

1 12:15 p.m.

2 MR. MacDONALD

3 Now the next witness, My Lord, is Chief Superintendent
4 MacGibbon of the RCMP.

5 CHIEF SUPERINTENDENT RICHARD ALEXANDER MacGIBBON, duly
6 called and sworn, testified as follows:

7 EXAMINATION BY MR. MacDONALD

8 Q For the record, sir, would you tell your name and rank?

9 A. My name is Richard Alexander MacGibbon. I hold the rank of
10 Chief Superintendent of the Royal Canadian Mounted Police.

11 Q At the present, Chief Superintendent, where are you
12 stationed?

13 A. I'm stationed at Regina, Saskatchewan.

14 Q And what is your position in that province?

15 A. I'm the Officer in Charge of Criminal Operations for the
16 Province of Saskatchewan.

17 Q Just generally, would you, and briefly for the Commissioners,
18 trace your career path in the RCMP?

19 A. I have served in the RCMP for just short of 33 years and I've
20 worked in every province in Canada except British Columbia.
21 I was stationed first in Saskatchewan and then 12 years in
22 Toronto, three years in Newfoundland, I went back to Toronto
23 and five and a half years and worked in Headquarters in
24 Ottawa for one year and a sabbatical at National Defence
25 College at Kingston, Ontario for a year. Two years in Halifax

1 from September 1st, 1983 until August the 15th of 1985.

2 And since August of 1985 I have been in Saskatchewan.

3 Q. What was your position when you were in Halifax?

4 A. I was, as it was known then, the Officer in Charge of Criminal
5 Investigation branch. That term is also known as CIBO. It is
6 now known as the Officer in Charge of Criminal Operations.

7 Q. Your successor in Halifax was Chief Superintendent Vaughan,
8 is it?

9 A. Superintendent Vaughan, yes.

10 Q. Thank you. While you were in Halifax in your position what
11 was your relationship with the Attorney General's
12 Department?

13 A. I was the reporting medium, I guess, by the RCMP under our
14 provincial contract to the Attorney General's Department.
15 And I met regularly with Mr. Gordon Gale who was the
16 Director, Criminal Law for the Department. And I use the
17 term regularly because those meetings were planned and
18 scheduled, I believe it's every Thursday of every week.

19 Q. Would you have any dealings, during your period of time
20 here, with the Deputy Attorney General, Mr. Coles?

21 A. I met very infrequently with the Deputy Attorney General.
22 Over that two-year span certainly not exceeding six times and
23 I believe even telephone contact would have been, not exceed
24 three times. I can only recall two conversations.

25 Q. Did either of those conversations have anything to do with the

1 MacLean case?

2 A. I only had one meeting in, where the matter of an MLA
3 MacLean was discussed.

4 Q. And that is one meeting totally.

5 A. That was one meeting.

6 Q. Thank you. And on a general basis would you, as CIBO in
7 Halifax, have any dealings with the Auditor General's
8 Department?

9 A. I only had one contact with the, with people from the Auditor
10 General's Department. I met Mr. Sarty when he was the
11 Attorney General. I believe he was retiring. And I met Mr.
12 Cormier at the same time. And I came to know that Mr.
13 Cormier became the Auditor General and my meetings there
14 were specifically to deal with the problem with MLA
15 expenses.

16 Q. As you know, we are concerned here today with the dealings
17 with, which the RMCP had with the expense claims of the
18 MLA, Billy Joe MacLean. When did you first become aware of
19 any suggested impropriety in the way he was dealing with his
20 expense claims?

21 A. My first knowledge was, came to me by virtue of a briefing
22 conducted by Inspector Blue, a former member of the RCMP,
23 and Staff Sergeant Leigh. I believe it was on or about the,
24 October 26th, 1983. And I was informed by Blue and Leigh
25 that they had met with people from the Auditor General's

1 office. That they, that Blue and Leigh had received some
2 documentation dealing with MLA expenses and that they
3 brought some of this documentation to our offices and were
4 seeking to inform me, first of all, and to receive some
5 direction. And at that same time I was informed there was a
6 further meeting scheduled two days later, October whatever,
7 and I indicated to Blue and Leigh that I wanted to participate
8 in that meeting. That meeting being with the Auditor
9 General's Department.

10 Q. Now you had some indication what the topic was to be
11 discussed at that meeting with the Auditor General's people.

12 A. Yes. I knew the scope of the topic.

13 Q. All right. Tell us, if you can, what you recall about that
14 meeting with the Auditor General's people on October 26th of
15 1983.

16 A. Blue and Leigh and I attended at the offices of the Auditor
17 General and Mr. Sarty was present, Mr. Cormier was present
18 and some members of the staff. I don't recall their names off
19 the top. And we discussed the problem of, that the Auditor
20 General had found some, that some MLAs had, were, had
21 made some excessive expense claims and that these claims
22 were supported with documentation which was, that there
23 was a serious problem with the documentation. Some of it
24 was either, believed to be false. That there were some
25 receipts that would have been issued by persons, or by a

1 person, and there were three, I think it was three different
2 signatures. Some of the other matters that we talked about
3 were the, there were some mileage claims which were
4 excessive, excessive to the point that, bordering on being
5 criminally fraudulent.

6 Q. Was information given to you or was documentation given to
7 you that day? By you I mean ...

8 A. I think we relied on the documentation that Blue and Leigh
9 had received on the first day. There was documentation in
10 front of us for all of us to consider. And it was, there were
11 individual packages, if you wish, detailing what had been
12 claimed and how it had been claimed. The receipt
13 documentation and I presume the formal approval, approving
14 mechanism, or approving documents for payment on those. I
15 was aware that all of the expenses had been received,
16 reviewed and had been paid to the MLAs in question.

17 Q. Let me take you to Exhibit 173 which is the booklet in front
18 of you and take you to page 13. There's a list on page 13, the
19 second paragraph, who were present. Perhaps I'm missing, I
20 don't see your name there but you clearly were present, were
21 you?

22 MR. RUBY

23 Wrong meeting.

24 MR. MacDONALD

25 Q. Oh, I'm sorry. I thought it was the 26th of October.

1 A. That's the first one. If I can help you, Counsel, that was the
2 day I was briefed by, because this note here concludes with
3 the briefing that was given to me.

4 Q. Okay. Sorry, thank you very much. 17 will come, all right.
5 Can I then still keep on page 13 and 14. You were briefed
6 following this meeting by Inspector Blue, is that ...

7 A. That's correct.

8 Q. I want to take you then to page 14 and toward the bottom
9 half of that page there's an underlined portion which says, "It
10 was determined at that meeting to our satisfaction that the
11 matters required investigation and appeared to be criminal in
12 nature." Were you advised of that by Inspector Blue?

13 A. Yes.

14 Q. And did you have the opportunity yourself to look at the
15 documentation?

16 A. Yes.

17 Q. And did you concur that the information available at that
18 time would require investigation and that, in fact, appeared to
19 be criminal activity involved?

20 A. There was sufficient in front of me to believe that an
21 investigation was warranted, yes.

22 Q. Now normally, Chief Superintendent, when the RCMP are
23 provided with information they conclude following a review
24 of that information that an investigation is required and there
25 appears to be criminal activity, what procedures are followed

1 by the Force?

2 A. Normally we would, on the basis of what, you know, you've
3 described, we would go ahead. The investigator would go
4 ahead with an investigation.

5 Q. Okay.

6 A. In the normal course of events I would not even be made
7 aware of a situation like that.

8 Q. Why are you being made aware of this particular matter
9 then?

10 A. This particular matter dealt with persons that were, formed
11 part of the Government of the day in Nova Scotia. I, as a
12 senior officer, had the communications link with the Attorney
13 General's Department of the Government in Nova Scotia and
14 that, I, as a senior officer responsible for criminal
15 investigations would want to know that an investigation, that
16 we had received information of this nature, that we were
17 going to be expected to do something either then or at some
18 time in the future and part of the rules of our operating is
19 that if it is that serious then the senior officer should know
20 about it.

21 Q. Okay. Now in this case the senior officer is advised and
22 concurs that based on what you know now, or at this stage,
23 there is an investigation required and there appears to be
24 criminal activity. Why, then, wouldn't the Force, why
25 wouldn't you direct your people, Inspector Blue or others, to

1 get going on it? "Go do your investigation?"

2 A. I was equally aware at that, following the briefing by Blue
3 that there was some problem with the documentation. The
4 documentation had come from the Speaker's office. It had
5 been given to us on a confidential basis by the Auditor
6 General. I considered that what we were, at that time that we
7 were being consulted by the Auditor General. And I
8 instructed, and when I became aware that there was a
9 meeting due in two days hence, I directed that I wanted to
10 attend that meeting.

11 Q. All right. On the top of page 15, sir, Inspector Blue reports
12 having met with you to review the matter. And then it notes
13 that it was decided that, "A meeting should be arranged
14 between representatives of the Auditor General's Department,
15 Department of the Attorney General and our Force." Why is
16 the Department of the Attorney General being brought into
17 this matter?

18 A. I think it's fair that the police department and that in this
19 case we were the, we are the provincial police in Nova Scotia,
20 and at that time that if that organization were to undertake
21 an investigation against members of the Legislature or
22 members of the Cabinet, that at least the Department should
23 know that such an investigation is going on. So the reporting
24 there would be a reflection of Blue and Leigh's discussion
25 with me.

1 Q. Was the involvement of the Attorney General for the sole
2 purpose of informing that Department of what was happening
3 and that ...

4 A. That would have been my thinking on that day.

5 MR. MacDONALD

6 My Lords, I'll be going into another matter if you want to
7 break at this time.

8 12:30 p.m. - BREAK

9 2:00 p.m.

10 Q. When we broke we were referring to page, I just finished
11 referring to page 15 and where you indicated the Attorney
12 General's Department was going to be advised for information
13 purposes as to what was going on. Now the next, I believe in
14 the sequence, Chief Superintendent, is on page 17 and that is
15 when you, yourself, met with the members of the Auditor
16 General's Department on October the 28th. Do you recall that
17 meeting, sir?

18 A. Yes, I do.

19 Q. What do you recall about it?

20 A. Well I recall going with Inspector Blue and I met with Mr.
21 Sarty and Mr. Cormier and some of his staff and we had
22 documentation on the table and we discussed some of the
23 details of the documentation as it relates to MLA expenses.
24 And there was more than one person or more than one MLA
25 under discussion.

1 Q. Now in the notes of that meeting that were prepared by
2 Inspector Blue it's indicated that, "It was the recommendation
3 of the RCMP that the matter be brought to the attention of the
4 Attorney General."

5 A. I was aware, and when I became aware I don't know, but I
6 was aware that there was some statutory requirements for
7 the Auditor General to report . And how he was to report,
8 aside from the report going, the formal report to the
9 Legislature, but if there were some wrongdoing as we were
10 discussing he had certain things that were required. And one
11 of them that comes to mind is that he had to report to the
12 Attorney General of the Province and make his findings
13 known to the Attorney General. And as I understood it that
14 was a formal process.

