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

**Volume 87**

- Held: September 19, 1988, at the St. Thomas Aquinas Church Hall,  
Halifax, Nova Scotia
- Before: Chief Justice T.A. Hickman, Chairman  
Assoc. Chief Justice L.A. Poitras and  
The Honourable G. T. Evans, Q.C., Commissioners
- Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David  
Orsborn: Commission counsel
- Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:  
Counsel for Donald Marshall, Jr.
- Mr. Ronald N. Pugsley, Q.C.: Counsel for Mr. John F. MacIntyre
- Mr. Donald C. Murray: Counsel for Mr. William Urquhart
- Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for  
Donald MacNeil estate
- Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the  
Attorney General of Nova Scotia
- Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.  
and Counsel for the Correctional Services of Canada
- Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and  
MacAlpine
- Mr. Charles Broderick: Counsel for Sgt. J. Carroll
- Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel  
for Staff Sgt. Wheaton and Insp. Scott
- Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for  
the Union of Nova Scotia Indians
- Mr. E. Anthony Ross: Counsel for Oscar N. Seale
- Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black  
United Front
- Court Reporting: Margaret E. Graham, OCR, RPR

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MR. RUBY - SUBMISSION and DISCUSSION  
SEPTEMBER 19, 1988 - 9:30 A.M.

1 MR. CHAIRMAN

2 Good Morning. Yes, Mr. Ruby?

3 MR. RUBY

4 Good morning, Mr. Chairman, I'd like to deal now with the  
5 [questions?] you heard from last week.

6 MR. CHAIRMAN

7 Yes.

8 MR. RUBY

9 ...that I wanted to raise on behalf of Mr. Marshall. There  
10 were a number of matters which I might ask Your Lordships to  
11 consider as an application by Mr. Marshall to call further  
12 evidence. There are three such items. First of all, in connection  
13 with the Marshall case itself.

14 First, there is a lawyer by the name of Peter Ashman, who is  
15 the Director of an organization called "Justice," which is the  
16 London, England branch of the International Commission of  
17 Jurists, an organization with which I think you'll probably all be  
18 familiar. And Mr. Ashman and the Justice group have made a  
19 practice, unlike anyone else that I can find in the English-speaking  
20 world, of investigating miscarriages of justice in the criminal  
21 system. And they have investigated a large number of such cases  
22 and, incidentally, one, the equivalent of acquittals through the  
23 English legal system by persuading the Home Secretary in a large  
24 number of cases that miscarriages of justice have occurred and  
25

MR. RUBY - SUBMISSION and DISCUSSION

1 that innocent people have, in fact, been convicted of crimes. Now  
2 what he has as a result of this is what we do not have here. We  
3 have looked very, very carefully at one particular miscarriage of  
4 justice. We've put it under a microscope, as it were. And we have  
5 not had an opportunity to look more broadly into the question of  
6 miscarriages of justice generally and how they occur, what makes  
7 them arise. Now what are the features of miscarriage of justice in  
8 the criminal justice system in Canada?

9 And my submission on this point is that it would be useful  
10 for us to have his work as an overview, so we have a context into  
11 which we can put this particular feature. For example, assuming  
12 that one of the factors we associate with miscarriage of justice  
13 here is sloppy and incompetent police work. Is that a common  
14 feature or an unusual feature? Is miscarriage of justice more  
15 likely to arise from other causes than that? And it would be my  
16 submission that, since we don't have the time or resources to do  
17 that kind of broad independent investigation here, we should  
18 draw in someone who has already done it and learn what lessons  
19 we can. So that's the first point.

20 I pause when I say that. Mr. Spicer has long known of my  
21 wish in this regard and I believe he has actually gone to England  
22 and interviewed Mr. Ashman, but I don't know if anything further  
23 has come of it.

MR. CHAIRMAN

24  
25 Ms. Edwardh supplied us with his book which gave the

MR. RUBY - SUBMISSION and DISCUSSION

1 details up to that point, at least, of all his investigations and  
2 results.

3 MR. RUBY

4 There is a selection. There were two volumes and I...

5 MR. CHAIRMAN

6 Yeah, we have them.

7 MR. RUBY

8 I think that is helpful, but that's not something that's come  
9 onto the record, and I think it should. That's my point. Also, we  
10 haven't the benefit of his analysis of the kinds of questions that  
11 I'm asking now, which is, you know, you can do it from the book  
12 but we haven't been able to ask him what are the kinds of factors  
13 which cause miscarriages of justice in the criminal justice system.  
14 And I think that's something we ought to know and be able to ask  
15 this man.

16 MR. CHAIRMAN

17 And how do they relate to the Province of Nova Scotia as  
18 opposed to Canada?

19 MR. RUBY

20 In that the systems are different. It is background. This is  
21 not direct material. It is context to what we have done.

22 The second item concerns the issue of compensation. The  
23 Commission has received a paper from Professor Archie Kaiser of  
24 Dalhousie Law School on the subject of compensation. And I've  
25 had an opportunity of reading it and it's a very interesting paper,

MR. RUBY - SUBMISSION and DISCUSSION

1 but it is, like most documented papers, written in abstract, in  
2 general. And I would like to have the opportunity of having  
3 Professor Kaiser here so that I can ask him questions that would  
4 allow me to relate that general information to Mr. MacDonald's  
5 compensation issue... Marshall's compen... We know about Mr.  
6 MacDonald's compensation. Mr. Marshall's compensation. And  
7 that relating should be done by somebody who has the kind of  
8 breadth of understanding of the field that Professor Kaiser does.  
9 So that's the second area.

10 The third witness I propose is Mr. Alan Story of the *Toronto*  
11 *Star* and you recall that at some point I put into evidence, and it's  
12 found at Volume 38 of the red volumes, page 129, an article he  
13 wrote. The context was that we have tried with, one might think,  
14 great difficulty to explore the issue of racism in the trial of Donald  
15 Marshall and it's proved to be, I think, a difficult exploration.  
16 We've not had great success one way or the other though we'll  
17 deal with that in argument, in concretely pointing out racism in  
18 that particular trial. And that's partly because of the passage of  
19 time and partly because of the difficulty of getting people to  
20 discuss the issue who were involved in the trial. But the one piece  
21 of evidence which he has is that he talked to jurors.

MR. CHAIRMAN

22  
23 What date was that argument, Mr. Ruby?

