

MR. GALE, EXAM. BY MR. SPICER

12:10 p.m.

1 MR. CHAIRMAN

2 Yes, Mr. Spicer?

3 MR. SPICER

4 Thank you, My Lord.

5
6 GORDON GALE, recalled and previously sworn, testified as
7 follows:

8
9 EXAMINATION BY MR. SPICER

10
11 Q. Mr. Gale, if I could ask you to turn to page seven of that
12 volume in front of you? It's a note of April the 10th which
13 indicates reference to one of those Thursday meetings. Have
14 you had an opportunity to review this volume in the last little
15 while in preparation for these hearings?

16 A. Our counsel went over it with me one day.

17 Q. Okay, if I could just direct your attention to this note. It
18 indicates that you brought up, on the third line:

19
20 Mr. Gale introduced a matter of present
21 controversy relating to the Honourable Roland
22 Thornhill and possible contravention of the
Section 110 of the Code.

23 Do you remember doing that?

24 A. I don't have any direct recall of that particular meeting.

25 Q. While you may not have any specific recollection of that

1 meeting, do you remember bringing up with the R.C.M.P. the
2 question of Roland Thornhill?

3 A. I recall it was brought up with the R.C.M.P. Now I...

4 Q. Do you remember bringing it up yourself?

5 A. I may have brought it up myself. I really can't recall this
6 meeting. I know there was a meeting but I can't recall
7 whether I brought it up or they brought it up or it was known
8 that this was going to be brought up at the meeting.

9 Q. The note would seem to indicate that one of the factors that
10 might have caused it to have been brought up was the fact
11 that the Premier had mentioned outside the Legislature that
12 Thornhill had accepted the benefits, financial benefits, while
13 holding office as a Minister. Does that twig your memory at
14 all as to whether or not that was a factor?

15 A. Well, that could certainly be one of the factors for bringing it
16 up because of...

17 Q. Prior to the knowledge or the statement by the Premier that
18 Thornhill had accepted the benefits while holding office, did
19 you have any knowledge of any inquiries being made by the
20 R.C.M.P. concerning Mr. Thornhill?

21 A. No, I don't recall having any knowledge of any inquiries about
22 Mr. Thornhill prior to that time.

23 Q. Prior to that point in time, and that would have been around
24 April or so of 1980.

25 A. Yes.

1 Q. Do you have any recollection of Chief Superintendent Feagan
2 indicating to you that the R.C.M.P. would be proceeding with
3 an investigation and you agreeing with that?

4 A. I don't have any direct recollection at this point in time. I
5 certainly would not... I certainly would have agreed with
6 them to proceed with an investigation.

7 Q. Once the investigation had commenced, do you remember
8 whether or not you would have advised Mr. Coles that that, in
9 fact, was taking place?

10 A. Oh, yes, I would have advised him that that was taking place.

11 Q. Would you have advised anybody else in the Attorney
12 General's Department that it was taking place?

13 A. Mr. Herschorn, undoubtedly.

14 Q. Would you have had any discussions with Mr. Thornhill about
15 it?

16 A. No.

17 Q. If I could ask you to turn over to page 10, there's a note, a
18 letter directed to yourself of May the 21st. I just want to
19 direct your attention to the last paragraph. Page 10.

20 A. Yes.

21 Q. The last couple of sentences of the last paragraph:

22
23 As you know, inquiries made in February were
24 preliminary in nature and were carried out to
25 determine if there was any grounds to the
allegations being circulated at that time.

1 Did you have any knowledge in February that inquiries were
2 being carried out?

3 A. I can't recall any knowledge prior to the April date that any
4 inquiries were being carried out. Now whether they told me
5 in April that such inquiries had been done before, I don't
6 recall either.

7 Q. Once the investigation was under way, did you give any
8 direction to the R.C.M.P. as to whom they were to report to in
9 respect of this investigation?

10 A. Yes, I gave the R.C.M.P. the direction that was given to me by
11 the Deputy Attorney General, that the R.C.M.P. were to report
12 to the Department and that when they had concluded their
13 investigation, that the matter would be reviewed within the
14 Department to determine whether or not there was a basis for
15 prosecution and if there was, that the, a prosecutor would be
16 appointed for that prosecution.

17 Q. Are you able to tell us at what point you gave that direction
18 to the R.C.M.P.?

19 A. Well, I'm not able to tell you whether it was at the meeting
20 with Feagan or MacInnes, or whether it was shortly
21 thereafter.

22 Q. Are you able to tell us whether, if it wasn't at the meeting,
23 whether it was indeed shortly thereafter or some time later, a
24 month later?

25 A. Well, I don't think it would have been anything in the range

1 of a month. I would think that if it was not at that meeting,
2 that it was within a week of that meeting.

