16 recommendation and then would have forwarded it to the
17 A.G.'s office, in any event, to get their final position?

18 A. That's correct, sir.

19 Q. And do you consider that you and your staff would have been
20 competent to review?

21 A. Yes, sir.

22 Q. The R.C.M.P. reports and make recommendations in this?

23 A. Yes, sir.

24 Q. How did Mr. How react to your suggestion that the report
25 issued by Mr. Gale... Or Mr. Coles in Victoria was incorrect?

MR. THOMAS, EXAM. BY MR. MACDONALD

1 A. I don't recall, sir. Obviously, he had some concerns about it
2 because it wasn't very long... I wasn't long gone from his
3 office before that second press release was on my desk.

MR. MACDONALD

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

EXAMINATION BY MS. DERRICK

6
7 Q. Mr. Thomas, my name is Anne Derrick and I represent Donald
8 Marshall, Jr. I just have a few questions for you. I take it
9 that although Mr. Burke wasn't the only Crown prosecutor in
10 your office that was doing fraud cases, that he was becoming
11 something of a specialist in them? Is that fair to say?

12 A. He was working in frauds exclusively at that point in time, I
13 think.

14 7:44 p.m.

15 Q. And had he been doing so for a little while?

16 A. I don't know when we started that. I wouldn't think too long,
17 no. This is back in 1980.

18 Q. I take it you had confidence in his ability in the area, though,
19 and as a Crown Prosecutor generally.

20 A. Yes, I have.

21 Q. Now you have said that in the normal course of events in a
22 file of this nature, you would have expected Mr. Burke to give
23 his recommendations, or give you a memo and you would
24 have reviewed the file and then handed it on to Mr.
25 Herschorn. Is that...

1 A. No, I think I said I probably told him to give me a report on
2 it.

3 Q. But would it have been the normal practice be then to review
4 the file in a case of this nature and then have Mr. Herschorn
5 look at it as well?

6 A. Well, this is the first one of this nature. This was a pretty
7 high profile one. That's why I feel certain I told Burke to give
8 me a report on it before he laid any charges.

9 Q. So in the course of your tenure at the Crown Prosecutor's
10 office you, in fact, had not dealt with a file of this nature
11 before this one?

12 A. I think we had another file involving a politician, yes.

13 Q. Would that have been the only other one that you can recall?

14 A. It's the only one I can recall right now.

15 Q. And was that a file that you also reviewed and it then went to
16 Mr. Herschorn?

17 A. Yes, I think that went to Herschorn.

18 Q. And so those were the two cases that you can recall making
19 what you've described as a judgement call in deciding that
20 Mr. Herschorn should look at them as well?

21 A. Those are the only two I can, well, Thornhill didn't go over
22 from me but...

23 Q. But it would have in the normal course of things.

24 A. It would have, yeah.

25 Q. And I was going to ask you what factors you would have

1 considered in making that judgement call but both these cases
2 you say involved politicians...

3 A. Um-hmm.

4 Q. So in both these cases it was an issue of political prominence
5 that would have...

6 A. Well, it's high profile stuff. I'm not going to make those
7 decisions when there's somebody else to make them.

8 Q. Right. So that was the case, you were moving it up the line.

9 A. Mmm.

10 Q. Now this was a decision of yours. I take it that this hadn't
11 come down as a directive that if you came into contact with
12 high profile cases you were to refer them further up into the
13 Attorney General's Department. This is just something that
14 you decided as Mr. Thomas, that this was the way to handle
15 this particular case?

16 A. Oh yeah, I had no direction to do that, no.

17 Q. And in the event that there had been some conflict, let's say
18 that you had decided, Mr. Burke had decided or some other
19 Crown Prosecutor, that charges should be laid, but then it
20 went up to Mr. Herschorn and the decision was that they
21 shouldn't be, that would be a decision that you would then
22 have abided by?

23 A. Oh yeah, I have no choice when they make the decisions.

24 Q. Because Mr. Herschorn is senior to you.

25 A. Oh, yeah. Well I don't think Herschorn was making them

1 independently. I think he was probably getting some input
2 from Coles and Gale.

