

1 GORDON COLES, recalled and previously sworn, testified as
2 follows:

3
4 EXAMINATION BY MR. MACDONALD

5
6 Q. Mr. Coles, just briefly to recap, sir, you were the Deputy
7 Attorney General for what period of years?

8 A. From 1972 up until a year ago.

9 Q. And your present position, sir?

10 A. I'm Special Adviser on Constitutional and Intergovernmental
11 Affairs for the Province.

12 Q. Let me move directly into the Thornhill matter and ask you
13 when it first came to your attention?

14 A. Well, it would have been in 1979, 1980. I'm not sure of the
15 exact time.

16 Q. Let me try to assist you. In front of you, sir, is a book of
17 documents and it's been marked Exhibit 165, the booklet?

18 A. Yes.

19 Q. And on page one and two, there are typewritten notes which
20 appear to be some sort of a summary. Were those prepared
21 by you?

22 A. Well, I don't honestly remember but probably they were.
23 They look to me as if they were prepared for, as a summary
24 for some purpose, and I'm not sure of the purpose or the time
25 but... I don't specifically recall preparing them, but I may

1 very well have done so. And why I say that is I recognize the
2 type as being that of my office, although the phraseology is
3 not one that I would necessarily claim particular authorship
4 of.

5 Q. Okay, I only use it, in any event, to perhaps assist us with
6 some dates and the first date is noted to be February of 1980,
7 where it is noted the senior officers of the R.C.M.P. met with
8 the Attorney General and yourself and senior staff to brief
9 you on the effect of anonymous information being obtained
10 by the R.C.M.P. Do you recall that briefly, sir?

11 A. I recall a briefing. I'm not sure whether that was a first
12 knowledge I had of it. I may have heard of it prior to that
13 particular meeting, but I'm not certain.

14 Q. Okay, but in any event, you do recall that briefing.

15 A. Yes.

16 Q. And what do you recall about it?

17 A. Oh, I don't recall very much. I recall our being informed that
18 the R.C.M.P. had come into possession of certain documents
19 from an anonymous source and identified the parties that
20 were named in those documents and that they were going to
21 conduct some inquiries to ascertain whether there was any
22 basis for any investigation, or words to that effect.

23 Q. And do you know if they did, in fact, carry that out?

24 A. Yes, I was...

25 Q. And make some inquiries?

1 A. I was informed that they had, yes.

2 Q. And the result of those inquiries?

3 A. As a result of those inquiries, they were satisfied that there
4 was a basis for them to undertake a, what I think what they
5 refer to as a formal investigation of the allegations set out in
6 that material.

7 Q. Let me take you, sir, to... I guess three, four, and five pretty
8 well have to be looked at together, I think. On page three, I
9 believe, is your handwriting, is that correct?

10 A. That's correct.

11 Q. Where you have considered a draft press release prepared by
12 Mr. Christen and have suggested some changes.

13 A. Yes.

14 Q. Are you able to tell me which of pages four and five were the
15 draft release and which were the ones that you had to
16 change?

17 A. Well, page five appears to me to be the draft that
18 Superintendent Christen prepared and sent down for my
19 perusal. And the one on page four was one that I made some
20 changes in, principally, as I recall, to improve the phraseology
21 and to reflect what he had told us at the meeting referred to
22 on March 7th. And that was forwarded back to him with my
23 covering note on page three.

24 Q. Do you know which, if either of those releases were actually
25 made public?

MR. COLES, EXAM. BY MR. MACDONALD

1 A. No, I don't recall.

2 Q. The one on page four, if we assume that's the one that you
3 had some input into, it says down towards the bottom:

4
5 Information had been received by the R.C.M.P.
6 concerning such matters and in mid-February,
7 which inquiries did not warrant the
8 commencement of an investigation.

8 A. Yes.

9 Q. I understood you to tell me a moment ago that when you
10 were first briefed by the R.C.M.P., they said that they did
11 consider an investigation should be carried out.

12 A. No.

13 Q. That's what I thought you said to me about a couple of
14 minutes ago.

15 COMMISSIONER EVANS

16 I think it was the R.C.M.P. who considered that the matter
17 required a formal investigation, I think is what...

18 MR. MACDONALD

19 Q. Yes.

20 A. Yes, but that, I thought you were talking about the meeting
21 that was alluded to in this memo in February, 1980.

22 Q. Yes, and this press release is dated March, 1980.

23 A. Yes.

24 Q. What were you told in February, 1980, that they were going
25 to carry out a formal investigation or they weren't?

1 A. No, in February, that they were going to carry out inquiries
2 into the material that they had received from an anonymous
3 source.

4 Q. Okay, and then in March then, the point had been reached
5 where those inquiries were such that they did not consider
6 any investigation would have to be carried out, is that
7 correct?

8 A. That is correct.

9 Q. Subsequently, in April, there was a decision made to carry out
10 a formal investigation.

11 a. That's my recollection, yes.

12 Q. What is your recollection, Mr. Coles, as to who made that
13 decision, that there should be a formal investigation carried
14 out?

15 A. I don't recall. I rather suspect the decision was reached by
16 agreement... Not agreement but by Mr. Gale and a
17 representative of the R.C.M.P. Mr. Gale, I would have...

18 Q. It was certainly being carried out at least with the knowledge
19 of your Department.

20 A. Oh, yes.

21 Q. And perhaps the concurrence.

22 A. Oh, at that point, yes. At that point, they were dealing with
23 us and this is surmise on my part, but to the best of my
24 recollection, that they were satisfied from the inquiries that
25 the subject matter ought to be investigated and

1 communicated, probably, their views to Mr. Gale or, in
2 advising them that, Mr. Gale may have said, "Well, I think
3 perhaps consideration should be..." I don't know, but I would
4 think it would have been a decision reached in that process or
5 at that level.

6 Q. And you were advised by Mr. Gale of the fact that the
7 investigation was to be carried out.

8 A. Yes.

9 Q. There is evidence before the Inquiry to suggest that at the
10 time it was determined that an investigation would be carried
11 out, Mr. Gale instructed the R.C.M.P. that they were not to
12 have any contact with local Crown prosecutors but were to
13 report strictly to you. Are you aware of that?

14 A. Well, yes. I wouldn't put it in those words. I don't think that
15 was the, I don't think that was the advice. Prior to the or at
16 or about the time of the decision that there be an
17 investigation, I had informed the Attorney General that there
18 may be an investigation into this and, in that event, in my
19 opinion, considering the nature of the allegations and the time
20 period of the alleged transactions, and the parties involved,
21 that such an investigation would probably attract media and
22 public attention, quite properly, and that in these
23 circumstances, it seemed to me more appropriate that the
24 R.C.M. Police deal directly with the senior staff of the
25 Department and that I, as Deputy, assume the responsibility

1 of reporting and advising to him. And Mr. How, who was then
2 the Attorney General, accepted that advice and I so informed
3 Mr. Gale and asked him to communicate this to the R.C.M.
4 Police and advise them that they were to deal directly with
5 either himself or myself in the matter and, as far as I
6 understood, they were perfectly receptive and in agreement
7 to do so and, in fact, did so throughout the course of the
8 investigation.

9 Q. What was your understanding of the instructions that were to
10 be given to the R.C.M.P.?

11 A. That they were to report and deal directly with Mr. Gale or
12 myself and not with the local prosecuting officer in the course
13 of their investigation and that we or I would, upon receipt of
14 their completed report, I would be making an evaluation of
15 whether or not there was any basis for any criminal charges.

16 Q. why was it that you would not want the R.C.M.P. investigator
17 to have contact with the local Crown prosecutor?

18 A. Well, it wasn't a case of not wanting to. It was more of a case
19 of not needing to. The decision was by the Attorney General
20 that he accepted my suggestion, advice and the decision was
21 that it would be dealt with by senior, the most senior staff in
22 the Department. And that being so, there was no need for
23 them to deal with people other than the senior staff. And the
24 senior staff were identified as Mr. Gale and myself and Mr.
25 Herschorn.

1 Q. Would you have concern about them dealing with the local
2 Crown prosecutor?

3 A. Concern? Not concern. If I had the responsibility, which I
4 understood from Mr. How's advice that he was going to leave
5 it with me, I would, if there was a need to involve a local
6 prosecutor, I would have involved a local prosecutor. But I
7 don't think "concern" is the right word. I had no reason to be
8 concerned about them doing so.

9 Q. Well, when it was found out that the R.C.M.P. were in contact
10 with the local prosecutor through Mr. Thomas, they were
11 immediately told to stop having any contact of any kind.

12 A. Well, I'm not sure what they were told. When it was noted in
13 the report, I'm not sure whether it was a report of Mr.
14 MacInnes' or Mr. Blue, but that Corporal House had had some
15 preliminary discussions with a prosecutor in the Halifax
16 office, I brought this to Mr. Gale's attention because I had not
17 requested or directed that a prosecutor in the Halifax office
18 be involved and I just assumed there was a breakdown in
19 communications. That Corporal House did not have the
20 instructions or the advice that his superiors had agreed to and
21 my understanding is, my recollection is, and it's aided by
22 having an opportunity to refresh my memory here, that when
23 Mr. Gale so advised the R.C.M. Police, they so directed Corporal
24 House to deal directly with himself or myself, as had been the
25 understanding and that was the end of it.

1 Q. I'm having difficulty, sir, understanding why there would be
2 any concern on your part if the investigating officer is talking
3 about the matter with the Crown, a Crown that's experienced
4 in commercial crime matters to get his advice. Why would
5 you be concerned about that?

6 A. Well, it wasn't a matter of concern. It was a matter that I had
7 the responsibility of advising the Minister in this matter and
8 we had agreed that the R.C.M. Police would deal directly with
9 myself or Mr. Gale and I just expected them to carry out that
10 arrangement. Or if that arrangement had not been
11 satisfactory or acceptable to them, I would have expected
12 them to come back and tell me so and say, "Look, we want to
13 have access to other people in addition to your people," and
14 I'm sure that could have been addressed and resolved. But it
15 just seemed unusual that somebody would suddenly be doing
16 something outside of the arrangement and understanding.

17 Q. Let me take you to page 12 of that booklet in front of you.
18 This is an internal memo on page 12. It's an internal memo of
19 Inspector MacInnes to his file, and I'm not suggesting that
20 you had this.

21 A. Well, for the record, I didn't.

22 Q. But I want to direct your attention to the bottom of page 12
23 and over onto page 13, where he says:

24
25
Personally, I feel that their advice to us not to

MR. COLES, EXAM. BY MR. MACDONALD

1 seek views of Crown counsel in this particular
2 investigation is tantamount to obstruction.

3 And Commissioner Feagan... Or not Commissioner,
4 Superintendent Feagan has testified before this Inquiry that
5 he would accept that. Was that ever conveyed to you by the
6 R.C.M.P.?

7 A. No, and I would have thought if they felt that, they would
8 have done so. I don't know why they wouldn't.

9 Q. Did you yourself have any dealings with the R.C.M.P. in the
10 early stages of this? I'm talking about with Feagan,
11 MacInnes, House, Blue.

12 A. Oh, I don't recall. I may have had some, I may have had
13 some contact and dealings with each of them. I don't recall.

14 Q. Looking again...

15 A. Certainly it was not the, it was not the procedure that they
16 come and deal directly with me. To the extent that they had
17 a need to consult us, I would have expected them initially to
18 deal with Mr. Gale or Mr. Herschorn, although the reports
19 were to come to me, which is the normal procedure, in any
20 event, in respect to criminal reports.

21 Q. The instructions to the R.C.M.P., about the procedure to be
22 followed in this case, were relayed to them by Mr. Gale, not
23 by you.

24 A. That is correct.

25 Q. Are you...

1 A. By Mr. Gale on my...

2 Q. On your instruction.

3 A. On my instructions.

4 Q. Yeah. On page 13, right after that phrase I read to you about
5 obstruction, there's reference to the R.C.M.P. operational
6 manual. Were you familiar or are you familiar with the
7 provisions of the R.C.M.P. manual?

8 A. No.

9 Q. You've never seen it?

10 A. I may have seen extracts from it, references to it, but I've
11 never seen it, per se. I have no particular reason to.

12 Q. What is reported here is that a particular section of the
13 manual instructs the members of the force, the inspect... the
14 investigators to look to counsel for these four purposes. One
15 is for advice regarding the importance of evidence available.
16 Second, advice regarding the importance of obtaining
17 additional information to support the charge. Third, is advice
18 on questions of law; and fourth is the procedures that will be
19 followed in court. To your knowledge, is there normal contact
20 between R.C.M.P. officers and members of the Attorney
21 General's Crown prosecuting staff for these purposes?

22 A. I presume so, unless they're directed or requested or advised
23 to follow another route, as they were in this particular case.

24 Q. Now in this route, or in this case, do I understand it was your
25 intention that Inspector or, I guess it would be Constable

1 House was to obtain that assistance from Mr. Gale?

2 A. Oh, I don't know what Corporal House's instructions were,
3 what his needs were. The understanding, as I recall, was that
4 they were going to investigate the allegations and report the
5 results of their investigations to me and that I would evaluate
6 them and advise in respect to them.

7 Q. Maybe you didn't understand my question. In this particular
8 case, was it the intent of your instructions to Gale related to
9 the R.C.M.P. that Constable House, if he needed this type of
10 advice, was to get it from Gale?

11 A. Well, I'm not in a position to answer that.

12 Q. Well, surely you are. You gave the instructions to Gale. What
13 did you intend?

14 A. That the R.C.M. Police would deal directly with us. Now
15 whether or not, whether or not Corporal House needed
16 advice on these points, if he needed those at any point, I
17 would expect him to deal with Mr. Gale, raise them with Mr.
18 Gale. But it was not a case of having instructed anybody. I
19 didn't know what the R.C.M. Police requirements may have
20 been from time to time, other than they understood the
21 reasons for dealing directly with us and agreed to do so.

22 12:10 p.m.

23 Q. And I think included in that was the answer to my question,
24 Mr. Coles, that to the extent that Mr. House would require
25 contact with a member of your department to get advice on

1 the importance of evidence, on the importance of obtaining
2 additional evidence, on the questions of law, he was to
3 contact Gale.

4 A. Yes.

5 Q. Thank you. And was not, under any circumstances, to seek
6 advice of a local Crown.

7 A. Well, I expected the understanding that had been reached
8 would have been communicated to all members of the RCMP
9 staff, and if that had been so, then he would have known to
10 the extent that he needed the advice of counsel he would
11 have come to counsel in the Attorney General's Department.
12 And let us not forget that Mr. Gale and Mr. Herschorn are
13 very senior counsel in the department, and so that I don't
14 think...I don't think you intended to draw any inference to
15 the contrary.

16 Q. No, I certainly didn't. But Mr. Thomas is also a senior.

17 A. Yes.

18 Q. Counsel. But did you not want the RCMP talking with Mr.
19 Thomas.

20 A. It's not a case of not wanting to, they understood the
21 reasons and agreed that they would deal directly with the
22 senior staff in the AG's department, namely Mr. Gale and
23 myself.

24 Q. Well, I guess where I'm having difficulty, sir, is
25 understanding what the reasons were, why from your

1 perspective they should not talk with the people they
2 normally deal with, at the level House normally would deal
3 with, he wasn't to do that, and I don't understand the
4 reason.