3 Q. Did you receive the direction from Mr. Coles to so direct the
4 R.C.M.P. That is, to tell the R.C.M.P. to report directly to Mr.
5 Coles?

6 A. To report directly to the Depart... Yes, I received that direction
7 from Mr. Coles.

8 Q. Did Mr. Coles explain to you at the time why it was that he
9 wanted that done?

10 A. My recollection is that it was because he did not want
11 anything to get out on the matter. That he wanted it treated
12 as... So that information would not get out, that he felt that
13 that would be best done by having it dealt with entirely
14 within the Department as opposed to involving prosecutors.
15 That Mr. Thornhill was a member of government and that it
16 should not have this matter go, become public knowledge
17 unless there was something to it.

18 Q. Did Mr. Coles express any concern to you that if it were left in
19 the hands of the prosecutors that it would become public?

20 A. Not in such words, but he indicated that he wanted it kept
21 entirely within head office, if you will. The reports would
22 come to me but they would be addressed to the Deputy
23 Attorney General. But normally they have attention to my
24 name. So that when the mail came in, I would see the report.

25 Q. Did you also indicate to the R.C.M.P. that in addition to

1 reporting to the Attorney General's office, that they were not
2 to have contact with any prosecutor?

3 A. Well, I thought that I had given them the instructions in such
4 a way as to tell them that we did not want them to lay
5 charges until such time as the investigation had been
6 completed, they had been reviewed by the Deputy Attorney
7 General and a decision made as to whether or not the
8 evidence supported charges. And I thought that implicit in
9 that was that they not go to anyone else outside of the
10 Department. I recall telling them that if they had any
11 questions about the matter, that during the course of their
12 investigation, that they should refer those to the Deputy or to
13 myself and that we would try and deal with those questions.

14 Q. Do you remember telling anybody in the R.C.M.P. explicitly
15 that they were not to have contact with any prosecutors?

16 A. No, I don't recall telling them explicitly that they were not to,
17 but I thought that in the terms that they were told, that that
18 got to preclude them having contact in accordance with what
19 the Deputy Attorney General had wished.

20 Q. If I could just ask you to turn to page 18. This is your letter
21 of July 25th which comes after, I take it, you found out that
22 the R.C.M.P., in fact, had been in contact with Kevin Burke,
23 prosecutor. Correct?

24 A. Yes.

25 Q. About six lines down in that letter, it says:

1 Such action (referring to the contact with Burke)
2 by Inspector Blue is directly contrary to the
3 instructions of the Deputy Attorney General
4 relayed through me to Superintendent Christen,
5 Chief Superintendent Feagan, and Inspector
6 MacInnes.

7 Now do you remember telling each of those individuals that
8 there were to be no discussions with Crown counsel?

9 A. At this point in time, I can't say that I told each of them. I
10 know that it was unusual for me to meet with Superinten...
11 Chief Superintendent Feagan. So I would assume that if I had
12 not told him of the April 10th meeting, that the direction
13 would have been given to Christen or MacInnes.

14 Q. You go on to say:

15 Those instructions were that no charges were to
16 be laid nor was any contact to be made with
17 prosecutors concerning this matter.

18 It looks from this letter, Mr. Gale, that you're indicating to
19 them that you did tell them specifically that there was not to
20 be any contact made with prosecutors. Are you not able to
21 confirm that today?

22 A. Well, I'm not... I can't tell you that I said "Don't contact
23 prosecutors." I can tell you that I told them if they had any
24 questions arising during the course of the investigation, that
25 those questions should be referred to me or to the Deputy
 Attorney General and we would give them whatever

1 assistance or advice they needed at that time. In other
2 words, I thought that it was understood that until they had
3 concluded their prosecutions, that we would act instead of, in
4 the stead of a prosecutor that they might normally contact.

5 Q. Some time later, Mr. Coles issued a press release in respect of
6 this course of action and I just want to take you to that. It's
7 on page 58.

8 A. You'll have to excuse me on my slowness in gathering some of
9 the pages, but some of them have so many page numbers.

10 Q. This one says "Press Release," page 58. Have you got it?

11 A. Yes.

12 Q. Second paragraph:

13
14 Mr. Coles said that although he has not seen the
15 statement attributed to the assistant prosecuting
16 officer, he restates his previous advice that it
17 was (and this is what I want to ask you about)
18 that it was clearly understood policy and
19 accepted practice between the R.C.M.P. and the
20 Attorney General's Department that in matters of
21 major or involved criminal investigations,
22 particularly those involving allegations of so-
23 called commercial crime and fraud, the police
24 investigation into the facts is referred to the
25 Deputy Attorney General or other senior lawyers
in the Department to assess the report and
determine whether the facts support any
allegation of wrongdoing... (It goes on.) If the
facts disclose evidence, then a prosecutor is
assigned.