3 Q. Now in the case here involving Mr. Thornhill where the file
4 was removed from Mr. Burke, that was very irregular, a very
5 irregular practice, in your experience.

6 A. I can't recall that ever happening before.

7 Q. You never actually got an opportunity to review this file?

8 A. No, I didn't.

9 Q. Is that correct? So when you say that you saw this booklet of
10 documents do you mean with respect to your coming and
11 testifying?

12 A. That's correct yes.

13 Q. Now if I can just refer you to your notes where you were
14 making comments with respect to Mr. Coles' press release...

15 A. What page is that?

16 Q. And there's reference to a clearly understood policy and
17 accepted practice.

18 A. Which page is that, ma'am?

19 Q. Well I've been referring to page 2.

20 A. Thank you.

21 Q. I think you've said already that, in your understanding, there
22 was no such policy.

23 A. That I was aware of.

24 Q. And if there had been such a policy would you have expected
25 that your office would have known about it?

1 A. Now what policy are you talking about? The...

2 Q. The policy...

3 A. Reporting to the Department by the police.

4 Q. The policy that Mr. Coles refers to in his press release where
5 he says that they're to be, that the police report is to be
6 referred to the Deputy Attorney General or other senior
7 lawyers in the Department experienced in criminal law.

8 A. Well that appears to be a policy in place between the
9 Mounted Police and the Department according to Mr. Coles
10 with respect particular types of cases. I'm looking at the
11 second one now. I don't know anything about that policy.

12 Q. You said you were not aware of it. And my question was
13 would you have expected that if there was such a policy that
14 your office would have known about it?

15 A. Well I suppose we could be expected to know what policies
16 are in place.

17 Q. In your office do you generally know about the policies of the
18 Department of the Attorney General, policies to do with
19 disclosure, policies to do with...

20 A. Oh yes, that's all clearly set out in what's commonly known as
21 the "blue books". But if the, you see, the difference between
22 the way things work with municipal forces and the Mounted
23 Police is a Thursday morning meeting in the Attorney
24 General's Department. The, I guess the CIB Officer or one of
25 the officers meets with Gale and Herschorn every Thursday

1 morning. Now that's not done with municipal police
2 departments. So there's, I suppose, a good reason for that
3 because the Mounted Police are policing the province from
4 Cape Breton to Yarmouth and there may be a lot of things
5 they want to talk about but if, in the course of those Thursday
6 morning meetings, the Department or the Deputy is apprised,
7 or Gale or Herschorn, of potentially high-profile investigation,
8 they might strike a policy with respect to how that's going to
9 go. I don't know, you'd have to ask Gale or Herschorn but I'm
10 just not privy to any of that procedure.

11 Q. If there were policies developed by the Attorney General's
12 Department that would affect your office, would you expect
13 that someone would tell you about that?

14 A. I would expect it with the Deputy that we have now.

15 Q. But not at the time that this case took place.

16 A. No.

17 Q. Might policies be developed on a fairly ad hoc basis in your
18 experience in those days?

19 A. Well there haven't been enough files to agree with that
20 suggestion.

21 Q. So you couldn't say that.

22 A. I don't think so. There haven't been enough, there haven't
23 been that many files where...

24 Q. You did say in the course of your evidence that nothing that
25 went on in the Attorney General's Department would surprise

1 you. Can you elaborate on what you meant by that?

2 A. Well I probably could but I don't know that the Commission
3 want to be bored with the problems that the lawyers are
4 having.

5 CHAIRMAN

6 No, we don't want to be bored with your internal problems.

7 MR. THOMAS

8 No, I wouldn't think so.

9 MS. DERRICK

10 Q. Was there anything about Mr. Coles' conduct that didn't
11 surprise you?

12 CHAIRMAN

13 What do you mean by that, "conduct"...

14 MS. DERRICK

15 Q. Then let me ask this question then. I'm interested in
16 knowing from you, Mr. Thomas, what sort of relationship Mr.
17 Coles had with other members of the Department, people in
18 your office.