5 A. Well, I don't know if I can help you, counsel, because as I
6 said at the beginning when I raised this issue with the
7 Attorney General that there was a pending...possibly a
8 pending investigation and the nature of the allegations and
9 the parties involved and the fact that the...it would attract
10 media and public interest, that it was appropriate in my
11 opinion that the matter be dealt by the senior staff of the
12 department, and Mr. How, then Attorney General, agreed
13 and said, "I'll leave it with you," and as a result of that, the
14 advice was given to the RCM Police and they agreed to it and
15 I can't help you beyond that.

16 Q. Is that always the case in a...where an investigation is being
17 carried out that's going to involve media attention?

18 A. No, of course not.

19 Q. Is it always the case where it's an investigation involving
20 alleged benefits conferred by someone dealing with the
21 government?

22 A. No, it's not.

23 Q. What's unique about this case then that would say in this
24 case the normal practise shouldn't be followed?

25 A. Well, the only thing that was unique about it was that I

1 thought it was appropriate to be dealt with in this way and
2 there wasn't anything especially unique about it except that
3 it involved four banks. It involved a member of the Cabinet,
4 it...the allegations refer to transactions that had allegedly
5 been over a number of years. There wasn't anything unique
6 except it was a high profile set of allegations and it seemed
7 to me that it was appropriate that it be dealt with by a
8 senior rather than junior staff of the department. And that
9 I, as the Deputy Attorney General, assumed the
10 responsibility for evaluating the reports and advising the
11 Minister.

12 Q. Okay. Let me go back to page, in this booklet, please, back
13 to page 11. And I am assuming with respect to this one, as
14 well, Mr. Coles, you would not have seen it certainly before
15 having been given documents in this inquiry. But it's been
16 identified as a memo from Mr. Venner to the Deputy
17 Commissioner of the RCMP in June of 1980. And I just want
18 to refer to some of the points in there and ask for your
19 comment. He starts out saying, "I think the time has come
20 to draw the line and for other reasons," it's scratched out
21 some reference to an irrelevant case, "...and for other
22 reasons with the AG of Nova Scotia. Either we are running
23 the police force and directing the conduct of investigation or
24 they are. And if the latter is the case, then a police force
25 other than the RCMP must be what they should have."

MR. COLES, EXAM. BY MR. MacDONALD

1 Down, further down...

2 A. Well, do you want me to comment there, counsel?

3 Q I would just like to read the whole thing and then I'll get
4 your comments. Down...just before that last blacked out part
5 they say "They have been pushing and pushing and I don't
6 see how we can keep backing up without losing credibility
7 and integrity." Was there anyone from the RCMP in
8 communication with you in 1980 advising that there were
9 conflicts that they considered you were pushing them
10 around?

11 A. None whatsoever, just the opposite. I thought we had a
12 very good working relationship and every contact I had
13 with them would attest to that.

14 Q Any suggestion from the members of the RCMP that your
15 department was attempting to run their police force?

16 A. No. They are here under contract, and the contract speaks
17 for itself. The internal management of the RCM Police is the
18 responsibility of the Commissioner.

19 Q And, in particular, no one was telling you that at the deputy
20 commissioner level there was concerns being expressed that
21 the AG's Department in Nova Scotia were pushing and
22 pushing and trying to run the police force.

23 A. No, nor at the local chief superintendent level.

24 Q Thank you. Let me take you to page 18, which is a letter
25 from Mr. Gale to Mr. Feagan on July 25, 1980, and just take

MR. COLES, EXAM. BY MR. MacDONALD

1 a moment to read that if you will and tell me if that
2 accurately reflects what you instructed Mr. Gale to advise
3 the RCMP to do?

4 A. In essence that coincides. I didn't dictate the letter, but...

5 Q. No, I appreciate that, but that accurately reflects your
6 understanding of the instructions you gave to Gale for relay
7 to the RCMP.

8 A. Well, it reflects more than that. It reflects the agreement
9 initially with the RCM Police in respect to this investigation.
10 They agreed precisely as set out here by Mr. Gale.

11 Q. Well, are you suggesting that it was a sit down and say,
12 "Look, we'd like to do this, will you agree?"

13 A. No, we advised them of the position and they agreed to it.
14 They had no difficulty. They understood that they were to
15 deal directly with us and expressed no dissent or difficulty
16 in so doing at any time, beginning or throughout.

17 Q. And in particular, where Mr. Gale says in the middle of this
18 paragraph,

19 Those instructions were that no charges were to
20 be laid, nor was any contact to be made with
21 prosecutors concerning this matter until you
22 have finished your investigation and forwarded
23 a report to this department so that the matter
24 could then be examined and the Attorney
25 General fully apprised of the evidence.

That was the instruction you wanted to go the RCMP.

MR. COLES, EXAM. BY MR. MacDONALD

1 A. Yes, it was understood that they would do their
2 investigation, file the report, and that I would evaluate and
3 give advice on the matter.

4 Q. And lay no charge and have no contact with any prosecutor
5 until they file the report with you.

6 A. It was understood that charges would not be laid until I
7 evaluated and determined whether there was any basis for
8 the allegations. It was implicit in the instructions that they
9 would deal directly with the senior staff of the department;
10 that answers your second question.

11 Q. Now let me ask you then to turn to page 20.

12 A. 20.

13 Q. 20, yes. That is a letter to the commissioner of the RCMP
14 from Superintendent Christen. Now I want to direct your
15 attention to the second paragraph, if I could, where Mr.
16 Christen is saying,

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

Was that your understanding?

1 A. Oh, I don't know if I had an understanding on that, but I
2 would find that normal and expected if the decision was to
3 prosecute a member of the Cabinet, I would expect the
4 Attorney General would want to so advise the Premier of
5 the decision.

6 Q. Yes. At what point in time would you expect that advice
7 would be given?

8 A. After the Attorney General made his decision upon receiving
9 my report and advice to him.

10 Q. And only after.

11 A. Oh, yes, there would be no decision made until...at that point
12 from my understanding.

13 Q. Would there be any, in your understanding, any advice from
14 the Attorney General to the Premier that an investigation
15 was being carried out and charges were being considered?

16 A. Oh, that's possible. I don't have any knowledge of it, but
17 that's possible.

18 Q. Would you see...

19 A. I don't imagine...I wouldn't have thought the Attorney
20 General would need to do that. I would think the media had
21 already probably conveyed that in their...

22 Q. Would you see anything wrong with that?

23 A. What, advising the Premier that an investigation was
24 underway?

25 Q. That one of his Cabinet Ministers...underway and charges

1 may be laid.

2 A. I wouldn't see anything wrong with it. I would almost
3 expect that kind of a communication.

4 Q. Would you? And finally, and I want to point this out to you,
5 as well, Mr. Coles, the last sentence in that paragraph I just
6 read to you, "Mr. Gale advised there was no intent to
7 interfere with our investigation, and if any advice or
8 direction was required, it would be provided by their office
9 rather than a local Crown prosecutor."

10 A. I think that's consistent with my understanding.

11 Q. Thank you. Now just go on to page 21 and the attachment
12 on page 22. That's where Mr. Thomas sent to Gale a
13 memorandum prepared by Kevin Burke who was the
14 prosecutor who Thomas had assigned to this case. Did you
15 see this memorandum at any time or at the time?

16 A. No.

17 Q. You were not made aware of that by Mr. Gale?

18 A. Well, not to my recollection.

19 Q. And in particular in the memorandum on page 22, the first
20 paragraph which I'll summarize, Mr. Burke is saying he has
21 had meetings with the investigating officer, he has
22 familiarized himself with the investigation which is very
23 near completion and in his view the materials compiled
24 indicate that one or more charges could be laid. Were you
25 made aware of that conclusion by Burke?

1 A. Not to my recollection.

2 Q. But you were aware that at least someone from Mr. Thomas'
3 office and, in fact, maybe even Mr. Burke, had been in
4 communication with the RCMP.

5 A. I was aware when I...when it came to my attention, I guess I
6 noticed there in one of the documentation you referred me
7 to that Inspector Blue and his report made reference that
8 there had been some preliminary discussions with Mr.
9 Burke, and that I think there is a reference that he intended
10 to continue those discussions after one of them returned
11 from vacation, and that that was a point when Mr. Gale
12 reminded the RCM Police of the earlier advice, and my
13 understanding was that they so communicated that to
14 Corporal House, and that subsequent meetings did not
15 transpire or that is my understanding. And as far as, you
16 know, as far as assigning Mr. Burke, if Mr. Thomas had an
17 inquiry from an RCM Police officer, it would be perfectly
18 normal and expected that he would make available a
19 prosecutor to that request, and there is...I didn't see
20 anything wrong with Mr. Thomas having done so. I think
21 perhaps Mr. ...in the light of the understanding, Corporal
22 Burke, Corporal House ought not to have bypassed the
23 instructions to come to our office and...

24 Q. Why would you not have passed along the information to
25 Thomas that in this matter you're not to deal with the

1 RCMP?

2 A. Well, we had not reason to expect the RCM Police would not
3 follow what they agreed to do and no reason to expect that
4 the information wouldn't get down to the lowliest corporal
5 in the force.

6 Q. Okay. Now on page 24 is a covering letter to Mr. Gale from
7 Feagan enclosing the final report from ...

8 A. Yes.

9 Q. ...Corporal House. And I understand that would have been
10 delivered by Gale to you.

11 A. Yes.

12 Q. And that was in compliance with the instructions you had
13 given to the RCMP.

14 A. And what they agreed to in the...with respect to the
15 investigation, yes.

16 Q. If the RCMP had said at the beginning "We don't want to
17 deal with you, we would rather deal with the Crown
18 prosecutor at the local level," would you have said, "Fine"?

19 A. Well, they could have...they could have taken that position.
20 I don't know what...it's a hypothetical question. I don't
21 know what our response would have been, but they were in
22 a position to be able to say "We will take a different course
23 of action, agree to a different course of action," yes. I don't
24 know what the resolution of that would have been, but sure,
25 it was open for them to do that. And it was open for them,

1 as I say, if in the course of the investigation they wanted to
2 have access to others they could have made that request
3 and it would have been undoubtedly considered.

4 Q. Okay. Now let's go to...I've passed...you also have up there, I
5 believe, Mr. Coles, Exhibit 164, which is a typewritten
6 document called "Statement of Facts".

7 A. Yeah.

8 Q. If you would go to the final page, paragraph 17. What is
9 reproduced here, sir, is the final two paragraphs of the
10 report wherein the recommendations and requests of the
11 RCMP are contained.

12 A. Uh-hum.

13 Q. Now when you received the report, what did you do?

14 A. Well, the...both...or I shouldn't say both, Mr. Gale and Mr.
15 Herschorn and myself were receiving all the reports that
16 came in in the course of the investigation and this...and this
17 report was...would have been copied to them, as the others
18 were, or they had access to it and my understanding was
19 that we were each going to consider the investigating...the
20 investigator's report and then we would get together and
21 take whatever course of action we thought appropriate, or I
22 thought appropriate.

23 Q. Tell me what you did.

24 A. Well, what I did, I read the report, I received it as their final
25 report, I considered the facts that were set out in the report,

1 in their reports to the extent that I was able to. I
2 considered the provisions of sections and subsections of 110
3 and addressed myself to whether or not there was any facts
4 that would evidence wrongdoing on the part of the banks or
5 Mr. Thornhill and I came to the conclusion that in my
6 assessment of the facts that the factual situation did not, did
7 not come within the provisions of those sections and,
8 therefore, that there was not support for the allegations of
9 any criminal wrongdoing and accordingly charges were not
10 warranted.

11 Q. Did you carry out any basic legal research, Mr. Coles?

12 A. Well, I don't know what you mean by basic. I familiarized
13 myself with the cases that were reported and of which I was
14 familiar. I was...I had some familiarity with a couple of local
15 cases that were...our department, of course, were involved
16 as prosecuting. I had, I thought, an adequate knowledge of
17 the law to deal with ...to deal with the issues, but I think I
18 should say this point, what was more important was the
19 evaluation of the facts, whether or not the facts did bring
20 the banks and Mr. Thornhill under the...or within the
21 parameters of the Code and I came to the conclusion that
22 they did not.

23 12:30 p.m.

24 Q. Surely you can't consider that without saying what the
25 authorities have said are the facts.

1 A. Of course. Of course.

2 Q. You have to look at the authorities.

3 A. I didn't say I didn't. I told you I had, but I said the...

4 Q. That's what I wanted to determine. So you did review...

5 A. Sure.

6 Q. The authorities. Did you ask for anyone in your department
7 to give you a brief on the law?

8 A. Not that I recall.

9 Q. Did you ...

10 A. I knew that Mr. Herschorn and Mr. Gale would also be
11 considering the law.

12 Q. It was your understanding that both Mr. Gale and Mr.
13 Herschorn would be reviewing the authorities?

14 A. Well, I knew that...well, I don't know if I can say I
15 understood that. I expected that they would. They knew
16 that I was going to be making, giving advice based on the
17 investigation and that I would be conferring with them and
18 they were familiarizing themselves with the reports to the
19 same extent as I were and I expected that they would...they
20 would do the automatic thing that I was doing, namely to
21 consider the facts and the law and come to a position on the
22 matter.

23 Q. Was it your expectation then that the recommendation or
24 the report that you would finally give to the Attorney
25 General would be a report that would be agreed or the

1 consensus of an opinion between you, Mr. Gale and Mr.
2 Herschorn?

3 A. Well, I don't know if I...I don't know if I expected that. I
4 planned to, I did discuss with Messrs. Gale and Herschorn
5 the...my evaluation of the facts and the opinion that I had on
6 them. I indicated the position, the conclusion I was taking
7 and the position I was going to advise the Minister and my
8 recollection is that they agreed with that and concurred in
9 the position that I was taking.

10 Q. Would they have had the opportunity to review your
11 written opinion to the Minister before it was sent to him?

12 A. I don't remember. I don't remember whether they did or
13 not. They may not have. I don't remember. They would
14 have received it, have had access to it at or about that time,
15 whether they saw it before, I don't know. May not have.

16 Q. But your understanding is that, in any event, what was ever
17 in your opinion, you would already have discussed the three
18 of you...

19 A. Oh, yes.

20 Q. And there was agreement on.

21 A. And they knew...they knew the bottom line, so to speak,
22 they knew the position that I had concluded and the advice
23 I was going to give.

24 Q. And you...

25 A. And my understanding is they both agreed with it.

1 Q And did you also understand or did you discuss with them
2 the view of what was required in law to sustain a conviction
3 under those sections that you were considering?

4 A. Oh, I don't know. I don't think so. I wouldn't have thought
5 it was necessary. They're both very learned in the law.

6 Q Okay. Just quickly look at page 103 would you, Mr. Gale.

7 A. Coles.

8 Q Coles, sorry.

9 A. Page 103.

10 Q 103. Now there is reference in that letter, which is sent by
11 you to Feagan, in the second paragraph, "Two Nova Scotia
12 cases, Ruddock and Williams, " and you say that Mr. Feagan
13 "Could assume that you were very familiar with the
14 evidence involved and the decisions of your court...of our
15 court," that's the Nova Scotia court, "were carefully
16 considered in assessing and evaluating the police reports
17 and enclosures in the above-captioned matters" (that's the
18 Thornhill matter) "In reaching our decision." So you did
19 carefully consider those two decisions of our Appeal
20 Division.

21 A. Of course.

22 Q Now, My Lords, at this stage I would like to introduce those
23 two decisions and make reference to some of the contents in
24 them, but my friend Mr. Pink has indicated there will be
25 objections to taking that course of action, so perhaps I'll hear

1 his objection and then I can respond. Should I tell you why
2 I would like to do it?