Did you understand that to be a clearly understood policy and

1 accepted practice between the R.C.M.P. and the A.G.'s office in
2 connection with crimes of the nature referred to in that press
3 release?

4 A. No, I did not. I understood that the normal procedure was
5 that they would have contact with prosecutors during the
6 course of their investigation, if they felt that was necessary.
7 That they, on high profile matters, that their reports would
8 also be submitted to the Department so that we would be
9 kept abreast of what was transpiring on the matter.

10 Q. Indeed, isn't it the case, Mr. Gale, that this was the only case
11 of which you are aware where this practice was followed?
12 That is, that the R.C.M.P. were told not to have contact with
13 the Crown prosecutor and the matter was to go directly to the
14 Attorney General's office.

15 A. Yes, this is the only case in my time there that I'm aware that
16 this has happened.

17 Q. There's a note on page 20 of this volume from Superintendent
18 Christen dated the 5th of August. In the second paragraph,
19 you're referred to there, and I just wanted to ask you about
20 the sentence which says:

21 In view of Mr. Thornhill's position in the
22 provincial government, it would be the wish of
23 the Attorney General to brief the Premier
24 concerning any decision to prosecute.

25 Do you remember advising Superintendent Christen of any

1 desire to brief the Premier?

2 A. I think that I... It was my understanding that the Attorney...
3 The deputy Attorney General, who was acting on the stead of
4 the Attorney General. The Attorney General indicated that he
5 didn't want to become, deal with the matter, that the Deputy
6 Attorney General felt that if charges were going to be laid,
7 that the Attorney General should so be advised and that the
8 Premier, presumably, I understood, the Premier would be
9 advised that the charges were either going to be immediately
10 laid or had been laid.

11 12:25 p.m.

12 Q. And would that be, to your understanding, an advice to the
13 Premier after the decision had been made to go ahead and lay
14 charges?

15 A. Oh, yes.

16 Q. Do you have any knowledge yourself, sir, as to whether or not
17 the Premier was being kept advised as this investigation
18 progressed?

19 A. No, I have no knowledge.

20 Q. No knowledge.

21 A. Of whether he was advised or not.

22 Q. On page 24, it's a letter again to yourself, this time from Chief
23 Superintendent Feagan of September 11th enclosing the RCMP
24 investigative material. Did you review the RCMP
25 investigative material yourself?

1 A. I read the reports when they came in and then simply either
2 passed them on or put them in the file waiting for their final
3 reports.

4 Q. Did you consider at that time that it was any of your
5 responsibility to analyze the RCMP reports with a view to
6 deciding whether or not there was enough evidence to go
7 ahead?

8 A. Not at that particular point in time. I expected that after they
9 made their concluding report in which they would give us
10 some type of summary akin to a brief to a prosecutor on the
11 thing that I would probably, at that time, be involved in
12 reviewing the reports and making some assessment.

13 Q. Chief Superintendent...

14 A. I might add that I did not, I'm not the one that received this
15 letter. I don't know when I saw this letter. That is not my
16 handwriting on it.

17 Q. Not your handwriting where it says, "Received September the
18 11th?"

19 A. No, sir.

20 Q. Did you ever analyze the RCMP reports yourself?

21 A. No, as far as I can recall there was one meeting with Mr. Coles
22 at which Mr. Herschorn was present and there were general
23 discussions on the case. I had not gone into that meeting
24 having gone through the file and reread the reports that I had
25 received or read reports I may not have received.

1 Q. On page 25 there's a memo from Mr. Herschorn to yourself.
2 Can you tell us how Mr. Herschorn came to write that memo
3 to you?

4 A. I can only tell you that either Mr. Coles asked me to have a
5 memo prepared or he asked Mr. Herschorn to have it
6 prepared. I tend to think he asked Mr. Herschorn and that
7 Mr. Herschorn addressed it to me as being his immediate
8 superior.

9 Q. Did you have any understanding of what it was that Mr.
10 Herschorn then was asked to do. What his job was with
11 respect to this memo.

12 A. At this point in time I don't know what the purpose of the
13 memo was. I don't know, other than looking at it to say it
14 seems to bring out some of the facts of the case.

15 Q. Did you review it at the time?

16 A. I think I probably looked at it quickly but I don't know what
17 the purpose of it, I cannot now recall what the purpose of it
18 was so I don't know what attention I gave it other than to
19 send it on to Mr. Coles.

20 Q. Do you remember whether at the time you looked at the
21 RCMP reports to see whether or not what Mr. Herschorn was
22 concluding was consistent with a fair reading of the RCMP
23 material?

