

1 10:16 a.m.

2 CHAIRMAN

3 Mr. Orsborn.

4 MR. ORSBORN

5 Thank you, My Lord. The next witness is Commissioner
6 Robert Simmonds.

7 COMMISSIONER ROBERT SIMMONDS, duly called and sworn,
8 testified as follows:

9 EXAMINATION BY MR. ORSBORN

10 Q. Can I have your full name, please, Commissioner?

11 A. Robert Henry Simmonds.

12 Q. And do I understand that you are currently living in Vienna?

13 A. Yes.

14 Q. And that you're presently working with the United Nations?

15 A. Yes, that is correct.

16 Q. Working with a police response for countries around the
17 world in connection with drug crimes?

18 A. Yes, that's correct.

19 Q. And you are a retired commissioner of the RCMP?

20 A. Yes.

21 Q. And when did you retire, sir?

22 A. 31st of August 1987.

23 Q. And how long were you commissioner?

24 A. Ten years.

25 Q. Would you briefly describe for the Commission your career in

1 the RCMP prior to becoming commissioner?

2 A. Well I joined the Force in April of 1947 and served most of
3 my younger years in the Provinces of Alberta and British
4 Columbia doing general detachment work and criminal
5 investigation work and gradually assuming increased
6 command responsibility until 1976. I was moved from
7 British Columbia to Ottawa to be the Deputy Commissioner of
8 Administration in the Force and then one year later was
9 appointed Commissioner.

10 Q. A pretty rapid rise from British Columbia to Commissioner in
11 a couple of years?

12 A. Well, perhaps, but...

13 Q. You didn't say no.

14 A. You don't do that in the RCMP.

15 Q. As Commissioner, I take it, you had the overall responsibility
16 for the entire operations of the RCMP in Canada?

17 A. Yes, statutorially you assume responsibility for all the activity
18 of the Force.

19 Q. Now in 1980 you were in the position of Commissioner?

20 A. Yes.

21 Q. In the months of April, May, June, et cetera, were you aware
22 that an investigation was being conducted by the RCMP in
23 Nova Scotia concerning Mr. Thornhill?

24 A. What is the timeframe?

25 Q. In, say the summer months of 1980. Were you aware that an

1 investigation was being conducted?

2 A. Yes, I was certainly aware there was an investigation. I'm not
3 sure I have the timeframe exactly in my mind. But I'm aware
4 of the Thornhill investigation.

5 Q. Prior to the announcement by the Attorney General that no
6 charges were to be laid, prior to that time, were you made
7 aware of any concerns that the Force had in the manner in
8 which the investigation had proceeded?

9 A. Not in any unusual way. I mean it's, I perhaps should qualify
10 that. It's not unusual for there to be concerns when you're
11 dealing with sensitive and investigations very close to the
12 political level, but I was not aware of any major problems in
13 the investigation.

14 Q. Had anybody brought to you any problems about the
15 relationship between the Force and the Department of
16 Attorney General?

17 A. No, not in a specific way at all. Not to, in a way that would
18 cause me to be concerned and say I should intervene.

19 Q. If I could direct your attention to page 11, sir, in the booklet
20 of materials, Exhibit 165. These pages have the page
21 numbers at the top of the page.

22 A. 11?

23 Q. Page 11, sir. I understand this to be a note written by Mr.
24 Venner who would be the Director of Criminal Investigations,
25 apparently sometime in June 1980, and generally the note

1 refers in fairly strong terms to the relationship between the
2 RCMP and the Department of Attorney General in Nova Scotia.
3 Were any concerns brought to your attention about the
4 relationship generally between the Force and the Department
5 in Nova Scotia?

6 A. No, not at that time. In fact, I saw this note for the first time
7 the day before yesterday and I was quite surprised at its
8 content because based on what is in it, I would have thought
9 that probably somebody would have come to me and said
10 there are some problems. But I had an ongoing relationship
11 with the Government of the province, the office of the
12 Attorney General, and with the Commanding Officer of the
13 Division and so on, and was quite unaware that there were
14 any issues that would cause a note like that to be written.

15 Q. Would Mr. Venner report to you?

16 A. He would, as DCI on the chart, he would report to the Deputy
17 Commissioner of Criminal Operations who would report to me.
18 But Mr. Venner and I were very close throughout our whole
19 career so, although the chart says he reports that way, we had
20 plenty of conversations about various things.

21 Q. Are your offices close together?

22 A. Yes, they're on the same floor and not many offices apart.

23 Q. Would you have expected that if he were seriously concerned
24 about the relationship in Nova Scotia that he would have
25 advised you?

COMMISSIONER SIMMONDS, EXAM. BY MR. ORSBORN

1 A. I would have expected that, yes. On the other hand, I must
2 try and put that in some context because at that particular
3 time the Force was wrestling with a lot of other problems.
4 There were other commissioners of inquiry underway in the
5 country and I was very engaged in reorganizing of the
6 Security Service and making changes within the organization
7 which was really taking an awful lot of my time. So I think
8 it's fair to say that the senior staff officers would not come to
9 bring problems to me unless they thought they were beyond
10 their ability to straighten them out. But I'm a little surprised
11 when I read this memo because it's indicative of, you know,
12 of problems that...

COMMISSIONER EVANS

14 May I find out to whom was that directed?

COMMISSIONER SIMMONDS

16 It looks to me as though it went up to the Deputy
17 Commissioner of Criminal Operations.

COMMISSIONER EVANS

19 But who was, that was...

COMMISSIONER SIMMONDS

21 At that time that was Raymond [Kincato?].

MR. ORSBORN

23 Q. Were you made aware of a concern of the "H" Division in Nova
24 Scotia following the announcement by the Attorney General
25 that no charges would be proceeded with in the Thornhill

1 matter?

2 A. Yeah, I became, you know, generally aware of the concern in
3 conversations with the Commanding Officer of the Division
4 which was Chief Superintendent Feagan and general
5 discussions that this case did not seem to be handled in quite
6 the routine way and there were concerns.

7 Q. Chief Superintendent Feagan communicated directly to you?

8 A. I have to be careful with that because I can't say for sure
9 whether it was one-to-one or through the Deputy or
10 whatever. But I do talk to, or when I was the Commissioner I
11 would talk with my CO's in the Divisions quite regularly on
12 the telephone and so on and we'd meet at conferences and
13 one thing or another and I would always, you know, ask them
14 about problems and how things were in the Division and so
15 it's very probable that Hugh Feagan would have talked to me
16 about his concern directly, although I have no absolute
17 recollection of that.

18 Q. Do you recall the nature of the concerns that were expressed
19 to you?

20 A. Well, the principal concern seemed to be that, on the
21 investigation, was that it was being dealt with in a different
22 way than normal. I mean the relationship with the Crown was
23 different in the sense that it was, in most cases they're dealt
24 with by a prosecutor that works with the police or that you go
25 to for advice when you want advice that a prosecutor can

1 give. But this one was being handled from directly within the
2 Department as opposed to the prosecutor's office. And that
3 caused some concern because it was different.

4 Q. Are you able to tell us whether or not these concerns were
5 brought to your attention only after the public announcement
6 was made by the Attorney General?

7 A. I can't tell you what date but I do know as a result of those
8 concerns I was, insisted that there be a review of the whole
9 matter at the Headquarters level so it would be totally
10 removed from what I would call any local concerns or
11 perceived pressures or anything else. It would be brought up
12 to Headquarters to be reviewed by senior officers of the Force
13 to...

14 Q. Are you able to tell us specifically how this review came to be
15 conducted?

16 A. Not specifically, you know, I obviously approved it or it
17 wouldn't have occurred. But I'm not sure the exact series of
18 discussions that led to it, but it's typical of the kind of case
19 that we would review at Headquarters because of concerns in
20 a division and so on.

21 Q. To summarize the evidence that we've heard to date. Once
22 the announcement was made by the Attorney General that no
23 charges were to be proceeded with, Chief Superintendent
24 Feagan then contacted Headquarters and said, "We better take
25 a look at this" and the wheels got in motion for a review.

1 A. Yeah.

2 Q. Would that be a fair characterization of how things could
3 happen?

4 A. Yeah. I... the CO of the Division and the CIB Officer of the
5 Division, I'm quite sure, just based on normal practice in the
6 Force, would be having on-going discussions with the DCI,
7 which was Venner, probably with the Officer in Charge of
8 Commercial Crime, because it was being investigation by that
9 division of the Force and they do report their findings directly
10 to Headquarters even on provincial cases for the work of the
11 Commercial Crime branch and I would assume there was
12 quite a lot of discussion back and forth which eventually led
13 to the decision to make, "Well, we'll have it reviewed in
14 Headquarters."

15 Q. You're not able to tell us, I take it, whether or not you
16 specifically instructed, on your initiative that a review be
17 undertaken.

18 A. I'm not sure if it was on my initiative or not but certainly I
19 would have agreed to the review and it was appropriate and
20 necessary in that case.

21 Q. How would you expect such a review to be carried out within
22 the Force?

23 A. Well, in cases of that nature where there is some, you know,
24 controversy, and even controversy between levels within the
25 Force sometimes as to the case and the correct next step and

1 the interpretation that should be given to evidence and so on,
2 what...the normal procedure is that, it would come up and be
3 reviewed by the DCI and by the Deputy of [OPS?]. These are
4 very experienced policemen that had themselves done a lot of
5 investigative work before they got into those offices and they
6 would review the work, ask questions and come to
7 conclusions.

8 Q. You would expect a review to be carried out by those two
9 individuals?

10 A. Yes. And with whatever other assistants they might want,
11 you know, in terms of experts in any particular area of crime.
12 I'm not sure, I did not participate in that review at all but I'm
13 quite sure that, likely, that the officer in charge of the
14 Commercial Crime Branch would be involved in it and so on.
15 And there would be quite a discussion. And of course the
16 Division, the investigators and the senior people in the
17 Division would also be involved in the review.

18 10:30 a.m.

19 Q. We understand that the review, at least initially, was
20 conducted with a number of people from "H" Division and
21 with senior personnel from commercial crime, Deputy
22 Commissioner Quintal, the DCI, Mr. Venner, and I guess
23 Assistant DCI, Mr. Riddell.