3 MR. CHAIRMAN

4 And you have copies of the...

5 MR. MacDONALD

6 The two cases that Mr. Coles said he carefully reviewed
7 before...

8 MR. CHAIRMAN

9 These are...you're talking about the decisions.

10 MR. MacDONALD

11 Yes.

12 MR. CHAIRMAN

13 That have been reported in the Law Reports.

14 MR. MacDONALD

15 Yes.

16 MR. CHAIRMAN

17 Well, these are public documents, aren't they?

18 MR. MacDONALD

19 Oh, yeah, it's not being objected to on that basis I don't
20 think. I think it's on the basis that I shouldn't be allowed to
21 question Mr. Coles' opinion that finally was reached. That's my
22 understanding of the objection, perhaps my friend could tell us...

23 MR. CHAIRMAN

24 Well, let me hear your objection.
25

DISCUSSIONMR. PINK

1
2 My Lord, the basis of our objection is quite simple. As your
3 Lordships have said time and time again, we're not here to look at
4 guilt or innocence, and I guess the question is whether Mr. Coles is
5 going to be questioned not on the substance of his opinion, I don't
6 have any objection to that, but on the correctness or incorrectness
7 of his opinion. If the Commission is going to be asked to conclude
8 that his opinion is incorrect or if he's going to be challenged on the
9 basis of that opinion, then I only raise the issue at this point
10 because that leads to the obvious question, does that go to guilt or
11 innocence. Now my friend has approached it in this way, and I
12 don't find simply putting the decisions objectionable, I guess it's
13 the question of what use is going to be made of a review with Mr.
14 Coles of those decisions as it comes back to looking at his earlier
15 opinion earlier in that year. So I wouldn't have objected at this
16 point given the way he was doing it, but I do have some concern
17 that you're going to be asked to judge the merits of the conclus-
18 ions that he reached, and that's our concern.

MR. CHAIRMAN

19
20 Well, you're correct when you say we're not going to deal
21 with the guilt or innocence of any party who is not before us. But
22 we have heard a fair bit of testimony which indicates there were
23 two conflicting opinions from...one from Mr. Coles and the other
24 from Sergeant Blue, who is a lawyer.

MR. MacDONALD

DISCUSSION

1 Plomp, My Lord.

2 MR. CHAIRMAN

3 Plomp, who is a lawyer with the...and a member of the
4 RCMP. It seems to me that out of fairness to Mr. Coles, he should
5 be given the opportunity to let us have the benefit of his
6 interpretation of the rationale of the courts in Ruddock and
7 Williams and I don't see...

8 MR. PINK

9 As long as it's for that limited purpose, I have no objection,
10 but I have concerns about it going to the broader purpose and
11 that's why I advised Mr. MacDonald of my concern and he gave
12 me the opportunity to speak to it at this point.

13 MR. CHAIRMAN

14 Well, Mr. MacDonald wanted to be heard, continue.

15 MR. MacDONALD

16 I don't want my friend to be misled, My Lord, I certainly
17 intend to go through the cases in a little bit of detail to make
18 certain that you're all aware of the information and the
19 authorities that were in the mind of Mr. Coles when he wrote his
20 opinion to the Minister, and then I would intend to go through
21 that opinion to see...to question the quality of it because if it is, as
22 has been suggested in Mr. Plomp's opinion and in some of the
23 questioning here, that that opinion is seriously flawed, then one
24 has to ask the questions were there other factors that were
25 present in leading to the decision that was given to the Minister,

DISCUSSION

1 and without knowing what that law is and what the authorities
2 are and what the witness understood, it's difficult to understand
3 the actual recommendations that were made to the Minister.

MR. MERRICK

4
5 My Lord, if I might rise on this point, as well. If I
6 understand it, Mr. MacDonald wishes to put to this witness an
7 analysis of what the law is as to the elements required under
8 Section 110, whatever subsections he may be interested in. I've
9 got no difficulty with that. But if Mr. MacDonald then intends to
10 go beyond that, having analyzed the law, then try to apply that
11 law to the facts of this particular circumstance in which to
12 determine whether Mr. Coles' decision was correct or not, then I
13 have great concern with going on to that second area. That may
14 not be his intent, but I'd like clarification.

MR. MacDONALD

15
16 That certainly is not my intent, My Lords. I do not wish to
17 ever put the question, "Now in these circumstances wouldn't you
18 agree that there is guilt or there is innocence."

MR. CHAIRMAN

19
20 Well, this might be a very good...with the caveat that rightly
21 or wrongly the three of us are supposed to be capable of
22 interpreting the decisions in Ruddock and Williams, we'll think
23 about it over lunch.

24 LUNCH BREAK - 12:40 to 2:10 p.m.

DISCUSSIONMR. MacDONALD

Perhaps before we commence...

MR. CHAIRMAN

Mr. MacDonald, before you commence, may I...may we have some amplification again not on the purpose of your introducing the two decisions, Ruddock and Williams, because they're available to us anyway, but the intent or purpose to which you intend to put...to use them in your cross-exam...in your examination of Mr. Coles?

MR. MacDONALD

Yes, My Lord, the...it would be my intention to refer the witness to very limited extracts from the decision to establish what I understand the witness to have said was in his mind, what he had reviewed prior to writing the opinion which he did to the Minister, for the purpose of testing the thesis which has been advanced by Sergeant Plomp in his opinion, and alluded to by other counsel in their questioning, that the opinion given by the witness to the Minister was fundamentally wrong and I want to give the witness the opportunity and I would like to delve into that very briefly without, and I assure your Lordships, without suggesting that given what these cases in fact say that his recommendation should have been different. I'm not going to question what he, in fact, told the Minister what his recommendations were, but it's the basis on which it's assumed or what we see is the basis for his opinion and find out from the

DISCUSSION

1 witness if, in fact, there were other factors which led to the
2 conclusion which he drew.

3 MR. CHAIRMAN

4 Two things we wish to avoid, one is an argument between
5 counsel during cross-examination and this witness or any other
6 witness as to the interpretation of the law. Secondly, questions
7 must not be put to the witness which would lead to the conclusion
8 that any person or persons are guilty of any offence under the
9 Criminal Code of Canada.

10 MR. MacDONALD

11 Well, I certainly intend to avoid both of those to the extent I
12 can, My Lord.

13 MR. CHAIRMAN

14 Well, with these ...with that rider and nebulous qualification
15 we'll take a look at the cases.

16 MR. MacDONALD

17 Thank you. And if I can just say before we start, My Lord,
18 at your request we have determined that Judge How can be here
19 at four o'clock this afternoon if we're finished with Mr. Coles and
20 you wish to proceed to take his evidence today, he's available and
21 we can do that.

22 MR. CHAIRMAN

23 He too then would have to be available in the early morning
24 for cross-examination.

25 MR. MacDONALD

DISCUSSION

1 Well, he was scheduled to be available in the morning
2 anyway so I assume that would not be a difficulty.

3 MR. CHAIRMAN

4 That's fine. I want to keep this on schedule if we can at all.

5 MR. MacDONALD

6 I've had marked, My Lord, as Exhibit 170 has been marked
7 the decision of the Nova Scotia Supreme Court, Appeal Division, in
8 the case of The Queen v. Ruddock, 171 is the decision of the Court
9 of Appeal of Nova Scotia in The Queen v. Williams.

10 MR. CHAIRMAN

11 Thank you.

12 EXHIBIT 170 - DECISION OF THE QUEEN v. RUDDOCK

13 EXHIBIT 171 - DECISION OF THE QUEEN v. WILLIAMS

14 MR. MacDONALD

15 Q. And, Mr. Coles, again, sir, just for the record, these are the
16 two cases referred to in your letter to Mr. Feagan on page
17 103, the Ruddock and Williams cases in which you say your
18 staff was involved in both prosecution and the appeals and
19 that they had been reviewed at the time you looked at the
20 Thornhill matter and gave your opinion to the Minister.

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. Thank you. In both of these cases, both of which, at least
25 the Appeal Division decisions are dated in 1978, in both of

MR. COLES, EXAM. BY MR. MacDONALD

1 these cases counsel for the Attorney General was Mr. Endres.
2 Mr. Endres was in your department at the time you were
3 doing your review on the Thornhill matter?

4 A. Yes.

5 Q. In fact, he's still there, is he not?

6 A. Yes, yes.

7 Q. Was he consulted at all as to the law which would apply in
8 the matter that you were looking at?

9 A. Not by me.

10 Q. And do you know if he was consulted by anyone else?

11 A. No.

12 Q. Thank you.

MR. CHAIRMAN

13
14 Only for the purpose of a historical interest and nothing else,
15 is the junior counsel for the respondent in R v. Ruddock, is that
16 the present Attorney General of Nova Scotia?

MR. MacDONALD

17
18 It certainly appears to be, My Lord. For the historical
19 record, I believe that the election that brought Mr. Donahue to the
20 house was in September of 1978.

MR. MERRICK

21
22 The senior judge is...the senior counsel is Chief Judge of the
23 County Court so that's...

MR. CHAIRMAN

24
25 I realize that, so Donahue had two successes that year.

1 MR. MacDONALD

2 Yes.

3 MR. CHAIRMAN

4 One at the polls and one in the courts, it doesn't happen to
5 very many of us.

6 MR. MacDONALD

7 At least one at the courts.

8 Q. Now, Mr. Coles, sir, if I can I just want to refer to some of
9 the comments of the Court of Appeal in this, let's start with
10 the Ruddock case and on page 79, first of all, Mr. Justice
11 MacDonald sets out the provisions of subsection (c) of
12 Section 110(1) of the Criminal Code and under that he says,
13 "This section does not involve any elements of fraud, breach
14 of trust or bribery which are expressly covered elsewhere in
15 the Criminal Code," and he notes that the maximum penalty
16 for violation of the section is five years imprisonment. You
17 were aware of that at the time you gave your opinion.

18 A. I was aware, you know, in the sense that I read the decision.

19 Q. Okay. Let me take you to page 81. And at this part of the
20 decision Mr. Justice MacDonald is quoting from the trial
21 decision in this particular case, it's the decision of Judge
22 O'Hearn, and it's the second paragraph from the quote where
23 he starts out,

24 I am also aware that a good many civil servants
25

1 have never heard of this provision of the
2 Criminal Code so that they would probably be
3 quite astonished to find that in taking a gift of a
4 turkey or liquor or cigars from a person
5 contracting with their department that they
6 were in serious breach of the criminal law.

7 Do you accept that as a statement of what constitutes a
8 breach of that section of the Code, the mere...

9 A. With the qualification that if, as I understand it, that subject
10 to the absence of the consent of the superior person.

11 Q. Oh, yes, absolutely. I... Let me...

12 A. And a further qualification, as I understand, whether it's
13 acknowledged or not in the law, the practise is that if a gift
14 is less than \$25 there is no requirement to get the consent.

15 Q. Is that your understanding of the practise in this province,
16 is it?

17 A. That's my understanding of the practise back at that time.

18 Q. Thank you.

19 A. I don't what the practise is today.

20 Q. And let's agree for the moment, I take it we have no
21 disagreement with this, that if you have the consent in
22 writing of the head of the branch of government that
23 employs you, that's an absolute defence to anything under
24 that section.

25 A. That's my understanding.

1 2:20 p.m.

2 Q. Yes. And then down at the bottom of page 81, quite apart
3 form any intention on the part of the accused, or the other
4 party involved, it's a precautionary provision of the Code, the
5 mental element involved is simply knowledge of the gift,
6 knowledge of the connection of the giver with the
7 government and willingness to accept. It does not involve
8 any element of fraud or breach of trust or bribery, mere
9 knowledge of the gift and the fact that you're dealing with
10 someone in the government. Yes?

11 A. Well I don't...

12 Q. That's the intent required.

13 A. I don't know what my "yes" is supposed to imply. I
14 understand that. I accept that.

15 Q. And then further down on that page 82, "I want to make it
16 clear that it does not involve bribery or anything that could
17 be called bribery. It is conduct that is absolutely prohibited.
18 If the giver knowingly accepts a gift from a person who is
19 dealing with the government without the permission of the
20 head of this department." That's the offence under that
21 Section, isn't it.

22 A. That's my understanding of the Section.

23 COMMISSIONER EVANS

24 Is that right? If the giver knowingly...

25

1 MR. MacDONALD

2 That's obviously a mistake, My Lord. I think ...

3 COMMISSIONER EVANS

4 The givee.

5 MR. MacDONALD

6 The givee or the receiver.

7 Q. And then on the top of page 85, or perhaps that's not the one
8 I meant. I meant on page 86, I'm sorry. Here he is quoting
9 from the trial decision in the case of R. v Cooper in Ontario
10 which did go to the Supreme Court of Canada but which
11 involved an alleged violation of subsection (b) of Section 110.
12 And I'm reading that quote where it says,

13 It's obvious, in my view, that altogether apart
14 from Section 110(c) that the appearance of
15 objective, uncorrupted impartiality must be of
16 the highest importance. This, indeed, is an ethic
17 which has been given the full support of the
18 criminal law in the section that I have made
19 reference to. And the reason for that, I think, is
20 obvious because the appearance of justice is
21 equally important as justice itself. And the
22 appearance of honesty and integrity in dealings
23 by Government employees, particularly where
24 large sums of public money is involved, must be
25 at all costs preserved lest the failure to do so
could result in *de facto* corruption with one
perhaps sliding imperceptibly into the other. It
is clearly for this reason that Section 110(c) has
been enacted."

24 You were aware of that comment as well?

1 A. I'm not sure that about that particular comment other than in
2 this, in the context of this decision. I'm not sure that I read
3 the decision form which it's taken. I read the Cooper case
4 before the Supreme Court of Canada.

5 Q. Yes. And the Cooper case was a case involving subsection (b)
6 of Section 110.

7 A. Yes.

8 Q. I understand, Mr. Coles, that the Supreme Court of Canada has
9 never commented on the provisions of subsection (c) of the
10 Code.

11 A. You're probably more knowledgeable on that than I am.

12 Q. Well, I wouldn't pretend to suggest that but I'm just saying
13 that I haven't been able to find any case. And in the absence
14 of a Supreme Court of Canada comment, I assume that the
15 comments of our own Appeal Division would be considered
16 the law in this province.

17 A. I would think so.

18 Q. Now if you look at the other case, R. v Williams and I think I
19 just will quickly refer you to page 382. The last full
20 paragraph on that page, Mr. Coles.

21 A. Yes.

22 Q. And this is the comment, again, I believe Mr. Justice Coffin
23 wrote this particular decision.

24
25 The Crown in the present case makes the point

1 that there is not sufficient distinction between
2 the positions held by McKendry, the official in
3 the Cooper case and the respondent, Mr.
4 Williams. The test is the 'appearance of honesty
5 and integrity in dealings by government
6 employees,' and it is immaterial whether or not
7 the official in question had any decisionmaking
8 power. The offence under Section 110 (1)(c) is
9 the acceptance of a benefit without having first
10 obtained the consent. No other intent is required
11 under that specific subsection.

12 Now when you then directed your attention to this case and
13 to giving your opinion to the Minister, was it with that in
14 mind that the only intent that one would have to satisfy in
15 order to find, to support a conviction under Section 110 (1)(c)
16 was the acceptance of a benefit without having first obtained
17 that consent, the written consent of the Minister.

18 A. Well I'm aware of what the law said but the premise to your
19 question was, and my advice to the Minister, I concluded in
20 my appraisal of the report of the investigators that the facts
21 did not attract this particular subsection. And perhaps you
22 will give me an opportunity in due course to explain that, or
23 now if you wish.

24 Q. Oh, I certainly will. I'll give you the opportunity fully, right
25 now if you like, to tell us what you want to explain.