MR. RUBY

24  
25 June 9, 1986. And one of the jurors, you'll recall, I'll just

MR. RUBY - SUBMISSION and DISCUSSION

1 read the short passage from the article:

2  
3 Finally, Rosenblum had to overcome the racial  
4 prejudice of at least one juror. Interviewed by  
5 the *Star* after Marshall's innocence was proved,  
6 the juror denied any discrimination was at work  
7 in the case, but then he added 'With one redskin  
8 and one Negro involved, it was like two dogs in a  
9 field. You knew one of them was going to kill  
10 the other. I would expect more from a white  
11 person,' he said. 'We are more civilized.'

12  
13 It may well be improper for us to attempt to call the juror  
14 or to find out which juror it was, and I'm not suggesting that we  
15 should do that. But we should have in the record from Mr. Story  
16 actual evidence that, in fact, occurred because it is the only  
17 concrete evidence of the racism which I will submit in the end  
18 pervasively permeated this trial. And I want to have an  
19 evidentiary base for that submission. Mr. Story has now been  
20 transferred to Toronto, but I'm sure he's available and will make  
21 himself available to the Commission.

22  
23 The fourth area that I want to raise flows from the portion  
24 of the transcript which I have placed on your desk this morning.  
25 I do not see Staff Sergeant Wheaton's name on the MacLean  
witness list and it's my submission that he ought to be called.  
You'll recall during the hearings the issue of the fire at Mr.  
MacLean's restaurant in Port Hawkesbury was raised by Staff  
Sergeant Wheaton, and you'll see that passage at page 7953 of the  
transcript before you. At that point, the questioning continued

MR. RUBY - SUBMISSION and DISCUSSION

1 after the information had been brought out and then at page  
2 7958, it becomes my turn to cross-examine and I indicate "I'm  
3 waiting actually to deal with this issue," at Line 23 on page 7958.

4  
5 I can appreciate at the moment we're dealing  
6 solely with the Marshall case, as counsel outlined  
7 in his opening, but I would also like to take the  
8 position and I do take the position...

9  
10 And so forth down to Line 7.

11 ...the documents are thoroughly capable of  
12 raising the inference that's one's cases that affect  
13 public officials, such as Chief MacIntyre, get  
14 inside the Attorney General's (Department.)  
15 Positions are taken from, among others, political  
16 reasons and that's something I want to explore.  
17 it's certainly within terms of reference.

18  
19 And the argument goes on. Mr. Chairman deals with a point in  
20 part in that Line 25 to the bottom of 7960. Mr. Chairman points  
21 out the undesirability of having an innocent person's name  
22 become public.

23  
24 I'm very keenly aware of that. I take it, then,  
25 the decision of this issue is deferred until some  
later time when further investigation has taken  
place.

Mr. CHAIRMAN:

No, no, no. We seem to be getting side-tracked  
now. I've ruled on that and

MR. MACDONALD:

The decision has been made, in my view, My

MR. RUBY - SUBMISSION and DISCUSSION

1 Lord. It's to permit this question to be answered  
2 and it's been answered.

3 MR. CHAIRMAN:

4 It's been answered.

5 MR. MACDONALD:

6 There's no decision other than that, as I see it.

7 And then Mr. Pugsley rises in relation to another matter. And we  
8 come back to that at page 7963. Line 11:

9 ...I want to get clear direction from Your  
10 Lordship on it on how far I can go... For  
11 example, I would like to ask this witness what  
12 he knows of the decision-making process inside  
13 the Attorney General's office in the case that he's  
14 involved in, the MacLean case where there's  
15 arson. And I think it's relevant because it may  
16 well show the pattern of political decision-  
17 making inside that office. Now I'm willing to  
18 defer that, but if you're telling me that I can't  
19 ask it...

20 I think what I meant to say was " I want to argue that  
21 further.

22 MR. CHAIRMAN:

23 No, what I'm saying to you is that you can ask  
24 him with respect to what he knows of the  
25 decision-making process, but the contents of the  
file is totally different. If he says that he knows  
that the particular file goes to the Attorney  
General's Department in the normal decision-  
making is not followed, and if he knows that of  
his own, you know, knowledge, we accept that.

MR. RUBY - SUBMISSION and DISCUSSION

MR. RUBY:

1 For example, I won't talk to the witness. But  
2 let's say he says this, like the MacIntyre case...  
3 issue, where there was a case where there was a  
4 prima facie case of guilt as far as he was  
5 concerned and yet charges never emerged, I  
6 would like to know about that. He may have to  
7 tell me something about the facts in order to  
8 make that meaningful. Now as I say, I want to  
9 defer this to a second stage

(Which we've now arrived at I can say parenthetically.)

But it is, in my submission, relevant.

MR. CHAIRMAN:

10 I think you'd better defer it to a second stage,  
11 because I would not be prepared to rule on that  
12 at this time, Mr....

MR. RUBY:

13 I take it we'll have the witness back to deal with  
14 that at some point later.

MR. CHAIRMAN:

15 Well, no, I'm not... I'm not saying we're going to  
16 have this witness back.

MR. RUBY:

17 Make a ruling.

18 And then there's a comment from the Chair and turns to the  
19 7965 at Line 21:

MR. CHAIRMAN:

20 Yes, well, let's proceed with the cross-  
21  
22  
23  
24  
25

MR. RUBY - SUBMISSION and DISCUSSION

examination of this witness now and...

1

2

MR. RUBY:

3

And I take it I will confine myself at this time to the issues affecting the Marshall case directly and leave the argument that I've made to another day?

4

5

6

MR. CHAIRMAN:

7

Right.

8

9

And that day now having arrived, it's my respectful submission that on the face of the evidence we now have, there was a cover-up of the case involving arson at Port Hawkesbury involving Mr. MacLean. And, therefore, it's important for me to...

10

11

12

13

MR. CHAIRMAN

14

15

16

17

18

Don't use that word, Mr.... because the evidence doesn't sustain you on that sofar as... You'll recall, I don't know if you were here for the subsequent cross-examination of Staff Sergeant Wheaton. My recollection is that he somewhat, on more sober reflection, he reached a different conclusion.

19

MR. RUBY

20

I respect that you may have reached a conclusion...

21

MR. CHAIRMAN

22

No, he.

23

MR. RUBY

24

But others changed slightly.