15 Q. It's also indicated in the notes of that meeting that, they, the
16 Auditor General's people expressed the opinion that they
17 would like to advise the House Speaker prior to any meeting
18 with the Attorney General.

19 A. Yes.

20 Q. And that the RCMP saw no difficulty with that. Why should
21 the Speaker be involved when there's suspected criminal
22 activity?

23 A. In the documentation that we were dealing with the, and the
24 matter of expense claims were handled administratively by
25 the Office of the Speaker. And, in effect, the Speaker was the

1 representative, or the focal point, of the Government of Nova
2 Scotia. And in terms of having somebody to focus on, to hold
3 a discussion, then the Speaker was the, in the person was,
4 that was identified as such.

5 Q. Would that be the case normally if the RCMP were
6 investigating a suspected crime, say, by an employee of a
7 bank, would they advise the president of that bank?

8 A. No, we would not if we'd been invited to conduct an
9 investigation or the matter had been referred to us as a
10 request to investigate. No, I don't think so, I don't think we'd
11 go quite that high, that would not...

12 Q. But the Speaker is only being advised here because he's the
13 person who administratively looks after expense accounts?

14 A. That was a requirement, as I understand it, for the Auditor
15 General to look after. I saw no role for the RMCP in dealing
16 with the Speaker at that time nor was it ever intended that I,
17 or any of my people, would meet with the Speaker to carry
18 out this reporting function or information session.

19 Q. But the note says, sir, that the RCMP had no difficulty with
20 the Speaker being involved. Now from the point of view of
21 carrying out an investigation of a suspected criminal activity,
22 would it not be preferable that the minimum number of
23 people know what's happening?

24 A. Well if the, if you identify the Speaker of the Legislature as
25 the focal point or the representative government of Nova

1 Scotia, if you wish, change that over to be the complainant on
2 behalf of, this was the individual who would be representing
3 the Government as a complainant as the loser in this
4 transaction.

5 Q. Not the Auditor General? You didn't...

6 A. No, the Audit-, my view of the Auditor General, he is acting
7 on behalf of the Executive of the Government and he's
8 ferreting out wrongdoings from an audit, or for audit
9 purposes. And he reports accordingly. The police function is
10 different than that.

11 Q. Would it be contemplated then that if charges were to be laid,
12 an information laid, that it would be the Speaker who would
13 be the informant?

14 A. No. Oh no. No. The police would be the informant.

15 Q. All right. At the bottom of that page it's indicated that the
16 RCMP requested the Auditor General's personnel to supply a
17 breakdown of all irregularities noted, and by category. Do
18 you know whether that, in fact, happened?

19 A. I can't say positively that it did happen or it didn't happen.

20 Q. Why, at this stage, would the RCMP be wanting that type of
21 information?

22 A. We would have liked to have known the full scope of what we
23 were faced with, all of the documentation. Because as I
24 recall, we did not have all of the documentation that was
25 available. We only had selections from it and that we wanted

1 to be in the best possible position to move with an overt
2 investigation. We wanted to have something to work on to do
3 the research and work up to it.

4 Q. Following that meeting, what was your understanding of the
5 next step. What was going to happen next?

6 A. I came away from that meeting with the understanding that
7 the Auditor General, and I'm not sure which personality was
8 going to undertake it. I believe it would have been Mr.
9 Cormier, would arrange a meeting with the Attorney General's
10 office. He was also going to arrange a meeting with the
11 Speaker and that I would, in all probability be attending any
12 meeting with the Attorney General's Department personnel.

13 Q. On page 19, at the bottom of that page, the entry for
14 November 15th. Mr. Cormier is advising that he had a
15 conversation with the Speaker who was concerned that he
16 would be out of town for a period of time and felt an
17 obligation to advise the Premier as soon as possible and it's
18 noted that Inspector Blue told him he saw no problem with
19 the Speaker advising the Premier. Were you aware that it
20 was the intention to advise the Premier of this potential
21 problem and the possible investigation?

22 A. Yes, I was aware that...

23 Q. Did you see any problem with that?

24 A. At that point in time, no, I had no difficulty with that.

25 Q. Now why do you suggest that the Premier should be involved

1 given what you said a moment ago that the Speaker is, and
2 you see as the focal point for the Government, and in effect,
3 the complainant.

4 A. That was a choice being made by the Speaker.

5 Q. And you said at the time you saw no problem with that.

6 A. At that time, in late, or mid-November of 1983, I had no
7 difficulty with that.

8 Q. Okay. Do you have a difficulty with that today?

9 A. Well there have been events, or events have taken place since
10 that time that perhaps that was not a wise thing to do. When
11 I say that, not in criticism of any party. It's just not a normal
12 thing.

13 Q. Can you think of any, or put yourself back if you can at the
14 time, given the fact that there is a potential investigation to
15 be carried out of a Member of the Cabinet, wouldn't it be
16 preferable that the Premier not know?

17 A. I would have preferred it and if I was sitting in the Premier's
18 shoes I would prefer also not to know.

19 Q. Do you recall the meeting at the Attorney General's office?

20 A. The Attorney General's office?

21 Q. Or was it the Auditor General's office? The meeting that was
22 attended by Mr. Coles and Mr. Gale.

23 A. There was a meeting at the Auditor General's office in later
24 November.

25 Q. Thank you. And what do you recall about that?

1 A. I recall that the meeting was set up for 3 o'clock in the
2 afternoon and that it was expected that Inspector Blue and I
3 would attend and we would be meeting with the Auditor
4 General. I believe Mr. Sarty was available or made himself
5 available to attend. Mr. Cormier was to be there and I believe
6 I knew that Mr. Coles, Mr. Gale, at least, from the Attorney
7 General's Department would be there. There may have been
8 some other people.

9 Q. What time was the meeting scheduled to commence?

10 A. My information, my recollection is that it was 3 o'clock in the
11 afternoon.

12 Q. When you, or what time did you arrive?

13 A. We arrived in time for a 3 o'clock meeting.

14 Q. Tell us what happened after you arrived.

15 A. We walked into a room and it was evident to me that a
16 meeting had been going on and after the introductions and
17 niceties of the day were exchanged we may or may not have
18 sat down at a table, but Mr. Coles was there, had a package in
19 a folder, or a stack of documents, and from what I saw and
20 from there and recalled from my meeting in that same room
21 with the Auditor General's people about a month before, it
22 was similar to the package of documents that we had
23 discussed. There was no discussion about our presence or any
24 further discussion amongst the number of us that, as to why
25 we were there. I was informed by Mr. Coles that he had been

1 briefed by the Auditor General, and I use that at large
2 because I don't recall who specifically he mentioned. And
3 he concluded his comments with that he had all that he
4 required. He would take the matter under advisement, and
5 I'm not quoting, I'm paraphrasing. And that he would like
6 to look at some of the Regulations and some of the Statues.
7 And that when he was finished he would be in touch with us
8 and I understood that to mean the RCMP.

9 2:15 p.m.

10 Q. Are you able to say whether representatives of the Attorney
11 General's Departments, Mr. Coles or Mr. Gale, were aware
12 that the RCMP considered that there should be an
13 investigation and that on their review of the documents
14 there appear to have been some criminal activity?

15 A. I don't know that I can speak to what they were aware of at
16 the time, but they certainly were aware that we had been
17 consulted at some time before that meeting on November
18 22nd. There is no doubt in my mind that they were aware
19 of that much. There was no discussion as to whether or not
20 the RCMP would or would not undertake an investigation. I
21 think it was one of those conversations where it was clearly
22 understood why we were there and that we were prepared
23 to act as and when required.

24 Q. Let me ask you to turn to page 21, and, My Lords, if I can
25 indicate for the record that there is a missing word in the

1 copy of this document on the third line at the end of that
2 line after it says, "Attorney General's Department" the word
3 "had" , H-A-D, should be inserted.

4 COMMISSIONER EVANS

5 A little further down "Some of" what?

6 MR. MacDONALD

7 "Some of the copy".

8 COMMISSIONER EVANS

9 "Copy material".

10 MR. MacDONALD

11 Yes.

12 Q. How long did the meeting last while you were there?

13 A. I think I would be stretching it if I said fifteen minutes, so
14 something considerably less than that.

15 Q. Were you expecting to hear something from someone after
16 the meeting at some time?

17 A. Yes, I expected what the undertaking that, as I accepted it
18 from Mr. Coles, I expected to hear or receive a definitive
19 answer on what material had been presented to him and, in
20 effect, it would be some advice for us to work with.

21 Q. Okay. Now let me take you to next to page 22. This is a
22 memorandum written the day following the meeting, and
23 that is from Inspector Blue, and that's to you, is it?

24 A. That is correct.

25 Q. Okay. Was that written at your request?

1 A. Yes, it was. It was written, and if I may.

2 Q. Uh-hum.

3 A. It was written in the form of a briefing memorandum for
4 me to use on November 24th, which would have been the
5 regular meeting day, my regular meeting day with the
6 Attorney General's Department with Mr. Gale.

7 Q. Okay. In that letter or memorandum, there's reference to
8 two separate, at least there's two separate numbered
9 paragraphs. Do one of those paragraphs deal with Mr.
10 MacLean or do all of them deal with Mr. MacLean?

11 A. Only one of them deals with Mr. MacLean.

12 Q. And which one is that, number 1?

13 A. That's paragraph 1, case 1.

14 Q. Okay. So paragraph 1, case 1 only.

15 A. Yes.

16 Q. I would suggest it's paragraph 1 case 1, 2 and 3, but if...I
17 obviously can't give your evidence. Your understanding it's
18 only paragraph 1, case 1.

19 A. That's what my memory tells me, yes.

20 Q. Thank you. And then underneath that are listed potential
21 charges, at least potential or sections of the Criminal Code
22 that at least should be looked at. Could all of those relate to
23 the matters involving Mr. MacLean?

24 A. I don't think all of them would have, but probably parts of
25 them to it.

1 Q. At this stage, I understand that the RCMP have concluded
2 that there were possible offences, as outlined in this memo,
3 committed by Mr. MacLean, is that correct?

4 A. At this stage, you're referring to November?

5 Q. Yes.

6 A. Of that year, yes.

7 Q. And would you tell me once again why the RCMP then are
8 not proceeding to carry out an investigation to determine if,
9 in fact, there is evidence available to support or to negative
10 that suggestion?

11 A. Well, we at our...at November 23rd, we are two days or one
12 day following a meeting with counsel who was to give me
13 some advice, and really nothing had happened in twenty-
14 four hours and nothing had happened in forty-eight hours.
15 And so at that period of time, this was prepared for my
16 discussions with Mr. Gale.

17 Q. I understand.

18 A. And at that stage the, you know, I was awaiting the results
19 of that discussion.

20 MR. CHAIRMAN

21 Q. Chief Superintendent MacGibbon, is there any significance to
22 the heading of that memorandum, "Assistance to Auditor
23 General, Province of Nova Scotia"?

24 A. No, I don't find any significance to that, My Lord. It was a
25 selection of words at the time, and I think that's probably

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 the stage that we were at. I ...this morning I spoke of being
2 consulted and I considered that...we were still in that
3 process of being consulted.