24 A. No, and I don't really have a great recall of any, I don't have
25 any recall of this memo as such which tends to confirm in my

1 mind that it was, as one asks of Martin Herschorn by Mr.
2 Coles and that for some reason Mr. Herschorn directed it to
3 me and that, and since it seems to be something that is
4 abstracting from some of the reports that I just sent it on. I
5 have no conscious recollection of this particular memo.

6 Q. You indicated to us a couple of minutes ago that this was the
7 only case of which you were where the RCMP had been told to
8 report directly the Attorney General's Department and not to
9 have contact with the prosecutor.

10 A. Yes.

11 Q. Was it your view also in this case that it was the Attorney
12 General's office that was going to make a decision as to
13 whether or not a charge was to be laid?

14 A. It was my understanding that a decision would be made as to
15 whether or not there was a case to go forth to the courts.
16 Whether we agreed with the RCMP recommendations or
17 conclusions. That if we thought that there was a case that
18 looked as if it could go forth to the courts that a prosecutor
19 would be assigned and it would then take its normal course
20 on the matter. I have always understood that it's the right of
21 the police to lay a charge. They often consult with the Crown
22 and whether it be a prosecutor or someone else in the Crown.
23 That they retain and it's the right to lay a charge and we
24 retain the right to just continue proceedings by entering a
25 stay here.

1 Q. Did you have any idea from your understanding of what the
2 position in the Attorney General's Department that this case
3 was being treated differently in that respect?

4 A. Well, you know, this case was, I'm not sure I understand your
5 question, quite frankly.

6 Q. Look at page 18, last part of that letter.

7
8 Your investigators are to cease to have contact
9 with the prosecutors concerning this
10 investigation and to concentrate on getting their
11 long-awaited report into the Department
12 summarizing the evidence and the charges
13 proposed...

14 A. Right.

15 Q. "...based on the evidence so that it can be reviewed and then
16 forwarded for prosecution if the evidence supports charges."
17 You're the author of that letter. Was it your intention in
18 writing that letter to be saying to the RCMP, "We're the ones
19 that are going to decide whether or not charges should be laid
20 here."

21 A. It's difficult to answer directly. We, as I recall, we were going
22 to look at the reports to determine whether or not there is,
23 what appeared to be a *prima facie* case. But the use of the
24 word "charges" is probably unfortunate in that it's really, as I
25 understood it, to be a review to determine whether or not the
evidence would support charges, prosecution. I might add
that as it turned out that charges, that it was decided that

1 there was a case that if the charges were laid that we weren't
2 going to prosecute that I had expected that there would be a
3 discussion with the police prior to any final decision being
4 taken on that or a public position being taken.

5 Q. Well what did you mean then, Mr. Gale? You wrote the letter.
6 You said, "Charges proposed based on the evidence so that it
7 can be reviewed and then forwarded for prosecution if the
8 evidence supports charges." What were you trying to tell the
9 RCMP?

10 A. Well that if we agreed that there is a basis for the charges
11 then we would forward it on to arrange for a prosecutor.

12 Q. And if you didn't agree?

13 A. Well that, if we didn't agree then I would have expected that
14 in the normal course of events there would have been some
15 discussion with the RCMP and, to show them why we thought
16 the case would, if charges were laid, that we could not
17 prosecute the case.

18 Q. And in this particular case, are you able to tell us whether or
19 not in your view as the person writing this letter of July 25th
20 to the RCMP, in your view, if there hadn't, if the AG's
21 Department had concluded there wasn't sufficient evidence,
22 did you think it was the right of the AG's Department to say,
23 "We don't think a charge should be laid in this case."

24 A. No, I think, yes, I think the Attorney General's Department
25 has the right to, acting as a legal adviser, to say that we don't

1 think a charge should be laid based on the evidence, the law.
2 But that does not preclude the police from laying a charge if
3 they're of a different mind or different view.

4 Q. And it's your view, I take it, at the end of the day the RCMP
5 or any police force have that right regardless of what the
6 view is of the AG's...

7 A. Yes, that's right.

8 Q. Even though you may not want to go ahead and prosecute.

9 A. That's correct. If they say, if we tell them we don't think
10 there's a basis for it, they say they're going to lay the charges
11 and I think at that point in time it's understood that they are
12 going to lay the charges, they have the right and that there
13 undoubtedly will be a stay of proceedings put in.

14 Q. I just direct your attention to page 77 and 78, in particular,
15 78, is a reference to a conversation with yourself. And the
16 first full paragraph on page 78.

17
18 In speaking with Mr. Gordon Gale, Director of
19 Criminal, on the 14th of November [this is
20 Superintendent Christen] he implied both he and
21 Martin Herschorn supported the Deputy AG's
findings and again referred to the Queen v
Cooper.