24 A. Yes, he was

25 Q. That would not be an unusual group to...

1 A. No, no.

2 Q. To review such a matter such as this.

3 A. It would be quite normal.

4 Q. Did you receive any written report of the review?

5 A. No.

6 Q. Did you receive any minutes?

7 A. Not, I didn't receive any documents. I could have had access
8 to documents, if I had asked for them, but I would be briefed
9 by the Deputy Commissioner on his findings and so on.

10 Q. Were you, in fact, briefed by the Deputy Commissioner?

11 A. Yes.

12 Q. That's Mr. Quintal?

13 A. Yes.

14 Q. We do have an exhibit, sir, which is Exhibit 167, which is not
15 in your booklet but is a typed extract of the Deputy
16 Commissioner's notes. He does note on page three of those
17 notes under the date "80-12-23", 23rd of December,
18 "Discussed with the Commissioner." And I believe that's the
19 first reference to a briefing of yourself. Would it be fair to
20 conclude that that would be the date on which you were
21 briefly by the Deputy Commissioner?

22 A. I'm quite sure it would because Quintal was, kept very careful
23 notes of what he did and if that's what his notes say, I'm sure
24 that's right.

25 Q. Do I understand that prior to this you had been out of the

1 country?

2 A. Yeah, I had been away from headquarters a lot in the latter
3 part of that year and in January of '81. I had been, I think it
4 was the 8th of November, I had gone to the Philippines and
5 then I had to go to Australia and New Zealand and I was not
6 back in my office until, I believe the 4th of December, and
7 then again after the New Year, I was away for a good part of
8 January.

9 Q. Were you away in company with the Deputy Commissioner?

10 A. The Deputy Commissioner was with me on part of that trip.
11 We went to an Interpol conference in Manila together. He
12 went off in another direction to a drug conference in Asia and
13 I went on down to...

14 Q. During your travels with him, was there any informal
15 discussion about this case and the review that had taken
16 place?

17 A. I can't answer that with certainty. You know, we discussed a
18 lot of things. It was not the focus of our visit, that's for sure.
19 We had a lot of other things we were concerned with.

20 Q. You wouldn't be discussing that in the Philippines, anyway, I
21 wouldn't think.

22 A. Well, we had a lot of other things to worry about there, I can
23 tell you.

24 Q. Can you indicate to us the nature of the briefing that you
25 eventually received from the Deputy Commissioner?

COMMISSIONER SIMMONDS, EXAM. BY MR. ORSBORN

1 A. Yeah, my understanding at the end of the review was that the
2 final conclusion was that it was not a case to put before the
3 courts and I can't recall all the details. I know we had a fair
4 discussion and I asked a number of questions and so on and
5 he told me, after a very careful review, that they had come to
6 the opinion that it was not a case to lay a charge on, in its
7 present state, at least.

8 Q. Do you recall if he advised you that this large-scale meeting
9 had, in fact, been convened and the review took place like
10 that?

11 A. Well, I was certainly aware of that. You know, again, I'd like
12 to try and put this into context. Like at the headquarters of
13 the force on the day of that review, which was the 5th of
14 November, I was at headquarters that day. There's a very
15 good probability at lunch down in the officer's lunch room
16 that I would have been perhaps even sitting with the C.O. and
17 chatting about things in the force. So I was well aware that
18 the review was under way.

19 Q. If I could direct your attention again to 167, the Deputy
20 Commissioner's notes on the first page. And it is in his note of
21 the decision of the review meeting and the decision reads:

22
23 They are to write back to A.G. and say they feel
24 very strongly about the matter and outline their
25 reasons why they disagree with the evaluation
of the Department of Attorney General. We feel
a charge is warranted under 110(1)(c).

1 Did the Deputy Commissioner brief you that a decision along
2 those lines had been reached at the meeting?

3 A. At that time?

4 Q. When he briefed you?

5 A. No, I don't think so. I was aware there was some different
6 views at various levels about the quality of the case, if I can
7 put it that way. But when he, you know, briefed me finally
8 on the issue, it was with the decision that had been reached
9 that, between he and Venner primarily, and I think Venner
10 did most of the research on the file.

11 Q. I understand.

12 A. That it was not a case to proceed with in its present state.

13 Q. Okay, if I could direct your attention to page 57 of the
14 booklet, Commissioner. And I understand these to be a
15 record of the proceedings at headquarters on the 5th of
16 November and I believe that Superintendent Feagan and
17 Deputy Commissioner Quintal have indicated that these are
18 generally accurate. The conclusions on page 57 of that
19 meeting indicate that it was their conclusion that the evidence
20 supported a *prima facie* case on the 110(c), that a further
21 approach should be made to the Attorney General, and that
22 subject to the result of further discussions with the Attorney
23 General, it was the force's intention to proceed. Was anything
24 in that nature conveyed to you by the Deputy Commissioner,
25 that conclusions of that nature had, in fact, been reached at

1 that meeting at which he was present?

2 A. No, not in specific terms. At the time of my involvement at,
3 towards the end of the matter, the decisions had already been
4 reached, that there was no... it was not a case to proceed with
5 in its present state. And certainly it was never brought to my
6 attention that there were problems like this, because if I had
7 known that, I mean the relationship I have with the
8 provincial Ministers was such that I would have... I would
9 have picked up the phone and said, "Well, what's going on and
10 what's the problem?" Or I would have gone and visited the
11 Minister or whatever because I believe you, you know, you
12 solve problems when they're apparent. So I was a little
13 surprised to see this in the last few days.

14 Q. Do I understand that in preparing for your testimony and
15 reading those minutes was the first time that you had seen
16 them?

17 A. Yes, I can say quite certainly I'm sure it is.

18 Q. Our understanding of the sequence of events is that following
19 this meeting at which these conclusions were reached, Chief
20 Superintendent Feagan then returned to Halifax, went to the
21 Department of Attorney General to convey these feelings, and
22 said, "Let's take a second look at it," or "Let's talk about it."
23 Got nowhere and then wrote back to HQ again and said, "I've
24 still got a problem. I want your direction." Were you aware
25 that following this November meeting with all these people

1 present that there had been further, a further approach made
2 to the Attorney General which had been fruitless?

3 A. No. I have to be careful of that answer, though, because I
4 would assume that throughout an investigation like that,
5 there would be contact between the Department and the
6 force. So it would be quite normal and natural for there to be
7 ongoing discussions.

8 Q. But you were not, apart from an expectation of ongoing
9 discussion, you were not made aware that following the
10 review, the force had tried to..

11 A. I was quite unaware...

12 Q. Persuade the Attorney General.

13 A. Yeah.

14 Q. That things should proceed and were, again, rebuffed.

15 A. Well, at that time, I was quite unaware of the discussion that
16 was described in here when the Commanding Officer had gone
17 to see the Minister and while waiting to get into his office, the
18 Deputy Minister arrived and apparently there had been quite
19 an exchange of views and they did not come to consensus on a
20 number of issues. That, I was unaware of at that time.

21 Q. Was it your understanding, Commissioner, and I don't want to
22 put words in your mouth, but correct me if I'm wrong, that
23 this meeting or review had taken place in Ottawa. They
24 looked at it and said, "There's no case," and that was the end
25 of it?

COMMISSIONER SIMMONDS, EXAM. BY MR. ORSBORN

1 A. Yeah. That's very close to being right. In fact, there's a
2 couple of documents in this book that you gave me to review
3 yesterday and I went through them last night and there are a
4 couple of documents that portray the situation, as I
5 understood it, quite well. And one of them is a handwritten
6 note from Assistant Commissioner Venner to one of the
7 officers in the commercial crime branch. It's at page 119,
8 where without going into any details on the strength of the
9 evidence, but what he says is, you know:

10 The issue, I believe, has been somewhat
11 over...(and there's some missing words on the
12 side from copying but I think it is)...overtaken
13 by events. But I think you may be able to agree
14 with me now when I suggest that the first
 sentence in your second paragraph is not factual.

15 He's making reference to another document that you have.
16 The R.C.M.P. decided not to proceed. It happens that in this
17 particular case, that was the same course of action preferred
18 by the Attorney General but it might not have been nor might
19 the two positions coincide the next time this comes up. A
20 decision was made based on the evidence or the lack of it.
21 And that was always my understanding. And then another
22 document I find, the next one over, where the officer-in-
23 charge of the commercial crime branch who at the time was
24 Superintendent Bob Roy, was interviewed. And, again, I don't
25

1 have any recollection of being aware of that, although I may
2 have known because I used to read the press clippings every
3 day. But where he puts, makes the point is that, no, we didn't
4 proceed because he uses the word "airtight" and he should
5 explain what that means, if it's important to know. But he
6 says that, no, it was a question of the evidence, the sufficiency
7 of the evidence to make the case with reasonable expectations
8 of a successful case, which is not an unreasonable test, I think,
9 for police to apply. So that describes the understanding that I
10 had at the end of the process.

11 Q. Just so we're clear, Commissioner, the handwritten note from
12 the DCI on page 119, I believe is replying to a memo from
13 Inspector Kozij, which is found on page 102?

14 A. Yeah.

15 Q. And in the second paragraph there, Inspector Kozij said:

16 It was the Attorney General who decided not to
17 proceed with the charge in this case.

18 And this, I believe, is the sentence to which Mr. Venner is
19 responding.

20 A. That's right. What he's saying is that we came to the same
21 conclusion. We might not the next time, but we came to our
22 conclusion based on the evidence. Not because the Attorney
23 General said so. I mean that's how I read that note of
24 Venner's, and certainly that was my understanding
25

1 throughout this case.

2 Q. At page 93, and following, Commissioner, there is the letter
3 dated December the 17th from Deputy Commissioner to "H"
4 Division which conveys the instructions that the matter is not
5 to be proceeded with.

6 A. Yeah.

7 Q. Again, until preparing for this hearing, sir, had you read that
8 letter?

9 A. No.

10 Q. No?

11 A. No. Well, I'd better be careful. I'm going by memory but I'm
12 fairly sure I had not, but...

13 Q. And I take it that you would not have been aware then that
14 in writing this letter, that it is apparently a change of heart or
15 a change of decision from the conclusions reached at the
16 review meeting.

17 A. Yeah. Well, based on the documents that I've seen now, it
18 struck me when I was reading them that following the
19 review, the initial meeting of the review. The review isn't
20 just one meeting. I mean these people listen and they take
21 notes and they listen to the investigators and then they do a
22 lot more work than that. I mean they would be looking into
23 case law. They would be discussing it and so on. But, initially,
24 after the first discussion, it seems that they had a different
25 impression than they later came to after they completed their

1 work.