25

MR. CHAIRMAN

MR. RUBY - SUBMISSION and DISCUSSION

1 No, he did. He did.

2 MR. RUBY

3 In the sense that the time of the snowstorm may have  
4 varied. But I don't believe, respectfully, that there's any variance  
5 in Staff...

6 MR. CHAIRMAN

7 I think he also said that the information had come to him  
8 from someone else.

9  
10 MR. RUBY

11 That's true. He said that here.

12 MR. CHAIRMAN

13 That's right.

14 MR. RUBY

15 He said he was assisting in the investigation. But the fact  
16 remains that the evidence we have now with respect to this  
17 incident indicates that there was a valid charge to be laid. It was  
18 the opinion of the investigator, according to what he has said at  
19 page 7953. "...it was the feeling of the investigators that it was a  
20 set fire." No charges were ever laid once the documents went to  
21 the Attorney General's Department. So my respectful submission  
22 is that is something we should look at. Now I have not seen those  
23 documents. I've not seen the evidence. I've not seen how it was  
24 dealt with in the Attorney General's Department. But on the face  
25 of it, it is directly related to what we are talking about. He does

MR. RUBY - SUBMISSION and DISCUSSION

1 not expand the field substantially, because we're already looking  
2 at Mr. MacLean in the way in which his cases got handled in the  
3 Attorney General's Department. And I would like to ask that this  
4 be called and I be allowed to ask questions about this man. Now  
5 if there are any questions, I don't want to expand further on the  
6 argument that I made in the previous day. But it having been  
7 deferred until today, my submission is what we know is that  
8 investigators felt a charge of arson was warranted and without  
9 going into the merits of that, because we don't have any  
10 information of substance on it yet, when it got to the Attorney  
11 General's Department, the charge was not proceeded with. And  
12 it's unexplained. And that's what I would like to see explained.  
13 Thank you, My Lords. You've been very patient.

MR. CHAIRMAN

14  
15 Yes, Mr. Orsborn?

MR. ORSBORN

16  
17 My Lord, I'll respond to the first three matters that Mr.  
18 Ruby raised and Mr. MacDonald will respond to the last one that  
19 was raised.

20 Mr. Ruby did advise us some time ago about his request to  
21 call this additional evidence and we have met with him on  
22 occasion to discuss that and, in general, our answer to him on the  
23 three items that he raised was that we would not be prepared to  
24 call them of our own volition, hence, the application to yourselves.  
25 To some extent, we may be grappling with a situation of, while the

MR. RUBY - SUBMISSION and DISCUSSION

1 | evidence may be nice and, indeed, in some respects, not  
2 | irrelevant, that we have had to grapple with the question of  
3 | drawing a balance between calling all evidence which in any way  
4 | impinges on our Inquiry and, on the other hand, the need to bring  
5 | this inquiry, at some time in the reasonable future, to an end.

6 |         With respect to the evidence of Mr. Ashman, Mr. Spicer,  
7 | while he was on other business in Europe, took advantage of the  
8 | opportunity to meet with Mr. Ashman and had a useful discussion  
9 | with him. We have been provided with a useful copy of his latest  
10 | paper on the matter and that will be available to the Commission.  
11 | Given that the benefits of his work will be available to yourselves  
12 | for your consideration, given that they are in very, they are in  
13 | general terms and not related specifically to the Marshall case or  
14 | to Nova Scotia, we felt that it was not that necessary to bring Mr.  
15 | Ashman across the Atlantic to testify before the Commission.

16 |         With respect to the calling of Mr. Kaiser, Professor Kaiser,  
17 | again the, his paper on compensation, as Mr. Ruby indicates, has  
18 | been made available to the Commission. The direct evidence on  
19 | compensation is all in, is all before the Commission and insofar as  
20 | there may be principles in Mr. Kaiser's paper that can be related  
21 | and adapted to the evidence that you have already heard, it is our  
22 | view that that is something that the Commission, the  
23 | Commissioners can do without the necessity, again, of calling Mr.  
24 | Kaiser as an additional witness.

25 |         With respect to the evidence of Mr. Alan Story, while the

MR. RUBY - SUBMISSION and DISCUSSION

1 evidence from the juror himself or herself would be directly  
2 relevant to the Marshall matter, we share Mr. Ruby's concern  
3 about the possible impropriety of obviously calling a juror, given  
4 the provisions of the Criminal Code. Because of that, we have an  
5 equivalent concern about calling Mr. Story to comment on his  
6 discussions with the juror. It would seem to us that if the juror,  
7 or indeed Mr. Story, would be in contravention of the Code by  
8 speaking of the deliberations of the jury, it would not be  
9 appropriate for this Commission in any way to be seen to be  
10 aiding or abetting that kind of conversation by calling Mr. Story to  
11 comment on it. We do have the reference to the discussion in the  
12 Globe and Mail... or in Toronto Star, I'm sorry, for whatever weight  
13 the Commission does ascribe, wishes to ascribe to that. And it was  
14 out of that concern, predominantly, that we chose to advise Mr.  
15 Ruby that we would not be in agreement to calling Mr. Story.

16 And, as I said, with respect to the calling of Staff Wheaton,  
17 Mr. MacDonald will respond to that question.

MR. MACDONALD

19 My Lords, I am taken somewhat by surprise. I wasn't  
20 aware that this particular issue was being raised this morning. I  
21 was aware of the other three and had I been aware, I would have  
22 had extracts from the transcript to refer you to as well. The  
23 Chairman referred to subsequent evidence given by Mr. Wheaton  
24 on cross-examination.

MR. RUBY

MR. RUBY - SUBMISSION and DISCUSSION

1           If you want to defer that discussion until you've had a  
2 chance to do so, I'm quite content.

MR. MACDONALD

3  
4           I'm prepared to talk about it, My Lord, but I can certainly  
5 get these additional transcript references for you, if you wish. But  
6 it's my clear recollection that on cross-examination by Mr.  
7 Saunders, Staff Wheaton acknowledged that at no time... first of  
8 all, what we should recall is what Wheaton said. My recollection  
9 is Staff Wheaton said that Mr. MacLean had copies of a report that  
10 had been filed by the R.C.M.P. with the Attorney General and that  
11 that was a violation or that was an aberration from the normal  
12 procedure. Further, he said that the investigator considered that  
13 arson charges should be laid, and they weren't laid. And he did  
14 confirm that, in this respect, he was, in all cases, relying on what  
15 he was told by Constable Gaudet.