22 Do you have any recollection of this discussion with
23 Superintendent Christen?

24 A. I remember Superintendent Christen indicating that he, there
25 was some difficulty with the Attorney General's or the Deputy

1 Attorney General's views on it. I recall that I indicated that it
2 might well be a matter within prosecutorial discretion and
3 that I personally did not have any great difficulty with the
4 Deputy's view, the Deputy's conclusion not to, that charges
5 were not warranted if one wanted to apply prosecutorial
6 discretion to the matter.

7 Q. Was the Deputy AG's conclusion that charges were not
8 warranted one that you agreed with?

9 A. It was one that I was prepared to accept if...

10 Q. That's not what I asked you. I asked you whether or not
11 you agreed with it.

12 A. Yes, I agreed that this was a case where charges need not be
13 laid so, yes, to that extent I agreed with him.

14 Q. If you'd been asked the question yourself *de novo* without
15 having had the benefit of Mr. Coles' view, are you able to tell
16 us your view would have been?

17 A. No, I'm not able to tell you because I had not given the case
18 an in-depth study that seems to be referred to here. There
19 was no in-depth study of this case by me.

20 Q. So when Mr. Coles indicates from time to time that cases were
21 also considered by senior staff members, as he does on page
22 103, is he incorrect in that?

23 12:40 p.m.

24 A. Well, I probably read the Cooper case. I probably read those
25 cases which were annotated either under the section, Martin's

1 Criminal Code or under the section in the Tremere's version,
2 publication. And I probably looked at those cases, but that...
3 But I had not sat down to give it any in-depth consideration
4 and, quite frankly, would not have given those cases a great
5 deal of consideration at that point in time. As I say, there's
6 this one meeting. I'm not sure if there was a general
7 discussion. I had not prepared for it.

8 Q. Did you know what the meeting was to be about when you
9 went to it?

10 A. Oh, when I went to it, but I hadn't any great, as I recall, there
11 was no great advance notice of the matter.

12 Q. Was there any advance notice as to what the meeting was to
13 be about?

14 A. Oh, I think probably told one day that he wanted to meet
15 with us the next day to talk over the Thornhill investigation.

16 Q. Were you ever asked by Mr. Coles to provide an opinion
17 based on your expertise in the criminal law as to whether or
18 not charges were warranted?

19 A. No, I was not asked to provide an opinion. At that particular
20 meeting, various, as I recall, various things were batted back
21 and forth. But, you know, possibilities that might be
22 considered. But I wasn't asked to prepare anything after it
23 nor was I asked to prepare anything before it.

24 Q. Do you know when the meeting took place?

25 A. No, I can't be precise. It would have been after, some time

1 after he had received that letter, that report that I said I was
2 not, had the handwriting received on and I think that was in
3 October.

4 Q. Yes, September.

5 A. It had to be some time between then and...

6 Q. Some time between then and October 29th, I take it.

7 A. Well, certainly probably before October 29th because I think
8 his own opinion is dated the 23rd of October, if I'm not
9 mistaken. So it had to be before that. I think when I left, my
10 understanding of it was that Mr. Coles was going to look at the
11 matter some more and try and reach some conclusions on it.

12 Q. Was it your... Sorry.

13 A. I don't know whether I left with the view that there would be
14 any further meetings, but it was not the type of meeting that
15 I would have thought was conclusive.

16 Q. Was it your experience that Mr. Coles would take it upon
17 himself from time to time to involve himself in a detailed
18 analysis of the criminal law, in the sense of the elements and
19 defences. Is that the sort of thing that he did?

20 A. From time to time, he would do that, yes.

21 Q. Were you satisfied that he was knowledgeable enough in the
22 criminal law to carry out that type of work? I say that in the
23 context that he indicated to us in the last set of hearings that
24 he didn't consider himself to be an expert in criminal law.

25 A. Well, I certainly didn't consider him an expert in criminal law.

1 His background in law had not been in the criminal area
2 whatsoever.

3 Q. Did you not think in that context that you might have borne
4 down on this particular case a little bit and provided him with
5 some advice?

6 A. Mr. Coles, if he wanted to deal with a matter, dealt with it. If
7 he wanted advice, he would ask for it.

8 Q. Do I take it that he didn't ask for advice in this case and he
9 just took it under his own wing?

10 A. Well, after that one general discussion meeting, it appears
11 that he took it under his own wing, because I was never
12 asked for any advice on the matter.

13 Q. At the time that Mr. Coles issued his press release at the end
14 of October, were you consulted at all about that, the
15 correctness of the final conclusion reached by Mr. Coles?

16 A. No, I wasn't consulted about it. I think I found out about it.

17 Q. Did you know about it in advance?

18 A. I may have been told that there was going to be a press
19 release and that he was dealing with the matter. Other than
20 that, I can't really say with any certainty. I don't recall
21 seeing the press release and the opinion at the time and I
22 think it was some time after that I would have seen it.