2 Q. Yes, to be fair, Commissioner, the evidence from Deputy
3 Commissioner Quintal is that following that meeting in
4 November, that certainly no further investigation, and I
5 believe he used the words "No further research was
6 conducted."

7 A. Into the case?

8 Q. Yes.

9 A. Well, I don't know what he means by those words, but
10 Venner, I'm quite sure, would have researched a number of
11 cases and, in fact, there's an indication in some of these
12 documents that he may even have touched base with the
13 Department of Justice, which is unusual on a provincial case.

14 Q. Would you have expected to be involved in the decision itself
15 as to whether or not the matter should proceed in the face of
16 opposition from the Nova Scotia Attorney General?

17 A. No, if the decision had been, if the review team, if the Deputy
18 had come in to me and said, "look, there should be a charge in
19 this case, but the Attorney General said there won't," well,
20 then I would have been very involved. Because I would have
21 been in touch with the Attorney General to discuss that issue.
22 Because I would always insist on the right to the police to lay
23 charges if they feel they must. I mean that's a controversial
24 point, but it's a point that I've always maintained.

25 Q. So if you had been aware that the difficulty was a roadblock

1 the interpretation that should be given to evidence and so on,
2 what...the normal procedure is that, it would come up and be
3 reviewed by the DCI and by the Deputy of [OPS?]. These are
4 very experienced policemen that had themselves done a lot of
5 investigative work before they got into those offices and they
6 would review the work, ask questions and come to
7 conclusions.

8 Q. You would expect a review to be carried out by those two
9 individuals?

10 A. Yes. And with whatever other assistants they might want,
11 you know, in terms of experts in any particular area of crime.
12 I'm not sure, I did not participate in that review at all but I'm
13 quite sure that, likely, that the officer in charge of the
14 Commercial Crime Branch would be involved in it and so on.
15 And there would be quite a discussion. And of course the
16 Division, the investigators and the senior people in the
17 Division would also be involved in the review.

18 10:45 a.m.

19 A. You know, I don't want to put words in their mouth but my
20 basic understanding was that there was some difficulty, there
21 was some obvious defences that we had not got evidence to
22 offset where they used, and these are all things that would
23 weigh on their mind, I'm sure. But they, and that was my
24 understanding. And really Venner's memo which says it was
25 the problem with the evidence, now I can't recall specifically,

1 but I do know there was discussion about the defences
2 available. I do know that there was some arguments back
3 and forth between the various section or subsections of
4 Section 110 as to intent, and all of those things had been
5 examined from what I would call a legal point of view in the
6 course of the review. And the conclusion of those senior
7 officers was it was not a case to proceed with.

8 Q. I'd just like to refer you to a couple of extracts from Deputy
9 Commissioner Quintal's evidence. You have a transcript in
10 front of you there, sir, reading from Volume 84, the booklet
11 on the top left-hand corner of the table. And I refer you to
12 page 14792. And reading from line 20 close to the bottom of
13 the page, 14792. I think the question preceding that:

14 Q. For some reason you didn't proceed to lay the
15 charge and presumably you exercised your
16 discretion not to proceed to lay the charge.

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

Q. You said that you were sort of afraid of the
consequences that were going to flow from the

proceeding in the face of the directive from the Attorney General's office.

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

Q. Yeah. But that's really the reason you didn't proceed is because you foresaw some future difficulties in your relationship.

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

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

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

And again, quickly, sir, to page 14800, the question at line 14.

Q. Now you have indicated to us that the consequences to the RCMP in this case of proceeding with a charge were a relevant factor in making your decision not to proceed. That is, the consequences of a daily relationship between the AG and the RCMP.

A. Well, it was a factor you could not ignore.

And there is an answer to the same vein on the following page that you can't ignore the fact that you have to have a

1 working relationship. Did the Deputy Commissioner in his
2 discussions with you make any reference to the fact that the
3 possible problems with a working relationship in Nova Scotia
4 were a factor in his decision?

5 A. I don't think he ever said that that at all influenced his
6 interpretation of the evidence and it was based on that, the
7 decision as to proceed or not to proceed. But certainly he
8 would be aware, I mean you couldn't help but be aware that
9 in the background that if we did decide to go, take another
10 course of action, that it would undoubtedly cause some, you
11 know, some problems. But that's not for him to worry about.

12 Q. In your view is, taking those possible consequences into
13 account at all an appropriate factor for the Force to take into
14 account in deciding whether or not to proceed?

15 A. It should not be the basis for a decision.

16 Q. No, I didn't ask that, sir. I asked you if it was a factor to be
17 taken into account at all.

18 A. No. But it's there. I mean you can't deny the fact it's there.
19 You're faced with it and you have to, and it's always in your
20 mind. But it should not be the basis for a decision. And, you
21 know, just let me enlarge on that a bit. The basic relationship
22 between the Force and the Government of Nova Scotia was
23 very good and there were, I would be surprised really that
24 any of the officers would feel that this particular case and the
25 problems with this case would, you know, would bring that

1 crashing down. Because I would visit when I'd be in the
2 Division, I'd always visit with the Attorney General. I would
3 also see him at Federal/Provincial conferences of justice
4 ministers and so on which I would always attend as part of
5 the Federal delegation. When I'd meet with the Attorney
6 General in his office, the CO would be present and I'd meet
7 with the Deputy and so on and I was unaware that there was
8 any, you know, deep problems at all, and in fact, we had a
9 very good relationship with the government of this province
10 in terms of the contract.

11 Q. If I could direct your attention to page 81 of the booklet of
12 materials.

13 A. 81.

14 Q. Yes, sir. Page 81. And I believe this to be a note of Mr.
15 Venner's, a DCI, I'm not able to give you a date. I can suggest
16 that it might have been written when he was thinking about
17 the decision that had to be made, and I direct your attention
18 to the middle of that extract where it says, "Contract to police
19 force should solicit the advice on the point of whether or not
20 the peace officer should lay a charge. There may be one
21 ultimate answer but when this is not apparent, then AG is the
22 last word."

23 A. Well I don't agree with that.

24 Q. You don't agree with that?

25 A. No. I mean my position is well known I think, and it's been

1 publicly stated and written on as a result of other cases
2 where I've had to take a stand and been questioned before
3 Parliamentary committees and so on, and I've always taken
4 the position that in a controversial case the police must be
5 free to lay a charge if they feel they should. The Attorney
6 General has the clear right to stay that charge and not
7 prosecute it, but then the matter is in front of the public and
8 it's in a court and people can make their own assessment.
9 Because that exists, the very fact that that principle exists
10 really is the best guarantee that it shouldn't ever become a
11 problem because everybody is very careful in making their
12 judgements on a totally professional basis because they know
13 that that could happen. That is the ultimate step. I must also
14 say, and again, when I was doing criminal cases I used to
15 answer questions "yes" and "no" when I could and I'm getting
16 a little, I'm elaborating a bit now, but the whole question of
17 how these cases are handled is, in a sense, interesting. And I
18 believe that it shows the value of having the policing
19 arrangements that we have in this country. Because it
20 provided for an opportunity for a review by very experienced
21 policemen, totally apart from the local scene. And, you know,
22 if there is a value to the way the policing is done through
23 these contracts, that's one of them. Because if there is local
24 heat, which can happen, you know, or perceptions of it can
25 develop, there is another mechanism one step back by police

1 to review it with very senior and experienced people and
2 come to decisions. And if they come to the decision they
3 should...the charge should proceed, then they should be
4 allowed to lay it provided they can find a judge or justice that
5 will accept the information.

6 Q. I may come back to that, sir, but were you ever advised in
7 this case that, or made aware that there was any local heat, as
8 you put it?

9 A. Well, I became aware as it went along that there was, that
10 there were strong differences of views, even, I think, within
11 the Force with respect to the weight the evidence should have
12 and the possible defences and so on. But more than that, I
13 mean, that can be resolved within the organization, and you
14 come to a decision in the end and it's respected. But I was
15 aware that there was a feeling that because the case was not
16 handled in the normal and routine way, suspicions developed.
17 And I think that's a fair way to express it. If the case had
18 gone normally to a prosecutor, as is normal, I doubt if any of
19 these issues would have come up. And I'm not suggesting for
20 one moment that because it wasn't handled that way there
21 was any impropriety or any wrong decisions because I have
22 no reason to believe there was. But the mere fact that it was
23 not handled in the ordinary way allows some of these, you
24 know, misunderstandings and concerns to develop.

25 Q. Were you aware that there were these strong differences of

1 opinion within the Force before you were briefed by a Deputy
2 Commissioner on December 23rd?

3 A. No. And it was even later than that I become more aware.

4 Q. And is it fair to say that those strong differences developed
5 only because of the final decision that was made?

6 A. Well...

7 Q. And that they were not apparent prior to that?

8 A. Well I guess it's all part of it. But, you know, I mean it's not
9 the first time there were differences. When I was a corporal
10 I didn't always agree with my boss either. But nevertheless,
11 there were different views in terms of the strength of the
12 case. I'll put it that way. But again, all that was handled
13 within the organization and decisions made at the appropriate
14 level.

15 Q. Insofar as the final decision of the Deputy Commissioner and
16 the DCI was influenced by this conclusion here, if it was at
17 all...

18 A. Yes.

19 Q. About the AG being the last word, do I take it that to that
20 extent, at least, the conclusion would be in error?

21 A. Yeah. I don't know what, you know, I don't know if you're
22 going to be interviewing Venner or if he's going to be before
23 you, but I'm sure that his view of the right of the police to lay
24 charges is identical to mine. I mean these are issues we used
25 to discuss throughout our careers and...

1 Q. Just to ask you a couple of questions about the letter that the
2 Deputy Commissioner eventually sent starting at page 93 of
3 the booklet. Page 93 and following and turning first to page
4 94, the top paragraph on that page, he writes towards the
5 conclusion of that paragraph, "Careful study convinces us that
6 at least no overlooked automatic defence or justification for
7 such behaviour on the part of Mr. Thornhill exists. Some
8 reasonable and probable grounds, to lay a charge under
9 Section 110 (1)(c) against Mr. Thornhill appear to be present."
10 In his briefing, did the Deputy ever suggest anything along
11 those lines to you?