A. Well the, I made a few notes, may I...

Q. Certainly.

A. In considering the application of Section 110 (1)(c), I had
available to me the report of the RCM Police and their

1 investigations and I understood that to be the final report at
2 the time and I considered it for the purpose of advising the
3 Minister. And I think if, with permission, My Lords, what's
4 important to understand my decision is for me to, in a
5 summary way, highlight the facts that I considered significant
6 in the report and the conclusion I drew from those facts. And
7 I'll very brief. It's not a long summary.

8 First of all, the factual situation, in my opinion, is
9 important in considering the cases that were before the courts
10 in order to answer the question whether or not a person was
11 guilty of any offence. The factual situation in the matter
12 concerning the four chartered banks and Mr. Thornhill, was a
13 debtor/creditor relationship that arose in the early '70s. It
14 had to do with normal banking transactions between Mr.
15 Thornhill, as customer, and the banks as lenders.

16 Point two, there were protracted negotiations, both by
17 Mr. Thornhill and on behalf of Mr. Thornhill, particularly
18 during the years 1977 and 1978. The purpose of those, as far
19 as I was able to discover from the report, was the bank were
20 trying to overcome his default. He was in default under their
21 respective loans. They were unsecured loans and they were
22 endeavouring to effect collection. The result of those
23 negotiations, in a very summary way, was that there were
24 some efforts to try to, on the part of Mr. Thornhill or on the
25 part of the banks, to liquidate those indebtedness. They did

1 not succeed although there was some limited accommodation
2 at one stage as a result of some money from a third source,
3 third party source.

4 In effect, in 1977 and 1978 the banks considered Mr.
5 Thornhill insolvent. They had unsecured indebtedness. They
6 had no reasonable prospects to recover those debts from Mr.
7 Thornhill. That's what the banks are reported to have said.
8 Even to the point where two of the banks had considered
9 recommendations from staff to write-off the indebtedness as
10 uncollectable. I'm not certain whether both banks, in fact,
11 wrote off the indebtedness or not. But there was indications
12 in the report that they had accepted the recommendations to
13 do so.

14 In the latter part of 19-, or perhaps at some point in
15 1978, Mr. Thornhill engaged a firm of chartered accountants
16 and instructed them to try to negotiate some settlement with
17 the banks. The report spoke of those protracted efforts. And
18 those efforts involved not resources or funds of Mr.
19 Thornhill's, but from, again, a third party source.

20 In September of 1978, before the general election of
21 that year, Mr. Thornhill was not in the government, he was a
22 member of the Opposition, and an offer was made on his
23 behalf to the banks offering to settle his indebtedness with
24 them on the basis of roughly \$.25 on the dollar, as I recall.
25 The sources of these funds were not assets of Mr. Thornhill.

1 They came from, again, the third party source.

2 The general election followed that offer which, up to that
3 time, had not been responded to by the banks.

4 Approximately somewhere about eight to nine
5 months after the event, in 1979, the banks accepted the offer
6 that was made to them the previous September. The report
7 indicated that the banks had hoped that with the re-election,
8 following the offer in September '78, Mr. Thornhill's personal
9 financial affairs would have improved, enabling them an
10 improved or enhanced prospect of collection. Their
11 expectations obviously, in their opinion, were not realized
12 because he was still considered to be insolvent at the time
13 when they accepted the offer.

14 The other significant fact was that the Premier had
15 indicated that he had knowledge of the efforts by Mr.
16 Thornhill to settle his indebtedness with the banks.
17 Now in my opinion, what I concluded from those facts in
18 particular, were the following questions. First of all, we're
19 talking about debtor/creditor relationship throughout. It was
20 one that was in the normal course of those kind of
21 transactions.

22 Secondly, that there was nothing the report to give
23 particulars of the banks in their dealings with the
24 Government. Now one might say, well, banks deal with the
25 government. Well, I don't know, I suppose they do. But

1 there's nothing, no particulars of the banks' dealings with the
2 government.

3 Further, that when Mr. Thornhill, or his accountants,
4 made the offer to the bank, he was not an official or an
5 employee of the Government. He was not that until October,
6 some time later in October.

7 It was an offer by Thornhill to the banks. They
8 accepted his offer and there may be some, there may be some
9 question, and, there was in my mind, maybe it was the banks
10 who received the benefit because, if you recall, you know, two
11 of them, prior to that, and prior to the election were quite
12 prepared, and may have, in fact, even written off the account.
13 But in any event, the offer was made when he was neither an
14 official or employee of the government. It was made in the
15 course of he, after about two years of protracted negotiations,
16 trying to reach a settlement, and the source of those monies
17 were not his. They came from a third party.

18 And those facts, and my evaluation of those facts,
19 satisfied me that they did not bring him within the provisions
20 of that subsection. And that is why I advised on the basis I
21 did.

22 Q. If I can way, Mr. Coles, My Lords, I don't want to get into the
23 facts but obviously I have to, we have to clear up some. You
24 do have the Statement of Facts in front of you, Mr. Coles.

25 A. Yeah.

1 Q. And this has been agreed to by counsel for the Attorney
2 General's Department and the RCMP as accurately reflecting
3 what the documents show.

4 A. I did have.

5 Q. You had that this morning.

6 A. I did have.

7 Q. Can you help me with the background, paragraph number 3.
8 Under paragraph number 3?

9 A. Yes.

10 Q. The proposal that was put forth to the banks was put forth on
11 September 17th, 1979. In fact, Mr. Thornhill had been
12 Minister of Development since October 5, 1978. So may I just
13 suggest to you that if you were relying on the facts that
14 you've just related to us, that you were relying on incorrect
15 facts.

16 A. Well I may be mistaken in my recollection of it but that's
17 what my recollection was he was...

18 Q. But you've just put out that that was a very important...

19 A. Yes.

20 Q. ...consideration to you. The fact that at the time the proposal
21 was made Mr. Thornhill was not a member of Government
22 but, in fact, he was.

23 A. I verify your date is correct. But my recollection when I put,
24 when I made my notes today in preparation for this was that
25 it was made prior to.

1 Q. Okay. So can I suggest to you that from the recitation you've
2 just given to us that that obviously wasn't a consideration
3 that you could have directed your attention to in 1980 when
4 you wrote your, you gave the advice to the Minister.

5 A. No, obviously not. My recollection at the moment was that it
6 had been.

7 Q. Okay. Now what were the other points...that you're saying
8 that...

9 A. Well...

10 Q. You weren't satisfied that banks had dealings with the
11 Government?

12 A. There was no particulars of that and also the question about
13 the Premier's statement of his knowledge influenced me in
14 thinking that this section did not apply.

15 Q. Okay. And as we've said, and there's no disagreement on
16 that, if you have written permission from the head of
17 Government, there is no offence under that section.

18 A. Um-hmm.

19 Q. You're not suggesting, are you, that Mr. Thornhill had written
20 permission?

21 A. I have no knowledge whether he had or not from that report.

22 Q. Did you make any inquiries to find out if he did?

23 A. No.

24 Q. Are you suggesting here seriously that the banks involved do
25 not have dealings with the Government of Nova Scotia, either

1 through, with directly or with its various Crown corporations?

2 A. Well I'm not, no, I'm not making suggestions. I'm saying
3 there is nothing in the report that amplified the dealings, if
4 any, that the banks had and...

5 Q. But that's something you could have found out, you could
6 have asked for further investigation to determine if, in fact,
7 these banks had dealings with the government.

8 A. I could have if I had been of the opinion that that Section
9 applied, that's right. In my opinion that was not required by
10 me.

11 Q. And then did you also say that you considered that Mr.
12 Thornhill may not have obtained a benefit??

13 A. Well...

14 Q. That is, today, what I mean.

15 A. No. I'm sorry, I was just checking my report to the Minister
16 to verify the date. I didn't mean to be distracting.

17 Q. No, fine.

18 A. That's right, I wasn't satisfied that that settlement
19 constituted a benefit, yes.

20 Q. The information given to you by Mr. Herschorn, and that's
21 found in his memorandum to Mr. Gale, I assume you had that,
22 did you?

23 A. Yes.

24 Q. That's found on page 25. Did you ask Mr. Herschorn for this
25 memo or did you ask Mr. Gale to have one done?

1 2:40 p.m.

2 A. I don't, I don't honestly remember. I would appear to me
3 where it's addressed to Mr. Gale that he probably asked for
4 it.

5 Q. In any event, turn to page 27.

6 A. Yes.

7 Q. D you know whose writing that is, that's scratched out
8 number 9, or I'm sorry, scratched out the date "1978" and
9 put a "9" above it?

10 A. No.

11 Q. If Mr. Herschorn, when he wrote that you, assuming there
12 wasn't any scratching out in it, in September of 1978,
13 letters, in fact, had been forwarded from the banks, I'm
14 sorry, to the banks outlining a proposal to settle in full, now
15 if that were, in fact, were the case and then subsequently a
16 year later there's a settlement of twenty-five percent on the
17 dollar, would not that at least raise a question in your mind
18 whether a benefit had been conferred?

19 A. Well, I don't recall it having done so.

20 Q. Do you recall being aware that the actual twenty-five
21 percent on the dollar proposal was made at a time when Mr.
22 Thornhill was a Minister of the Crown?

23 A. Well, I'm sure I was aware of it and those dates are the
24 correct dates, yes.

25 Q. Let me take you to your...

1 A. But at the same time I didn't consider that kind of a
2 proposal, a settlement following the protracted negotiations
3 that had transpired to be in the nature of a benefit that was
4 intended and captured by that section.

5 Q. Okay. Well, let me just take you to the opinion that you
6 gave to the Minister, and let me just as a preface, so you
7 might understand my questions. I had the impression in
8 reading this opinion, and I've read it on several occasions,
9 that what you are telling the Minister is that Mr. Thornhill
10 did not have the requisite intent under subsection (c). He
11 didn't have a guilty mind and that therefore no charges
12 should be laid. Now that's the way I read it.

13 A. Well, that was not my intent.

14 Q. That was not your intent.

15 A. No.

16 Q. Was your intent to tell the Minister that there was no
17 benefit here or that because the Premier would have
18 approved it, therefore, we shouldn't go ahead and lay a
19 charge?

20 A. It was a combination of those factors. I did not see the...I
21 did not see the benefit that I thought had to be identified. I
22 was...I did not see the banks being identified sufficiently for
23 the purposes of that section and, of course, I was aware of
24 the Premier's statement and that led me to the conclusion
25 that that section did not apply.

1 Q Did Mr. How have anything...any knowledge of the facts of
2 this case, to your knowledge, other than what you gave him
3 in your opinion?

4 A. Not to my knowledge.

5 Q Did Mr. How have access to and did he review the RCMP
6 report, to your knowledge?

7 A. I have no knowledge of that.

8 Q Okay. Well, I wanted you to understand the way I read this,
9 so perhaps...

10 A. Yeah.

11 Q ...you'll understand the questioning as I go through this with
12 you. On page 31, paragraph number 2, I took that to be a
13 statement that, using the names instead of the titles, that
14 you, Messrs, Gale and Herschorn had all reviewed this
15 matter and concluded that there was...to determine whether
16 there was an offence contrary to the provisions of Section
17 110 of the Code. Is that what you intended to tell the
18 Minister?

19 A. No, I...no, I'm not sure I intended that. It was my report to
20 the Minister, it was my advice to the Minister the...Mr. Gale
21 and Mr. Herschorn were involved in receiving the reports
22 and evaluating the reports and they met with me and I
23 outlined to them my opinion, the basis for it, and they
24 agreed to the position I was taking.

25 Q And they agreed to the basis for your opinion.

1 A. Well, I'm not so sure that that was put to them.

2 Q. Okay. Now let me take you to page 34. Up to this time it
3 appears to be a recitation of facts and if you feel that I'm
4 jumping over things that should be referred to, please let
5 me know. In paragraph 10 you're advising the Minister that
6 the crux of the matter is to determine whether there was
7 evidence of the necessary criminal intent to characterize the
8 settlement proposed on behalf of Thornhill and accepted by
9 the bank as constituting a fraud upon the government.
10 That's the crux of the issue as far as you're concerned? At
11 least that's the way I took it from reading that.

12 A. Well, yes, in a summary way, that's it, yes, there has to
13 be...subsection (c) has a specific intent it required.

14 Q. Well, the intent as we've just seen from...

15 A. Yeah.

16 Q. ...our Appeal Division is to knowingly accept a benefit.

17 A. If this settlement constituted a benefit, and if the banks
18 were within this section of the Act, yes.

19 Q. Well, I'm talking about Mr. Thornhill now. We'll come to the
20 banks in a moment. So if we can perhaps consider Mr.
21 Thornhill first of all. The intent, as I understand it from our
22 Appeal Division, is that Mr. Thornhill would have accepted a
23 benefit without having first obtained the consent in writing
24 of the Premier. That's the offence under that section, having
25 knowingly accepted a benefit from someone dealing with

1 the government.

2 A. Yeah, if this were a benefit. He made an offer to the banks.

3 Q. Yes.

4 A. He made an offer to the banks.

5 Q. Uh-hum

6 A. It wasn't the banks making an offer to him.

7 Q. No, I understand that. But I'm merely suggesting to you
8 that in order to...the only intention required under (c) in this
9 case would be that Mr. Thornhill knowingly accepted a
10 benefit from the banks if they deal with the government
11 without having obtained the written consent of the Minister.

12 A. Uh-hum.

13 Q. Of the Prime Minister.

14 A. Yes.

15 Q. Thank you. Now let me then take you over to page 35 and
16 it's just immediately before the paragraph numbered 11,
17 that paragraph immediately before it.

18 A. Uh-hum.

19 Q. You say,

20
21 Similarly for Mr. Thornhill to be guilty of any
22 offence under Section 110 the offer made on his
23 behalf to settle his indebtedness with the banks
24 must evidence a criminal intention, (which is
25 underlined), ...to either accept or offer to accept
an advantage or benefit from the four banks as
consideration for cooperation, assistance,
exercise of influence in connection with matters

MR. COLES, EXAM. BY MR. MacDONALD

1 of business relating to the government, or with a
2 guilty mind, demand or accept from a person
3 who has dealings with the government, an
4 advantage or benefit.

5 A. There's obviously a typographical error. That should be
6 110(1)(b), the second line.

7 Q. Okay. So in order for Mr. Thornhill to be guilty of any
8 offence under 110(1)(b), that's what you're saying.

9 A. Yes. That would be my...

10 Q. Well, there was no suggestion that Mr. Thornhill committed
11 any violation of subsection (b), was there?

12 A. There...

13 Q. Can I assist you? I'll get you any document you like.

14 A. We were considering subsection (1) in it's...

15 Q. That's the...you do attach to your opinion copies of the
16 relevant sections of the Code, that's on page 38. I don't
17 know if Your Lordships' copies are clear.