16           Now on cross-examination... Or he also said that Mr.  
17 MacLean allegedly was seen at the restaurant at five o'clock in the  
18 morning in a blinding snowstorm. Now on cross-examination, I  
19 believe by Mr. Saunders, he said that five o'clock in the morning,  
20 could, in fact, be noon or getting up to noon. That that would be  
21 very early in the morning.

22           He also said that he had no knowledge of any report actually  
23 having been received by the Attorney General's office. I take it, I  
24 think it was until some time in December of 1980. And he also  
25 went on to say that Constable Gaudet did tell him that he believed

MR. RUBY - SUBMISSION and DISCUSSION

1 Mr. MacLean had copies of earlier reports and that Mr. MacLean,  
2 in fact, had been, being investigated for arson.

3 Now those are very serious charges and, by request, both  
4 the R.C.M.P. and the Attorney General's gave me full access to the  
5 files involving that particular case, which I have reviewed. I've  
6 also examined and questioned Constable Gaudet on the matter.

7 What we are about here, My Lords, is to look at cases where,  
8 in our opinion, there is some suggestion that other than the  
9 normal procedure was followed by the Attorney General's  
10 Department or the Royal Canadian Mounted Police. That's what  
11 we're dealing with now.

12 9:52 a.m.

13 We have not tried to find every possible case where there  
14 may have been a departure from what is maybe considered  
15 normal. We consider that if we can demonstrate to you or if the  
16 evidence demonstrates to you that on a couple of occasions there  
17 has been a procedure followed that is not normal that that would  
18 be sufficient to enable Your Lordships to make recommendations  
19 of change, if you consider change is required.

20 In this particular case, in the MacLean fire case, having  
21 reviewed all of the materials, I am satisfied that there is nothing  
22 in the files of the RCMP or the Attorney General which would  
23 demonstrate that any report was received by the Attorney  
24 General's office prior to December of 1980.

25 I'm also satisfied, My Lord, that the procedure followed in

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1 this case was absolutely the normal. That, in fact, once the RCMP  
2 report was received, it was reviewed and it was reviewed by a  
3 local Crown Prosecutor who reviewed all of the evidence, took all  
4 the information he considered necessary and advised the RCMP  
5 that in his opinion there was no evidence to support the laying of  
6 a charge against Mr. MacLean, and that decision was concurred in  
7 by the RCMP. So this is not a situation where at the very top of  
8 the Attorney General's Department, without involvement of local  
9 Crowns, any decision was made. This was the normal procedure  
10 being followed. In fact, they took it outside of the county in which  
11 Mr. MacLean resides and went to a Crown Prosecutor in another  
12 county in an attempt to make certain they got an independent and  
13 an objective opinion on the matter.

14 I have spoken to Constable Gaudet. Constable...and for this  
15 purpose, my major purpose in speaking to Constable Gaudet was  
16 to determine whether he would agree with the evidence of what  
17 Staff Wheaton said he had been told by Gaudet. And I was  
18 advised that he was certainly not prepared to disagree with what  
19 Staff Wheaton had said and for that reason he wasn't called. The  
20 only purpose I would see in calling Constable Gaudet would  
21 perhaps be as a collateral attack on the credibility of Staff  
22 Wheaton. So we elected not to call Constable Gaudet.

23 We've seen no evidence to suggest that anything other than  
24 the proper procedure, as we understand it, was followed in the  
25 MacLean case, that following complete investigation there was no

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1 suggestion of any impropriety or, in fact, any evidence to support  
2 the allegation that Mr. MacLean was involved in any arson. And  
3 in those circumstances we saw no need to bring that evidence  
4 before Your Lordships.

MR. RUBY

5  
6 In response, My Lord. First with regard to Mr. Story. It is  
7 not clear that Mr. Story engaged in any impropriety at all from  
8 the comment that I've read. But in any event, I should point out  
9 to you that that question in a criminal context, at least, will never  
10 be tried because of the six months statute of limitations on the  
11 summary conviction offence in the Criminal Code of reviewing  
12 deliberations of a juror. So there is no possible criminal exposure  
13 to anyone at this point in time. I want to make it clear also that I  
14 don't rule out questioning the juror at this point. I simply say  
15 that the first step, at least, is to get the evidence before us in the  
16 form in which we can get it from Mr. Story.

17 Second, with regard to the MacLean arson, my submission is  
18 that on its face we're left with a peculiarity in that the  
19 investigator felt there was a charge. Once again, we have someone  
20 who has a high political position and the Attorney General's  
21 Department decided not to proceed.

MR. CHAIRMAN

22  
23 No, no, the...no, the local Crown Prosecutor in another county.

MR. RUBY

24  
25 Local prosecutor aside, he's part of the Attorney General's

MR. RUBY - SUBMISSION and DISCUSSION

1 Department.

2 MR. CHAIRMAN

3 I realize that's true, but there's a difference from the context  
4 that we've been looking at in last week's evidence and the  
5 evidence coming this week.

6 MR. RUBY

7 Sure. No two cases are ever exactly alike. But in this case,  
8 given that that's the procedure that was followed, the only way of  
9 knowing whether or not there was an impropriety in the handling  
10 of that case requires an assessment of the strength of the  
11 evidence. If there's a case that's a very strong case, that  
12 somebody decides not to proceed with in the face of the evidence  
13 that's available, then one would say, yes, there may well be  
14 impropriety. If on the other hand it's a weak case, you'd say, no,  
15 there was not an impropriety. So that we are unable to assess  
16 that question without knowing what the documents are, what the  
17 evidence was in that case, and being able to compare that with the  
18 decision that was made by the Attorney General's Department.  
19 My friend has seen the documents. I have not. And so I am left  
20 in a position where must suggest to you that I think it's  
21 important to look at this case and see whether or not there is any  
22 impropriety because what we have now before us, we are not  
23 having heard from the investigator or the person who has looked  
24 at the evidence and said, "There's not enough evidence." There's  
25 no reason to think that that's the case, that's so. We just don't

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1 know. And so it does fit respectfully within the general  
2 parameter of the kind of problem we're looking at, even though  
3 the procedure may have been a different one. And the mere fact  
4 that a difference in procedure of going to a local Crown rather  
5 than to the Attorney General's office in Halifax should not make  
6 the crucial difference. Thank you.