23 Q. Mr. Coles' opinion to the Attorney General, on page,
24 commencing on page 31 through to page 37. Have you had an
25 opportunity to read through that, Mr. Gale?

1 A. Yes, I have.

2 Q. Did you see it at the time in October of 1980?

3 A. I have no recollection of seeing it at that time. I have an
4 impression in my mind that I saw it some time later, but not
5 at that time. I certainly wasn't, didn't see it before it was
6 issued.

7 Q. I just want to direct your attention to page 36, towards the
8 bottom of the page where he indicates:

9
10 I am of the opinion that the protracted
11 discussions, the nature of the settlement, and the
12 circumstances under which the offer was made
13 on behalf of Mr. Thornhill and accepted by the
14 banks do not disclose evidence of the kind of
intention necessary to constitute any criminal
wrongdoing on the part of either the chartered
banks or Mr. Thornhill.

15 Do you agree with that conclusion?

16 A. Yes, I agree to an extent with it. Intention is not, in a general
17 language sense rather than in a legal sense.

18 Q. Let's go back to page 35 for a minute, third paragraph:

19
20 Similarly, for Mr. Thornhill to be guilty of any
21 offence any Section 110, the offer made on his
22 behalf to settle his indebtedness with the banks
must evidence a criminal intention to either
accept or offer to accept an advantage.

23 Do you agree with that conclusion, based on your
24 understanding of the requirements of Section 110(c)?

25 A. Well...

1 MR. PINK

2 My Lord, I think Mr. Coles yesterday indicated that there
3 was a typo there and the reference there should have been to
4 Section 110(1)a.

5 MR. CHAIRMAN

6 That was in his evidence yesterday?

7 MR. SPICER

8 That was evidence yesterday.

9 Q. What's your understanding of the intention requested by
10 Section 110(c)?

11 A. Simply knowledge that the, that you have accepted something
12 and that the people deal with the government, have some
13 dealings with the government.

14 Q. And that's the extent of it.

15 A. Yes.

16 Q. Did you ever convey that opinion to Mr. Coles?

17 A. I may have during our general discussion afterwards. No, I
18 don't think I have.

19 Q. Did he ever inquire of you as to what you thought was
20 required?

21 A. No.

22 Q. And you don't have any direct recollection as to whether or
23 not you told him, "Look, this is what's required here under
24 110(c)."

25 A. Well, I suppose if we discussed the Thornhill matter at all in

1 that general discussion that I would have said that what's
2 required under 110(c) is such and such.

3 Q. If you go on on page 35, that same paragraph, there's a
4 reference to, there's a quote:

5
6 Any matter of business relating to the
7 government or with a guilty mind 'demand or
8 accept from a person who has dealings with the
9 government an advantage or benefit.'

10 That's directly from 110(c), isn't it?

11 A. Well, I presume it is. I haven't memorized the sections and I
12 haven't compared all them. Well, the quotation parts are,
13 appear, from a quick review, to have come from 110(c).

14 Q. Mr. Gale, let me ask you this, you're a person who has been
15 with the Department for a number of years who has expertise
16 in the Criminal law. You're aware that there's an important
17 matter being dealt with in the Department involving an
18 analysis of the criminal law. You know, as you told us, and
19 indeed, as the Deputy A.G. has told us himself, that he doesn't
20 have... he doesn't consider himself to be an expert in the
21 criminal law. Are you, as a person with that expertise and
22 having been in the Department for a number of years, happy
23 with the way this was handled? Are you happy with the fact
24 that Mr. Coles took it under his wing, rendered the opinion
25 that he did, knowing as you knew that he doesn't have the
expertise in criminal law? Are you content with that?

1 A. No, I'm not content with it. I would have preferred that I or
2 others who might have more knowledge in criminal law on a
3 day-to-day operation review the matter and give our views
4 to it.

5 Q. Did you have a degree of discontent at the time that this was
6 occurring that you weren't being consulted?

7 A. Well, I think that after I found out the conclusion on it, yes,
8 that I... After the general discussion and Mr. Coles said that he
9 would work on the matter, I had assumed that, you know, he
10 would educate himself in the reports and the law on the
11 matter and try to get into a position to come to a conclusion
12 on it. That he would then, any conclusion that he came to,
13 that he would then have it vetted by...

14 Q. But he didn't.

15 A. By someone else who was more experienced in criminal law.

16 Q. Right, and he didn't do that.

17 A. No.

18 MR. SPICER

19 Thank you.

20

21

EXAMINATION BY MR. RUBY

22

23 Q. How long, to your recollection, was that meeting with Mr.
24 Coles and Mr. Herschorn?

25 A. Oh, something of about an hour or, an hour and a half at the

1 very most.

2 Q. And you said that it was a general discussion. What do you
3 pose that to? What other kind of discussion did you have in
4 mind? This is the general.. What... I want to get some content
5 to that.