4 Q. Mr. Cormier told us this morning that when he first
5 contacted Inspector Blue, it was primarily for the purpose
6 of seeking advice from him. Have we moved now beyond
7 that stage?

8 A. No, I think that's...I apply this same sort of thing.

9 MR. CHAIRMAN

10 Okay. Thank you.

11 MR. MacDONALD

12 Q. I understood you to tell me this morning, sir, that the
13 Attorney General was being advised, and you recommended
14 meeting with him really to inform him of what was going on.

15 A. That's a comment made by somebody and it probably arose
16 because, at some stage we should, if we're undertaking an
17 investigation, and you're referring back to October 26, that
18 we have a responsibility to inform the Attorney General's
19 Department, if we launch an investigation against members
20 of the legislative assembly, I think, and I...that's normal.

21 Q. I'm trying to just fathom out in my own mind what's
22 happening. The Auditor General comes to you for advice or
23 whatever, says "Would you look at this material, let us have
24 your advice." The RCMP look at it and say, "We consider
25 that that material evidences some criminal activity. We

1 think an investigation should be carried out." I'm right so
2 far.

3 A. So far.

4 Q. Now then I understood you to say, and the documents seem
5 to support that the next step the RCMP recommend that
6 there should be a meeting with the Attorney General. And
7 in response to my questions this morning, I understood you
8 to say and that...the reason for that is so the Attorney
9 General can be informed of what's happening.

10 A. Yes, I have...

11 Q. What I have difficulty with is having gone to the Attorney
12 General to inform him of what happen...what is happening,
13 you now, or you the RCMP, seem to say, "Now we won't do
14 anything further until we receive instructions from the
15 Attorney General." Why did he become...what changed from
16 being the receiver of information to the person who tells
17 you whether any investigation should be carried out?

18 A. Well, I think we have to get it in a little clearer context than
19 that. From where I sit, it is my responsibility to inform the
20 senior person in the Attorney General's Department that an
21 investigation against MLA's is imminent and that is what
22 that note, I have no doubt in my mind that that's what that
23 note refers to, even though I didn't make it.

24 Q. Yes.

25 A. We still haven't progressed, even one month later, past the

1 stage of giving advice to the Auditor General or responding
2 to his consultations. And even when we get down to an
3 undertaking being given by Mr. Coles, that is...that's where
4 we were at and we asked for, or not specifically asked, but
5 we ...it was clear that we needed some advice and that was
6 Mr. Coles' undertaking.

7 Q. Okay. Now these are your words that you've just used.

8 A. Uh-hum.

9 Q. You're telling the Attorney General that an investigation is
10 imminent.

11 A. Well, clearly I had not told him at that stage back on October
12 26th.

13 Q. No, no, but the reason to meet with him, I think using your
14 own words, is to advise him that an investigation of an MLA
15 is imminent.

16 A. October 26.

17 Q. Yeah.

18 A. Yeah. That's me thinking and speaking out loud.

19 Q. Yes.

20 A. And somebody else recording it.

21 Q. And then you meet with the Attorney General, his people,
22 on October or November the 22nd and I suppose you're
23 going in for that purpose to say an investigation of one of
24 the MLA's is imminent.

25 A. That...yes.

1 Q What I'm having difficulty with, sir, is finding out what gets
2 it off that...what gets you going? What makes you do an
3 investigation that's imminent having determined that there
4 has been suspected criminal activity which give...which
5 could give rise to the charges listed to you by Inspector
6 Blue? And that's where I'm having my difficulty.

7 A. I don't like to play with words but you refer to the word
8 "charges". These were ...these were offences that we would
9 be looking at. Whether or not we ended up with charges,
10 and I draw a very clear distinction that...

11 Q That's...

12 A. Mr. MacDonald.

13 Q ...valid. I meant to use the word...

14 A. Okay.

15 Q An invest...a further investigation.

16 A. That...those are the offences that would give us the
17 reasonable and probable grounds to go forward with an
18 investigation.

19 Q Yes.

20 A. Just so that, you know, we both talk the same language.
21 Having been consulted by the Auditor General, and just to
22 get back to your answer...to try and answer your question,
23 sir, been consulted, I was aware that the reporting
24 requirements by the Auditor General had to be fulfilled. I
25 did not want the RCMP to undertake an investigation which

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 probably would overtake the reporting requirement and run
2 the risk of even becoming public. The report by the
3 Auditor General was not due in the legislature until some
4 time down early in '84 and there was a good risk. So I was
5 not about to allow the people to go run the roads and do an
6 investigation and come back, knowing that there are some
7 reporting requirements to be fulfilled and that, again, we
8 would overtake that...we would overtake that inquiry.

9 Q. Before you...

10 A. Nothing was going to happen. I was satisfied that nothing
11 was going to happen to the documentation and to the
12 evidence that we had or we were certain was available to us.
13 We had assurances that that evidence still existed in the
14 Speaker's office and it's very unlikely that it would have
15 disappeared.

16 2:30 p.m.

17 Q. By reporting requirements, are you talking about the Auditor
18 General's Annual Report to the Legislature?

19 A. Yes. And also his reporting, as I understood it. He formally
20 would inform the Attorney General and as it was discussed
21 with us, that he would be formally, or giving notice to the
22 Speaker.

23 Q. Let me go back, then, to what it was. After your meeting with
24 the Attorney, what it was you were expecting to happen.
25 What, if anything, were you waiting for?

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 A. I was, expected that we, the RCMP, or I, in particular, would
2 be told what the nature of the rules, the regulations that
3 governed the submission and the payment for MLA expenses.

4 Q. And if you assume you obtain that, if someone had come back
5 to you and said, "Here are the rules that govern the claiming
6 and the payment of MLA expenses," what would you do then?

7 A. Then I would consider what the evidence we had and
8 whether or not there was left sufficient grounds for us to
9 proceed with an investigation.

CHAIRMAN

11 Are we entitled to assume, then, Chief Superintendent
12 MacGibbon, that before you could embark upon an investigation to
13 see whether or not there had been a breach or breaches of any
14 provisions of the Criminal Code of Canada, you would first have to
15 direct your attention to whether or not there had been compliance
16 with the regulations, which I understand are referred, known as
17 the Legislature Internal Economy Board Regulations. Is that ...

18 A. I would like that much, yes. I wanted that much.

CHAIRMAN

20 Do we presume...

21 A. If somebody presented receipts for accommodation and they
22 were accepted and paid, in my mind that doesn't necessarily
23 constitute a criminal offence, My Lord. And we were waiting
24 for some definition, statement.

25

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALDCHAIRMAN

1
2 So was there an undertaking from the Deputy Attorney
3 General that he would, at that meeting, that he would furnish you,
4 or have someone furnish you with an opinion with respect to
5 these regulations.

6 A. Yes. And that's when I came away. I came away from that
7 meeting with that clear understanding.

CHAIRMAN

8
9 I take it these regulations, I see some were in here, an
10 indication that these regulations are not published under the
11 Regulations Act which would probably mean they weren't known
12 to you.

13 A. That is precisely the position we found ourselves in some
14 time later. I think the word, My Lord, was used, they were
15 "club rules" or "house rules".

CHAIRMAN

16
17 Yes.

MR. MacDONALD

18
19 Q. If somebody, I'm sorry, if the Attorney General then had
20 come back to you following the meeting and said, "Here are
21 the regulations that govern MLA expenses," and having
22 looked at those and, again, looked at the information provided
23 to you by the Auditor General, you would have concluded that
24 if there was still suspected criminal activity, you would have
25 proceeded with an investigation?

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 A. Yes, we would have. Yes, we would have. We'd, there was
2 enough, there was sufficient, reasonable or probable grounds
3 on other offences to continue on. But I would like to have had
4 that position before we ...

5 Q. I have some difficulty, sir, in understanding what possible
6 relevance any regulation could have to a suspected forgery
7 offence. I just really can't understand that.

8 A. The major offence that we were looking at was a fraud
9 against the government and that if there were standards then
10 we would look to something else. If there were no standards
11 in place, that we would look to something else.

12 Q. But the offences that are outlined here on page 22 talk of, and
13 at least case one, false motel receipts. And the suspected, or
14 at least the sections of the Criminal Code that are identified,
15 forgery, uttered forged document, it would seem to me to be
16 relevant to a suggested false receipt. And I don't understand
17 how any regulation could ever justify that activity.

18 A. No, I'm not even inferring. All I'm saying is we were looking
19 for, to know exactly what the rules were by which all of the
20 expenses... this, again, was a briefing document covering the
21 widest possible scope of offences and we had not even gone to
22 look at the documentation from that light. On the surface
23 there were some motel receipts which we considered
24 fraudulent, yes.

25 Q. Fraudulent in that they were false.

1 A. False, yeah.

2 Q. And you would agree with me that there couldn't possibly be
3 any legislation or regulation which would authorize the use of
4 false or forged receipts.

5 A. That is true. That is true.

6 Q. That is true. And if, then, you suspect that there's forgery,
7 just suspect, and the only thing you were waiting for from the
8 AG was copies of the Regulations that it involved, I still have
9 difficulty understanding why you wouldn't just forge ahead,
10 excuse the word, and carry out your investigation.

11 A. Simply put, that there were some reporting requirements
12 which we were... where we were being cautious that we did
13 not want to overtake the Auditor General's function at that
14 time.

15 Q. But, and I don't want to appear to be argumentative, I'm just
16 trying to understand your position. Surely it's not the
17 Auditor General's function if there's suspected forgery to
18 report that. I would suggest that the Auditor General, in
19 involving the police, has followed the correct procedure. It's
20 the police that should determine whether or not a suspected
21 forgery has, in fact, occurred.

22 A. I agree and we had to get access to the original
23 documentation in order to satisfy, you know, an investigation,
24 or proper investigation as to forgery. And to do that we
25 would have had to had access to the original records which

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 were under the care and control of the Speaker of the
2 Legislature.

3 Q. Were they asked for?

4 A. Were they?

5 Q. Did you ask the Auditor General for, or the Speaker for the
6 original records?

7 A. I didn't feel comfortable at that time in going and informing
8 the Speaker that we would like access to your records
9 because, I didn't feel comfortable at that time.

10 Q. Why not? Put it this way, you wouldn't feel uncomfortable
11 going to anybody else asking that. Why would you feel
12 uncomfortable going to the Auditor for that? I'm sorry, the
13 Speaker.

14 A. The Speaker? First of all, the documentation and the
15 evidence that we would be looking for was privileged, in my
16 mind, and I'm not so sure that the Speaker would have been
17 quite willing just to turn it over to us for us to go... Because
18 we said, or we told him that he was a victim of a forgery or
19 some other criminal offence.