19 COMMISSIONER EVANS

20 I'd have to ask relationship with whom?

21 MS. DERRICK

22 Q. Let me ask you then of Mr. Coles' relationship with you...

23 COMMISSIONER EVANS

24 Before you answer I think...
25

14905 MR. THOMAS, EXAM. BY MS. DERRICK

1 MR. SAUNDERS

2 What bearing does that have, My Lords, to the evidence that
3 Mr. Thomas has been called to testify to. That is to say, his notes
4 and the press release...

5 CHAIRMAN

6 That's right.

7 MR. SAUNDERS

8 And his conversations with Martin Herschorn.

9 CHAIRMAN

10 It has none.

11 MR. SAUNDERS

12 I don't think he had any communication with Mr. Coles
13 about it. His communication was with the Attorney General so
14 what does it matter what relationship this witness had with Mr.
15 Coles?

16 MR. MacDONALD

17 Well he had conversations, he said he talked to Coles about
18 the press release and he certainly had conversation with Coles.

19 CHAIRMAN

20 In Victoria.

21 MR. THOMAS

22 No, sir, I didn't...

23 CHAIRMAN

24 That's Herschorn.

25

1 MR. SAUNDERS

2 He spoke to Martin Herschorn.

3 CHAIRMAN

4 Oh yes, but you did go and see Mr. Coles after his return.

5 MR. THOMAS

6 That's correct, sir.

7 CHAIRMAN

8 Well, if want, if Ms. Derrick's question relates to that, fine,
9 but your general relationship, I don't think I have to be very
10 astute to conclude that you're not bosom pals.

11 MR. THOMAS

12 All right. Gordie Coles is all right, he just, well like I say,
13 that's not within your mandate.

14 MS. DERRICK

15 Not any more.

16 Q. Were there any cases that you were involved in where Mr.
17 Coles tried to have files removed from your supervision?

18 A. Not that I can recall but there was that one instance where he
19 was obviously involved in assisting an investigator with a file
20 that eventually wound up in our office.

21 Q. And was that a case of a politically-sensitive nature?

22 A. Well the subject was...

23 MR. SAUNDERS

24 Well, My Lord, before...
25

1 CHAIRMAN

2 Let's be careful because we don't be dragging other people
3 into...

4 MS. DERRICK

5 No, no...

6 MR. SAUNDERS

7 And that's my point, My Lord, and I know my friend is
8 trying to be careful, I know my friend is trying to be careful and
9 I'm certainly assured that the witness will be very careful, but I
10 want to make it clear that we're here to discuss the one case and
11 if there are similarities with another case that Your Lordships
12 consider to be important and relevant and if the matter has been
13 prosecuted so that the names are in the public domain then...

14 CHAIRMAN

15 Again, what I gather from Mr. Thomas' testimony that one
16 of the three is since deceased...

17 MR. SAUNDERS

18 Deceased.

19 CHAIRMAN

20 What useful purpose could it possibly serve to resurrect and
21 open old wounds...

22 MR. SAUNDERS

23 I know of none.

24 CHAIRMAN

25 They've apparently paid their debt to society, whoever they

1 are, we're certainly not interested in them.

2 MR. SAUNDERS

3 Thank you, My Lord.

4 MS. DERRICK

5 My Lord, I'm not interested in knowing anything further
6 about the case except whether or not it was of a politically-
7 sensitive nature.

8 CHAIRMAN

9 Well, I don't know...

10 MS. DERRICK

11 And I think that is exactly the issue that's being explored
12 here, whether cases that involve common people or are politically
13 sensitive receive different treatment, or have received different
14 treatment than other types of cases and so I respectfully submit
15 that's a very relevant question. The Deputy Attorney General was
16 involved in another case and I think it's...