MR. CHAIRMAN

18 Yeah.

MR. COLES

19 Yes. I'm sorry, it's subsection (1)(a), I'm sorry.

20 Q. In any...what you...

21 A. Which is the subsection that paragraph referred to.

22 Q. So that do we understand that in reading your opinion on
23 page 35 we, in fact, should read, "Similarly for Mr. Thornhill
24 to be guilty of any offence under section 110 (1)(d)."
25

- 1 A. No, (a).
- 2 Q. (a), I see. I see. And you would be referring to subsection
3 (a) and then (ii), I suppose, is that what you're referring to?
- 4 A. Well, it was that subsection.
- 5 Q. Okay.
- 6 A. Whatever.
- 7 Q. But I suggest to you that the last...last portion of that
8 paragraph, Mr. Coles, where you said, you then have semi-
9 colon, and then you say, "Or with a guilty mind," that's on
10 page 35, "Or with a guilty mind, 'demand or accept from a
11 person who has dealings with the government an advantage
12 or benefit,'" that that, in fact, is referring to subsection (c).
- 13 A. Well, I ...I would not have thought so, but maybe the
14 phraseology there would suggest that, but I don't think so. I
15 took that...and my recollection is I didn't see, I didn't think
16 subsection (c) applicable, was applicable to the facts for the
17 purposes of a prosecution.
- 18 Q. I see. You didn't think it applicable at all.
- 19 A. I didn't, no.
- 20 Q. The facts...
- 21 A. No, I didn't think the facts supported a charge under
22 subsection (c) at all.
- 23 Q. And you didn't then, you just dismissed it out of hand and
24 didn't intend to deal with it at all in your opinion to the
25 Minister?

- 1 A. Well, I think I did deal with it.
- 2 Q. That's what I'm trying to find out where.
- 3 A. Well, I think I dealt with it on top of page 2, I make
4 reference to it specifically, top of the paragraph.
- 5 Q. Yes.
- 6 A. And then I directed my attention to...specifically to the other
7 sections, subsection (1)(a) and was of the opinion that there
8 was no offences disclosed that from a prosecutorial point of
9 view warranted the laying of the charge.
- 10 Q. I suggest to you that what you're telling...what you've told
11 the Minister is that there is no evidence of the requisite
12 intention required by subsection 110 to justify bringing
13 charges against Mr. Thornhill or the banks, and that's what...
- 14 A. Yes, uh-hum.
- 15 Q. ...you told the Minister.
- 16 A. Uh-hum.
- 17 Q. You didn't tell the Minister, "Look, there really isn't any
18 offence under (c) because the Premier approved it or
19 because there is no benefit." You didn't direct...
- 20 A. I didn't, no, I didn't get into specifics, no.
- 21 Q. Did you consider that you had dealt with all of the points
22 that were raised by the RCMP or was it your intention to do
23 so?
- 24 A. No, I thought I...I thought I had dealt with the...with the
25 facts to determine whether or not there was the evidence, a

1 commission of any offence under that section and that there
2 was a basis to prosecute either the banks or Mr. Thornhill,
3 and I came to the conclusion that there wasn't and,
4 therefore, that there is no justification for the laying of the
5 charges.

6 Q. Okay. Let me take you back to the report from the RCMP, or
7 the extract that we have, sir, that's in the statement of facts
8 Exhibit 164, and it's paragraph 17. And this is what the
9 investigating officer has said, and you would be aware,
10 wouldn't you, that this would have been reviewed by all
11 levels up to the OIC in Halifax before it went to you?

12 A. Well, I was...no, I...

13 Q. You wouldn't be aware of that?

14 A. I wasn't aware of how the report was handled in the RCM
15 Police.

16 Q. Aren't you aware of the normal practise in the RCMP?

17 A. Not in respect to the internal, I'm not surprised, I would
18 expect it, but I wasn't personally aware of it, no.

19 Q. Okay. Thank you. Paragraph 17, this is what the RCMP
20 report said, "I would like to make the following
21 recommendations..." Do you have that, sir, where I'm
22 reading from?

23 A. Yes, uh-hum.

24 Q. "First, that I have established a *prima facie* case of section
25 110(1)(c) against Mr. Thornhill, therefore a prosecutor be

1 appointed to take this matter before the courts." I
2 understand from what you've said to me today that you
3 concluded there was no *prima facie* case because there was
4 no benefit and because the Premier was knowledgeable
5 about the arrangements.

6 A. Yeah, I wasn't concerned with the *prima facie* case, whether
7 or not there was sufficient evidence to maintain and support
8 a successful prosecution. A *prima facie* case, as you know,
9 is a process of a prosecutorial process. The...

10 Q. Well, the reason then you thought there could be no
11 conviction or no reasonable grounds for conviction is
12 because there was no benefit, in your view.

13 A. Yes.

14 Q. And also because the Premier had...was knowledgeable of it
15 and would have consented.

16 A. Yeah, and the absence of any particulars about the banks'
17 dealings with the government too.

18 Q. Okay. That latter point...

19 A. And plus, you know, benefit was...had relation to the whole
20 protracted nature of these transactions.

21 Q. Okay. And number 2, he says, "That I have shown some
22 evidence that Mr.Thornhill obtained funds by false
23 pretences and I would like to further discuss this matter
24 with a prosecutor," and he refers to the section involved.
25 What, if anything, did you do with respect to that

1 recommendation?

2 A. Well, that and the next one that you will come to about
3 conspiracy, I didn't consider them serious statements. I saw
4 no basis for them in the reports that I examined and
5 considered.

6 Q. So not even serious enough to comment on them to the
7 Minister?

8 A. No, I...well, I did to the extent that I didn't see any basis of
9 any wrongdoing on the part of...on the part of Mr. Thornhill.
10 On the bottom of page 6, on page 36, I'm sorry.

11 Q. Yes. But you...

12 A. I didn't mention it specifically, but I...that was intended to
13 cover...

14 Q. That was intended to cover both the false pretences and the
15 conspiracy suggestion.

16 A. And, that's right.

17 Q. Okay. And then the recommendation from the RCMP or the
18 suggestion that they would like to get a prosecutor
19 appointed so they could obtain his advice, the various points
20 they set out in paragraph 17, I take it your conclusion was
21 since you did not think there was any evidence to support a
22 conviction there was no need to appoint a prosecutor.

23 A. That's right.

24 Q. Now you had reference to all of the documents in the
25 possession of the Attorney General's Department from the

MR. COLES, EXAM. BY MR. MacDONALD

1 RCMP when you made your opinion, gave your opinion, did
2 you?

3 A. Well, I had, yes, possession of all the documents that were
4 filed with us.

5 Q Yeah. And you would have reviewed them in...

6 A. Yes.

7 Q ...coming to your conclusion.

8 A. Yes.

9 Q And have you had the opportunity over the last couple of
10 days or whatever in reviewing the materials that have been
11 filed before this Commission to look at those extracts that
12 are contained on pages 40, 41, and 42 of this booklet?

13 A. Yes, I'm sorry.

14 3:00 p.m.

15 Q So would you have seen the documents from which those
16 extracts are taken and seen those particular comments as you
17 were doing your review?

18 A. I remember the reports contained extracts from the bank,
19 internal bank documents, yes. These would, I don't
20 remember them specifically but these look like the kind of
21 extracts that were there.

22 Q And comments such as, from whatever person in the bank,
23 that the, considering this is numbered 5 on page 2, just for
24 example, on page 41, I'm sorry. "Considering Mr. Thornhill's
25 position as Minister of Development, we consider it prudent

MR. COLES, EXAM. BY MR. MacDONALD

1 not to apply pressure at this stage. " You would have been
2 aware of those type of comments?

3 A. Yes. Yes.

4 Q. In the bank documentation.

5 A. These were internal bank memos.

6 Q. Yes. And number 6, "We think the banks could well be open
7 to criticism if it were publicly known we had given Mr.
8 Thornhill preferential treatment because of his influential
9 position."

10 A. Well, that was the opinion of the writer of that.

11 Q. Yes. I appreciate it. It's only one person. But you were
12 aware that that sort of...

13 A. Oh, yes.

14 Q. Comment was contained in the documentation when you...

15 A. Yes.

16 Q. Reached your conclusion that there was no benefit here.

17 A. Yes. I interpreted them that the banks were looking for their
18 money and they were hoping that his position would enhance
19 his personal resources and enable him to deal with...

20 Q. I see. That's the way you interpret that.

21 A. Yes.

22 Q. That the, when they suggest that there is preferential
23 treatment, when someone suggests that there's preferential
24 treatment because of his influential position, if you mean to
25 suggest that that...

MR. COLES, EXAM. BY MR. MacDONALDMR. MERRICK

1 My Lord, I want to raise an objection at this stage. Mr.
2 MacDonald, himself, is the one who advised us that we were going
3 walk a very tight line here, that we weren't going to get into the
4 question of guilt or innocence, political motivation or not political
5 motivation. It was going to be purely the question as to what
6 decision was arrived at by various officials dealing with the
7 process, what information did they have available and that's it.
8 He has asked Mr. Coles if he was aware of this type of information.
9 Mr. Coles has said that he was. To go on now and try to challenge
10 him and shake any assessment that may have been made because
11 of this information is getting right into the merits of it as to
12 whether there was or was not, in fact, a charge. That answer was
13 given many years ago and as Your Lordships have said, we're not
14 getting back into it here and I think Mr. MacDonald is now going
15 over the line.
16

MR. MacDONALD

17 Well, My Lords, Mr. Merrick in his questioning in the last
18 couple of days, of everyone, has been going directly to the merits
19 and nobody has been jumping up. I've been trying to avoid them
20 as much as possible and all I'm trying to establish from Mr. Coles
21 is what his answers mean. And his answer to me was he took
22 these particular extracts, or similar type of things, to mean that
23 because Mr. Thornhill was a Minister that he had, he personally,
24 had enhanced ability to earn money and I merely ask him is that
25

MR. COLES, EXAM. BY MR. MacDONALD

1 what he seriously is suggesting to the type of comment I've just
2 read to him. I'm not going to the merits of the case. I'm going to
3 the question and the answer that I get from this witness.

CHAIRMAN

4
5 That's correct. As of now you haven't. We're watching him
6 very carefully Mr. Merrick.

MR. MERRICK

7
8 Fine, My Lords.

MR. MacDONALD

9
10 Q. Did I interpret you correctly, Mr. Coles, that you took these
11 type of comments from the bank to mean that because Mr.
12 Thornhill was now a Minister, he'd be getting more money
13 and he might be better able to pay off his debts.

14 A. Well I think that's what their wait-and-see position was. Now
15 that he was a salaried Cabinet minister, I take their word for
16 it. They had hoped his position would enhance their
17 prospects of collecting. It turned out otherwise as they
18 indicated in their report that he, in their opinion, continued to
19 be insolvent and they took the offer that was available to
20 them.

21 Q. Okay. And so in reaching your decision, and the advice you
22 gave to the Minister, you were satisfied that, first of all, Mr.
23 Coles, or Mr. Thornhill did not obtain any benefit and,
24 secondly, that the banks were not motivated in any way by
25 trying to get some political favour here.

MR. COLES, EXAM. BY MR. MacDONALD

1 A. Certainly. They were motivated. They were motivated trying
2 to collect their debt.

3 Q. But not motivated by trying to get some political favour.

4 A. That is correct.

5 Q. Thank you. Now the RCMP were advised, this in on page 39,
6 on October 29th, 1980, a letter was written to them advising
7 that here is the Attorney General's decision in the matter and
8 he intends to make it public at 3 p.m. today.

9 A. Yes.

10 Q. That was the first contact with the RCMP, was it not, since the
11 time they had delivered their report to you. That is the first
12 contact in connection with this case.

13 A. Probably on my... as far as I'm concerned.

14 Q. And as far as you know, Mr. Gale or Mr. Herschorn weren't in
15 contact with them?

16 A. I wouldn't expect so but I'm... not on this subject.

17 Q. So what happens here is the RCMP file a report saying that
18 they believe that there are grounds for laying charges, asking
19 for the opportunity to consult with a prosecutor and what
20 they get in turn is, "Here is the decision of the Attorney
21 General which will be made public today at 3 o'clock." Yes?

22 A. Well, they got this letter October 29th, yes.

23 Q. And at 3 o'clock today we're going to make it public that
24 there will be no charges laid.

25 A. Yes.

MR. COLES, EXAM. BY MR. MacDONALD

1 Q. Now do you think that that was being responsive to what the
2 RCMP asked you to do?

3 A. Well, I must admit, I didn't anticipate, I wasn't even thinking
4 in terms of the RCM Police. We had been under constant
5 inquiries from the media. They knew that the RCM Police had
6 filed a report and I know I, personally, in my office was daily
7 contacted by the media. They wanted a decision and my
8 concern was once the decision was made by the Attorney
9 General that that should be released as quickly as we could to
10 the media and I, quite frankly, did not think in terms of the
11 RCM Police. Obviously, if I had, I would have devised
12 different course.

13 Q. Did you ever contemplate that the RCMP may not agree with
14 you?

15 A. No. No. I thought they looked to us for advice whether or not
16 there was a basis for laying criminal charges and once that
17 decision was made, I didn't anticipate the reaction, no. I
18 didn't expect it.

19 Q. The decision...

20 A. Because it was a prosecutorial decision, not a police decision.

21 Q. I'm interested in that. You say it's a prosecutorial decision
22 whether to lay a charge?

23 A. No, no. No, whether or not a charge could be prosecuted. In
24 my opinion, if you have legal advice and there's not a basis
25 for the prosecution of a charge, my personal opinion is the

- 1 charge ought not to be laid.
- 2 Q. Now I'm not sure what was sent along to the RCMP with that
3 letter, Mr. Coles. It refers to the Attorney General's decision
4 and then also is a copy of your memorandum which we've
5 just looked at. Would the decision be in the form of the press
6 release?
- 7 A. My recollection is yes.
- 8 Q. And if I can refer you to page 43.
- 9 A. Yes.
- 10 Q. Did you draft that release?
- 11 A. Well, I drafted the one on 43 but the Minister did not act on
12 that release.
- 13 Q. But it was 43 that you suggested the Minister may like to
14 make public.
- 15 A. Yes.
- 16 Q. I'd like to refer to just a couple of things in your draft. And
17 it's the final paragraph that's particularly interesting. Do I
18 take it from that that you were suggesting to Mr. Coles that
19 your opinion should be released publicly?
- 20 A. Well I, that's what it says.
- 21 Q. And that's what you were suggesting.
- 22 A. I had no objection to it. I thought it had all the normal course
23 of events, as you know, it would not be a public document.
- 24 Q. But you considered the...
- 25 A. But I had no objection to it.

MR. COLES, EXAM. BY MR. MacDONALD

1 Q Considering the public nature of this particular matter you
2 were recommending to Mr. Coles or Mr. How that he depart
3 from the normal practice and make it public.

4 A. That's what I put in my draft. I had no discussion with Mr.
5 How until I presented this draft.

6 Q I appreciate that but you were sufficiently confident in your
7 opinion that you were quite prepared to let it go to public
8 scrutiny.

9 A. Yes.

10 Q Do you know why Mr. Coles did not accept that
11 recommendation?

12 A. Mr. How?

13 Q I'm sorry, Mr. How.

14 A. No.

15 Q You do know he did...

16 A. I presume that he wasn't prepared to vary from the practice.
17 I don't know.

18 Q When did you next hear anything about this matter, Mr.
19 Coles?

20 A. You mean from the RCM Police? There was a press
21 conference sometime following this.

22 Q Yes. Between, that was attended by you and Mr. How, I
23 believe.

24 A. Yeah. I think the next time was a meeting that, I'm not
25 certain. I think the meeting in November that the Chief

MR. COLES, EXAM. BY MR. MacDONALD

1 Superintendent requested. I don't recall any dealings in the
2 interim.

3 Q. Let me first of all deal with an event that happened just prior
4 to your meeting with Mr. Feagan and that is the press release
5 that was issued by you out of, in Victoria. Do you recall that?

6 A. Oh, yes.

7 Q. That's on page 58.

8 A. Yes.

9 Q. What gave rise to your issuing that press release?

10 A. Well, I think I received a phone call from Mr. Herschorn and I
11 don't recall now but it had, it was in reference to a statement
12 made by Mr. Kevin Burke to the effect, I think the effect was,
13 that he was taken off the case.