12 A. No. I would say by the time he briefed me with conclusions
13 he'd come to a different opinion.

14 Q. Yes. And to be fair to him, he does set out some, a number of
15 factual matters on the following pages and some concerns
16 about what a jury might do that lead him to believe that it
17 should not be proceeded with.

18 A. Yes.

19 Q. In the following paragraph though, Commissioner, on page 94,
20 he says, "Having said that, however, we do not agree with the
21 position of the Officer of Charge in your Commercial Crime
22 Section when he states in memorandum... (et cetera)..that all
23 that is necessary is that there are reasonable and probable
24 grounds to believe that an offence has been committed and
25 reasonable and probable grounds to believe that the person to

1 be charged committed that offence before proceeding." And
2 do you agree, sir, as a statement of principle that something
3 beyond reasonable and probable grounds is necessary before
4 proceeding?

5 A. Well you're opening up the whole question of discretion and
6 what it means and when it should be applied and it's a very
7 awkward one. In principle, though, yeah, there are occasions.
8 I mean...

9 Q. Don't misunderstand my question, sir. Do you agree as a
10 statement of principle that something beyond reasonable and
11 probable grounds is necessary?

12 A. No.

13 Q. Before proceeding.

14 A. It's not necessary, it's not essential.

15 Q. No, reasonable and probable grounds would be...

16 A. Is sufficient.

17 q. Would be sufficient...

18 A. Yes.

19 Q. And then beyond that the discretion would come into play?

20 A. Yeah, that's right.

21 Q. And the letter then goes on, as I say, to isolate a number of
22 factual considerations he took into account. And I don't
23 propose to go through those with you except he does says that
24 they weighed on his mind and he considered them. At page
25 96, Commissioner, at the conclusion of the first big paragraph

1 there he says, "I do not presume to be a substitute for the
2 courts but these are factors that needed serious consideration
3 before embarking on a course of action in defiance of a
4 specific directive of the Attorney General. He is to be advised
5 that in the present case we will abide by his directive." And
6 this is your Deputy Commissioner speaking, having had the
7 benefit of discussions and drafting of Tom Venner. Were you
8 aware, sir, that there, you were abiding, were you made
9 aware that in not proceeding you were abiding by a directive
10 of the Attorney General?

11 A. Yeah, I would never, I would not have chosen those words
12 but Quintal was here and he can explain them. But what I
13 would say is that our review of the case indicated that we
14 came to a conclusion that it was not a case to proceed with,
15 not necessarily because the Attorney General said so. Because
16 we had come to that conclusion based on the evidence.

17 Q. Well, he reiterates on page 97 in his Conclusion (b). He says,
18 "In this case after very careful consideration of all the facts
19 involved we decided to abide by his instructions that charges
20 are not to be laid as conveyed at the meeting of 80/11/12,"
21 which was a meeting that followed the review that took place
22 in Ottawa.

23 A. I see.

24 Q. And...

25 A. Well, I can presume, of course, that we're drawn into that

1 kind of discussion because of other correspondence where,
2 you know, I noticed in the file somewhere one of the officers
3 in the Commercial Crime Branch making that an issue. You
4 know, should be comply with the directive.

5 Q. Sure.

6 A. That became the issue instead of was the evidence sufficient.
7 And I presume that that sort of thing got some discussion
8 during the conversations and obviously, I mean you never
9 want to go head-to-head with a Minister but that does not,
10 that never does remove the principle that if you feel you
11 have the right case to proceed with, you should be allowed to
12 proceed.

13 11:00 a.m.

14 Q. I take it that had you been aware that there was some
15 consideration being given to the weight of the directive of the
16 Attorney General, that you would have intervened at the
17 provincial level.

18 A. Yeah, if any of the officers had come to me and said, "We're
19 not going to proceed with this because the Attorney General
20 doesn't want us to, but I think we've got a case," I would have
21 said, "Wait a minute, let's talk about that. And I'll go and see
22 the Minister if I have to to see what's worrying him because
23 that's not acceptable.

24 Q. Do I understand that you had not reviewed this file and the
25 correspondence until you were preparing for this hearing?

1 A. I had never gone through, and to this day I've never
2 reviewed the investigational file. I've seen these extracts that
3 Commission is considering and so on, but I have never read
4 the detailed investigational file or any statements or examine
5 exhibits or anything of that nature at all.

6 Q. Having reviewed what you have, do you have any comments
7 or concerns about the procedure and conclusions that were
8 adopted by the force in looking at the matter? Not the
9 investigation as such, but after the matter was raised in
10 November.

11 A. No, I think that, I mean, you know, one may... There may be
12 different views with respect to the quality of the decision, but
13 the process was followed properly. And as far as I can see,
14 there was absolutely no influence brought, improper
15 influence brought into that process excepting, as you say, in
16 the background there was always the knowledge that the
17 Attorney General had already taken a position. So it was real.
18 It was there. But that would not really affect officers like
19 Venner and Quintal in coming to a judgement on the quality
20 of the case. I mean I'm quite sure of that, but you'd better
21 hear that from them.

22 Q. Okay. Just turn for a moment, sir, to February,
23 January/February, 1981 and we have on, in the documents,
24 sir, at page 117, a letter that you forwarded to Mr. How.

25 A. Yeah.

1 Q. Are you able to tell us how that letter came to be written?

2 A. Well, my recollection is that at the end of January, I think it
3 was the 29th of January, I had gone out to a conference at the
4 University of British Columbia and I was a speaker at that
5 conference and it was a conference on police accountability,
6 and Mr. How was there. And during the course of that couple
7 of days of conference out there, we were chatting, as I was
8 with a lot of other people, and he... This case came up in a
9 brief way and I said that we've done our review and the
10 judgement of the officers at headquarters is it's not a case to
11 proceed with. And my recollection is, and it's vague, but was,
12 "Well, will you give me that in writing?" And, "Sure, I'll give
13 it to you in writing." You're the Attorney General. I'm quite
14 prepared to tell you what we did.

15 Q. Did you have any idea of the use to which the Attorney
16 General wanted to put it?

17 A. No. I presume, I mean I'm not even sure altogether what use
18 he did put it to, but I knew I was giving it to an Attorney
19 General who is also a Minister of Justice and I was just giving
20 him the facts of what the force had done.

21 Q. The covering letter on page 116 speaks of a conversation with
22 Mr. How and a letter to which minor corrections were made.
23 Was there more than one draft of the letter?

24 A. You know, I saw that as well and I have no recollection at all.
25 Obviously, there must have been. There must have been

1 something that required greater clarity or something.

2 Q. Mr. How, in fact, testified that once he received the first
3 letter, it wasn't as clear as he would have liked about the fact
4 that the decision was taken independently by the R.C.M.P. and
5 he asked you to...

6 A. Yeah.

7 Q. Clarify it. Does that refresh your memory at all?

8 A. Well, I expect that's right, but I don't precisely remember
9 that. You see, the letter is... May I discuss the letter?

10 Q. Please.

11 A. You know, this letter is made or is written on my
12 understanding, of course, that, you know, we discussed the
13 review process and that it was concluded that it was not a
14 case to proceed with. And what I was really pointing out in
15 this letter was, well, two or three things, but one is that had
16 we come to a different conclusion, we would have felt free to
17 proceed because one of the principles that I maintained was
18 that we had that right. And that if we had come to that
19 decision, I think later on in the letter, I explained what we
20 would have done. We would have come back to them to see if
21 we could get them to agree. If they failed to agree, we would
22 go out on our own if necessary. And I wanted that to be
23 understood. We were not proceeding, not because he had told
24 us not to proceed, but rather because we had arrived at that
25 conclusion ourselves. But had we come to a different

1 conclusion, we would have proceeded. I mean that's the
2 purpose of that letter and it's an accounting under the
3 contracts. The Commissioner accounts to the Minister for the
4 activity of the force and so on and it was an accounting to him
5 of how we handled this case.

6 Q. You say in Paragraph 4, Commissioner, page 117:

7
8 We also maintain that as a matter of principle
9 that police officers have the right to lay charges
10 independent of any legal advice received if they
11 are convinced that there are reasonable grounds
12 to do so and provided, of course, that a justice
13 will accept the charges.

14 And from your earlier evidence, I take it that you believe
15 that is a proper statement of the principle?

16 A. Yeah.

17 Q. And I take it also from your comments about the Deputy
18 Commissioner's statement of principle, as expressed in his
19 letter, that this principle then would be at variance with the
20 principle the Deputy suggested, because he has suggested that
21 we need something beyond reasonable and probable grounds
22 before, as being necessary.

23 A. Yeah, well, don't read the words "reasonable grounds" in my
24 letter in the judicial sense, necessarily. I mean are there
25 grounds reasonable to proceed? And there can be a whole lot
of things go into that. I mean apart from just reasonable and
probable grounds that you swear to in the information. I

1 mean there are other factors that... We're getting back into
2 whole area of discretion. But if there are reasonable grounds
3 to proceed and we think it's an appropriate case to proceed
4 with, my stand is that we have the right to do so.

5 Q. But would you agree with me that that is at variance with the
6 principle as suggested, as written by the Deputy
7 Commissioner on page 94 when he says:

8 We do not agree with the proposition that all
9 that is necessary is reasonable and probable
10 grounds.

11 A. Well, no, we're a little apart there.

12 Q. Yes, okay. And, in fact, again, insofar as his decision was
13 influenced by his view of the principle, if it was, his decision
14 would be in error to that extent.

15 A. Yeah, but I would have to really know...

16 Q. I understand.

17 A. You know, the circumstances. Like I mean there are many,
18 many cases where you've got reasonable and probable
19 grounds to believe there's an offence you don't proceed to
20 court with. If we went to court with everything we believed
21 there was reasonable and probable grounds for, there
22 wouldn't be enough judges or courts in the land.

23 Q. But that's where you do get into your exercise of discretion.

24 A. Yeah, exactly.

25 Q. In the final paragraph on that page, Commissioner, you say:

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I instructed that the file be carefully reviewed within the force.

I take it that you are not sure whether you in fact instructed it or whether it happened and you approved it.

A. I certainly approved of it, which in the force, is an instruction. If the Commissioner says, "Yes, you can have your review," that means get on and have the review. I mean so the words, you know, can mean different things to different people. But within the context o the R.C.M.P., I said, "yeah, get on and review that case."

Q. And in the second page of that letter, page 118, the review you refer to is the meeting on November the 5th. At least that was the kick-off.