MR. MacDONALD

8 Just so it's clear, My Lord, I'm not suggesting here that the  
9 local Crown made any decision. The local Crown was asked for his  
10 opinion by the RCMP and he gave it. The RCMP decided not to lay  
11 a charge. That was a clear case of exercise of discretion that we've  
12 heard of all last week, and the normal procedure being followed.  
13 You go to a Crown, you get his advice, and then you decide what to  
14 do. There is no evidence of any kind of any pressure being  
15 exerted on the RCMP. The decision was made by the RCMP  
16 according to the documentary evidence.

MR. CHAIRMAN

18 Any other counsel wish to be heard?

MR. PINK

20 My Lord, I'd like to just speak briefly on all the matters  
21 raised by Mr. Ruby, but I'd like to start with the last one. I can't  
22 object strongly enough to the language that my friend uses to  
23 characterize this in his representation. It's...I think it's  
24 inappropriate for counsel to use some of the language that he did  
25 to describe something of which he knows very little about. I

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1 know that he has made requests of Commission counsel to have  
2 this matter dealt with and he's been advised of their position  
3 earlier on. Mr. MacDonald is correct. The matter was dealt with  
4 away from the central office of the Attorney General's Department  
5 and the only fact, I might add, is that the local Crown in reviewing  
6 the file reminded the RCMP that it was their ultimate choice  
7 whether or not a charge should be laid. So again, it was kept  
8 within the confines of what we've called normalcy.

9 In terms of the other applications, My Lord, I support the  
10 position enunciated by Commission counsel, and especially on the  
11 Story application. I think it would be inappropriate, even though  
12 there may be some statutory limitation period, for this  
13 Commission to support or condone the speaking with the witness,  
14 directly or indirectly, a juror, directly or indirectly about  
15 something which the Code deals with.

16 In terms of Mr. Kaiser, we've not seen the report or the  
17 opinion that's been referred to but would agree also that if Your  
18 Lordships have the benefit of reviewing it and are able to  
19 compare it with the evidence that's before us that that should be  
20 sufficient.

21 MR. CHAIRMAN

22 Mr. Ruby.

23 MR. RUBY

24 My Lord, I just wanted to add just very briefly, in response  
25 to my friends' comments. My friend criticizes my choice of

MR. RUBY - SUBMISSION and DISCUSSION

1 language, but what he does and what Mr. MacDonald also did was  
2 to keep throwing out little tidbits from the files that they've seen  
3 which they say lead to the conclusion that nothing was wrong  
4 here.

5 MR. CHAIRMAN

6 Right.

7 MR. RUBY

8 They've never shown the files to us. It does seem just a bit  
9 unfair.

10 MR. CHAIRMAN

11 Well, we have to...we have to rely, and we do rely on the  
12 high degree of professionalism and the integrity of Commission  
13 counsel. That's part of their duty to review files to see if there's  
14 any relevancy to this inquiry. And I...and without ruling on the  
15 application I have no difficulty in accepting the position put by  
16 Commission counsel.

17 It does trouble me a great deal that accusations that are  
18 made involving people who are not before us seem to create a  
19 great deal of headlines without any substantiation for them, and I  
20 have never met the gentlemen you'er referring to, Mr. MacLean,  
21 but I do recall reading in the press, when this evidence was  
22 suddenly volunteered by Mr. Orsborn, Mr...or Staff Sergeant  
23 Wheaton after he had completed his evidence-in-chief, and then  
24 the next day certainly recanted to a large extent, seeing two  
25 quotes in the press that I thought would be significant attributed

MR. RUBY - SUBMISSION and DISCUSSION

1 to Mr. MacLean, that he had thirty-odd calls as a result of the  
2 accusations made just before we rose that day from the press, and  
3 following the change in the...the refinement, he only had two.  
4 And that, you know, troubles me a great deal that people who are  
5 not before us seem to be the subject, their guilt or innocence  
6 seems to be the subject matter of public debate arising out of  
7 these hearings, and it was the same all of last week, and I make it  
8 clear again today. We are looking only at the procedure and the  
9 practise followed. The rest is outside of our mandate. And it is  
10 quite wrong for anyone to attribute guilt or innocence to the...any  
11 person arising out of the evidence that we hear in what we  
12 interpret to be a discharge of our mandate, with respect only to  
13 the recommendations.

14 Such being the case we will, as a Commission, consider  
15 these...the representations that have been made and either deal  
16 with them this afternoon or more likely tomorrow morning, at the  
17 commencement of tomorrow morning's hearings. Now are you  
18 ready to proceed.

MR. ORSBORN

20 Yes, My Lord. The first witness will be Mr. Paul Cormier.

MR. CHAIRMAN

22 I've heard some good news that counsel are prepared to  
23 assiduously devote themselves to their duties and ask only  
24 relevant questions and as a result thereof the schedule has been  
25 changed, or conclusion has been changed from Thursday to

MR. RUBY - SUBMISSION and DISCUSSION

1 Wednesday.

2 MR. PAUL CORMIER, duly called and sworn, testified as follows:

3 EXAMINATION BY MR. ORSBORN

4 MR. ORSBORN

5 One housekeeping matter, My Lord, before Mr. Cormier  
6 commences. There had been a booklet of documents circulated to  
7 counsel and provided to Your Lordships. I understand that the  
8 appropriate exhibit number is number 173.

9 EXHIBIT 173 - MacLEAN DOCUMENTS \*

10 Q. Mr. Cormier, your name is spelt C-O-R-M-I-E-R.

11 A. That's right.

12 Q. You live in Halifax currently, sir.

13 A. Yes, I do.

14 Q. And I understand you are the Auditor General of Nova  
15 Scotia.

16 A. I am.

17 Q. Forgive me if during the examination I call you the Attorney  
18 General, we've been so used to thinking of the AG as the  
19 Attorney General that I might slip. Do I understand that  
20 you are a Fellow of the Institute of Chartered Accountants of  
21 Nova Scotia?