20 Q. You mean you can cloak a crime by claiming privilege?

21 A. I didn't feel comfortable in going to him and telling him, at
22 that time.

23 CHAIRMAN

24 I'm having trouble with that privileged, too. I've heard
25 arguments advanced that the Speaker, who is not a member of

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 Government or a representative of any government, but rather
2 the Queen's first commoner, may not be subjected to search
3 warrants. I think that's an Upper Canadian argument and I don't
4 know how valid it is, but it's an issue, I am quite certain that has
5 been before various law enforcement agencies here and in the
6 United Kingdom, in Canada and the United Kingdom. And some
7 people will argue that as a result of the *Magna Carta* that the
8 Queen's first commoner cannot be subject to any search warrants.
9 Based on the theory, at least, that the, it's a lot more than theory,
10 it's fact, that Mr. Speaker is not in any way responsible to
11 Government but only to the Legislature. Is that what you mean
12 by privileged?

13 A. That is precisely the case and I'm guided by my own
14 operating instructions along those lines, My Lord.

CHAIRMAN

16 But not privileged in the sense that ...

17 A. Not in solicitor-client privilege.

CHAIRMAN

19 That it wouldn't be, yes, not in that, not that kind of a
20 reason. In due course it could acquired...

21 A. Yes.

CHAIRMAN

23 And would be admissible. I see, all right.

MR. MacDONALD

25 Q. Without debating that point, Chief Superintendent, there is no,

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 or you did have copies of the documents in question. Yes?

2 A. Correct, yes.

3 Q. And there's no suggestion that the Auditor General or the
4 Speaker was advancing any claim of privilege, if one exists.

5 A. Not at that time, no. There was no ...

6 Q. And nothing to lead you to suspect that had you asked the
7 Auditor General or the Speaker to provide the information
8 that you wanted, if you just, all you wanted to do was look at
9 the originals, there's nothing to suggest that they would not
10 have cooperated fully.

11 A. Not at that time, no.

12 Q. But you felt uncomfortable in asking. Is that a fair...

13 A. That's fair enough.

14 Q. Fairly accurate...?

15 A. I didn't, I did not feel that we were in good enough shape to
16 go to the Speaker at that time, in November of '83.

17 Q. Would you agree with this, sir, that what we have here is a
18 case of a suspected commercial crime, so-called.

19 A. That's a fair description.

20 Q. And it's being treated for the reasons that you've articulated
21 here differently that if it were a suspected commercial crime
22 committed by someone who wasn't a member of the
23 Legislature.

24 A. No, I disagree with that. It didn't get any different treatment.

25 Q. Well, sir, you didn't carry out any investigation. You didn't go

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

- 1 and ask for the original documents so you could look at them.
- 2 A. There was some investigation carried out.
- 3 Q. I understand, and correct me if I'm wrong, that all you did
- 4 was review the information given to you by the Auditor
- 5 General, yes?
- 6 A. Somebody did it for me, yes.
- 7 Q. No one went and asked the people who were supposedly
- 8 issued the receipts whether they, in fact, did issue them.
- 9 A. We had some, we undertook some work to confirm that they
- 10 were receipts from the Sheiling Motel.
- 11 Q. Oh, I'm sorry, I didn't understand that. Tell me what work
- 12 was carried out then and when, yes.
- 13 A. And when?
- 14 Q. Yes
- 15 A. In that time frame there was, a member went to the...it had to
- 16 be in Port Hawkesbury, I believe that's where the Sheiling
- 17 Motel...
- 18 Q. Yes, it is.
- 19 A. Okay.
- 20 Q. So a member did...
- 21 A. Went there and he stayed there legitimately on RCMP
- 22 business and obtained a receipt and came back home and we
- 23 looked at that and compared it to the copies that we had in
- 24 our possession and were satisfied that, at least, that that's
- 25 where those receipts had originated.

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 Q. Okay. And that would be...

2 A. There was some other work done here in the City of Halifax
3 on some other parts of this case, one case too, I'm not certain
4 exactly which one, dealing, and it says on that document,
5 "Receipts for constituency office rent non-existing company."
6 That one there. There was some work done to, you know,
7 initially to satisfy that that statement could be made.

8 Q. Would you agree with me, then, having just even done that,
9 gone to the Sheiling Motel, satisfied yourself that the receipts
10 that were being issued by Mr. MacLean were, in fact, receipts
11 from the Sheiling Motel which is where, in his home? He
12 obviously wasn't staying there when he was in Halifax. That
13 you've, even there have a *prima facie* case that there's been
14 some illegality and, in fact, there's been a forgery...

15 MR. RUBY

16 And a fraud.

17 MR. MacDONALD

18 Q. And a fraud. Just that alone is enough to say, "I have
19 evidence, a *prima facie* case of forgery and fraud."

20 A. Yes, I agree. I agree.

21 Q. Now that's why I'm suggesting to you that if you found that
22 out with respect to someone who's not a member of the
23 Legislature, you've got a *prima facie* case of fraud, forgery,
24 that you would proceed and do the investigation. You
25 wouldn't just put the brakes on and wait for somebody to

CHIEF SUPERINTENDENT MacGIBBON, EXAM. BY MR. MacDONALD

1 come and tell you to do something else.

2 A. Well, I think in the events that were happening at that time, I
3 became aware that negotiations, meetings were being held, I
4 believe, with the Speaker and I believe Mr. MacLean and I
5 think Mr. Cormier was involved in those things. And, again,
6 the, as, I presume, was all part of the work-up to the Auditor
7 General's report that was due in the Legislature. And those
8 events were happening and I'm not so sure that my position,
9 I felt my position was getting stronger. I felt my position was
10 getting weaker while those things were going on. And I was
11 reluctant to launch out into a full-blown investigation as these
12 things were going on. I wasn't privy to all of the things that
13 were happening at that time period.

14 Q. And be that as it may, I come back to my suggestion to you,
15 that had this not been an investigation or an alleged criminal
16 activity by a member of the Legislature, that the RCMP would
17 have treated it differently. They wouldn't be waiting for
18 anything. They'd be forging ahead, doing their investigation.

19 A. I would hope that we would apply the rule of common sense
20 and Mr. Citizen would get equal treatment. That if there was
21 some doubt or something needed to be checked, I would hope
22 that proper research would be done the proper work would
23 be done and then go ahead with the investigation.

24 Q. I'm not suggesting for a moment, sir, that you wouldn't do a
25 proper investigation and I believe that's all you've suggested

1 that every citizen is entitled to a proper investigation. I'm
2 merely suggesting to you that as of November the 22nd,
3 1983, the RCMP stopped doing any investigation with
4 respect to this and weren't going to do any more unless they
5 received instructions from someone to do it.

6 2:45 p.m.

7 A. I'm sorry, I disagree with you, sir.

8 Q. Okay. Then was it your intention on November 22nd, 1983,
9 to launch an investigation of Mr. MacLean's activities?

10 A. We would have gone ahead at that time.

11 Q. Why didn't you?

12 A. Why didn't we?

13 Q. Yeah.

14 A. We were waiting for that undertaking from Mr. Coles.

15 Q. What undertaking?

16 A. That he would review the regulations and the statutes, as he
17 stated he would, and he would come back to us.

18 Q. But I thought you already agreed that no regulation, no
19 matter what it says, is going to justify forgery and you had a
20 *prima facie* case that forgery had occurred.

21 A. I guess I can only...I can only think that we treated them as
22 opposed to single offences that we treated it as an overall, a
23 fraud in the largest...in the broadest sense and that the
24 things that were happening were not help...going to help any
25 investigation that we...

1 Q. Okay. Let me move on.

2 A. So rather than, rather than deal with a single offence of
3 forgery, we sat and waited.

4 Q. Let me move on.

5 COMMISSIONER EVANS

6 Before you leave page 22 at the bottom, "There may be
7 technical violations of the Executive Counsel Act and Regulations
8 or the House of Assembly which could be dealt with by the
9 Speaker of the House; however, from the information supplied
10 they do not appear to be criminal in nature."

11 MR. MacDONALD

12 I understand, My Lord, and perhaps the witness can help us,
13 that that refers to paragraph number 2 in this letter which has
14 nothing to do with Mr. MacLean.

15 Q. Is that correct, Chief Superintendent?

16 A. That's correct, yes, but I think...well, it's under the
17 paragraph 2 but I think there...I think it also applies in a
18 limited degree to the ones in paragraph 1.

19 Q. Yeah, but there...you would agree with me that if there was
20 a forgery that wouldn't be a technical violation of anything?

21 A. No, I'm not suggesting that at all.

22 Q. Thank you. You did tell me that this document on page 22
23 was prepared for you to be used in your regular Thursday
24 meeting with Mr. Gale, is that correct?

25 A. That's correct.

1 Q. And, in fact, did you discuss with Mr. Gale the matters which
2 are referred to in this memorandum when you met on the
3 Thursday?

4 A. I'm sorry, I didn't say that we had discussed it on the
5 Thursday.

6 Q. I'm sorry, but I thought...

7 A. No.

8 Q. ...you said they were prepared...

9 A. It was prepared.

10 Q. ...for that purpose.

11 A. For that purpose.

12 Q. Okay. My only question was, and nothing sinister about
13 what I said, having prepared for that purpose, did you, in
14 fact, discuss with Mr. Gale the contents of this memo?

15 A. No.

16 Q. Why is that?

17 A. And I say no because I don't recall there being a discussion
18 on that day on this topic, on this topic. This was prepared for
19 my purposes and the topic didn't come up. It may very well
20 have been discussed, but I certainly don't remember it
21 being and I've checked and looked for notes to try to assist
22 myself, and the best I can conclude it was not.

23 Q. Thank you. You continued to meet with Mr. Gale every
24 Thursday, did you?

25 A. As and when I was available and he was available, yes.

1 Q. Yes. Did you ever get an answer from the Attorney General
2 to what regulations applied, what statutes applied?

3 A. Sometime in March, April, in that era, of 1984, I had a
4 discussion at one of our regular meetings with Mr. Gale.
5 That...and we talked about the matter of the regulations and
6 I was told that the regulations were not as generally known
7 or gazetted regulations or proper regulations of the
8 Government of Nova Scotia. That there were, and I think
9 this is where the term came up, club rules. I believe that's
10 where that term came up, and they were not...they were just
11 guidelines, if you wish, for use by the speaker and they
12 were not...they were not a public regulation.

13 Q. Did you accept that communication from Mr. Gale as being
14 the answer that you had been waiting for from November?

15 A. No, I asked him if we would be receiving something formal
16 from the Department and to which he responded that Mr.
17 Coles is handling this and that was basically the end of our
18 discussion.

19 Q. At that time though, whenever it is, March or April, you
20 were told by Mr. Gale there's no formal rules as such, there's
21 no published rules. I take it you would accept, therefore,
22 there are no rules that would have the force of law.

23 A. I accepted that much, yes.

24 Q. Yeah. So that there was certainly no rules that would justify
25 the activity which you considered to be criminal that Mr.

1 MacLean had engaged in?

2 A. I'm sorry. There were no...

3 Q. If there's no regulations that have the force of law, the use
4 of forged or suspected forged documents, obviously there's
5 no defence that that's permitted, then at that stage why
6 wouldn't you have said "Now, we're going ahead with an
7 investigation to see if charges should be laid here"?