14 Q. And you wanted to respond to that by issuing...

15 A. Yes. I think Mr. Herschorn asked me if I would prepare a
16 statement or...

17 Q. Mr. Herschorn asked you to prepare a statement.

18 A. I'm not sure. He may have asked me or I may have
19 volunteered it. It arose out of that conversation.

20 Q. Let me take you to that press release and the second
21 paragraph.

COMMISSIONER EVANS

22
23 Q. May I just ask you at this stage. At that time was Kevin
24 Burke still a prosecutor or assisting prosecutor?
25

MR. COLES, EXAM. BY MR. MacDONALD

1 MR. COLES

2 Oh, yes. He continued to be for a number of years after that.

3 COMMISSIONER EVANS

4 Q. Is it normal for prosecutors to start talking publicly to, about
5 the investigations they're involved in?

6 MR. COLES

7 Well it's certainly not normal. It's certainly quite
8 exceptional.

9 COMMISSIONER EVANS

10 I'm surprised he's still there.

11 MR. MacDONALD

12 Q. The second paragraph, Mr. Coles, where it says, "It was clearly
13 understood policy and accepted practice..." do you see where
14 I'm reading?

15 A. Yes.

16 Q. "...between the RCMP and the Attorney General's Department
17 that in matters of major, or involved criminal investigations,
18 particularly those involving allegations of so-called
19 commercial crime and fraud, the police investigation into the
20 facts is referred to the Deputy Attorney General or other
21 senior lawyers in the Department..." and so on. Now, I've put
22 that now to Mr. Feagan and I've put it to Mr. Quintal and it
23 was put to David Thomas and it was put to Martin Herschorn,
24 all of whom said they weren't aware of any such policy. Now,
25 was there such a policy?

MR. COLES, EXAM. BY MR. MacDONALD

1 A. That was my understanding, in practice, that that took place.
2 That was a practice, particularly in commercial crime cases,
3 there were a number, there is one, for instance, that was
4 referred to in the testimony that I read in this morning's
5 paper having to do with a highway situation down in
6 Bridgewater, I think, or Lunenburg County. And if I may,
7 with the permission of My Lords, the statement was
8 attributed to Sergeant Plomp and that the inference was that
9 somehow I, as Deputy, blocked the prosecution that was
10 subsequently... in this particular case. Well, I think the record
11 should show that that was one that was referred to us in the
12 Department by the RCMP and it was referred to Mr. Gale. I
13 was involved in it, but we decided we should get an opinion
14 from the then Chief Prosecuting Officer, which is the opinion
15 we did get and the effect of it was that there was not a basis
16 for laying a charge or prosecuting a charge, and Mr. Gale and I
17 concurred in that opinion and too, I wrote the letter to that
18 effect, and I suppose that's the only part that surfaced to, as
19 far as Sergeant Plomp was concerned, but it's incorrect to say
20 that there was any blocking of the prosecution as was implied
21 by that statement.

22 Q. The statement is on page 75 of that booklet.

23 A. Well, I was referring to what I saw in the paper this morning
24 and there are others, Canadian Distilleries, there was a major
25 investigation. That was referred to us for an opinion and that

MR. COLES, EXAM. BY MR. MacDONALD

1 was...

2 Q. That, as well, and that's been referred to here a couple of
3 times in the last few days, that is another case that has
4 political connotations, doesn't it?

5 A. Yes.

6 Q. Yeah. And so did the one involving Rhodenizer.

7 A. Well, I don't think so.

8 q. No?

9 A. Not that I can recall. Well, he was a government employee, I
10 think he was. He was a highway, a foreman, I think he... Well
11 there are a number of cases, commercial crime cases, by their
12 nature, and there's no reason to, in my logic, that they should
13 be called commercial crime cases. They're criminal cases,
14 but, however, there's a section that deals with them because
15 the nature of those particular offences involving the staff of
16 the VG Hospital, Lands & Forest people...

CHAIRMAN

17
18 Well, Mr. Coles, I don't want to get into discussions about
19 other cases, other than the one that we're dealing with today and
20 the one we're dealing with next week.

MR. COLES

21
22 My purpose, My Lord, is simply to say there was a practice
23 of this referral to the Department to answer my learned friend.

CHAIRMAN

24
25 Right. I don't mind you saying that but I don't want details

MR. COLES, EXAM. BY MR. MacDONALD

1 of...

2 MR. MacDONALD

3 Q So I understand your evidence, the practice is in certain cases,
4 and perhaps we'll try and define them generically, there is a
5 policy that the RCMP go directly and report only to you or
6 your senior officials and are not allowed to have any contact
7 with Crown Prosecutors.

8 A. No, that's not what I said. I said that they make these
9 referrals to the Department for an opinion and then a
10 determination as to who, what prosecutors, if there is to be a
11 prosecution, should it be assigned to

12 Q Is there any other case, and please let's have... recognize what
13 the Chairman has just told us, and we won't identify if there
14 are particular names, but are there other cases that you're
15 aware of, or the RCMP have been told, "You're not to have any
16 contact at all with the Crown Prosecutors. If you've got any
17 problems, you're not to go to them to ask for their advice."

18 A. Well, no, but in the way you're phrasing the question, Counsel,
19 with all deference, that was not the position put to them in
20 this case. They were told to deal directly with us and then...
21 and I would have expected if they were dissatisfied with that
22 arrangement they would have said so and they would have
23 asked to have access to whoever they thought they ought to
24 have access to.

25 Q But the instructions given to them, and you've agreed with

1 me this morning and they're in Mr. Gale's letter of July 25th,
2 the instructions were that no charges were to be laid nor was
3 any contact to be made with prosecutors concerning this
4 matter until you had finished your investigation and
5 forwarded a report to this Department. Now my question to
6 you, sir, is are there other cases where those instructions
7 were given to the RCMP?

8 A. Not to my knowledge.

9 Q. Thank you.

10 A. But, my I add a supplementary, as they say?

11 Q. Certainly.

12 A. But that was understood in this particular case with the RCM
13 Police and they, at no time, expressed any dissatisfaction with
14 that arrangement and that is why we were somewhat
15 surprised to have Corporal House make the contact he had.

16 Q. Mr. Thomas gave evidence last night that he was a little upset
17 with the press release that was given by you and that when
18 you, first of all, he had Mr. Herschorn contact you to ask if
19 you would issue a clarification and the advice he received
20 back was that you would not. Do you recall that contact from
21 Mr. Herschorn advising that Thomas was upset?

22 3:20 p.m.

23 A. I don't recall.

24 Q. Okay.

25 A. But...that Mr. Herschorn said that...

1 Q Mr. Thomas said it.

2 A Oh, Mr. Thomas.

3 Q And if Mr. Thomas says it, I assume...

4 A I presume if he said he was upset he was upset. I don't
5 recall being...

6 Q Well, he also said that when he returned to Halifax he made
7 an appointment to see you and anticipating you were going
8 to tell him you wouldn't do anything, a half hour later to see
9 the Attorney General, and an hour later than that, after that,
10 he had an appointment to see the press if there wasn't a
11 change, do you recall that?

12 A No, not specifically, no.

13 Q Why did you issue an amendment to the press release?

14 A Well, I think as a result of a conversation I may have had
15 with either Mr. Gale or Mr. Herschorn, that it wasn't my
16 initial...my initial release was not as clear as it might...as it
17 should have been.

18 Q You did not...

19 A It was issued when I was in Vancouver at the time.

20 Q When were you in Vancouver, do you remember? The first
21 press release, according to our information, is November the
22 6th.

23 A Well, that would be the time I expect.

24 Q And unfortunately we don't have any actual date on the
25 release so I...

1 A. It was dictated by me from Vancouver.

2 Q. But the amended is dated November 13th, which is a week
3 or so later. I can give you that. That's on page 60.

4 A. Yes. And my recollection is I was in my office at that time.

5 Q. You were back at the time the amendment was made.

6 A. Yes, uh-hum.

7 Q. Do you not recall Mr. Thomas coming to see you, being quite
8 upset and insisting that there be a change?

9 A. Well, I don't honestly recall it, but he may have, I don't
10 recall it, no.

11 Q. This would be a common occurrence for someone to be
12 coming to your office saying, quite upset, "I want changes,"
13 and then going to see the Attorney General?

14 A. No, I wouldn't think so.

15 Q. Do you recall the meeting with Mr. Feagan in November?

16 A. Yes.

17 Q. Did you keep any notes of that, sir?

18 A. No.

19 Q. What do you recall about it?

20 A. Oh, I've had a chance...opportunity of reading Mr. Feagan's
21 notes. I think in substance he captured the meeting.

22 Q. Okay.

23 A. He attributed some statements to me I don't recall making
24 but I...he may have very well have come to those
25 conclusions from things that I said at the meeting.

1 Q Okay.

2 A. But I don't think I said them in those...

3 Q Is this the first time you were aware that the RCMP were
4 upset over what had...the course that you had followed here
5 or the Minister had followed in issuing a press release
6 saying there will be no charges?

7 A. To my recollection, yes.

8 Q Now let me take you to some of the comments of Mr. Feagan.

9 A. May I have the page number?

10 Q Yes, I'm sorry, page 64 is where I'm going first of all.

11 A. Uh-hum.

12 Q About two-thirds of the way down he says, "He stated," that
13 would be you,

14
15 He stated that he recognized the right of police to
16 lay charges but in this particular case we had
17 asked for his legal opinion and he had given a
18 decision after two other senior lawyers of his
19 department, Mr. Gordon Gale and Mr. Martin
20 Herschorn and himself, had carefully researched
21 the law.

22 Would you have told that to Mr. Feagan?

23 A. Well, I'm not sure I said exactly that, but that would be the
24 effect of what I had to say.

25 Q And that was your understanding, and I take...

A. Yeah, I never..

Q ...what you said, in any event, all three of you carefully

1 researched the law.

2 A. Well, I was under the impression that they would
3 have...they would have done so, yes. I should say if I may,
4 counsel, that I at no time questioned his right to lay a
5 charge. I did make it clear at some point in this discussion,
6 I'm not sure whether it was...whether it's copied here, that I
7 would question his judgement should he decide to do so
8 after the Attorney General has exercised his prosecutorial
9 responsibility.

10 Q. Don't you really feel that you handicapped him in this case
11 by going public before giving him the opportunity to discuss
12 it?

13 A. In hindsight probably so, and that was certainly not
14 intended. That was not the purpose of my doing so and I
15 didn't, as I said earlier, I hadn't even thought about the
16 response that the RCM Police might give to that. I was
17 thinking more in terms of responding to the inquiries that
18 were being made by the media.

19 Q. But from a practical point of view, the press release having
20 been issued it makes it extremely difficult for (a) for the
21 RCMP to lay a charge or (b) for the Attorney General not to
22 stay it.

23 A. Yes, I appreciate that. But as I say, that was not...that was
24 not part of the purpose or intention of doing so.

25 Q. Okay. On page 65, the top of that page, sir.

1 I stated further that I viewed his advice as
2 assistance to us and felt that we should have
3 been given the opportunity to discuss the matter
4 further before a final decision was reached as to
whether or not charges should be laid.

5 Would you agree that that in hindsight is the procedure that
6 should have been followed?

7 A. Yeah, I have no doubt.

8 MR. PINK

9 What page is that?

10 MR. MacDONALD

11 Page 65 at the top of the page.

12 Q. Let me take you over to page 66, toward the middle of that
13 page,

14 He pointed out that he and the Attorney General
15 were responsible to the people of the province,
16 that he was a senior attorney acting for and on
17 behalf of the department and he had, after
18 careful research, not only given an opinion, but
19 had made a decision in the case, and by
20 presenting argument about his decision I was
21 placing myself and the force in a most serious
22 position. He stated that I had absolutely no
23 business questioning a decision of the
24 department and he intimated that he and I
25 would not be able to continue to work together
in the future if I displayed such a lack of
confidence in him. He suggested I go home and
reflect on the whole matter

Would that be your recollection of the discussions?

1 A. Well, I don't know if I, you know, I...that may have been the
2 response or feelings he took, but what I...what I stated and
3 very loud and clear, as loud and clear as I thought was
4 necessary, and I suppose that's why the Chief
5 Superintendent makes reference to me being emotional, he
6 being a very soft-spoken person and I suppose to hear
7 someone speak in loud, clear tones gave him the reason to
8 attribute emotionalism. But, no, I was very, very serious
9 about the role of the Attorney General, that law officers of
10 the Crown had the duty and obligation to offer advice and
11 the Attorney General had the, not only the constitutional
12 and statutory, but the contractual authority to decide as to
13 whether a matter warranted a prosecution or not and he
14 had made a decision, and having made that decision, I
15 thought that that foreclosed the debate that...that the Chief
16 Superintendent was raising, namely that they had, in his
17 words, he kept referring to a *prima facie* case. Well, it
18 seemed to me that you had have more. The evidence had
19 to go beyond that required for the laying of a charge for it to
20 be successfully prosecuted and that was the essence of the
21 differences between us, and I think I pointed out to him
22 that the fact that there is evidence for...on probable and
23 reasonable grounds doesn't necessarily satisfy the
24 requirements of the prosecution, and I think that was the
25 essence that...of the debate between us from which he drew

1 these statements, as I recall it.

2 Q. Why wouldn't you say to him, "Look it's really not a
3 question of the legal authorities here. The fact is in my
4 opinion there was no benefit, or if there was the Premier
5 authorized it," that's the end of it?

6 A. Well, the discussion didn't get into those specifics. The
7 decision had been made by the Attorney General at that
8 time.

9 Q. Well, the decision had been made by you and Mr. How ...

10 A. I advised him and he accepted my advice.

11 Q. ... accepted it.

12 A. Yes.

13 Q. Now Mr. Feagan, I can direct you to it if you like, but he said
14 several times in the memo says you've told him you have no
15 intention of changing your mind, "You can submit whatever
16 you like to me, I'll read it, but I have no intention of
17 changing my mind." Would that be a fair...

18 A. I don't think so.

19 Q. You don't think you would have said that.

20 A. I don't think so. I don't think the question was even put to
21 me.

22 Q. Were you prepared to have your mind changed?

23 A. I don't know. That's hypothetical. I don't know. There was
24 nothing advanced that gave me reason to change my mind.

25 Q. Okay. Did Mr. Feagan or anyone in the RCMP ever give to

1 you a copy of the legal opinion they had that was prepared
2 by Sergeant Plomp?

3 A. No.

4 Q. Did you ever suggest to them that no one in the force has
5 the type of experience, legal experience, that could give an
6 opinion that would have any weight anyway?

7 A. No.

8 Q. Pardon?

9 A. No.

10 Q. No.

11 A. But, of course, you must remember that under the contract
12 the force was obliged to take their legal advice from the
13 Attorney General of the province in respect to matters
14 pertaining to the province.

15 Q. There is suggestion in the RCMP documents, which wouldn't
16 have come to you, but there are suggestions that because
17 there is a difference of opinion, at least a perceived
18 difference of opinion on the law here, that it would have
19 been...it would not have been inappropriate to suggest to
20 you that you should have...get an outside legal opinion. How
21 do you think you would have reacted to that suggestion?

22 A. Oh, I don't know. I think that would have been a matter for
23 the Attorney General.

24 Q. But wouldn't...the Attorney General would ask for your
25 advice.

1 A. Well, if he had, then I would have had to consider it. I
2 couldn't answer a question like that.

3 Q. Have you ever had that happen to you?

4 A. No.

5 Q. Has there ever been a circumstance where you've gone
6 outside of the department for an opinion on a criminal law
7 matter?