6 A. We didn't get down to reviewing each facet of the report,
7 what it meant. We didn't get down to reviewing each facet of
8 the case law and how that tied in or did not tie in with it. So
9 it was not an in-depth type of discussion of that nature. It
10 not an analysis of the, an in-depth analysis of the case.

11 Q. You said that some possibilities about the case were batted
12 about. What were the possibilities that were batted about, to
13 your recollection?

14 A. Well, one of the questions was whether, I think was batted
15 about, certainly one that, you know, I had in mind at the time
16 was, or troubled me, I suppose, somewhat at the time was is
17 the law really such that if a person was trying to get out a
18 financial problem of long standing, was this the type of thing
19 that was meant, the section was meant to do. You know the
20 general understanding is that the section is meant to deal
21 with government corruption and was this really corruption
22 and the questions I would have wanted to look into more
23 would have been, was it really a benefit or an advantage to
24 look at a little case law to see how those terms might have
25 been described. Those were sorts of questions that were in

1 my mind. So you can see that it was a very initial type of
2 discussion on the matter.

3 Q. It's the beginning of a process, I think...

4 A. Yes.

5 Q. Was the way in which it was described. You've indicated that
6 you were clearly aware of the mental element required or the
7 intent required under Section 110(1)(c). You knew that at the
8 time.

9 12:55 p.m.

10 A. Yes.

11 Q. And you would have discussed that, as well, in that meeting.
12 It's one of the major issues, I suggest.

13 A. It probably was discussed that, you know, this is the type of
14 case where there isn't that much required. He's got to be
15 conscious.

16 Q. That's right. And that would have, of necessity, been part of
17 the initial discussion. You couldn't have an initial discussion
18 without raising that matter and discussing it.

19 A. Well it probably was discussed but I have no, my memories
20 of the meeting are not detailed. They're general and, as a
21 consequence, somewhat vague.

22 Q. You agree with me it's hard to imagine a discussion of a
23 preliminary nature about this case and this charge that
24 wouldn't raise that issue. It's a pretty basic part of the
25 discussion, that commencement as you've described.

1 A. Yes. I would think it was, would be, it's the sort of thing that
2 could have been raised there and, but I can't now say it was
3 or it wasn't.

4 Q. I appreciate you can't remember that. I'm saying that,
5 suggesting to you that I would be surprised if that was not
6 raised at this kind of initial meeting. Are you saying you
7 agree with you that or you don't agree with that?

8 A. I can only answer you by saying that it is one of the things I
9 think could well have been raised at this meeting.

10 Q. It's one of the things any experienced criminal lawyer looks
11 to at the beginning, agreed?

12 A. Yes.

13 Q. And that's you, you're an experienced criminal lawyer.

14 A. [Well....for payment?].

15 Q. All right. At page 78 there's a reference to the Canadian
16 Distilleries' investigation that I asked someone else about and
17 they didn't know what that was about. Is that also, I don't
18 want to go into it in detail, but is that a political case as well?

19 A. I'm sorry. I didn't catch your last remark.

20 Q. If you look at page 78.

21 A. Yes.

22 Q. The Canadian Distilleries' investigation.

23 A. Right.

24 Q. Is that also a political case?

25 A. It involved, yes, I suppose it's a political case in that it

1 involved political parties.

2 Q. So it appears that there was a rule being established that was
3 applicable in two cases, this one and Canadian Distilleries and
4 both were political cases. Is that fair?

5 A. Well in the Canadian Distillers one, I'm not aware of the police
6 being told that it would not, that the reports were only to
7 come to us and that they were not to have any contact with
8 prosecutors. But certainly the police did come to us with this
9 case and they...

10 Q. Once again, in this case...

11 A. They asked if they should be proceeding with an investigation
12 and they were told to do so by the Attorney General and, but
13 to keep us advised of what was going on.

14 Q. Once again, in this case, if you read the last half of that first
15 complete paragraph on page 78. There's a separate rule being
16 established that in that case the prosecutor is being told not
17 to include any recommendation just the charges in his report
18 to the Deputy Attorney General. It's the Deputy Attorney
19 General on his staff who will decide. That's a rule you're
20 establishing for political cases it looks like, is that so?

21 A. Well, I don't recall any such statement being made to the
22 police, quite frankly. I would be surprised if, at that stage.
23 I don't recall a case being dealt with other than the so-called
24 Thornhill case the way it was and I don't recall this type of
25 direction going to them even though it's stuck in the RCMP

1 letter.

2 Q. You'll agree with me that it would be quite wrong for the
3 Attorney General's office to set up a special rule for political
4 cases but the ordinary methods of investigating and
5 recommending charges were not to be followed but, rather,
6 they were all to be handled in a special way. That would be
7 wrong, would it not?