A. That was the kick-off, yeah.

Q. And it would be your belief, in accordance with an old practice that even following that meeting, there would be further review by the Deputy Commissioner and DCI?

A. Yeah, I mean that's just normal, and I'm aware...I mean I'm not unaware of the fact that there was some agony over the file and that they were looking at it very carefully. And that Tom Venner, who is a very experienced man and done a lot of this kind of work, too, wouldn't come to a conclusion in a hurry. And he was the man that basically was researching and handling that file. He would take it to the Deputy and the

1 Deputy would be involved in the discussion. The Deputy
2 would take responsibility for the decision and tell me of that
3 decision. But there is no question that it would have been
4 carefully researched beyond just that meeting.

5 Q. Okay, the second paragraph on that page, you say:

6
7 At the completion of the review, he came to the
8 same conclusion as had the Deputy Attorney
9 General. That being that the circumstances of
10 the case as reflected in the file combined with
11 evidence, et cetera, did not warrant the laying of
12 a charge nor the continuation of investigation.

13
14 Now reading your letter as a whole, and particularly going
15 back to your earlier statement of principle, a reasonable
16 interpretation of that was that there were not reasonable
17 grounds to lay the charge.

18 A. I, yes, that's reasonable.

19 Q. And was that your understanding?

20 A. Yeah.

21 Q. That was your belief.

22 A. My understanding always was that it was a case that very
23 likely could be quite easily defended and so you don't just
24 throw it up in the air and make the guy defend himself.
25 Because there are problems in terms of the weight of the
evidence.

Q. Was the Deputy Commissioner the only person that would

1 have briefed you on the matter?

2 A. He would be the only person that would, you know, that
3 would give me what I would call "a formal briefing". At the
4 lunch table, there may have been conversations among the
5 senior officers that I would have overhead. But in terms of
6 the procedures, it would be the Deputy Commissioner.

7 Q. Reading from the transcript, again, Commissioner, at Volume
8 84, page 14,804, towards the bottom of the page, Mr.
9 MacDonald is directing the Deputy Commissioner to this letter
10 and he says at Line 21/22: "Now this is the paragraph I'd like
11 to direct your attention to" and he directs his attention to the
12 paragraph we've just looked at, and the question:

13 Q. Is that an accurate reflection of the
14 conclusion you came to?

15 A. Not quite. I would not have said it in those
16 terms.

17 Q. In fact, you came to the conclusion
18 that there were reasonable and
19 probable grounds to warrant the laying
20 of the charge but the case wasn't strong
21 enough to go against the wishes of the
22 Attorney General.

23 A. Yes.

24 Had you been aware of those sentiments of the Deputy
25 Commissioner at the time, would you have written this

1 paragraph?

2 A. Perhaps not in those terms because my understanding always
3 was was the way it was expressed in the document I pointed
4 out earlier from Venner, in which he says that, you know, the
5 problems with the evidence, or the weight of the evidence.

6 Q. Now on that point about the weight of the evidence, and again
7 I'm reading from the transcript at page 14,793. It's a passage
8 we read before, 14,793 at Line 12. Deputy Commissioner
9 says:

10
11 If I had been convinced that we could have
12 obtained a conviction, I would have gone ahead
13 regardless of the consequences.

14 And all the phrase that's been used as sort of a substantial
15 likelihood of getting a...

16 MR. BISSELL

17 Excuse me, the word that appears below that is just "a
18 likelihood", not "a substantial likelihood". Line 20.

19 MR. ORSBORN

20 Q. Okay. Line 19 and 20:

21 I felt in this particular case we had to consider
22 whether, in fact, a likelihood of getting a
23 conviction was there.

24 And his earlier comment about being convinced that we had
25 to get a conviction. In your view, is that the same threshold

1 standard for laying a charge as you had enunciated in your
2 letter? And I'm not talking about an exercise of discretion.

3 A. Yeah.

4 Q. I'm talking about a basic threshold to meet before you even
5 get to your exercise of discretion.

6 A. Well, I think a responsible policeman would always consider
7 whether the likelihood of conviction was there. And that
8 doesn't, I would certainly not say, though, that you have to
9 know whether there's going to be a conviction because you
10 never know what it'll happen before a jury in the hands of
11 good defence counsel or whatever. But I think if you felt that
12 you did not have a chance for conviction, it would be quite
13 irresponsible to move. You'd probably do more investigating,
14 but you certainly wouldn't proceed to the court if you thought
15 you couldn't, didn't have a chance of success.

16 Q. Again, sir, the test of a likelihood of conviction or being
17 convinced that we could obtain a conviction, is that a different
18 threshold test than reasonable grounds?

19 A. Yeah, it is divisible. It is divisible.

20 Q. And it would be a higher test?

21 A. Yeah, I have trouble with that, being definitive on that. I
22 mean what does "reasonable and probable grounds" really
23 mean? And I can only say, though, that it would be a very
24 strange circumstance to have a policeman that didn't think he
25 could succeed with a case demanding that he lay a charge. I

COMMISSIONER SIMMONDS, EXAM. BY MR. ORSBORN

1 mean that just doesn't happen.

2 Q. You say in the following paragraph...

COMMISSIONER EVANS

3
4 Q. What you're saying is one is a legal test and the other is a
5 practical test?

6 A. Yes, I think so. Yes, I think that's a distinction. It's very
7 difficult, though, to be definitive in those areas. There's a lot
8 of judgement involved in all of these sort of cases.

MR. ORSBORN

9
10 Q. You say in the final paragraph on 118, in the middle of that
11 paragraph:

12
13 What is important, of course, that this is a
14 judgement reached entirely within the force and
with outside influence or direction. [sic]

15 I guess what I'd like to ask you. I point out two or three
16 factors that took place in the process...

17 A. Yeah.

18 Q. By which this case was handled. We have a public
19 announcement by the Attorney General.

20 A. Yeah.

21 Q. That charges would not be proceeded with. We have a, not a
22 charitable exchange between Mr. How... Mr. Coles and
23 Superintendent Feagan saying that there's going to be
24 problems with the working relationship if charges are
25 proceeded with. And we have, at least as the Deputy

1 Commissioner construed it, a directive or instructions from
2 the Attorney General. Are you able to indicate, in your view,
3 whether or not those factors influenced in any way the
4 eventual decision of the R.C.M.P.?

5 11:15 a.m.

6 A. Well that's a very tough question because I don't know what
7 was always in the minds of those officers when they did their
8 review. In going through some of these documents now I can
9 see it was obvious the matter that was on their mind but I
10 would be very surprised if it really deterred what I would
11 call their professional judgement on the evidence.

12 Q. Well knowing what you know now, would you have written
13 that paragraph in the same way you wrote it?

14 A. I perhaps would have written it differently.

15 Q. What would you have said?

16 A. Well, what I probably would have said would be, you know,

17
18 Draw a lesson from this case. When cases of this
19 nature come along that are very sensitive, and
20 politically sensitive, for goodness sakes don't
21 take it outside of the normal realm of handling
22 cases whether he's a politician or a plumber.
23 Deal with the Crown in the usual way and just let
24 it proceed. Because the perceptions of bad
25 motives suddenly arise when it's handled in a
different way.

And it was clear some of those perceptions had developed
during the course of this investigation. I'm not here to judge

1 whether or not there were any but I have no reason to
2 believe there were from what I know but it certainly allowed
3 those misunderstandings to develop and it could be avoided.
4 Whenever you get a very politically sensitive case, whether
5 it's at the Federal level or the Provincial level, to just make
6 sure it follows the normal route.

7 Q. I'd ask you to consider this suggestion from the police point of
8 view.

9 A. And just let me say, and I might have said something like
10 that in a letter, you know, in terms of what I'd say differently
11 today.

12 Q. Generally is it fair to say, from the police point of view, that if
13 you've got your reasonable and probable grounds in a
14 practical sense. In practical sense there's no defence you've
15 overlooked. That that's your threshold and threshold before
16 you exercise your discretion. But in this case because of the
17 decision by the Attorney General, because of the pressures
18 felt by the Force in terms of their working relationship, that
19 the Force took an extra cautious approach and said,

20
21 We've got to have a higher threshold, we better
22 make sure that we're not going to lose this
23 because if we lose, if we proceed anyway we're
24 going to have problems and if we lose we're
25 going to have egg all over our face so we will
 look at the evidence that much harder than we
 would normally look at it.

1 Is that a fair characterization?

2 A. I think it's fair to say that because of that position they would
3 be super cautious. And in being super cautious I'm quite
4 sure, I wasn't there but I'm quite sure that Venner would
5 have gone into case law, he would have looked at things that
6 had been said in various appeal courts on cases with respect
7 to evidence and in respect to *mens rea* and Section 110 is an
8 unusual sort of a Section in any event. It's basically slanted
9 at only just a narrow part of the population and I'm sure that
10 he would have done an extraordinarily careful research
11 because of that. I mean you would not seek a confrontation,
12 that is for sure, so you would look at it very carefully.

13 Q. You were more concerned about losing this case than you
14 would be otherwise.

15 A. Well, we're concerned about all of those but we don't really...

16 Q. That's not an unfair characterization.

17 A. Well yeah but it, I'm not sure that it should stand just that
18 bald. I mean we don't go to court with the expectation of
19 losing cases and when we lose them we analyze to see why
20 and try and learn from that so we're better prepared for the
21 next one. But it's because of the peculiar situation it, if we
22 had gone to court and insisted on laying a charge and then
23 failed in that charge, it certainly would have required another
24 level of dealing with the problems. But it would not be at
25 their level. That would be between me and the provincial

1 Attorney General and if it was not satisfactorily resolved
2 there it would be the provincial Attorney General and the
3 Federal Solicitor General with respect to contract and so on.

4 Q. Given the, just looking again at that last paragraph, you say,
5 "Had we come to a different a conclusion we would have
6 sought further discussion with the Deputy Attorney General
7 following which if differences had not been reconciled..." Isn't
8 that, in fact, exactly what happened that your meeting in
9 November reached a conclusion that charges should proceed.
10 You sought further discussion with the Deputy Attorney
11 General, the differences were not reconciled and then the
12 Force looked at it again.

13 A. Well it, that's what appears to have happened looking back in
14 the record. At the time when this case was wrapped up for
15 my information, though, I understood that we'd reached a
16 conclusion.