22 A. That's correct.

23 Q. And you were appointed at Auditor General in...formally in  
24 September of 1984.

25 A. That's right.

MR. CORMIER, EXAM. BY MR. ORSBORN

1 Q. And do I understand that approximately for a year prior to  
2 that you were acting Auditor General?

3 A. I was.

MR. CHAIRMAN

5 Was your answer as acting...

MR. ORSBORN

7 Formally appointed, My Lord, in September of 1984 but for  
8 a year prior to that was acting Auditor General.

MR. CHAIRMAN

10 Mr. Cormier, is the Auditor General appointed by the  
11 legislature on the recommendation of the Lieutenant Governor-in-  
12 -Council or by the Lieutenant Governor-in-Council?

MR. CORMIER

14 My Lord, it's a Governor-in-Council appointment. There is  
15 no legislature ratification of it.

MR. CHAIRMAN

17 Are you a servant of the Lieutenant Governor-in-Council or  
18 of the legislature.

MR. CORMIER

20 Considered to be a servant of the legislature.

MR. CHAIRMAN

22 Thank you.

MR. ORSBORN

24 Q. How may you be removed?

25 A. I can be removed for cause by a two-thirds vote of the

1 legislature.

2 Q. And as Auditor General you are responsible for reporting on  
3 the public accounts of the Province, I presume.

4 A. If I might, a small distinction, the public accounts are  
5 normally the financial statements of the Province and the  
6 audited opinion on those is expressed by a firm of public  
7 accountants. But we do have a fairly broad mandate  
8 comparable to all legislative auditors in Canada to report on  
9 the revenues, expenditures, asset controls and related  
10 matters.

11 Q. Do I understand that in the course of audit field work during  
12 the period from May to September of 1983, your auditors  
13 brought to your attention some questions concerning  
14 documentation on the expense accounts of members of the  
15 legislative assembly?

16 A. That is correct.

17 Q. And do I understand that among those concerns were  
18 expense accounts relating to Mr. Billy Joe MacLean?

19 A. That is right.

20 Q. Do I understand that the expense accounts of members are  
21 monitored by the Speaker's office for compliance with  
22 regulations, appropriate supporting documentation and  
23 approval for payment?

24 A. That's correct. They receive them, check them, approve  
25 them and submit them to finance for payment.

MR. CORMIER, EXAM. BY MR. ORSBORN

1 Q. And in terms of your audit responsibilities, would it be fair  
2 to describe the Speaker's office as being in the nature of a  
3 client of yours that you would do work for and then report  
4 to?

5 A. That's right. We would review the expense accounts and  
6 report our findings to the Speaker, yes.

7 Q. In October of 1983 who was the Auditor General?

8 A. Mr. Arnold Sarty was Auditor General until he retired  
9 effective October 31st, 1983.

10 Q. And with respect to the expense accounts of Mr. MacLean  
11 that were brought to your attention, I presume Mr. Sarty's  
12 attention, could you indicate in general terms for us the  
13 nature of your concerns?

14 A. The nature of our concern was that there were some forty, I  
15 think precisely forty-two, claims for accommodation  
16 supported by vouchers which we perceived to be  
17 inappropriate in that they were vouchers of the Sheiling  
18 Motel which he operated and the Sheiling Motel name had  
19 been taken from the bottom of the expense accounts and...

20 Q. So from an audited point of view, you were not satisfied  
21 with the documentation that supported the claim.

22 A. To us it was inappropriate documentation, yes.

23 Q. Did you do anything as a result of those concerns?

24 A. As a result of those concerns it was the decision of the office  
25 to consult with the Royal Canadian Mounted Police as to the

MR. CORMIER, EXAM. BY MR. ORSBORN

1           appropriateness of these from a criminal or fraudulent  
2           submission standpoint.

3       Q.    When you say it was the decision of the office, do I take it  
4           that means that...

5       A.    Mr. Sarty.

6       Q.    ...Auditor General and concurred in by yourself.

7       A.    It was Mr. Sarty's decision concurred in by myself, that's  
8           right.

9       Q.    Why would you call in the RCMP first before going to the  
10           either the Speaker's office or the Department of Attorney  
11           General?

12      A.    I suppose for two reasons, one we wanted to get what we  
13           considered to be the best expert or specialist type of advice  
14           on the matter and we felt that this could be best secured  
15           from the RCMP. The second reason was that this was a very  
16           significant serious matter and I might say quite different  
17           from the normal type of audit finding that we would  
18           encounter, and it was Mr. Sarty's view and again my  
19           concurrence with it, that we did not want the matter to be  
20           treated lightly, and felt that we wanted the independent  
21           point of view from the RCMP as a third party aware of the  
22           circumstances that we had...we had uncovered.

23      Q.    And you, in fact, met with the RCMP.

24      A.    Yes, we did.

25      Q.    If I can draw your attention to Exhibit 173.

MR. CORMIER, EXAM. BY MR. ORSBORNMR. CHAIRMAN

1  
2 Before you leave that so I won't forget it. Did you have any  
3 reason to believe that if you had gone to the Speaker, who I  
4 gather in one sense was your client, and/or the Attorney...not  
5 and/or, that's a dreadful word, anyway, or the Attorney General's  
6 Department that it would have been treated lightly?

MR. CORMIER

7  
8 Well, I don't believe, if subsequent meetings are an  
9 indication, that the Speaker would have treated it lightly because  
10 he did not when we first brought it to his attention. I might say  
11 that subsequent discussions with the Attorney General's  
12 Department were such that since they indicated to us, and I'm  
13 going a little bit ahead of myself, if I might...

MR. CHAIRMAN

14  
15 Well, if it's coming up.

MR. CORMIER

16  
17 I think it might come up later in my meetings with the  
18 Attorney General.

MR. CHAIRMAN

19  
20 All right, let's keep it...

MR. CORMIER

21  
22 Yes.

MR. CHAIRMAN

23  
24 Let's keep it in sequence.  
25

MR. CORMIER, EXAM. BY MR. ORSBORNMR. CORMIER

1  
2 But I don't think it fair to ascribe our thinking to the  
3 Speaker necessarily, it was more to the Attorney General's  
4 Department.

MR. ORSBORN

5  
6 Q. But presumably when you made your decision to go to the  
7 RCMP, you did not have the benefit of whatever occurred in  
8 the later meetings. Was there...was there anything at that  
9 time when you decided to go to the RCMP which gave you a  
10 concern that the Department of Attorney General might  
11 treat it lightly?