8 A. We're still...I'm still in the position that there was a
9 requirement for the Auditor General to inform the Attorney
10 General and to inform him of his findings, and I'm not sure
11 at that point and we're now talking March, April, whether
12 that's pre the legislature sitting or after and pre the report
13 being filed or after, but it would have been in that era. But
14 I do recall that the report was filed, there was...there was
15 little, if any, reference to this problem in the Auditor
16 General's report and we were still waiting for this formal
17 notification procedure that the Auditor General was to fulfil.
18 And they were still in the process of consulting and trying to
19 resolve the audit side of their problem and so there we sat.

20 Q. Was the Auditor General informed by you or by the RCMP
21 that your members had, in fact, carried out some
22 investigation and were satisfied that the receipts being
23 issued by Mr. MacLean were, in fact, receipts from the
24 Sheiling Motel and, therefore, couldn't possibly be accurate?

25 A. I'm reasonably certain that the Auditor General was

1 informed by...by Blue or by Leigh, one of them.

2 Q. Let me take you to page 23 of the booklet. And prior to
3 asking you about this, if the RCMP had elected to carry out
4 an investigation or had been instructed or if an investigation
5 were underway, would the first step be to go and talk with
6 Mr. MacLean or would that probably be the last thing you
7 would do?

8 A. I think it would be one of the last things that would be done.

9 Q. And the reason for that? Why would that be?

10 A. I think it would be very necessary to know exactly what the
11 questions needed to be answered, and you'd have to do
12 some investigation and some research to put yourself in that
13 position to frame the proper questions.

14 Q. If you had receipts that were allegedly signed by third
15 parties, would you want to speak to those people before you
16 spoke to Mr. MacLean?

17 A. Certainly, if those people were around, yeah.

18 Q. Were you aware that the Auditor General, I'm sorry, that
19 the Speaker was going to question Mr. MacLean about the
20 alleged criminal activities and give him the full details of the
21 report which had been prepared by the Auditor General?

22 A. I don't believe I was aware of it prior to it happening. I
23 think I became aware of it after it happened.

24 Q. And what was your reaction when you became aware of it?

25 A. I was disappointed that that had been done and I viewed

1 that as being not helping our cause in terms of preparing for
2 a criminal investigation. I think I would wonder then why
3 were we consulted in the first place if this was to be...if this
4 was to be the result.

5 Q. On the bottom of page 23 it indicates that "The speaker is
6 reporting the results of his investigation directly to the
7 Deputy Attorney General, Mr. G. Coles. Coles is not
8 interested in having the matter investigated by the police.
9 Mr. Gale is not opposed to a police investigation although he
10 will go along with Coles' wish." Were you aware of that?

11 A. No. No.

12 Q. The document that is here on page 23 is a report prepared
13 by Staff Sergeant Leigh. Would these come to your attention
14 in the ordinary course of things?

15 A. Oh, yes, this would have come to my attention.

16 Q. Would you have not directed your mind to it and the fact
17 that Mr. Coles is not interested in having an investigation
18 carried out?

19 A. I have no doubt that I did.

20 Q. What business is it of Coles whether an investigation should
21 be carried out or not?

22 A. Other than that he's the Deputy Attorney General, I should
23 think that in his position he would...he would have wanted
24 an investigation carried out.

25 Q. But the fact that Coles doesn't want an investigation carried

1 out, does that influence in any way the RCMP decision
2 whether you should investigate?

3 A. It didn't influence mine.

4 Q. Then on page 24, the comment from Mr. Leigh, or Staff
5 Sergeant Leigh to this effect. "From the information
6 supplied by Cormier it would appear that any chances for a
7 successful police investigation are being seriously hampered
8 by Donahoe's investigation." Would you have...would you
9 agree with that?

10 A. I would agree, yeah, yes.

11 Q. So the intervention of the Speaker in these circumstances of
12 a suspected crime by a member of the legislature seriously
13 hampers any investigation the police want to carry out,
14 correct?

15 A. That's correct.

16 Q. Do I understand it is your belief, however, that the rules in
17 force in Nova Scotia require that the Speaker be advised of
18 these alleged improprieties with the...and that he is going to
19 carry out an investigation?

20 A. The rules that we've talked about that the Speaker be
21 advised were the rules that were guiding the Auditor
22 General.

23 Q. Would you agree with me that if in fact those are the rules,
24 they should be changed?

25 A. I think so, yes.

1 Q. Let me take you now to page 25. Before I do that, no, I'll
2 come back to it, sorry. Page 25. This is another memo from
3 Mr. Leigh and it's dated in March of 1984. About halfway
4 down it's this sentence that I want to direct your attention
5 to, "Instructions were to be awaited from the Department of
6 the Attorney General re a police investigation. To date
7 instructions have not been received and the CIBO is aware of
8 the situation." Is that a fair characterization of what's
9 happening?

10 A. The use of the word "instructions" was not quite what I was
11 waiting for. Instructions there would imply that I was
12 awaiting to...or awaiting permission or authority of
13 something akin to that, and I was not waiting instructions. I
14 was awaiting for an opinion, some proper advice on which to
15 decide whether or not to go forward with this investigation
16 or the large part of this investigation.

17 3:00 p.m.

18 Q. Again, would this be the type of report that would come to
19 your attention, this one prepared by Staff Sergeant Leigh?

20 A. I think this one probably came across my desk, yeah.

21 Q. And the next page, page 26.

22
23 A year has now passed since the Auditor General
24 brought this matter to the attention of the police.
25 The Department of Attorney General was to
review the matter and issue instructions re

1 request for police investigation. Since no
2 correspondence was received from the
3 Department, the file is being closed.

4 And that would be the closure of the file in your system,
5 would it?

6 A. In the system, yes.

7 Q. Now...

8 A. It's more administrative than operative.

9 Q. Had any investigation been carried out in the meantime by
10 the R.C.M.P. from the meeting with, at the time of the meeting
11 with the Auditor General and the Attorney General in
12 November of '83 until the file was closed a year or so later?

13 A. I wonder if you could help me with the date on that entry on
14 the side? Would that have been, was that '84?

15 Q. '84.

16 A. October?

17 Q. Yes.

18 A. Okay. No, nothing had been.

19 Q. Now can I summarize like this, that in October of '83, the
20 R.C.M.P. were given information which led them to believe,
21 and which was subsequently confirmed by some
22 investigation, that a crime had been committed by a member
23 of the Legislature?

24 A. That's a fair summary.

25 Q. And that the R.C.M.P., in the face of that, at no time carried
out a full investigation to see if, in fact, there was such a

1 crime committed. That is, up until they closed their file in
2 October of 1984.

3 A. No, we did not do any overt investigation.

4 Q. Would that be unusual?

5 A. I've seen so many unusual things, I hesitate to answer. I
6 think this was unusual, yes.

7 Q. Let me take you, sir, to page 32. That is a memorandum from
8 Gordon Gale to Mr. Coles and it is dated April the 2nd, 1984.
9 Had you ever seen, or when did you first see that document?

10 A. I first saw this document in September of this year, 1988.

11 Q. Have you ever been advised prior to having seen this
12 document that Mr. Coles was advised by Mr. Gale that no
13 information existed to support criminal charges against Mr.
14 MacLean?

15 A. I think the answer is no to that. No, I was never informed.

16 Q. During the course of your career, have you had occasion to
17 carry out investigations of your own?

18 A. Yes.

19 Q. To interview people who are suspected of having committed a
20 crime?

21 A. Yes.

22 Q. Is it usual for such people to deny that they've committed the
23 crime?

24 A. Yes, it is, quite common.

25 Q. And is it usual for a policeman to conclude that we're not

1 going to proceed with any investigation because the accused
2 denies... or the suspect denies having committed the crime?

3 A. No, that's not usual, not usual practice.

4 Q. If you had been advised in April, 1984 that the Attorney
5 General's office considered there was not evidence to support
6 the laying of charges because Mr. MacLean denied having
7 done any criminal act, would that have been enough for you
8 to say, "Fine, we'll accept that. Let's close our file"?

9 A. No, it would not have been enough for me.

10 MR. CHAIRMAN

11 Q. Chief Superintendent MacGibbon, you indicated earlier that
12 you would meet, the Thursday meetings, you would hold the
13 Thursday meetings from time to time with Mr. Gale whenever
14 you were both available. Did he at any time after April the
15 2nd, 1984 advise you of his opinion to the Deputy Attorney
16 General?

17 A. No, My Lord, I'm certain he did not.

18 MR. MACDONALD

19 Q. At any time, did Mr. Coles advise you that he had received
20 such an opinion from Mr. Gale?

21 A. No, he did not.

22 Q. Let me take you to page 35. This is a letter or memorandum
23 from the Deputy Attorney General to the Attorney General
24 dated April 18, 1984. And I want to direct your attention to
25 the fourth paragraph. I take it you didn't see that memo at

1 the time.

2 A. No, I first saw this memo in September of this year.

3 Q. Thank you. The fourth paragraph, Mr. Coles says:

4 We have communicated our opinion in the matter to
5 the R.C.M.P. who, although they were not formally
6 asked to investigate the matter, nevertheless were
7 made aware of the concerns of the Auditor General.

8 And so on. Was the opinion of Mr. Coles and Mr. Gale ever
9 communicated to you?

10 A. Not to me.

11 Q. If the opinion was to be communicated to the R.C.M.P., who
12 would it normally have been given to?

13 A. It would normally have been addressed to myself.

14 Q. Are you able to say whether anyone else in the R.C.M.P., to
15 your knowledge, Inspector Blue or your superior...

16 A. The only other logical person that would or may have
17 received such a communication or would receive such a
18 communication would have been the Commanding Officer.

19 Q. And he was?

20 A. Then Chief Superintendent Reid.

21 Q. And if Mr. Reid had received such an opinion in the normal
22 course, would he have informed you?

23 A. He certainly would have. He would have given me the
24 documentation.

25 Q. Thank you.

1 MR. MACDONALD

2 I should say, My Lord, we're not aware of any, we have not
3 seen any documentation which would indicate that the opinion of
4 the R.C.M.P, or the opinion of Mr. Coles or Mr. Gale in written form
5 was given to the R.C.M.P.

6 MR. CHAIRMAN

7 Q Just so we can tidy this up. If Mr. Coles had given a copy of
8 his opinion of April the 18th, 1984 to Inspector Blue, would
9 you have expected Inspector Blue to bring it to your
10 attention?

11 A. Yes, and I'm certain that he would have.

12 MR. MACDONALD

13 Q Now let me take you... When did you leave Nova Scotia, sir?

14 A. August 15, 1985.

15 Q Let me ask you to look at page 46.

16 COMMISSIONER EVANS

17 Q Did you ever... Did anybody... Since a copy of this went to the
18 Deputy Auditor General, was there any contact between that
19 office and the R.C.M.P. as to the contents of that letter,
20 opinion?