17 Q. You were not aware of that process.

18 A. No. There were a lot of things I was unaware of in terms of
19 the daily discussion between the Division and Headquarters'
20 branches and so on.

21 Q. You mentioned the lessons that may be learned in terms of
22 treating a case such as this in normal channels. Is that your
23 view of how, say, a high profile case should be treated?

24 A. As far as possible. It isn't always possible because sometimes
25 events take over. The difficulty with those kind of cases is

1 it's hard to deal with them as though they're routines because
2 of a lot of factors. I mean the media is very involved and
3 following your investigators around. Sometimes you have
4 take all kinds of precautions to try and investigate
5 impartially, without being subject to those pressures. The
6 present, the developing state of the law has made it more
7 difficult. There was a time when the police could go on the
8 basis of rather, you know, not very definitive information
9 could go and look at a situation to determine whether or not it
10 really deserved a deeper look at it. And you used to be able
11 to get search warrants and do various things to come to that
12 conclusion. At some stage you might cut it off, say, no, there's
13 nothing there. Today, because of the present state of the law,
14 those search warrants become open to the press almost
15 immediately. The person that's being investigated or the firm
16 or whatever, especially in this commercial crime area, is
17 exposed and even if the police later on come to the conclusion
18 not to proceed, you may, that person may have been
19 destroyed in one way or another and so the whole system is
20 fraught with difficulty now because of the state of the law
21 and the emerging state of the law.

22 Q. Picking up your last point about people being destroyed. You
23 expressed in fairly strong terms the right of the police to lay a
24 charge notwithstanding any influence or direction from the
25 Attorney General. Given that unfettered right, how within the

1 police force do you best protect that the charges are not laid
2 where they should not be laid?

3 A. Well you have a review process. But what you really have to
4 try and, as best as you can, is have, you know, mature,
5 responsible, experienced people that are making those
6 decisions. And also, like I mean, despite that, the principle
7 that you must have that right at the end, normally you expect
8 a lot of discussion between your police and the Crown that
9 will be prosecuting the case. Normally you expect to be
10 touching base with them in terms of, you know, gaps in your
11 evidence or problems in presenting it and one thing or
12 another. And that is what normally goes on. But if it falls
13 apart, and that generally only happens in a case of high
14 profile and, or political profile cases, the police have to
15 reserve that right.

16 Q. If your Deputy Commissioner had come to you on November
17 the 6th and said, "We've had this meeting, we think charges
18 should go but we've got a real problem down in Nova Scotia,
19 they don't agree with us", do I take it from your earlier
20 evidence that at that stage you would have become
21 personally involved?

22 A. Yes. What likely would have happened is that I likely would
23 have called directly to the Attorney General and said I
24 wanted to meet with him, arranged to discuss it with him and
25 try and come to the proper understanding. And, you know,

COMMISSIONER SIMMONDS, EXAM. BY MR. ORSBORN

1 based on experience that I've had in a variety of jurisdictions
2 normally you can sort those things out if it's done at the
3 correct moment. Once a public position has been taken it gets
4 more awkward.

MR. ORSBORN

5
6 Thank you, Commissioner.

EXAMINATION BY COMMISSIONER EVANS

7
8 Q. I'd like to ask you, first, on page 81 what is that anyway? I
9 know it's written by Venner but did it go any place or was
10 that just in a file or...

11 A. Page 81? I don't know what that is. It looks to me like it was
12 notes he was making on a phone call or something and he just
13 put it on the file. But I really can't explain it.

14 Q. But it wasn't intended to go to any individual in the Force.

15 A. I wouldn't think so. It's not addressed to anyone.

16 Q. No.

17 A. And the issue they seem to be discussing there is the question
18 of outside counsel.

19 Q. Right.

20 A. And I see in some of the documents that's addressed. And in
21 one of the documents that's in here I see he's saying well I
22 haven't put in something about the Commissioner's view on
23 this because I don't think it's necessary. Because on that
24 particular issue, I mean that is a very controversial issue in
25 terms of our contract policing. When is it appropriate to go

COMMISSIONER SIMMONDS, EXAM. BY COMMISSIONER EVANS

1 and talk to a lawyer in the Federal Department of Justice?

2 And when it comes to advice on the casework we have a very
3 clear line. That we don't go for case advice on a provincial
4 case to the federal department. You might go the federal
5 department for some administrative questions or procedural
6 questions and so on but my other point has always been, and
7 this seems to be what they were discussing I gather, was that
8 there are cases when it is appropriate to go and get an
9 independent outside counsel to come in and assist you if you
10 feel that you're getting bad advice or advice for the wrong
11 reasons from the Crown.

COMMISSIONER EVANS

12 Thank you.

CHAIRMAN

13 Mr. Ruby?

MR. RUBY

14 Thank you, My Lord.

15 Two items of production, first of all, if I might. Commission
16 counsel can assist. The earlier draft of the letter to Mr. How, has it
17 been found and obtained? Is it available?
18

MR. ORSBORN

19 No.

MR. RUBY

20 Lost? Or just not looked for?
21
22
23
24
25

DISCUSSIONMR. ORSBORN

Well, as far as being looked for we've looked through all the files and it's not there.

MR. RUBY

All right.

Secondly, some days ago I asked, through Commission counsel, if counsel for the Government of Canada would make available the Rutherford letter that's referred to in one of the materials. Have you had a chance to do that? Is it available?

MR. BISSELL

We indicated to Mr. MacDonald our position on that.

MR. MacDONALD

Yes, My Lord. I believe that letter is referred to on page 109 of the book.

CHAIRMAN

Page 109?

MR. MacDONALD

Yes. And the date...

MR. BISSELL

But that's a letter on a different file, a different subject and a different time after this, same subject but a different file, in a different time period and it's legal advice. And for all of those reasons, which I think are valid reasons, we take the position that we're not prepared to produce the letter.

DISCUSSIONCOMMISSIONER SIMMONDS

1 Perhaps I can be helpful a bit. If, Counsel, if I start to
2 violate any of the understandings object but the division of where
3 you go for advice is an interesting one. If they were discussing a
4 policy issue, a policy that should guide the Force in the conduct of
5 its operations, it would be quite legitimate to go to the Federal
6 Department of Justice to get legal views and assistance. If you're
7 discussing policy because of the problems of a case, then you have
8 to be careful that you're not going to that lawyer to get advice on
9 the case which is in a provincial domain. But you might be
10 discussing policy issues behind it and the Federal Government
11 remains responsible for the policies under which the Force
12 operates in terms of its operational procedures and so on. So
13 maybe that's helpful, I don't know.

MR. RUBY

14 It would seem from the document at page 109 that the
15 Rutherford letter was of importance in formulating the responses
16 that we've been examining. And I'd like to know to what extent
17 that advice was followed and to what extent it wasn't and for that
18 purpose I need production of the letter. So I would ask for
19 production of the letter.

MR. BISSELL

20 The date on which the Rutherford letter is received is
21 February 9th, '81, or which it appears in this. I don't see how it's
22 relevant to any of the subject that the letters and decisions were
23
24
25

DISCUSSION

1 made before February 9th, '81, and again, it's a matter of advice,
2 solicitor-client advice. And I think it's most inappropriate and my
3 friend knows that.

CHAIRMAN

4 Well, I don't propose to rule on it now. I want to get this
5 cross-examination out of the way.
6

MR. RUBY

7 Thank you.
8

EXAMINATION BY MR. RUBY

9
10 Q. I take it that you never read the file and, therefore, made no
11 independent judgement on the matter yourself.

12 A. That's correct.

13 Q. You mentioned in the course of your evidence that, with
14 regard to, I think, the false pretences aspect of this case that
15 you didn't think anything by way of charges was warranted
16 and I have a note in its present state. What needed to be
17 done in your view?

18 A. Well not having read the file I don't know if there was
19 anything else that could be done. I mean was there any stone
20 that we hadn't turned? Were there any areas that we hadn't
21 examined and looked at? If there were any missing that
22 could have produced something new then, of course, they
23 should be looked at. I can only conclude from the Deputy's
24 letter though that when he says, "No need to investigate
25 further", that they had turned all the stones and having

1 turned them all it was at the state where they didn't feel it
2 was suitable to proceed.

3 11:30 a.m.

4 Q. That would not be an appropriate response if, in fact, the
5 investigation was incomplete and had not yet been completed.

6 A. I would agree.

7 Q. You said there was a good relationship between you and the
8 R.C.M.P. and the Department of Justice and the Attorney
9 General's office in Nova Scotia. Would you take a look with
10 me in this gray volume at page 65? First of all, were you
11 aware of this document? This is a note from the Thornhill
12 file. Had you ever seen it?

13 A. No.

14 Q. From Mr. Feagan. He says halfway down page 65, in the
15 middle of that paragraph:

16
17 And now that he had made a decision on that
18 facts, (he being Coles) it should be no concern of
19 mine to question his decision and, further, he
20 questioned the motivation of my advisers within
21 the force and that I had a great deal of nerve to
22 suggest that after senior lawyers of his
23 department had reviewed the matter and come
24 to conclusion, that they could be wrong. And
25 that if I went so far as to lay a charge, I was
treading on dangerous ground.

23 That's a most peculiar response from someone with whom
24 you have a good relationship, don't you agree?

1 A. Yeah, I was quite surprised to read that.

2 Q. And then Mr. How arrived, the next line indicated, and he
3 outlines, again, his feelings and then at page 66, about eight
4 lines down:

5
6 He (Mr. Coles) pointed out that he and the
7 Attorney General were responsible to the people
8 of the province. That he was a senior attorney
9 acting for and on behalf of the Department and
10 that he had, after careful research, not only
11 given an opinion, but had made a decision on the
12 case. And by presenting argument about his
13 decision, I was placing myself and the force in a
14 most serious position. He stated that I had
15 absolutely no business questioning a decision of
16 the Department, and he intimated that he and I
17 would not be able to continue to work together
18 in future, if I displayed such a lack of confidence
19 in him. He suggested that I go home and reflect
20 on the whole matter.

21 Do you find that as a peculiar response from the Deputy
22 Attorney General as I do?

23 A. Well, this is Feagan's version of the conversation. I haven't
24 seen the other version, if there is one, but I am surprised if
25 that's an accurate reflection of the tone of that discussion.