12 A. If I might put it this way, I'm not sure if this is going  
13 answer your question, but if it isn't, kindly pursue it. Mr.  
14 Sarty's point of view and one, as I suggested earlier, that I  
15 concurred with, is that the Auditor General as a servant of  
16 the legislature has a direct responsibility under his Act or  
17 under the Auditor General Act to report directly to the  
18 legislature on any matters concerning expenditures, and  
19 there was a very real provision in our Act which requires  
20 us to report on any documentation that is not properly  
21 vouched or certified. That's in the legislation. And it's a  
22 direct reporting responsibility. It's not one that is filtered  
23 through or reviewed by or discussed with a department of  
24 government prior to that, whether it be a client department  
25 or whether it be the Attorney General. He felt fairly

1 strongly about this, and as a result, he did not feel that his  
2 initial...his initial contacts would necessarily be, as it might be  
3 from another department working within government on  
4 some matter to the Attorney General. Now that was  
5 fairly...that was...that was a relatively strong feeling on our  
6 part. That doesn't answer precisely why, you know, what we  
7 had to suspect that they might, but we knew it was an  
8 extremely sensitive matter. It was dealing with a Cabinet  
9 Minister. And for that reason we wanted to be as direct and  
10 as, I suppose, as certain of our point of view. We're not  
11 lawyers, we're not police investigators, but from our audit  
12 background we had a strong feeling that there was evidence  
13 of fraudulent activity taking place and as a result we felt we  
14 didn't want that in any way deferred, demurred, and we  
15 went...we decided to go to directly to the RCMP. Now I don't  
16 know if that, does that satisfy you? That's the feeling that  
17 we...does that answer it? I'm not sure.

10:15 a.m.

18 Q. Partially. I'd like to pursue it a little more rather than  
19 leaving this sort of concern about it being taken lightly just  
20 hanging.

21 MR. CHAIRMAN

22 Q. Ordinarily, when you... During the course of your audit, if you  
23 find, forget for a moment any question of fraud, but if you  
24 find that certain expenditures are not properly vouchered or  
25

1 properly explained, do you go to the Deputy Minister of the  
2 department concerned or the head of the Crown corporation  
3 concerned and ask if there's any explanation before you  
4 include it in your report to the Legislature? Do you give them  
5 an opportunity to respond?

6 A. My Lord, we don't have too many instances of this type or  
7 even types involving criminal activity. In the few cases that  
8 have come to my attention in the fourteen plus years I've  
9 been with the office, we've done a mix of things, and they're a  
10 handful. We've called the R.C.M.P. to ask them what they  
11 think of something. And then we'll go to the Attorney  
12 General. But, normally, we don't necessarily go to the  
13 department concerned immediately because of our concern  
14 that there may be an attempt to explain. There may be  
15 unreasonable delays incurred. We want to get the police  
16 initiative as quickly as we can while the material is still, if  
17 you will, relatively current.

18 Q. No, no, I was referring to unsuspected criminal activity.

19 A. Oh, excuse me. Unsuspected, yes. Unsuspected, you're  
20 quite right. Going to the department.

21 Q. Where there's been an overrun or..

22 A. Yes, oh, yes.

23 Q. There may be some errors that ...

24 A. Yes, yes, yes, excuse me, yes. You're quite right. I'm sorry. I  
25 thought you meant in this type of a...

1 Q. No.

2 A. Okay.

3 MR. ORSBORN

4 Q. You've indicated a concern that the matter might be taken  
5 lightly by the Department of Attorney General. You've  
6 recognized that it was a matter involving a Cabinet Minister.  
7 Did you have any prior experience which supported your  
8 concern that a matter involving a Cabinet Minister would be  
9 taken lightly by the Department of Attorney General?

10 A. No, and I'm sorry I didn't answer it that definitively. No, we  
11 did not have any specific instances as parallels that we might  
12 encounter at this time, no, none whatsoever. But it was just  
13 the seriousness, the magnitude, the personalities involved and  
14 so on that we felt we had better be as careful and as  
15 deliberate in our..

16 Q. Do I understand then that your concern arose more out of a  
17 desire that your own responsibilities would be properly  
18 fulfilled rather than any concern that the Department of  
19 Attorney General would not fulfil theirs?

20 A. I think that's a fair statement.

21 Q. If I can direct your attention to the booklet and at page 13. I  
22 apologize for the wide variety of numbers that appear on  
23 some of these pages, but page 13 also has a 28 on it.

24 A. Yes.

25 Q. But it is the second page of the R.C.M.P. documentation, is the

1 13th page of the documentation with a date on the left-hand  
2 column of 83-10-26. Do you have that, Mr. Cormier?

3 A. Yes, I do.

4 Q. And in the second paragraph, it speaks of the meeting being  
5 held between Mr. Sarty, yourself, two of your audit  
6 supervisors, Inspector Blue of the R.C.M.P., and Sergeant Lee.  
7 And do I take it that this was the meeting that was convened  
8 at Mr. Sarty's request?

9 A. Yes, it was.

10 Q. And did you provide the R.C.M.P. with a packet of  
11 documentation during that meeting?

12 A. At that meeting, we showed to them the expense vouchers in  
13 question.

14 Q. What did you ask the R.C.M.P. to do?

15 A. Our question to them was does this, or do you consider this to  
16 be evidence of fraudulent activity which should be pursued  
17 further with yourselves and the Department of the Attorney  
18 General?

19 Q. You didn't ask them to conduct an investigation as such, I  
20 take it?

21 A. No, we did not ask them to initiate an investigation on the  
22 basis of that.

23 Q. You asked them to review documentation that you provided?

24 A. Yes.

25 Q. And if I can ask you to turn to page 17 of that booklet. The

1 top date on the page is 83-10-27, and underneath that, 83-  
2 10-28.

3 A. Yes, page 17, yes.

4 Q. Opposite the caption or the date there of 83-10-28, there's an  
5 indication that the R.C.M.P., in fact, reported back to you two  
6 days later?

7 A. That's correct.

8 Q. And reading this, this will be a meeting between the Auditor  
9 General's people, Superintendent MacGibbon, and Inspector  
10 Blue?

11 A. That's right.

12 Q. And do I understand from reading that that it was their  
13 recommendation that the Attorney General, in fact, be  
14 advised of the matter?

15 A. It was, yes.

16 Q. Did the R.C.M.P. offer you any opinion at that time what their  
17 view was as to either the possible criminality or their desire  
18 to pursue an investigation?