17 CHAIRMAN

18 The Deputy Attorney General.

19 MS. DERRICK

20 Yes, that's what Mr. Thomas said. Mr. Coles, the then Deputy
21 Attorney General.

22 CHAIRMAN

23 Well his testimony so far has been that he has reason to
24 believe that the Deputy Attorney General was involved, and I
25 think you used the word "assisting" a police officer in carrying out

MR. THOMAS, EXAM. BY MS. DERRICK

1 an investigation. That he subsequently, that the file subsequently
2 came to his office, that is Mr. Thomas, that he and Mr. Thomas
3 subsequently prosecuted those who were being investigated and,
4 I mean...

MS. DERRICK

6 But still, and respectfully My Lord, doesn't explain why he
7 supposedly had been involved in it in the first place.

CHAIRMAN

9 Well I don't know.

MS. DERRICK

11 And one possible explanation could be that the case was
12 politically sensitive but we can't know that unless this witness can
13 tell us whether or not that was the case.

COMMISSIONER EVANS

15 He's already stated that he didn't know the state of the
16 investigation or where it had started or whether Coles had been
17 involved. He just saw them in the corridor as I understood it.

CHAIRMAN

19 In the Court House.

COMMISSIONER EVANS

21 In the Court House.

MS. DERRICK

23 They may well be able to tell us whether or not it involved
24 common people or politically sensitive...

1 CHAIRMAN

2 Well, you know, I wanted to be very, very careful that we
3 don't start, this doesn't develop into a slander session that people
4 are not able to defend themselves and the purpose, I repeat again,
5 of this whole exercise is not, is to look at the practice of the
6 Department of the Attorney General of Nova Scotia vis-à-vis police
7 and some may argue that that's very remotely connected with
8 Donald Marshall, Jr., and I'm sure it is in a sense. Except we do
9 have to make some recommendations and obviously teh
10 recommendations must relate to the Department of the Attorney
11 General and I want...

12 MS. DERRICK

13 My Lord, I respectfully submit that the answer to the
14 question of whether or not the case was politically sensitive can
15 hardly identify anybody. Because that could relate to a great
16 number of people....

17 MR. SAUNDERS

18 My Lord, that's the point I'd like to respond to if my friend
19 has finished if she insists on the right to assert that question.
20 That places my client and me at a distinct disadvantage because
21 my friend can have an answer to that question and leave it and sit
22 down and the question would be, "Was that a factor in the case?"
23 And so the answer might be "yes". The answer might be, "Yes, it
24 was a feature" and there may have been countless other factors
25 and I don't know.

MR. THOMAS, EXAM. BY MS. DERRICKMS. DERRICK

Then we can...

MR. SAUNDERS

And the only, excuse me, I'm not finished, My Lords. The only way in which I would be able to pursue it with this witness would be to seek Your Lordships' permission to delve into the details of the case history which I think would be unfair to everyone who had anything to do with the case. This witness is here to speak to one matter. We put him forward several times for interviews with Commission counsel and those are the bases of the instructions that I have with this client. For my friend to be, and able to pursue some exploration of other cases with this gentleman, places us, as I said, at a real disadvantage.

CHAIRMAN

You're correct in your summation. If, for instance, Ms. Derrick, the answer is yes then the Attorney General's counsel, or someone in the Department of the Attorney, not the Attorney General necessarily but someone, would have to, would be entitled to be called upon to explain and then you've identified these people and that is not part of this exercise. I am not going to have innocent Nova Scotians' names dragged through this Inquiry.

8:00 p.m.

MS. DERRICK

No, and I can assure you, My Lord, I'm not seeking to do that.

MR. THOMAS, EXAM. BY MS. DERRICK

1 MR. CHAIRMAN

2 Anyway, that's...I'm not prepared...

3 MS. DERRICK

4 So your ruling is that that question is not allowed.

5 MR. CHAIRMAN

6 Yes.

7 MS. DERRICK

8 Q Mr. Thomas, you said in your direct evidence that the police
9 in Halifax County have twenty-four hour access to a Crown
10 prosecutor. Is that true as well of the RCMP?