8 A. I don't know. There may have been, there probably have,
9 but I don't know. Mr. Gale would be in a better position to
10 answer that question.

11 Q. Okay. You have no knowledge of...it doesn't immediately
12 come to your mind of having done...

13 A. I don't recall any such experience.

14 Q. Let me take you to documents and it starts on page 77, it's
15 from Mr. Christen to his CO, and I assume you don't get
16 copies of these internal documents and the first time you
17 would have seen them was...

18 A. A couple of days ago.

19 Q. A couple of days ago. Down at the bottom of that first long
20 paragraph on page 77 it says, "Mr. Coles had indicated he
21 does not consider legally trained members of this division
22 sufficiently experienced to draw the proper conclusions in
23 this case." You don't recall saying that to anyone in the
24 RCMP?

25 A. I don't recall it. I don't know where...where this comes...is

1 this...is he suggesting I said that to him?

2 Q. I think he's talking about the discussion you had with
3 Feagan.

4 A. Oh, I see.

5 Q. Were you expecting Mr. Feagan to come back to you with
6 some sort of a brief or an opinion or something at the end of
7 your meeting in November?

8 A. Not that I recall. Not that I recall. I think there was...I think
9 there was some reference to the fact that he had an internal
10 opinion from a Sergeant in his, you know, in the force and
11 I'm not sure, but it seems to me he raised the question "Can
12 I send it to you?" and I think I replied, "Yes," or in the
13 affirmative. I don't recall. But there is some reference to an
14 internal opinion that he had and...

15 Q. Were you expecting anything to happen after that meeting
16 in November?

17 A. No. Well, he indicated that he had to report to...or was going
18 to report to the Commissioner and we knew that, and I
19 didn't have any anticipation that there would be anything
20 further, but I didn't address my mind to it. I didn't know
21 whether there would or wouldn't.

22 Q. Okay. At the bottom of this page 77 and continuing over,

23
24 It is unfortunate the Attorney General's
25 Department elected to deal with this matter in
the manner in which they did by releasing their

1 findings publicly and at the same time providing
2 us with a copy of their decision, the whole
3 matter was thrown immediately into the public
4 forum. This effectively closed down
5 communication, in my mind, and does not now
6 allow for a reversal of opinion by the Attorney
7 General.

8 I think you've agreed that, at least practically speaking,
9 that's correct.

10 A. Yes, uh-hum, well, except for the last line, that's for the
11 Attorney General whether he would feel that he could take a
12 different position. I mean, I can't speak to that.

13 Q. You can't speak to for the actual person, but you'll agree that
14 practically, having gone public and saying there is no
15 evidence to lay...to warrant the laying of a charge, he's not
16 likely to prosecute.

17 A. And in my opinion I would...if I had been asked for it, I
18 would have said I would still have held that opinion that
19 there was not evidence to warrant a successful pros...or
20 to...for a successful prosecution, therefore, charges ought not
21 to be laid, that's right.

22 Q. Okay. Now it's the next paragraph I'd like to see if you have
23 any knowledge about. He says,

24 In speaking with Mr. Gordon Gale, he implied
25 both and he and Herschorn supported the
Deputy Attorney General's finding and again
referred to the case of The Queen and Cooper.
Mr. Gale further advised it was the Deputy

MR. COLES, EXAM. BY MacDONALD

1 Attorney General's wish to release his findings to
2 the press at the time of his release in order the
3 press could have the decision researched by
4 their counsel before drawing an improper
5 conclusion on their own.

6 Now was that the motivation behind your suggestion that
7 the opinion should be released?

8 A. No, and I'm sure the gentlemen of the press would be
9 surprised with such generosity on my part, no, of course not.

10 Q. So your intention or your motive for releasing or suggesting
11 that your opinion be released had nothing to do with trying
12 to cut off any...

13 A. No.

14 Q. ...drawing of improper motives here.

15 A. No, of course not.

16 Q. Now let me take you to page 98. That is the letter you
17 received from Mr. Feagan. Do I take it that was the next
18 contact you had from him in connection with this case after
19 your November meeting?

20 A. I would think so.

21 Q. Were you ever told by Mr. Feagan that in early November
22 there was a meeting convened in Ottawa attended by, I
23 think, it's fifteen or so senior members of the force for the
24 purpose of reviewing this case?

25 A. I was told at one point that he had gone to Ottawa and I
think he, if my recollection serves me correctly, he indicated

1 that he and others had gone to Ottawa, but beyond that I
2 had no knowledge of the reason for his...well, I knew he was
3 going up on this case but I had no knowledge of any such
4 meeting.

5 Q. Would you have been interested to know that at a meeting
6 attended by deputy commissioner, assistant commissioners,
7 the very senior people in commercial crime divisions in
8 Ottawa and in Halifax, it was unanimously concluded that
9 the facts in this case supported a *prima facie* case under
10 section 110(c) and that charges were to be laid?

11 A. And your question was, would I have been interested.

12 Q. Would you have been interested to know that?

13 A. Oh, of course, I think I would have, but again from a
14 prosecutorial point of view, we're not talking about a *prima*
15 *facie* case, we're talking about a case that will support a
16 conviction and I'm not so sure that that, you know, that
17 would be all that helpful. But in any event I had...I knew
18 that the report had gone to Ottawa and I would expect there
19 would be some consideration of the report by the
20 Commissioner, but of the meeting, no.

21 Q. In this letter on page 98 the end of that first long paragraph
22 on the first page where Mr. Feagan is talking about the
23 intent required under section 110(c) he says, "I am
24 attaching material put forward by my investigators for your
25 information." Are you aware, can you tell us today what

1 information was given to you?

2 A. No, I don't.

3 Q. But you do recall or you do not recall ever receiving a legal
4 opinion.

5 A. Well, not that I recall.

6 Q. What did you take from Mr. Feagan's letter?

7 A. Well, I suspect I took the last paragraph on page 99, that
8 advice.

9 Q. That charges against Mr. Thornhill and the banks will not be
10 laid in contradiction to your wishes or to the wishes of the
11 Attorney General.

12 A. Well, "wishes" is his word. I would have thought
13 contradiction to the decision of the Attorney General.

14 Q. Okay. Now in your opinion, let me first of all take you back
15 to the first page, where Mr. Feagan says, "As he explained to
16 you during our meeting, I feel there are reasonable and
17 probable grounds to lay a charge." Now what do you say is
18 the...we're talking theory now, what is the proper resolution
19 of a situation where the police feel that there are reasonable
20 and proper grounds to lay a charge and the Attorney
21 General's Department says, "We don't believe that there are
22 sufficient grounds or sufficient evidence to support a
23 conviction," what should happen?

24 A. Well, in my view the responsible authority is the Attorney
25 General. He has the prosecutorial responsibility and, you

MR. COLES, EXAM. BY MR. MacDONALD

1 know, there is...the laying of a charge on reasonable and
2 probable grounds can be just as damaging as a conviction on
3 the charge and if there is not, in the opinion of the
4 prosecutor, sufficient evidence to support a successful
5 prosecution, then I have real concerns about the wisdom
6 and judgement of laying a charge in the light of that opinion.
7 And my view is that the prosecutor is the person who has
8 the final say because he has the authority to withdraw, offer
9 no evidence, enter a stay.

10 3:40 p.m.

11 Q. But doesn't, if you follow that line, and I'm talking theory
12 now, doesn't that take away the safeguard of having at least
13 the Attorney General's Department or the prosecutors
14 publicly take a stand that there is no evidence here.

15 A. No, I think it adds safeguards. It prevents the laying of
16 charges that ought not to be laid, in my own personal view. I
17 wish we were in a position with the resources so that the
18 police are required to consult with legal counsel and get the
19 advice on the evidence and the prospects of a successful
20 prosecution. And if the legal opinion is that it's not there, I
21 question the judgement of laying a charge.

22 Q. And would say that in those circumstances charges should not
23 be laid.

24 A. That would be my opinion, yes.

25 Q. Okay. Now you appreciate there's a quite a bit of academic

MR. COLES, EXAM. BY MR. MacDONALD

1 writings that would be directly opposed to that.

2 A. Yes. But, you know, if you, if I may, you know, if you carry it
3 to the logical conclusions, what you're doing in effect is
4 transferring the prosecutorial responsibility to the police.

5 Q. But isn't it the...

6 A. And that seems to me is a very dangerous concept and one
7 that you want to consider very carefully before exercising.

8 Q. But I was always under the understanding or impression that
9 these are, it's a two-stage thing. The police decide from an
10 investigator's point of view whether or not there were
11 reasonable and probable grounds to say that a crime has been
12 committed.

13 A. That's right.

14 Q. And if the policeman considers that there are, he should lay a
15 charge.

16 A. He has the right to lay a charge.

17 Q. He has the right. That's probably better...

18 A. But if he seeks out legal counsel for an assessment of the facts
19 and the law and evidence is available and that advice is that
20 that the charge is not supportable in the sense that it does...
21 the facts don't lend themselves to a successful prosecution,
22 then my view would be that that the police ought not to
23 exercise that right in those circumstances.

24 Q. Okay. Thank you. Let me take you to 103 again, Mr. Coles.
25 We referred to that briefly this morning and I only want to

MR. COLES, EXAM. BY MR. MacDONALD

1 refer you to the last sentence in the second paragraph. And,
2 in fact, the whole second paragraph. The suggestion being, or
3 the impression being from that paragraph that those cases,
4 Ruddock and Williams and other cases were read in detail
5 and, by you and your senior staff members. Now, did you
6 intend to include in there the suggestion that Coles, Herschorn
7 and Gale had all read those cases in detail?

8 A. Well I don't think, it certainly reads that way. I don't think
9 so. I assumed, I assume that they would have read the cases
10 that were applicable to the factual situation as well as I and it
11 was an assumption on my part.

12 Q. Mr. Herschorn testified this morning that he, in fact, if, in fact,
13 this was referring to him, then it would be inaccurate because
14 he did not.

15 A. Well it was an assumption on my part.

16 Q. Thank you. Now I was going to take you through the
17 exchange of correspondence between you and Mr. Feagan but
18 I, in dealing with the proper role of the Crown counsel and
19 prosecutors, but I believe you've already told me your view
20 and that's what you tried to set out to Mr. Feagan as well, I
21 think, isn't it, that in your view...

22 A. Yes.

23 Q. That if you seek the advice of a prosecutor and the prosecutor
24 is of the opinion that you're not going to get a successful
25 prosecution, then charges should not be laid.

MR. COLES, EXAM. BY MR. MacDONALD

1 A. That's my view.

2 Q. That's your view.

3 A. Yes.

4 Q. And that was the view you put across, or tried to put across
5 to Mr. Feagan on behalf of. You're speaking there on behalf of
6 the Department of the Attorney General?

7 A. Well, no, I suppose whenever I speak I'm presumed to be
8 doing that but it was, as I referred in the first paragraph,
9 "your request for my views" and I wouldn't represent them
10 beyond that.

11 MR. MacDONALD

12 That's all I have for Mr. Coles. Thank you, sir.

13 EXAMINATION BY MR. PRINGLE

14 Q. Mr. Coles, my name is Al Pringle, I'm counsel for the Royal
15 Canadian Mounted Police. I have a few questions for you.
16 The meeting that you referred to in February of 1980, the
17 first meeting, you referred to yourself and senior staff of the
18 Department being there. Who were the other senior staff that
19 were present at that meeting?

20 A. I don't recall exactly but I would presume they were Mr. Gale
21 and possible Mr. Herschorn, but I'm not certain whether he
22 would have been there.

23 Q. Well, who else would be senior staff in the Department of the
24 Attorney General in February of 1980 besides those two
25 gentlemen?

MR. COLES, EXAM. BY MR. PRINGLE

1 A. Well they would be the appropriate ones for this matter, yes.

2 Q. Okay. Would you...

3 A. But I'm not sure whether they were both there.

4 Q. Could you refer, please, to page 8 in the big book of
5 documents which is Exhibit 165. That's a memorandum from
6 Inspector McInnes and dated the 15th of April 1980 to,
7 actually to the Commissioner in Ottawa, but I want to refer
8 you to the second paragraph and about five lines down where
9 the Inspector writes as follows, "While not highlighted in this
10 report, I would like to mention that on April 9th, the
11 Attorney General and Deputy Attorney General had
12 conversation with Inspector Blue, and I am informed that
13 some attempt was being made to use Superintendent
14 Christen's press release in such a manner to suggest that our
15 investigation established no indication of any wrongdoing."
16 Do you recall anything about that? A meeting on April 9th
17 with...

18 A No.

19 Q. Inspector Blue. Do you have any notes of any meeting with
20 Inspector Blue.

21 MR. PINK

22 It doesn't say that there was a meeting. I think there was a
23 just a conversation.

24 MR. PRINGLE

25 Q. Okay. Do you recall any conversation, any contact with

MR. COLES, EXAM. BY MR. PRINGLE

1 Inspector Blue on April 9th?

2 A. No.

3 Q. When do you make the decision, sir...

4 A. Pardon me. I don't understand the statement either. I mean
5 the press release spoke for itself I would think.

6 Q. Yeah. You were aware that there was an earlier press release
7 by Superintendent Christen earlier in the year. You were
8 aware of that. In fact, you referred to it in your direct
9 evidence.

10 A. Yeah. Isn't that the one you're referring to here?

11 Q. Yes.

12 A. Yes.

13 Q. And I guess what I'm asking you to comment upon Inspector
14 McInnes' comment that later, when the investigation got fully
15 started on April 10th, was there any contact between you and
16 Inspector Blue concerning reference to that earlier press
17 release and utilization of it.

18 A. No, not that I recall.

19 Q. Thank you. I'd like you to tell me, sir, exactly who in the RCM
20 Police, as you understand it, received your direction or advice
21 or whatever it was, as you have testified, that there was to
22 be... contact was to be with the Deputy Attorney General's
23 Department or the Attorney General's Department rather than
24 Crown Prosecutors. You've testified about the RCM Police
25 agreeing to that, three or four times, and I'd like to know who

1 you...

2 A. Well Mr. Gale. Mr. Gale had the contact with the RCM Police.

3 I don't know who, in particular, it was with.

4 Q. Are you aware, sir, that in these documents, you've read
5 them, have you, this Exhibit, 165? Have you read through
6 that document in some detail? The booklet.

7 A. This document?

8 Q. Yeah.

9 A. Yes, I had it a couple of days.

10 Q. Would you have a look at page 20, please. And that is a
11 memorandum from Superintendent Christen by date of the
12 5th of August 1980 to the Commissioner in Ottawa. In the
13 first paragraph Mr. Christen writes, "I personally contacted
14 Mr. Gale on the 31st of July, 1980, concerning his statement
15 that he had advised me Crown counsel was not to be
16 contacted in this matter until the Attorney General had been
17 fully apprised of the evidence. I informed Mr. Gale I had no
18 recollection of his having done so and I am certain if he had I
19 would have remembered." Did Mr. Gale ever advise you of
20 any contact, as such, by Mr. Christen?

21 A. No. I say, no, not to my recollection.

22 Q. Page 12, if you could refer to that for a moment.

23 A. Page 12?

24 Q. Yes, of the same booklet, Exhibit 165. That's the memo to file
25 by Inspector McInnes and in the second paragraph McInnes

MR. COLES, EXAM. BY MR. PRINGLE

1 writes to file in his memo, "Needless to say, I also informed
2 Mr. Gale that I was not in any position to instruct our
3 members not to seek Crown counsel, bearing in mind that it is
4 normal practice when investigations are conducted, whether
5 they by minor or major in nature." Did Mr. Gale ever advise
6 you of that contact or that discussion with Mr. Inspector
7 McInnes?