21 A. I'm not aware of any, My Lord. Sorry, Mr. MacDonald.

22 MR. MACDONALD

23 Perhaps you'd direct me, My Lord, where a copy went to
24 the Auditor General?

25

1 COMMISSIONER EVANS

2 Page 36. "I enclose a letter for your consideration and
3 suggest it be copied to the Deputy Auditor General.

4 MR. MACDONALD

5 I see. Thank you.

6 COMMISSIONER EVANS

7 To which they were going to send the results of their
8 investigation.

9 MR. MACDONALD

10 Thank you, My Lord.

11 COMMISSIONER EVANS

12 Am I correct in that? A copy of the letter was going to go to
13 the Speaker and from the Speaker, it was suggested that a copy go
14 to the...

15 MR. MACDONALD

16 Certainly the, on page 39, it indicates that a copy...

17 COMMISSIONER EVANS

18 Did go.

19 MR. MACDONALD

20 Went to the Deputy Auditor General, yes.

21 Q Did anyone in the Auditor General's Department ever advise
22 you that an opinion had been received from the Attorney
23 General's office concluding that no charges will be laid against
24 Mr. MacLean?

25 A. No.

1 Q. Thank you. On page 46, this is a letter from Mr. Vincent
2 MacLean, who was the Leader of the Opposition, directed to
3 your Chief Superintendent and asking that an investigation be
4 carried out immediately by the R.C.M.P. into the alleged
5 criminal activity of Mr. Billy Joe MacLean. And as a result of
6 that letter, I understand an investigation was carried out, is
7 that correct?

8 A. Yes, this started off an inquiry, an investigation.

9 Q. And I assume that had Mr. Vince MacLean not insisted that
10 an investigation be carried out, that we can assume that none
11 would have been carried out?

12 A. I'm afraid I can't answer what, you know, what I would have,
13 what decision I would have made.

14 Q. Was the R.C.M.P. contemplating at this time launching its own
15 investigation?

16 A. Contemplating? No.

17 Q. Was this letter from Mr. MacLean to Chief Superintendent
18 Reid given to you for action?

19 A. Yes, I saw this, I saw this eventually. This document doesn't
20 indicate that I saw it, but I did.

21 Q. And it would be you who would get the appropriate staff
22 going to...

23 A. Correct.

24 Q. Had you seen the report of the Deputy... I'm sorry, of the
25 Auditor General for the year 1984 which had been filed?

1 A. I saw both of them, the eighty... the one that was filed in '84
2 covering '83 and the one filed in '85 covering '84. I saw both
3 of them.

4 Q. And from those reports, did you consider there was sufficient
5 information to lead the R.C.M.P. to start an investigation?

6 A. I think there was at the time because, really, nothing had
7 changed.

8 Q. Why didn't the R.C.M.P. then commence its own investigation?

9 A. I have some difficulty in answering. I don't know.

10 Q. What I'm...

11 A. Other than at that particular time they just... But I think we
12 would have been, we would have, but I just forget when the
13 Auditor General's report was tabled in the House.

14 Q. Just a moment and I'll see if I can get that date for you.
15 Perhaps we don't know what date it was tabled. It's dated,
16 the covering letter of transmittal is dated March the 8th of
17 1985. And on page 45, there's an extract from the Chronicle
18 Herald of April 4th, 1985, which indicates in the first para-
19 graph that "the Auditor General's report was made public
20 Wednesday." So it was the Wednesday prior to April 4th,
21 1985. Early April, 1985. Mr. MacLean's letter, as we've seen,
22 is dated April the 29th, some three weeks later.

23 A. Yeah.

24 Q. Are you saying that based on what was in the Auditor Gen-
25 eral's report, the R.C.M.P. was contemplating starting its own

1 investigation?

2 3:15 p.m.

3 A. I think it's fair to say that we could not ignore it, and we
4 would not have ignored it, because certain things had been
5 accomplished. One, the Auditor General's report had become
6 public and that we, the police investigation could not
7 infringe on what the Auditor General was doing and that
8 was one of the things that was a consideration in my mind
9 at an earlier point in time.

10 Q. What I'm trying to get clear, and I confess to some confusion
11 at this point, is what it...what is it that initiates, that gets the
12 RCMP to get going on an investigation? What does...what
13 are...what's the initiating event? And not necessarily in this
14 case, but in any case?

15 A. A valid complaint.

16 Q. A complaint must be...

17 A. A valid complaint or valid information received from some
18 source, a human being.

19 Q. Now, can the RCMP...if someone in the RCMP suspects on his
20 own, for whatever reason, that there's a crime being
21 committed, can he launch the investigation themselves?

22 A. Well, I guess have a little dif...I have a little difficulty with
23 "suspects on his own" without him...without that individual
24 coming into possession of some information from a...that is
25 derived from a human source, a human being.

1 Q. Let me then zero in on this case and ask you one more time
2 if you can try to explain why, in the face of having evidence,
3 that would establish that at least there appeared to be a
4 criminal activity in this case, some investigation showed at
5 least a prima facie case of a forgery or a fraud why the
6 RCMP would not have done the investigation which, in fact,
7 was carried out in 1985, '86 and led to charges and
8 ultimately the conviction of Mr. MacLean?

9 A. We didn't initiate or didn't proceed beyond that point of
10 receiving that documentation because we did not feel that
11 we were on, and it was solely, I guess, my decision, that we
12 were on secure enough grounds to go ahead and to have
13 something of this nature become public and it not be
14 supported by the necessary evidence to go to laying charges.
15 There were certain statutory requirements that had to be
16 fulfilled. If there were...if it could be described as a
17 communications gap, yes, I think there's...that happened.
18 We didn't get the answer that we were looking for from, or
19 at least that I thought we should get from the Attorney
20 General's Department. And for that basis it did not go ahead
21 until the 1984 report of the Auditor General that made
22 these expenses, made the issue public. Then I think we
23 were in a better position; okay, we could go, we could
24 become public with the investigation and go do what we had
25 to do.

1 Q Are investigations that are carried out by the RCMP public?

2 A. Public in the sense that when policemen go and ask
3 questions, and in this circle, it certainly would have...it
4 would have become public very, very quickly.

5 Q Okay. Do you at this stage, Chief Superintendent, consider
6 that the actions of the RCMP throughout this case were
7 justifiable and acceptable and not subject to criticism?

8 A. Yes, I'm satisfied that we did the right things.

9 Q Thank you. That's all.

10 A. At that period of time.

11 Q Thank you. That's all I have, My Lord, thank you.

12 MR. CHAIRMAN

13 Mr. Ruby.

14 EXAMINATION BY MR. RUBY

15 Q Chief Superintendent, at the beginning of your evidence, you
16 refer to the mileage claims and you said, if I have your
17 comments noted correctly, you thought them "excessive to
18 the point of being criminally fraudulent". Can you explain
19 what you mean by that?

20 A. That if an individual was entitled to charge "X" number of
21 miles per day or per month and that the claim was, in fact,
22 "YZ" number of miles and was so extreme as to be a means
23 of committing a criminal offence. That's all I meant.

24 Q Can you give me an idea of how extreme we're talking about
25 or whether it was, in fact, the kind of thing that could be

1 done by accident or through inadvertence?

2 A. I'm sorry, if it...

3 Q. Can you give me an idea of how extreme we are speaking
4 about so that I'll know whether for example...

5 A. If an individual is...if an individual is allowed to claim
6 twenty-five miles per day for a round trip and the claim
7 was made to be double that, as an example, and over the
8 course of a year or so, the claim would have been grossly
9 inflated.

10 Q. So you formed the view that the numbers were such that
11 you could safely draw an inference that in terms of a *prima*
12 *facie* case they were criminally fraudulent?

13 A. That was just...that was one element, one element.

14 Q. When did you form that view?

15 A. When did...I'm sorry, sir, I'm not hearing all of your words.

16 Q. I know what's wrong. Let's try this. When did you form
17 that view? Is that better?

18 A. That view? I probably arrived at that the very first...on my
19 very first viewing of the documentation that was provided
20 to Inspector Blue and Staff Sergeant Leigh, when they came
21 to my office on October 26th.

22 Q. So you had, in your own mind, a *prima facie* case of fraud
23 from the very beginning.

24 A. That's correct, yeah.

25 Q. And yet there was no investigation of that fraud.

1 A. There was a...there was some preliminary work done, that's
2 all, but investigation as you term it, no, no.

3 Q. That is not the usual course of procedure when an ordinary
4 person is suspected of a similar kind of fraud, is it?

5 A. No, we like to get on with the job.

6 Q. If you'll turn with me to page 24, and this may be the
7 answer to what would logically be the follow-up question to
8 the last answer you gave. I'd like you to explain to me how
9 it was or what it was that made it appear that the chances
10 for a successful police investigation were being seriously
11 hampered by Speaker Donahoe's investigation? Precisely
12 what was going on that seriously hampered your chances for
13 a successful police investigation?

14 A. This is in the era of January, 1984, and I believe at that time
15 the speaker had had one meeting, if not more, or Mr.
16 Cormier had had one, if not more, meetings and Mr.
17 MacLean was involved or attended those meetings and gave
18 explanations related to his expense claims. And, I am not
19 able to elaborate on the words from the information
20 supplied by Cormier, I'm not able to elaborate on what the
21 full information was that was supplied by Mr. Cormier to
22 Staff Sergeant Leigh, certainly not able to do it today.

23 Q. So the only thing you can point to is the fact that MacLean
24 had given explanations on a matter which on its face you
25 found incriminating to someone other than the police?

- 1 A. That's correct.
- 2 Q. Those explanations were available to you though through
3 Mr. Cormier.
- 4 A. That's why I say, from the information supplied. I don't
5 know.
- 6 Q. But those explanations were just...were available to you
7 from Mr. Cormier, I mean you could see on the previous
8 page, page 23 in the middle.
- 9 A. They weren't made available. It said, "Advised that is
10 reporting the results of his investigation." I presume that
11 blanks means or it refers to Mr. Donahoe, that Donahoe is
12 reporting or the Speaker is reporting the results of his
13 investigation directly to the Deputy Attorney General, Mr. G.
14 Coles.
- 15 Q. And did you ever ask Mr. Coles for the results of his
16 investigation?
- 17 A. I did not specifically ask, no.
- 18 Q. But surely that's a logical thing to do. Once you know he's
19 reporting to the Attorney General of an investigation into
20 the very subject matter you're concerned with, why on
21 earth wouldn't you call him up or speak to the man at the
22 weekly meetings and say, "Hey, can we have this, please?"
- 23 A. I'm sorry, I don't...I did not meet with Mr. Coles on a regular
24 basis.
- 25 Q. Mr. Gale, I believe.

1 A. Oh, Mr. Gale, yes, I...

2 Q. Why wouldn't you say in your regular weekly meetings with
3 Mr. Gale, "Look, I understand that your department is
4 getting this, we're directly concerned in it, can we have a
5 copy please"?

6 A. Mr Ruby, I don't even have, I don't have a sensible answer,
7 I don't know. Oversight on my part or...

8 Q. Okay. I want to ask you these questions because it leaves
9 the inference and I want to put it to you squarely now, as
10 we go through some more of these things, that the pattern of
11 inactivity on the part of the RCMP is explainable only by the
12 fact that here's a powerful friend of the Premier's that's
13 being accused or is suspected of crimes. And if there's other
14 explanations, I want to know what they are as we go along.
15 But that's what in my mind and I want you to know that.
16 Okay. You focused at one point on the fact that you had
17 been consulted by the Auditor General. This was a
18 consultation. I take it you agree that whether you got the
19 information after being consulted by the Auditor General or
20 by the man on the street or anybody at all, if it disclosed a
21 prima facie crime, it was your duty to cause an investigation
22 to be made, is that so?