Q. This is not the way, I take it, in which Attorneys General
usually respond to senior officers of the R.C.M.P.?

A. Now this is the Deputy Attorney General.

Q. It's Deputy, thank you very much.

A. Yeah, I find it rather unusual, particularly because I had had

1 lots of dealings myself with Mr. Coles and other officers in
2 that Department and with successive Attorneys General and
3 had always had a, what I call a very healthy relationship and,
4 by and large, I think the relationship of the Division with the
5 Department was a very healthy one as well, although it seems
6 to have come apart on this issue.

7 Q. You said in the course of your evidence this morning, and I'm
8 paraphrasing it but I hope I have it accurately. If someone
9 had come to me and said, "We've got a case, but we're not
10 going to proceed because of the A.G.'s direction that we
11 shouldn't, I would have said, 'Hey, wait a minute because
12 that's not my view'."

13 A. Yeah.

14 Q. What does "got a case" mean to you?

15 A. Well, in police jargon, that means we have a good sustainable
16 case that should be put before the courts and the evidence is
17 sufficient and it's one we should proceed with. I mean that's
18 what it means in general terms.

19 Q. Does it mean sufficient to... Are you predicting the likelihood
20 of a conviction or are you predicting sufficiency for a J.P. to
21 issue process and take the charge?

22 A. Well, I think you always have in the back of your mind the
23 likelihood of a conviction, knowing full well that in the hands
24 of skillful lawyers, the best of evidence can be reduced to
25 nothing at times. But you certainly proceed with the

1 assumption that you've got a case that is likely to lead in that
2 direction.

3 Q. Because the language that you've been asked about in Volume
4 84 raises some of the same ambiguities that I see now in your
5 answer and I just want to try and clarify some of them. If
6 you look at page 14,793. You've looked at it before. Is the
7 language in that case "convinced that we could have obtained
8 a conviction, likelihood of getting a conviction." Now would
9 you agree with me that, first of all, if you've got reasonable
10 and probable grounds, you've got at least a reasonable chance
11 of getting a conviction. That's implied in reasonable and
12 probable grounds. It's impossible to conceive of a case where
13 there are reasonable and probable grounds to think that "x"
14 committed a crime and, at the same time, say there's no
15 chance of a conviction?

16 A. Well, I can think of cases because I give you cases where the
17 police know who committed the crime but you know you
18 have no chance of conviction.

19 Q. No, but cases where you also have reasonable and probable
20 grounds.

21 A. Yeah.

22 Q. To believe it.

23 A. Yeah, I think it's included in that.

24 Q. All right. So when you raise the standard to a likelihood of
25 getting a conviction, you're predicting what a jury will do.

1 Yes?

2 A. Yeah, you're making a judgement on the likelihood of, the
3 weight of the evidence that will likely be applied.

4 Q. Isn't that really for someone else to do? It's not something
5 you're trained for.

6 A. I accept that as being fairly right, although I don't know
7 people that are better at making judgements in the likelihood
8 of cases succeeding than an experienced policeman.

9 Q. How about experienced defence counsel? I won't quarrel
10 with you on that.

11 A. They never expect the Crown to succeed.

12 Q. Maybe we're always far too optimistic. You'll agree with me
13 that it's not every case where you ask yourself, "Is there a
14 likelihood of success?"

15 A. No, I think it's always in the back of your mind. As I said
16 earlier, you just don't go to court and lay charges against
17 citizens if you don't think you can succeed.

18 Q. But in most cases, you'd agree. If you don't think you can
19 succeed with it, if there's no chance of succeeding, you're not
20 going to lay the charge. But, in most cases, really I suggest all
21 you ask is, is there a reasonable chance of success?

22 A. Yeah.

23 Q. You don't say is it likely I'll succeed? Is there a reasonable
24 chance of success?

25 A. Yeah.

1 Q. Agreed?

2 A. I think that's fair.

3 Q. Now, in this case, it seems the higher standard was used.

4 A. Well, the person that made the decision was before you and
5 he could be questioned about that standard that he actually
6 applied. There is no question by the fact that public
7 pronouncements had been made. They would be "super
8 cautious," I think was the word that was used by the counsel
9 here. And that is true, they would be.

10 Q. If you turn the page to Line 9 on 14,794. It seems clear from
11 that passage at Lines 9 to 15, and I'll give you a moment to
12 read it.

13 A. Yes.

14 Q. That the consequences were taken into account in deciding
15 whether or not the charge should have been laid, the possible
16 acquittal, the possibility of an acquittal, correct?

17 A. It would appear from, that Quintal is saying that. That he did
18 consider that.

19 Q. Now the possibility of an acquittal exists in every case, but it's
20 never taken into account, I take it, in terms of the
21 consequences of it. Because there aren't any consequences to
22 an acquittal ordinarily, are there, for the force?

23 A. Not for the force.

24 Q. And here, the consequences of the force have become a factor
25 in the decision-making process of this case, if Inspector

1 Quintal's evidence is accepted.

2 A. I think there is no doubt that... I mean it was a problem,
3 anyway. If it wasn't a problem, we wouldn't be here today.
4 And whether or not there was a charge or not a charge or an
5 acquittal or not acquittal, I saw in these notes somewhere
6 where one of the officers had sent me an optimistic note
7 saying that the C.O. of the division thinks it's calming down
8 and I said that this one won't ever calm down because I'm too
9 familiar with the, with what happens in these kinds of cases.
10 It will come out. It will be aired at some stage and that's why
11 we must be sure that what we've done is right and
12 sustainable. And I don't know how much weight was going
13 on in Deputy Commissioner Quintal's mind or in Tom Venner's
14 mind when they reviewed it. But my impression has always
15 been, as stated by Venner in another memorandum, that it
16 was really on the basis of the evidence that they, and the
17 possible defences that they came to the conclusion. And I
18 accept that.

19 Q. You'll agree with me that if you're going to make a proper
20 decision about whether or not to lay a charge, it's important
21 to consider all the relevant factors...

22 A. Yeah.

23 Q. And only relevant factors. Yes?

24 A. Yeah.

25 Q. What will happen to the force as a consequence of an

1 acquittal is not a relevant factor, I think you'll agree.

2 A. I would agree.

3 Q. So it was improper and wrong for them to consider it in this
4 case, if as the evidence indicates, it was done.

5 A. Yeah, if you take it literally. But you don't go looking for a
6 fight.

7 Q. No, but you don't go in fear, either.

8 A. No, exactly.

9 Q. You can't be afraid of the Attorney General.

10 A. I agree with you completely. And that's what we say. Had it
11 been a case where, a good case to proceed with, we would
12 have proceeded. And that is exactly the judgement I think
13 those two officers came to, based on the briefing I got from
14 the Deputy Commissioner.

15 Q. And that decision, whether it was or not, I'm not going to deal
16 with it.

17 A. Yeah.

18 Q. It should be one that did not consider at all any possible
19 consequence for the force from the Attorney General.

20 A. That, yeah, I would agree with you. That should not be the
21 basis for the decision at all.

22 Q. It shouldn't be considered at all. It's not part of the decision-
23 making process.

24 A. No, but it's there. I mean it's there. It's up there and it's in
25 your mind whether you want to put it out of it or not. But it

COMMISSIONER SIMMONDS, EXAM. BY MR. RUBY

1 should not have had any bearing at all on their interpretation
2 of the value of the evidence and the defences available to the
3 evidence and so on.

4 MR. RUBY

5 Thank you, sir. Those are my questions.

6 MR. SAUNDERS

7 We have no questions.

8 MR. CHAIRMAN

9 Mr. Ross?

10 MR. ROSS

11 No questions.

12 MR. CHAIRMAN

13 Mr. Merrick?

14 EXAMINATION BY MR. MERRICK

15 Q. Sir, my name is John Merrick and I represent Mr. Thornhill in
16 this matter. I just want to clarify a few matters to make sure
17 that I've understood your position on them. We've talked
18 about this very thorny question of discretion and I take it
19 that it's your position, based on your years of experience, that
20 even the police officer, when it comes time to lay an
21 information, has that area of discretion which may enter into
22 the decision which he or she may make.

23 A. There is a principle of police discretion which always
24 exists and it is most frequently applied at cases of a much
25 lower nature. Everyday on traffic work, you see offences that

1 you decide not to prosecute, and yet the evidence is clear. So
2 it's there, it's an element that a policeman has.

3 Q. so that even a police officer, in deciding whether or not to
4 proceed to lay the charge, has that discretionary area which
5 they have to cover in making up their mind.

6 A. That area exists.

7 Q. And I take it that in exercising that discretion, they are, in a
8 sense, arriving at the test or the statement that I took down
9 from you at the beginning of your evidence, whether or not it
10 was a case to put before the courts in rough practical terms.

11 A. Yeah.

12 Q. Is that a fair way to characterize it?

13 A. Yes, yes.

14 Q. And I take it, sir, that you would not dispute the fact that an
15 Attorney General or a Crown prosecuting officer, who is an
16 agent of an Attorney General, also has that same sort of
17 discretionary area.

18 A. Well, as to whether or not he'll prosecute?

19 Q. Yes.

20 A. Well, I'm not going to get into that area. I mean the Attorney
21 General certainly has the right to stay a charge, if he feels it's,
22 for whatever reason. And I don't know what tests he should
23 apply. There is something called the public interest. There is
24 something called the administration of justice and the
25 perceived fairness of the administration of justice. Those are

1 sort of things that I should think would be very much in an
2 Attorney General's mind if he decided to stay a charge
3 publicly.

4 Q. So you would not be surprised by or critical of anybody
5 suggesting that an Attorney General or a Crown prosecuting
6 officer, and even deciding whether to recommend or agree
7 with the laying of charges, takes that discretion into account.

8 A. Yeah.

9 Q. Let me put it a little simpler for you, if you're having trouble
10 with the question. Would it be fair to say that even a Crown
11 or an Attorney General, if it's in the Deputy Attorney
12 General's hands or Attorney General's hands, really faces the
13 same sort of question, whether it's a case to put before the
14 courts.

15 A. Whether it's a case to prosecute.

16 Q. Yes.

17 A. And I separate that from laying of a charge.

18 Q. Yes.

19 A. And normally there should be no division between the
20 investigators and the prosecutor on the laying of the charge,
21 but sometimes it does arise. And when it arises, it's
22 important for the police officer to be able to do what he
23 thinks is right. After all, he can be dealt with if he's
24 capricious or foolish or taking silly charges before the courts.
25 The judges aren't at all shy in reminding policemen that

COMMISSIONER SIMMONDS, EXAM. BY MR. MERRICK

1 they're stepping well beyond their normal expected role.