8 A. Not to my recollection.

9 Q. Inspector McInnes was in Commercial Crime, was he not?

10 A. At the time?

11 Q. Yes.

12 A. I under-, I believe he was, yes.

13 Q. Now Superintendent, then Chief Superintendent Feagan,
14 testified before these proceedings, and it's in Volume 83 at
15 page 14508 that he has no recollection of any instructions not
16 to contact, or any direction not to contact the Crown
17 Prosecutors in this matter.

18 A. Well I thought, reference was made to a letter of Mr. Gale...

19 Q. Yes, the letter of July 25th.

20 A. Yeah.

21 Q. Prior to that, is it your testimony that there was a direction or
22 an agreement by the RCM Police that there would be no
23 contact with any Crown counsel?

24 A. It was my understanding that was so.

25 Q. Notwithstanding that Inspector McInnes writes on page 12

MR. COLES, EXAM. BY MR. PRINGLE

1 and 13 of Exhibit 165 that he thought such a practice would
2 be tantamount to obstruction.

3 A. I wasn't aware of his memo.

4 Q. It doesn't look like he agreed, does it.

5 A. I beg your pardon?

6 Q. It doesn't look as if he agreed, does it.

7 A. I have no comment on his memo. I don't know whether he
8 did or not.

9 Q. And we've seen that Superintendent Christen didn't agree.
10 Correct?

11 A. Well I don't know if that's correct.

12 Q. And Superintendent Feagan has testified that he has no
13 recollection. Who else in the RCM Police, in Commercial Crime
14 or at "H" Division could possibly have received such a... made
15 such an agreement with yourself and Mr. Gale in 1980?

16 A. Well you'll have to put that question, Counsel, to Mr. Gale.

17 Q. Okay.

18 A. I don't know. I didn't communicate that to anybody.

19 Q. Did you...

20 A. Other than Mr. Gale.

21 Q. Did you ever ask Mr. Gale who he spoke with?

22 A. No.

23 Q. Did he ever tell you?

24 A. Not that I recall.

25 Q. Thank you. I'd like to refer you to some evidence that you

MR. COLES, EXAM. BY MR. PRINGLE

1 gave in the last session of this Inquiry and it's Volume 77 at
2 page 13711. Mr. Spicer...

MR. ROSS

4 What was the reference again?

MR. PRINGLE

6 Q It's Volume 77, page 13711. Actually it starts at page 13710
7 and Mr. Spicer was asking you as follows and I'll just read
8 these questions to you.

9
10 Q Are there situations where police reports
11 would not go to local prosecutors but
would go directly to the AG's office?

12 A. Oh yes, many.

13 Q And have there been situations where
14 you, where you have requested that that
15 be done, that the report go to the Attorney
General's office?

16 A. Yes.

17
18 Q And have there been more than one of t
hose cases?

19
20 A. There have been more than one that came
21 to our office as distinguished from a local
22 prosecutor's office but I can only recall one
where, I, it was at my request.

23 Q Is there then, is there or is there not, a
24 policy in connection with complex cases
25 where police reports would go directly to
your office?

MR. COLES, EXAM. BY MR. PRINGLE

1 A. Oh I think my recollection is that all
2 complex cases, quite apart from who was
3 going to be involved in the prosecutorial
4 decision, they were all copied to our office.

5 I'd just like to ask you, sir, were they copied on all occasions
6 or were they sent there on these complex cases for a decision
7 by your Department?

8 A. Well, I don't recall. I think, some involved in assessment.
9 Whether or not there's a basis for a charge and, if so, a
10 request to have a prosecutor assigned, that was the case in
11 respect to one that I alluded to earlier down the South Shore.
12 That was the case in respect to the Canadian Distilleries.
13 There are several of that kind.

14 Q. Yeah. But were they copied to your office on all occasions,
15 these complex cases, and would they, mostly remain with the
16 prosecutor's office for actual prosecution?

17 A. Well, the ones I've just referred to came directly to our office
18 in, to my recollection.

19 MR. PRINGLE

20 Thank you very much.

21 EXAMINATION BY MR. ROSS

22 CHAIRMAN

23 Mr. Ross?

24 MR. ROSS

25 Q. Four possible questions. Just to pick up, Mr. Gale[sic], from

1 my learned friend. About these complex cases, would you
2 agree with me that your interpretation of complex would
3 really depend on the individual being investigated rather
4 than the conduct being investigated?

5 A. No.

6 Q. I see. And as far as your evidence, it appears as though
7 there's an unwritten policy or a practice which approves of
8 the involvement of the most senior members of the Attorney
9 General's Department during the investigations of certain
10 criminal activity?

11 A. Well, some, cases that are referred to us are dealt with by the
12 senior members of the Department and we decide whether or
13 not we will refer them to a prosecutor for an opinion or
14 whether we'll answer the request within the Department.

15 Q. And when you say "referred to you," referred to you from
16 where, from whom?

17 A. By the RCM Police.

18 Q. By the RCMP, I see. And, but this referral, or the involvement
19 of senior members from your, from the Attorney General's
20 Department, is a departure from the normal practice, isn't it?

21 A. Yes.

22 Q. And is it fair to say that this departure is out of concern for
23 the protection of the subject of the investigation?

24 A. No, some of these cases are involved and complex and take a
25 lot of time and I suppose it's a matter of convenience. They

1 come directly to us because invariably we would be involved
2 in the decision-making process.

3 Q. But just for these unusual circumstances, it's not run of the
4 mill.

5 A. No, that's right. Normally the police will go directly a local
6 prosecutor unless they decide otherwise. It may be a case
7 where it is a commercial crime case, the local prosecutor may
8 not be available to handle the case. I mean...

9 Q. And is, well ,then are you aware of any circumstances in
10 which the senior staff from the Department became involved
11 for the protection of the names or reputations of persons
12 other than those in a position to exercise political power?

13 A. Well, I don't even recall them being involved for the purpose,
14 of the exception that you put at the end of your question. No,
15 they don't get involved for that purpose.

16 Q. Well, I didn't suggest they get involved for that purpose. I'm
17 asking if you're aware of any circumstances where the high
18 officials from the Attorney General's Department get involved
19 when the person being investigated is not an individual who
20 is in a position to exercise real political power.

21 MR. PINK

22 I have to object to that question.

23 MR. COLES

24 I'm not sure I understand...

25

1 MR. PINK

2 The premise upon which the question is based is not
3 substantiated in the facts that Mr. Coles has attested to.

4 MR. ROSS

5 Q. No, My Lord, I think that I've pretty well laid the ground
6 what I asked him first what, what was the usual procedure.
7 I asked him about the departure from the procedure and
8 I'm now asking him if he's aware of any circumstances when
9 the departure from that procedure involved other than
10 those who were in a position to exercise real political power.
11 4:00 p.m.

12 MR. CHAIRMAN

13 The question would be, other than those, any one. See other
14 than those, you start off on the premise that that has been done.

15 MR. ROSS

16 Q. Precisely. Well I'll just change that one word to anyone.

17 A. Well, the answer to that is yes. We had a case, I don't know
18 if I should mention it, but...

19 Q. Not the name.

20 A. The case.

21 Q. We don't want any identification.

22 A. All right. Well, there's been reference to a case on the south
23 shore. Now I don't know that that particular person would
24 fall into your category of exercising political power. I would
25 not think so. But that's a case that affected an individual

1 who I would not think would fit into your definition of one
2 who exercises political power, and that case was referred to
3 us, yes, for an opinion.

4 Q. And but are there any other cases in which you got involved
5 on your initiative?

6 A. On my own initiative, not that I know of.

7 Q. But you did so on this case, didn't you?

8 A. In this one?

9 Q. Yeah.

10 A. Well, I did so because the, as I explained, the basis for my
11 advice to the Attorney General and he...the Attorney General
12 of the day and he said, "I'll leave it with you," and so I
13 assumed that I had charge of this particular file, yes.

14 Q. And this was the only one that there was a reference back
15 from the Attorney General for you to look after.

16 A. Yes.

17 Q. I see. Thank you very much.

18 MR. CHAIRMAN

19 Mr. Merrick.

20 EXAMINATION BY MR. MERRICK

21 Q. Mr. Coles, indeed I would presume that you might consider
22 it a dereliction of duty of the Deputy Attorney General if, in
23 a situation involving a cabinet Minister the Deputy Attorney
24 General didn't personally get involved and at least become
25 aware of what was going on.

MR. COLES, EXAM. BY MR. MERRICK

1 A. Well, you know, I would have to be involved in any event,
2 whether it was left with me or not, of course.

3 Q. Yes. Now let me come to a point I want to clarify with you.
4 The RCMP submitted their report to the Attorney General's
5 Department. The report was considered by you and other
6 senior staff members. A decision was made, a
7 recommendation was made by you and an announcement
8 was made by the Attorney General. Your next real meeting
9 then, I take it, was your meeting with Mr. Feagan on
10 November the 12th when he came in and met with you in
11 your offices. From that point onward, Mr. Coles, am I correct
12 in my reading of the evidence that the real concern of the
13 RCMP at that stage was not whether or not a *prima facie*
14 case existed against Mr. Thornhill, but what they perceived
15 to be an infringement of their privilege or ultimate right to
16 decide on whether charges were to be laid and whether that
17 had somehow been interfered with by the press release that
18 had been granted? In other words, is it not true that from
19 November the 12th on, the real thing that was concerning
20 the RCMP was this question of procedure or privilege.

MR. PRINGLE

21
22 Oh, with respect, how would this witness know actually
23 what was concerning the RCM Police.

MR. CHAIRMAN

24
25 Pardon.

MR. COLES, EXAM. BY MR. MERRICK

1 MR. PRINGLE

2 How would the witness know actually what was concerning
3 the RCM Police? That would be a proper question for them
4 perhaps.

5 MR. CHAIRMAN

6 About the only way you can answer it is you can read...that
7 one can reach a logical conclusion that they were concerned with
8 respect to the procedure, wanted an assurance...

9 MR. PRINGLE

10 I'm sure they were, and I expect they were.

11 MR. MERRICK

12 Well, I'll ask it this way, My Lords.

13 Q. Would that have been your understanding?

14 A. Well, I'm not sure I'm in a position to answer that. Certainly
15 in the meeting we had in the Attorney General's office with
16 the chief superintendent, and I met with him before the
17 Attorney General arrived, and certainly, certainly a lot of
18 that, and to a large extent that whole discussion dealt with
19 the fundamental issue as to...as to the right of the prosecutor
20 versus, vis-a-vis the right of the police to lay a charge, and
21 it seemed to me that we were having difficulty in joining
22 issue here because I...when I left the meeting I wasn't
23 convinced in my own mind that I had made the point or that
24 the chief superintendent comprehended what I was saying
25 about the prosecutorial responsibilities of the Minister. It

1 seemed to me he was more concerned about the right of the
2 police to lay a charge if, in his words "There is a *prima facie*
3 case" and I attempted to distinguish between what would
4 satisfy the reasonable and probable grounds for laying the
5 charge and what the prosecutorial responsibility in respect
6 to that charge would be. I'm not sure that between us we
7 ever, we ever resolved that. But I am very certain that I
8 made it very clear that I had no quarrel or no question
9 about his right to lay a charge. My concern was his
10 judgement should he decide to lay that charge in the light of
11 the circumstances of the decision that there was not
12 sufficient evidence to warrant a prosecution. Now that was,
13 in essence, the crux and the concerns that were expressed
14 certainly from that point on as far as I was concerned.

15 Q. And that's my...the point of my question to you, Mr. Coles,
16 that the fundamental issue that was really being discussed
17 by you with the RCMP at that date and in the subsequent
18 correspondence that took place.

19 A. Yeah, it wasn't a matter of personal confidence we had in
20 one another, that was not the issue.

21 Q. No, and my question is that it wasn't so much the existence
22 or non-existence of a *prima facie* case in the situation of Mr.
23 Thornhill, but this issue of who had the ultimate right to lay
24 a charge in any case.

25 A. I think generally I would agree with that phrasing of the

1 issue.

2 Q Now let me come to...

3 A. But, no, there is no question about who had the right to lay
4 the charge. The police had the right to lay the charge. The
5 question is whether or not a charge should be laid in the
6 circumstances after the law officers of the Crown are
7 involved and they give their advice and it is accepted and
8 acted upon.

9 Q And it was in the context of that issue irregardless of the
10 circumstances of a particular case.

11 A. Yes.

12 Q Yes. Now, Mr. Coles, coming to this particular case that was
13 being discussed, I take it from the evidence, and I will ask
14 for your assessment as well, I take it that...and the first
15 point that I derived from everything that I've heard here,
16 and I would ask your assessment of this, I take it that after
17 you reviewed the file and looked at everything that the
18 police had given you and looked at the law to the extent that
19 you did that you were satisfied that whatever criminal
20 intent or guilty mind may have been required under the
21 section did not exist in this case on the part of Mr. Thornhill
22 or the banks.

23 A. Right.

24 Q Thank you. The second point that I take from all of this is
25 that when you look at the facts, and as you looked at the

1 facts that time that the transaction that took place between
2 Mr. Thornhill and the banks could be, as was characterized
3 by the previous two witnesses, a "normal business
4 transaction or proposition."

5 A. That's what I concluded to have been, yes.

6 Q. Thank you. And I also take it that you were aware of the
7 fact that the offence that was being debated here was not an
8 offence if a written consent were obtained from the head of
9 government and you understood that consent, if not written,
10 had been obtained in this case.

11 A. Well, I understood that...from the statements that were
12 made that the Premier was aware that the negotiations were
13 underway and Mr. Thornhill was attempting to settle his
14 outstanding indebtedness, yes.

15 Q. All right. And to sum it all up, one of the things that I've
16 asked the last couple of witnesses, in arriving at your
17 conclusions or your decision, did anybody put any pressure
18 on you?

19 A. No, none whatsoever.

20 Q. Did you receive any phone calls from Mr. Thornhill?

21 A. Never spoke to him before, during or after.

22 Q. You were sitting home reading the papers to have to learn
23 how this was happening. You had no communications with
24 him?

25 A. That's right.

MR. COLES, EXAM. BY MR. MERRICK

1 Q. And would you agree with me, and agree with the previous
2 two witnesses, that the fundamental decision that was made
3 here was simply and purely because "you didn't think there
4 was a strong enough case to lead to a conviction"?

5 A. That is correct.

6 Q. Thank you.

MR. CHAIRMAN

8 Mr. Pink.

MR. PINK

9
10 Again I would like to reserve until my friend Mr. Ruby has
11 completed his cross-examination.

MR. CHAIRMAN

12
13 That's all for now, Mr. Coles, I hate to get everyone out of
14 bed early tomorrow morning but if you could come back at
15 around eight o'clock or so soon thereafter as the Commission is
16 ready to proceed, and be available for cross-examination by
17 counsel for Donald Marshall, Junior, in the event they have any
18 questions that they wish to put to you on matters arising directly
19 from your testimony today. While I think of it, I would ask that
20 arrangements be made to have the transcript of today's evidence
21 in the hands of counsel for, ah, both counsel for Donald Marshall,
22 Junior, as early this evening as possible. Now we'll rise for ten
23 minutes or so.

24 **BREAK - 4:07 - 4:25 p.m.**