23 A. That's correct.

24 Q. You go to the meeting with the Attorney General...with the
25 Deputy Attorney General on November 22, '83. Mr. Coles is

1 there, and I'm not certain who else. I think Mr. Gale, as
2 well, and some others. I don't understand why you would
3 not at that meeting tell the Attorney General in plain
4 language that based on what you already had in front of you
5 from Mr. Cormier at that point in time, you thought there
6 ought to be a criminal investigation, but apparently you did
7 not. Can you tell me why that happened?

8 A. I think the conversation was...and first of all, the meeting
9 was very brief.

10 Q. Fifteen minutes or so you said.

11 A. Yes. And that the Deputy Attorney General, Mr. Coles,
12 indicated to me that he had sufficient, he would review the
13 matters and the documentation and that he'd give us...he'd
14 provide us with an opinion or his guidance on the problems
15 dealing with the regulations or the guidelines that were
16 governing the expenses.

17 Q. You were there for approximately fifteen minutes, maybe a
18 little less. What did you tell him in the meeting? What did
19 you say?

20 A. I went to that meeting expecting it to be a cold meeting and
21 it would be a briefing that Mr. Cormier and his staff would
22 be briefing us, the police, and the Deputy Attorney General,
23 and that the discussion would flow from there. And when I
24 arrived, I found that that briefing had already taken place.

25 Q. But you were there for almost fifteen minutes. What did

1 you say during that fifteen minutes or did you say
2 anything?

3 A. Specifically I don't recall other than that we were there, we
4 were prepared to investigate and we'd await his...this
5 meeting, and I said it, and I clearly say it, that the meeting
6 was substantially less than fifteen minutes.

7 Q. Okay. But you did not think it important to communicate to
8 him...

9 A. I think...I think there was sufficient communication between
10 Mr. Coles and myself that we were prepared to investigate
11 and we were ready to start. All we needed was the thing,
12 some word from him, the undertaking that he gave us, not
13 instructions, not direction, advice. Just the advice. That's all
14 we needed.

15 Q. But what you didn't disclose to him was that you had
16 already done some work and formed an opinion on the issue
17 that he was giving advice on, namely that there ought to be
18 an investigation, a criminal investigation. Why wouldn't you
19 tell him that?

20 A. I'm sorry, why wouldn't I tell him?

21 Q. Why wouldn't you not tell him that you had already formed
22 a view based on what you had seen?

23 A. He's the senior law officer in the province or the second
24 senior law officer in the province. In effect, he's my
25 contractual master. I'd find it rather presumptuous of me to

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

tell that senior law officer how to do his job.

1
2 3:30 p.m.

3 Q. But isn't it your job, isn't it your decision as an R.C.M.P. officer
4 to decide whether or not to commence an investigation, not
5 his?

6 A. It's my decision to commence, yes.

7 Q. But you say you don't want to tell him how to do his job and
8 I'm suggesting to you it's your job, not his.

9 A. Well, somewhere I'm losing you, sir.

10 Q. The job at hand is whether or not, is to decide whether to
11 have an investigation, a criminal investigation. You said that
12 you felt reluctant to tell him how to do his job. I'm suggesting
13 to you that it was really your job, not his.

14 A. I think the words you were using to me, and I don't want to
15 debate this, but why didn't I tell him that...

16 Q. But you formed a view on this matter about whether there
17 should be an investigation

18 A. That I had formed a view? I think there was that
19 communication that it was clearly understood that he was
20 aware of what my thoughts are, what my thoughts were. As
21 to me sitting here today to tell you what I communicated to
22 him, I have some difficulty, sir.

23 Q. So you're satisfied then that you did communicate to him.

24 A. I think there was sufficient communication in that very short
25 period of time that he knew, he knew what I understood the

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

1 problem to be; that is, that there were criminal offences that
2 should be looked at and his undertaking was to review the
3 regulations, the guidelines and to give me the benefit of his
4 opinion.

5 Q. That's helpful, because I didn't understand that. Good. You
6 say that one of the reasons why you didn't proceed, and I
7 guess this is the principal reason, is that you didn't want to
8 overtake, and that's your language, the Auditor General's
9 annual report to the Legislature. What did you mean by
10 "overtake"?

11 A. I think we would have been in a position to go out and do the
12 things necessary to complete a police investigation and, most
13 certainly, it would have become, there's no doubt in my mind
14 that it would have become a public matter and the Auditor
15 General had a role and a function to play and there's no
16 question in my mind that our work would have overtaken
17 what he was doing and would have, may have precluded him
18 from doing some of the things that he was required to do.

19 Q. Now tell me what you mean by that because I don't
20 understand how what you're doing, a police investigation.
21 I concede that some of the people you're talking to are going
22 to make it public, it'll leak out. But I don't understand how
23 what you're doing as a police investigation is going to prevent
24 the Auditor General from doing what he has to do. Explain
25 that to me?

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

1 A. Those are the thoughts I had at that time, sir.

2 Q. Surely you went the next step from the blank generality and
3 said, "And this is what might happen." How could it possibly
4 happen that a police investigation could prevent the Auditor
5 General from doing his job?

6 A. I didn't say prevent. It would just over, the events would...

7 Q. Interfere with.

8 A. Interfere.

9 Q. How?

10 A. I think he had a role to play. He had reporting relationships
11 and here he has... It's just... I saw that his role was, I suppose,
12 parallel to ours and that I was, I was concerned that what we
13 would do would interfere with what he had to do.

14 Q. Can you particularize for me? It's the last time I'll ask you
15 the question. I don't want to badger you, but I still haven't
16 got an answer. How was it that it would interfere? What was
17 it that would do the interfering? Can you help me on that, or
18 is there just no answer...

19 A. No.

20 Q. Beyond the generality?

21 A. I don't think there's any answer beyond the generality.
22 That's how I felt at that time.

23 Q. Did you tell the Auditor General, or the Deputy, Mr. Cormier,
24 that you felt this way? Did he know that you were holding
25 off your investigation to prevent interference with him or

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

1 overtaking him?

2 A. I don't think I told him. I only had the two...

3 Q. Because if I understood him, my impression was that he
4 thought that the criminal investigation was now in safe hands,
5 yours, and was proceeding.

6 A. He thought that?

7 Q. That's the impression I got from listening to his evidence. I
8 don't think he had any idea that you were holding off in order
9 to avoid interfering with him.

10 A. That's not what I heard this morning.

11 Q. You heard it differently?

12 A. I heard it differently, at about ten after twelve.

13 Q. I may have missed it. The file is closed, let me find this date.

14 MR. PINK

15 October '84.

16 MR. RUBY

17 Q. October '84? Thank you. October '84, and you said that we
18 would not have ignored this matter even before Mr. MacLean
19 wrote to you. You said you wouldn't have let it just lie and do
20 nothing. But I don't see any documents that show that you
21 did anything between the date when you closed the file and
22 the time Mr. MacLean wrote. Am I missing something?

23 A. Yes. The closing of the file is merely an administrative thing
24 internally within the R.C.M.P. It's a practice that continues
25 today and has for years. We would have and we, I'm certain

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

1 that we would have reacted having, when the Auditor
2 General's report became public in April of 1985, I'm certain
3 that we would have moved on and initiated the investigation.

4 Q. If you initiated the investigation at that time, shouldn't the
5 file show a reopening?

6 A. Ahh...

7 Q. You'd have to reopen the file to initiate an investigation,
8 right?

9 A. It should have, for whatever purposes it was chosen to do
10 something different administratively.

11 Q. I wonder if my friends can advise me whether there's
12 anything that shows anything happening following the
13 making public of the Auditor General's report and prior to Mr.
14 MacLean's letter. If there's any file anywhere that shows that
15 anything was done? My friends will find out and let me
16 know in due course.

MR. MACDONALD

17
18 It sounds like an undertaking in a civil case. I guess that's
19 what he's asking for.

MR. RUBY

20
21 I have no experience with civil undertakings, and I don't
22 want to acquire any.

23 Q. One of the things you needed was a copy of the rules in your
24 own mind. I'm talking about prior, going back to the earlier
25 stages now.

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

- 1 A. Uh-huh. Either a copy of the rules or somebody to tell us
2 exactly what the rules were.
- 3 Q. Sure. And your principal informant had been Mr. Cormier.
- 4 A. Up until that time, yes.
- 5 Q. If you really wanted a copy of the rules, why not pick up the
6 phone and call Mr. Cormier and say, "Can you get us a copy of
7 the rules, please?"
- 8 A. He may very well have had them and perhaps Blue and Leigh
9 had seen it, but I'm not aware.
- 10 Q. So the rules could not, the absence of the rules could not have
11 been a serious impediment to you.
- 12 A. No, we wanted, we knew there were rules. What were they,
13 what status did they have in law. That's what we were
14 looking for. And if they weren't used, and I guess the next
15 thing we'd want to know, were those the rules that were used
16 to apply the test to the expense claims.
- 17 Q. Isn't the best source the Deputy Auditor General or the
18 Speaker's office and couldn't you just pick up the phone and
19 get them, get that information?
- 20 A. I assume that that could have been done. I don't know.
- 21 Q. Then why didn't...
- 22 A. Apparently the information was loose and at large and I think
23 it was knowledge amongst that those rules were not public.
24 Maybe even Cormier didn't have a set. I don't know. I can't
25 give you a definitive answer.

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

1 Q. I understand that. But what I don't understand is if you
2 really are serious about this investigation and not just holding
3 it off because the man is in front of the Premier, why
4 wouldn't you ask somebody for a copy of the rules and ask
5 the Speaker whether they had the force of law or not?

6 A. I think we did. I think we did that in our meeting and that's
7 what was intended in our meeting with Coles, Mr. Coles.

8 Q. On the twenty...

9 A. 22nd.

10 Q. 22nd.

11 A. It would have been a logical follow-up that he would have
12 arranged to get a set and provide us with his departmental
13 view of what they were and their status. That's what I was
14 looking for.

15 Q. Yeah, but when a year goes by and you don't get them and
16 you're at the stage where you close your file, you're about to
17 close your file inter alia because you haven't got them, why
18 wouldn't you pick up the phone and ask somebody. I mean
19 surely after a week or two, you'd say, "Hey, I can get these
20 like that. They're no secret."

21 A. That ignores all the other events that had taken place. And
22 there were the events, those events were taking place in
23 January. Those events were taking place in February of '84.
24 The Auditor General's report was filed. There was no
25 comment made. I was not aware that there was any formal

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

1 reporting, as I expected there to be, to the Attorney General.
2 There were negotiations going on, Speaker, one of the MLA's.

3 Q. Let me come back to the closing of the file. You say it's
4 primarily an administrative act. I take it if nothing had
5 happened, that's the end of the matter.