8 A. Yes, it would be wrong to handle them in a special way since
9 it was a complicated type of case. We, I know we were
10 having difficulties trying to find prosecutors that could be
11 freed up to deal with the case but that was the only special
12 consideration that I'm aware of.

13 Q. And that's irrelevant to the direction that purports to be
14 relayed in this memorandum.

15 A. Yes.

16 MR. RUBY

17 Thank you, sir.

18 EXAMINATION BY MR. PRINGLE

19
20 Q. Just one area area. Mr. Gale, do you remember when you, as
21 you've testified, first spoke to the RCM Police about their not
22 having contact with the prosecutor in this case?

23 A. Well only to the extent that I answered. If it was not at the
24 meeting with...

25 Q. Yes.

1 A. Chief Superintendent Feagan and McInnes that it would have
2 been, I would have thought, within a week of that.

3 Q. Yeah. You wrote on the 25th of July 1980 a memo to Mr.
4 Coles and you say that you had spoke to Inspector McInnes
5 and reminded him that that matter had been discussed with
6 him. I can take you through these pages in some depth but I
7 think to summarize and save time I can tell you that at page
8 12 of the case book that's in front you, there's a memorandum
9 to file by Inspector McInnes saying that he thought that any
10 such advice would be tantamount to obstruction. And that's
11 dated the 24th of July 1980. At page 20 there's a
12 memorandum by Inspector, Superintendent Christen, the
13 Officer in Charge of the Criminal Investigation Officer for the
14 province who says that, and I'll quote this,

15
16 I personally contacted Mr. Gale on the 31st of
17 July, 1980 concerning his statement that he had
18 advised me Crown counsel was not to be
19 contacted on this matter until the Attorney
20 General had been fully apprised of the evidence.
21 I informed Mr Gale I had no recollection of his
22 having done so and I am certain if he had I
23 would have remembered. He acknowledged
24 possibly he had not advised me personally of the
25 Deputy Attorney General's wishes in this regard.

22 Do you recall speaking with Superintendent Christen about
23 that?

24 A. I recall that there was some discussion from Superintendent
25

1 Christen that that...that he wasn't aware of that particular
2 requirement. I had a strong view that either he or McInnes
3 had so been told and in telling one I assumed would go to the
4 other.

5 Q. Well you've seen what McInnes wrote to file about it, "that it
6 was tantamount to obstruction in his opinion." And I can tell
7 you that the, Superintendent Feagan testified here in Volume
8 83, page 14508 that he has no recollection of being told that
9 be you and that the first, in fact, that they really heard about
10 it was the 25th of July 1980 letter from you.

11 A. Well I have testified already as to what I told them. Of how
12 they interpreted that is a question I cannot answer. They'll
13 have to tell you that and you'll have to make your decision on
14 it.

15 Q. Sure. Do you have any recollection specifically of meeting
16 with any of them and telling them that?

17 A. I don't have a specific date and time at this point in time, I
18 have a view that I did tell them that. I further reinforce my
19 view in that I would have written the letter of July 25th...

20 Q. Who did you tell? Which one?

21 A. Well I normally met with Christen.

22 Q. Christen, okay. That's the one you pick.

23 A. And if he was not available his assistant would come over.
24 And at that time it was McInnes.

25 Q. And you do have some recollection of Superintendent

MR. GALE, EXAM. BY MR. PRINGLE

1 Christen contacting you and discussing with you as he set out
2 in page 20 of this book in his memorandum of August the 5th
3 that he called you when he heard about that in July and said
4 that wasn't so?

5 A. I don't recall whether he called me or at some stage that I
6 met with him and he indicated that he didn't really know that
7 that was the way it was to go.

8 Q. All right. Who had experience in prosecuting commercial
9 crime matters in the prosecutors in Halifax at the time, 1980?

10 A. Nobody really.

11 Q. Was Kevin Burke one of them?

12 A. Nobody really.

13 Q. Kevin Burke had done some, hadn't he?

14 A. Kevin Burke was working on the Canadian Distillers' file as I
15 recall.

16 Q. Which is prior to that.

17 A. Which was prior. I'm not sure when the cases went to court.
18 I haven't looked at that.

19 MR. PRINGLE

20 Okay, thank you.

21 CHAIRMAN

22 Mr. Merrick?

23 MR. MERRICK

24 No, My Lord.
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MR. PINK

We have no questions, My Lord.

CHAIRMAN

That's all, thank you, Mr. Gale.

1:05 p.m. - ADJOURNED TO 19 September 1988 - 9:30 a.m.

REPORTER'S CERTIFICATE

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



Margaret E. Graham

DATED THIS 15 day of ~~September~~ 1988 at Dartmouth, Nova Scotia