2 11:45 a.m.

3 Q. Now I take it, sir, that based on your knowledge of what was
4 going on at the time it was your understanding that the
5 exercise of the decision within the Force on whether to
6 proceed with this matter was being done on an assessment of
7 the evidence that was available to the Force.

8 A. That was my understanding.

9 Q. Yes. And I take it that you were confident that that
10 assessment was being done by experienced police officers
11 who you had delegated the task to.

12 A. Yes, it was.

13 Q. In fact, you told us that Mr. Venner was a very experienced
14 officer. I haven't heard what his experience is. Can you give
15 me a brief overview of it?

16 A. Venner at one time or another in his career has handled just
17 about every kind of difficult case there is. He's done it in a lot
18 of areas of the country. His young years were in the Province
19 of Alberta where he handled all kinds of, firstly, local crime
20 and then more serious crime. He did a lot of commercial
21 crime work, a lot of drug work. Then he was in the Province
22 of Ontario where he was responsible for the supervision of
23 some very large and major cases there and, you know,
24 controversial cases. And he's a man of great experience and
25 tremendous integrity.

COMMISSIONER SIMMONDS, EXAM. BY MR. MERRICK

1 Q. And at the point in time you would have presumed that
2 notwithstanding that this business of the AG in Nova Scotia
3 may have been in the back of the mind, that Venner and
4 Quintal would have been making their assessment on the
5 evidence as free as possible from that consideration as they
6 were able to do so.

7 A. That would be my judgement but, you know, they are the
8 people that can answer that.

9 Q. And quite so and we've had one of them here and he has
10 answered questions. I'll put it to you, sir, that based on what
11 you've been told and what you've seen to date you have
12 nothing to indicate that that was not, in fact, the case that
13 went on.

14 A. Well what I can say is what I've seen now. I'm rather
15 surprised at the amount of to-ing and fro-ing that was going
16 on between Headquarters and the Division and between the
17 Division and the Department or the Deputy Attorney General.
18 I mean that comes as a bit of a surprise to me because I was
19 unaware that there was that much agony in the case.

20 Q. Yes.

21 A. Although I was aware that there was some, you know,
22 different views and so on. But I'm rather surprised that
23 because of what I read that I didn't become much more
24 directly involved although I must say I was not very
25 available during that critical period of time because of other

COMMISSIONER SIMMONDS, EXAM. BY MR. MERRICK

1 duties that I had. I was away a lot of the time out of Ottawa
2 during December and January which seemed to be two critical
3 months. But also in looking at my diary at that period of time
4 when I was there, I was almost totally tied up with meetings
5 in the Privy Council office over a whole series of difficult
6 issues dealing largely with the security service and the
7 MacDonald Commission and some of the reorganization we
8 were trying to accomplish.

9 Q. I appreciate that you say you're now understanding, perhaps
10 for the first time, the amount of agony that may have been
11 gone through in arriving at this decision, but I don't take it
12 from your evidence that you're suggesting that you're
13 satisfied at this stage that either Venner or Quintal
14 wrongfully were distorted in their decision on the evidence.

15 A. No, I'm quite sure that neither of those men would be
16 improperly influenced. But it is true, as other counsel have
17 suggested, that always is the knowledge in the back of their
18 mind that the Attorney General's already taken a position
19 which is awkward and obviously would make them very
20 cautious. But they're not the kind of men that can be bent
21 because of things said by other people.

22 Q. You were asked about whether further investigation or other
23 rocks had to be overturned...

24 A. Yeah.

25 Q. And whether there were other things to be done. I take it

COMMISSIONER SIMMONDS, EXAM. BY MR. MERRICK

1 you would have assumed from the experience of these
2 officers that they would have addressed themselves to the
3 question of whether there was any further investigation that
4 properly should have been by the Force in relation to any of
5 the charges.

6 A. Well, you know, as I say, I didn't read the file but my
7 conclusion is that the investigators in "H" Division had done a
8 first-class job. They had looked at things and they had
9 turned up a lot of information, some of which is before you
10 now and I think they did a good job. The real question was,
11 what did it establish?

12 Q. Yes. But my point to you is this. You would have expected
13 your review officers to make a determination if they thought,
14 in the face of that first-class job, whether there was anything
15 else to be done.

16 A. I'm sure you're right. If the basis of all that experience, the
17 officer in charge of the Commercial Crime Branch, the Director
18 of Criminal Investigation and the Deputy Commissioner for
19 OPS, if they had said, "Look, why don't you go over here and
20 do this?" Or "Why didn't you do that?" Or "Have you checked
21 this?" Or "Go out and get a search warrant and find that." I
22 mean if they had seen that they would have said, "Go and do
23 it."

24 Q. And that was part of their responsibility to find and report
25 on if they found it.

COMMISSIONER SIMMONDS, EXAM. BY MR. MERRICK

1 A. Yes, that would be included in the review process.

2 Q. And you know nothing to indicate that either of them
3 suggested that there was further investigation that should
4 properly have been carried out.

5 A. No. I go by the record.

6 Q. You were asked about whether the police ever laid charges
7 when charges should not be laid applying whatever test you
8 want to apply. And you said, "Well that's what the review
9 process is for to stop that." And, sir, would you say that
10 perhaps this is what has happened in this case? That the
11 review process looked at this and came up with a different
12 conclusion than the local officers on the scene.

13 A. Well I'm not even sure that everybody at Headquarters or
14 everybody at Division had the same views. But the ultimate
15 decision at the end of the review by the officers that are
16 charged with that responsibility was that it was not a case to
17 proceed with.

18 Q. That's right. And the purpose of that review was to make
19 sure that charges were not laid in cases where they shouldn't
20 be laid.

21 A. Well I suppose that's one of them, one of the purposes. We're
22 looking at the sufficiency of the investigation and everything
23 else, you know.

24 Q. You were confident at the time that notwithstanding the
25 position adopted by the Deputy Attorney General that if your

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1 officers considered that this was a charge that should have
2 been proceeded with they would have recommended
3 proceeding.

4 A. Yes.

5 Q. And, in fact, sir, I take it on hearing all of the evidence that
6 the decision here as to whether to proceed with charges,
7 ultimately was a decision made by the RCMP.

8 A. Yes.

9 Q. And I take it, sir, that it was made without any sort of
10 political pressure or fear of favour or whatever the oath of
11 office goes on to cover.

12 A. Well there was certainly, I certainly didn't feel any. As has
13 been pointed out by counsel, though, the officers examining it
14 were aware of the position that had been taken by the chief
15 law officer of the Crown, the Attorney General, and had made
16 some public statements and statements, I believe, in the
17 Provincial House. So they could not be unaware of that. But
18 it would not be the basis for their decision.

19 Q. You said at one point in your evidence that, and I forget the
20 exact context in which you used these words that it was
21 important to insure that what the Force did was right and
22 sustainable.

23 A. Yeah.

24 Q. I take it, sir, that on the report that was given to you, when
25 the Force made the ultimate decision as to whether charges

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1 were to be laid in this case, you were satisfied that that
2 decision was right and sustainable.

3 A. I think it was certainly the right decision and, you know, I
4 don't want to appear at all, you know, flippant because it's a
5 very serious matter, but I remember at the time when
6 Quintal was talking to me about this, I said well, and I think
7 my exact words almost, "Well, I'd sure rather be on the
8 defence side than the Crown side from what you're telling me
9 of this case if we were to proceed because you're showing me
10 some obvious weaknesses."

11 MR. MERRICK

12 Thank you, sir, that's all I've got.

13 CHAIRMAN

14 Mr. Pringle?

15 EXAMINATION BY MR. BISSELL

16 Q. My Lord, I just have one question. Commissioner Simmonds,
17 you've been referred to a number of passages in Mr. Quintal's
18 letter to Chief Superintendent Feagan and I just want to refer
19 you to one more and ask you for your comment as has been
20 done in the past. And that's at page 96 of the book. There
21 you will see a paragraph that begins, "The opposite
22 argument..." and I would ask you to go the second sentence of
23 that paragraph where it says, "It seems very unlikely,
24 however, that a jury of 12, no matter how instructed, would
25 ever unanimously agree that a conviction was appropriate."

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1 A. Is this page 96?

2 Q. Page 96. You see the paragraph that begins, "The opposite
3 argument..."

4 A. Oh yes, okay.

5 Q. And the second sentence of that paragraph.

6 A. Yes.

7 Q. And I'm going to ask you for your comments. Is that, in
8 terms of an assessment of the case's reasonable chance to
9 succeed?

10 A. I think it's a very valid comment and something to consider.

11 MR. BISSELL

12 Thank you, sir. That's all.

13 RE-EXAMINATION BY MR. ORSBORN

14 Q. Just one, My Lord, very quickly. Commissioner, you
15 mentioned in a question in your reply to Mr. Merrick that you
16 said the Deputy Commissioner, "I'd rather be defence counsel
17 because they are obvious weaknesses here in the case." In
18 your current review of the documentation does it surprise
19 you that these obvious weaknesses were not evidently
20 recognized or at least recorded in the minutes of the review
21 which took place on November the 5th?

22 A. Yeah, I asked a question about those minutes because, when
23 I first saw them the day before yesterday in Ottawa, and I
24 said who prepared them because they're not signed and
25 when, were they prepared relative to the meeting. And I see

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1 some notes saying well this is the best recollection I've got of
2 our sort of view and opinion.

3 Q. Did you determine who they were prepared by?

4 A. No. The, Chief Superintendent Docker who had prepared a
5 book for me to look at when I got in from Vienna, did not
6 know and I didn't have time to do any research. I just read
7 the documents and, but, you know...

8 Q. Did it surprise you that these obvious weaknesses were not,
9 did not jump off the page at you?

10 A. I sus-, well, I don't know what should be in the minute. But I
11 would know that coming out of that that certainly Venner and
12 Quintal would have a lot of questions on their mind, I'm sure,
13 and would look at it further. I mean...

14 Q. Thank you.

15 A. But, you know, I can't speak for them.

16 CHAIRMAN

17 Thank you very much, Commissioner Simmonds.

18 WITNESS WITHDREW

19 11:56 a.m. - BREAK

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