6 A. Absolutely not. All that is moving a file from the file, the
7 physical file, the wad of paper from one, under the control of
8 an investigator over to another file drawer. That's all that
9 means.

10 Q. From active to passive?

11 A. I suppose that's the best way of describing it.

12 Q. From live files to dead files. Right?

13 A. Call it, your words, I'm sorry.

14 Q. Is it accurate? Live files to dead files?

15 A. No, dead files are, I guess, just something that would never
16 ever come back again.

17 Q. This one might have come back again.

18 A. Yes.

19 Q. Any dead file can come back again.

20 A. Any dead...

21 Q. This is not progress, is it? Do you agree with me?

22 A. I'm sorry, but I...

23 Q. This is not progress in the investigation.

24 A. Oh, no, this is not progress.

25 Q. I'm particularly at a loss to understand how that file can

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

1 move from a live file to dead file; active to passive; whatever
2 the wording is inside your office, when you're sitting there
3 knowing that since the Sheiling Motel receipts were obtained
4 in the wrong town and since the company on which the
5 constituency office expenses were drawn or were concerned
6 with were nonexistent, you're sitting there with a prima facie
7 case of fraud of forging and uttering. When you're sitting
8 with that prima facie case, how can you close a file?

9 A. I had hoped that I had explained that a little earlier, but I'll
10 try it again, sir.

11 Q. Please. I'm just not understanding it.

12 A. It's simply the, the things we were consulted and asked to do
13 and the undertakings that were given to us and the events
14 that took place through early 1984 and we felt that our
15 chances of success had diminished considerably and...

16 Q. The only thing...

17 A. We just didn't, we didn't go further. We didn't go ahead any
18 further.

19 Q. Okay. The only thing you've pointed to in answering my
20 questions as to what diminished the chances of success was
21 the explanation given by Mr. MacLean to the Speaker and
22 others. Mr. Cormier, who was at that meeting, this morning
23 said that he found that not very plausible and he gave two
24 reasons. One, the receipts were sequentially numbered so it
25 couldn't be a true explanation. And, two, it showed entries

CHIEF SUPERINTENDENT MACGIBBON, EXAM. BY MR. RUBY

1 for taxes that were clearly never paid on his present
2 explanation. So if that explanation wasn't much of an
3 impediment for Mr. Cormier, why should it be an impediment
4 for you? Surely it makes your case, not breaks it.

5 A. No, I... You had the benefit of some detailed explanation from
6 Mr. Cormier. I don't think I had all of that detail and the file
7 was closed and perhaps we erred in doing it. That's...

8 Q. It seems an awful error, doesn't it?

9 A. I think, at that time, I think it was probably the right thing to
10 do. Events after that, followed after that that showed that
11 that was an error.

12 Q. And unless you accept the explanation that this was being
13 done in order to avoid embarrassing a powerful friend of the
14 Premier, unless that's the explanation, it seems inexplicable,
15 does it not?

16 A. Well, that certainly is not the reason why the file was closed.

17 Q. Can you suggest any other reason, so I'll understand why it
18 happened?

19 A. Why it happened?

MR. BISSELL

21 I don't like to interrupt, but these types of questions, this
22 question has been asked a number of times now and I think the
23 witness has explained on numerous occasions to my friend and to
24 Mr. MacDonald as to why before as to why he did what he did. It
25 seems to me we're covering, we're tilling the same ground.

1 MR. RUBY

2 Q. I'm trying to understand what alternate explanations there
3 might be, and maybe my friend is correct and you've simply
4 told us everything you can about and, if so, that's fine, too.
5 But I wanted to give you one last chance to put it in a nutshell
6 so I can understand it.

7 A. Well, I hope I've told you all I can. It was closed simply
8 because, in our view and in my view, we did not feel that
9 there was any logical chance or any chance of success,
10 notwithstanding that certain offences had been identified, we
11 did not feel we had any decent chance of succeeding in a
12 criminal investigation. And your comments about a friend of
13 the Premier's, that's, at that time, was not knowledge that I
14 had.

15 Q. You had no idea he was a friend of the Premier's?

16 A. No, I don't know that man. I had never met the man and the
17 thing, the media reporting later brought that to my attention,
18 but in terms of what was in my mind and what I knew in late
19 1983 and through 1984, I did not know that.

20 3:45 p.m.

21 Q. You had no idea, in late '83, early '84, this man was a friend
22 of the Premier's.

23 A. A friend of, I think you used other words to describe it.

24 Q. A powerful friend of the Premier's.

25 A. I did not...

1 Q. Didn't you realize...

2 A. I did not have that knowledge.

3 Q. You knew he was an MP.

4 A. I knew we was an MLA.

5 Q. MLA.

6 A. And I knew he was a Cabinet Minister, I believe. I did not
7 concern myself with friendships.

8 MR. RUBY

9 Thank you, sir.

10 EXAMINATION BY MR. PINK

11 Q. Chief Superintendent, my name is Darrel Pink, I'm
12 representing the Attorney General's Department and I'll try
13 very, to be very brief and not cover any area that's already
14 been dealt with. You mentioned at the outset that you're
15 currently the Chief Superintendent in Saskatchewan, is that
16 correct?

17 A. That's correct.

18 Q. And the Thursday meetings that you held with the Attorney
19 General's Department in Nova Scotia, do you maintain a
20 similar type of liaison with the Government in Saskatchewan,
21 with the Attorney General's Department?

22 A. Yes, but not as frequent.

23 Q. Not as frequent. Now you became involved in this file
24 initially on October 26th of 1983. That's when you had your
25 first briefing from Inspector Blue?

1 A. That's correct.

2 Q. And you attended a meeting on October 28th with the
3 Auditor General.

4 A. That's correct.

5 Q. And his staff. Your meeting with the Attorney General, or
6 the Deputy Attorney General and Mr. Gale, was on November
7 22nd.

8 A. That's correct.

9 Q. Now you indicated that some investigation had been carried
10 out. One of your members had attended at Port Hawkesbury
11 and had brought back a copy of a receipt from the Sheiling
12 Motel. Correct?

13 A. That's correct.

14 Q. Was that between October 28th and November 22nd?

15 A. I'm reasonably certain it was in that, yes.

16 Q. Okay. And you also indicated that you had some other, had
17 followed some other minor investigations locally to support
18 one of the conclusions on page 22. Could you repeat that for
19 me? I missed that in your direct examination.

20 A. Yes, I did, either direct or was, somehow. Anyway it was
21 communicated to Blue and to Leigh that the documentation
22 they had in their possession, that they should try, to the
23 extent possible, to verify or to do some police-type work,
24 police-type investigation to determine what the nature of the
25 documentation was. What did it represent? Was it fraud?

1 Was it whatever else. To the extent that they could do it
2 without becoming public.

3 Q. And which of the items on page 22 did this further
4 preliminary investigation lend support to?

5 A. I'm looking at the wrong 22, I'm sorry.

6 Q. I'm looking at 22, the memo from ...

7 A. Yes, I have it.

8 Q. Inspector Blue to you.

9 A. I have it now. I believe there was some work done to
10 identify the unknown female in case number two.

11 Q. And anything done with regard to case number three?

12 A. There was some work done, some visits made to premises
13 here in the City of Halifax and I, they may have even done
14 some corporation checks through the secretary of companies
15 of Nova Scotia.

16 Q. And that was all done between October 28th and November
17 22nd?

18 A. Actual dates, it's in that era certainly.

19 Q. Prior to your meeting with the Deputy Attorney General.

20 A. I would, I think so.

21 Q. And as a result of those, that preliminary investigation and
22 the initial review of the material, you concluded that there
23 was sufficient information that it merited further
24 investigation.

25 A. There was sufficient information that it merited other, more

1 work by us, yes.

2 Q. And I suggest to you that when you met with the Deputy
3 Attorney General and Mr. Gale on the 22nd of November, you
4 did not communicate that to them.

5 A. I don't believe I did. I don't believe I did.

6 Q. You've also stated that the content of, that the memo at page
7 22, which was prepared on November 23rd prior to your
8 regular November 24th meeting with Mr. Gale, the content of
9 that was not communicated to Mr. Gale.

10 A. No, it was not communicated to Mr. Gale.

11 Q. The right to carry out an investigation is solely that of the
12 police. Is that correct?

13 A. I believe that, yes.

14 Q. And you're at no one's direction as to whether or not an
15 investigation should go forward.

16 A. I believe that.

17 Q. You can be requested to carry out an investigation by a
18 number of different sources, correct?

19 A. Yes.

20 Q. In this case you never received any direction, instruction or
21 anything of the sort from the Attorney General's Department
22 not to carry out an investigation. Is that correct?

23 A. That is correct.

24 MR. PINK

25 Thank you, sir.

EXAMINATION BY MR. BISSELL

1
2 Q. Just two short questions, sir. The, at what point did you
3 conclude that there was evidence there that merited an
4 investigation?

5 A. I think my mind was fully made up when the investigator
6 came back from Port Hawkesbury with the receipt from the
7 Sheiling Motel and the results of the inquiries in Halifax. All
8 of that came together.

9 Q. Had you formed any conclusion based upon what was given
10 your investigators on October the 26th?

11 A. By that, at that time, yes.

12 Q. Yes.

13 A. Yes, I had some opinions.

14 Q. Okay. And what were your opinions?

15 A. Well my opinions were that a certain amount of the
16 documentation that we had access to was false.

17 Q. And to the best of your knowledge, is that the same material
18 that was given to Mr. Coles on the November 22nd meeting?

19 A. I'm satisfied that he had the same documentation and more.

20 MR. BISSELL

21 Thank you, sir, those are all my questions.

RE-EXAMINATION BY MR. MacDONALD

22
23 Q. Just one area, Chief Superintendent. You used the phrase
24 with my friend, Mr. Ruby, that intrigued me and I think I've
25 got correct. You said the reason you didn't proceed was that

1 you didn't see there was any reasonable chance of succeeding
2 in the investigation. Now that's what I took down as your
3 saying. Now I don't understand how one measures success in
4 an investigation. I would think that if you investigate and
5 find the facts that you have succeeded. Would you agree with
6 that?

7 A. Yes, I guess, that was a very poor choice of words to use. I
8 think we would have liked to had, like to think that we had
9 success. I think there's also a, in situations like this, there's
10 also a risk that goes with the people, the notoriety of the
11 people involved. We, the police, go out and investigate and do
12 some great harm to individuals and an investigation becomes
13 public and if our investigation is successful we find the facts.
14 Perhaps we don't lay the charges but it becomes public and
15 regardless of what we find, there is harm done to the
16 individual. If we are successful and we lay charges, I suppose
17 there's an equal or greater amount of harm done. But those
18 are the things that I'm thinking of when, I said if there isn't a
19 reasonable chance of success or...

20 Q. But you talked, and I took it what you really meant, you felt
21 that somehow events had occurred that you wouldn't be able
22 to get the true facts and in that sense you may not have got,
23 you may not have succeeded in the investigation.

24 A. And that also formed a part of my process.

25 Q. But yet a year later one your investigators, Nigel Green,