11 A. Yes, ma'am.

12 Q And has that been the case for some time?

13 A. Several years, I don't know how many.

14 Q Several years.

15 A. Yes.

16 Q You were asked, Mr. Thomas, about the effect of the removal
17 of this file from your office on the staff in your office. Is it
18 correct that Mr. Burke left the office of the...the Crown
19 Prosecutor's office shortly after this matter happened?

20 A. I don't know when in...I can't relate his resignation with this
21 file, I don't know.

22 Q And he's now in private practise, is that correct?

23 A. As far as I know he is.

24 Q Those are my questions.

25 A. I should say yes, he was in court this morning with...yes, I

MR. THOMAS, EXAM. BY MS. DERRICK

1 would say he's in private practise.

2 MS. DERRICK

3 Thank you very much, those are my questions.

4 MR. CHAIRMAN

5 Mr. Bissell.

6 MR. BISSELL

7 No questions.

8 MR. CHAIRMAN

9 Mr. Merrick.

10 MR. MERRICK

11 No questions.

12
13 EXAMINATION BY MR. SAUNDERS

14 Q. Mr. Thomas, on just one matter, sir. Going back to your
15 testimony that it was November the 6th when you first
16 heard this press release that apparently had been given by
17 Mr. Coles in Victoria, and that the document booklet before
18 you at page 60 indicates that it was November the 13th that
19 the clarification release was issued by Mr. Coles, are you
20 able to tell the commissioners when it was between the 6th
21 of November and the 13th of November that you prepared
22 your notes?

23 A. It was...do we know when the 6th of November, 1980, was?
24 Was that a Sunday?

25 Q. The day of the week, I'm sorry, I don't know that.

- 1 A. If we can determine that I probably made these notes the
2 Monday or that weekend or the day before, the night before
3 I went to see Coles and the Minister.
- 4 Q. So am I correct in suggesting to you that you did not have
5 the notes prepared when you called Martin Herschorn
6 urging that he contact Mr. Coles on the west coast and clarify
7 the release?
- 8 A. No, no, I just summarized for Herschorn what I heard on the
9 radio.
- 10 Q. Yeah. But when you attended upon the Attorney General
11 you had your notes prepared.
- 12 A. I would have had this prepared before I went to him
13 because I figured I was going to be talking to the media.
- 14 Q. And did you review in detail with the Attorney General the
15 matters that you have set forth in your notes?
- 16 A. Oh, I don't recall specifically what I said to him. I...as I
17 indicated, the point I wanted to make to the Minister was I
18 was upset about Burke being made out a liar, would you
19 please do something about it?
- 20 Q. I understand that. Is your best recollection, Mr. Thomas,
21 that you canvassed the reasons why you took exception to
22 the release when you met with the Attorney General?
- 23 A. No, sir, I don't remember exactly what I said to the Minister.
- 24 Q. In any event, at page 60 of the booklet it's clear from this
25 memorandum from the Deputy to his Attorney General that

MR. THOMAS, EXAM. BY MR. SAUNDERS

1 he issued the clarification release as he says, "Further to
2 your concerns," and that he directed a copy of the
3 clarification release through to you, sir.

4 A. Yes, sir.

5 Q. And that's a fact, is it?

6 A. Yes, sir, I got it, well, it would have been that day, the day
7 it was released. Well, that was the day I went over to see
8 them, I guess.

9 Q. Yes.

10 A. That's the day I went to see them the 13th.

11 Q. And you were copied with a revision.

12 A. That's correct, sir.

13 Q. Yes.

14 MR. SAUNDERS

15 Thank you.

16 MR. CHAIRMAN

17 Mr. MacDonald.

18 MR. MacDONALD

19 No, I have nothing else.

20 MR. CHAIRMAN

21 That's all. Thank you very much, Mr. Thomas.

22 INQUIRY ADJOURNED - 8:05 p.m.

23

24

25

REPORTER'S CERTIFICATE

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



Margaret E. Graham

DATED THIS 13 day of September 19⁸⁸ at Dartmouth, Nova Scotia