19 A. My recollection was that they felt that this was something  
20 that was indicative of but not...indicative of fraudulent  
21 activity. I don't know if indicative is the word, but not...

22 Q. Indicative?

23 A. Yes.

24 Q. Was there any view expressed that they would wish to do an  
25 investigation?

1 A. I'm not sure if what they were going to do, was we will now  
2 consult with the Attorney General and take it from there or  
3 whether they said that we should immediately commence an  
4 investigation, no. I'm not... I think in view of their opinion to  
5 us on the documentation we submitted, there was certainly a  
6 feeling that something should be done, yes. So I guess put,  
7 but they didn't come right out and say, yes, we shall start or  
8 we should start or we will start.

9 Q. And who was to advise the Attorney General? The R.C.M.P. or  
10 the Auditor General?

11 A. No, I think the thrust of the meeting was that we should now  
12 arrange for a joint meeting with the Office of the Attorney  
13 General and them and ourselves. But in the meantime, since  
14 the Speaker was out of the country, we would want to convey  
15 to him the findings that we had and the results of our  
16 meeting with the R.C.M.P. prior to our going to the Attorney  
17 General.

18 Q. Did you or did Mr. Sarty, in fact, advise the Speaker?

19 A. Yes, we did.

20 Q. who was the Speaker at the time?

21 A. Mr. Donahoe.

22 Q. Arthur Donahoe.

23 A. Mr. Arthur Donahoe.

24 Q. And was that briefing provided by both of you or just Mr.  
25 Sarty or just yourself?

1 A. Both of us.

2 Q. Both of you. And what, if any, reaction did the Speaker have  
3 to the information you provided?

4 A. The Speaker's reaction was, I suppose, two-fold. That it was  
5 an extremely matter that we were bringing to his attention  
6 and that our actions to date in meeting with the R.C.M.P. and  
7 subsequently meeting with the... and subsequently planning a  
8 meeting with the Attorney General were appropriate.

9 Q. I take it he had no difficulty about your having involved the  
10 R.C.M.P.?

11 A. None whatsoever were expressed to us.

12 Q. Do I understand that there was some expression by the  
13 Speaker of a desire to brief the Premier?

14 A. I think... I believe he did tell us that he wanted to apprise the  
15 Premier of this and we felt that that was not an unreasonable  
16 thing to do.

17 Q. And I take it that following that then, you then took steps to  
18 contact the Department of Attorney General?

19 A. We did.

20 Q. And there are two letters found at pages 27 and 28 of the  
21 booklet and I'm summarizing. There's a letter from yourself  
22 to Mr. Coles enclosing a letter from Mr. Sarty and basically  
23 doing little else than requesting a meeting for November  
24 22nd.

25 A. Right.

1 Q. Now backing up on page 21, there is Inspector Blue's note.  
2 You have Inspector Blue's note of the meeting on the 22nd of  
3 November. There is an indication that the Attorney General's  
4 people had been briefed by yourself and Mr. Sarty prior to  
5 the R.C.M.P. arrival. Why did you do that?

6 A. Why? I guess it was just because Sarty and I felt we should  
7 explain to them what had transpired to date, give them an  
8 opportunity to see what we had uncovered in our audit, and  
9 describe the three meetings prior to that, the two with the  
10 R.C.M.P. and the one with the Speaker. No special significance  
11 but I think the R.C.M.P., as I recall now, the R.C.M.P. felt that  
12 that might be a better way to do it, than have them called in  
13 after we had gone through this with them.

14 Q. Was it just Mr. Coles and Mr. Gale present for the Department  
15 of Attorney General?

16 A. That's correct. Sarty and myself.

17 Q. Did they both participate in the meeting?

18 A. Well, they did but the primary participant on their part was  
19 Mr. Coles, as Deputy Attorney General.

20 Q. What reaction, if any, did Mr. Coles have about the  
21 information you provided him with?

22 A. Well, Mr. Coles initially took exception to our going to the  
23 R.C.M.P. prior to advising them of the circumstances and...

24 Q. You say he took exception to your going to the R.C.M.P.?

25 A. He felt, yes, he did. He felt we should have gone to them first.

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1 Q. Was that expressed to you?

2 A. Yes, and Mr. Sarty explained to him that our position as, or his  
3 position as Auditor General was one as a servant of the  
4 Legislature responsible directly to the Legislature and it's a  
5 unique position and quite different from what might be the  
6 situation for those in other departments of government and  
7 felt it was an appropriate course of action to have followed  
8 and that he would do it again under similar circumstances.  
9 And I think Mr. Coles accepted that explanation as a bona fide  
10 reason for having proceeded in the manner we did.

11 Q. Did Mr. Coles suggest any reason as to why you should not  
12 have gone to the R.C.M.P. first?

13 10:30 a.m.

14 A. I don't think he or I cannot recall him going into any lengthy  
15 dissertation as to why we should not other than to say "You  
16 should have come to us first," or words to that effect.

17 Q. Would you describe that meeting as a full briefing of the  
18 Department of Attorney General as to the views of the  
19 Auditor General and the views of the RCMP?

20 A. I'm not sure full briefing, but we certainly went over the  
21 essentials of the case, showed them the evidence, the  
22 documentation we had and described the discussions and  
23 the conclusions we had arrived at and that the RCMP had  
24 supported.

25 Q. On page 22, the following page, there is an internal RCMP

1 memo dated the 23rd of November, the following day.

2 A. Uh-hum.

3 Q. And under number 1 there are three cases and then a  
4 number of suggested offences. The heading to number 1 is  
5 "Possible offences requiring an investigation." Do you recall  
6 if at the meeting on the 22nd there was any expression by  
7 the RCMP that there were, in fact, possible specific offences  
8 that required investigation?

9 A. Well, the...if I understand the question correctly, the matter  
10 was the submission of documentation that appeared to be  
11 inappropriate, falsified, if you will, for the...to substantiate  
12 an expense claim which had been...which had been  
13 reimbursed to the person in question.

14 Q. The question was whether or not at that meeting the RCMP  
15 indicated that they wished to do an investigation because  
16 there were these possible offences that should be looked at?

17 A. You're talking about the meeting.

18 Q. Meeting.

19 A. With the Attorney General and the RCMP.

20 Q. And yourselves.

21 A. And ourselves, yes. As I recall the decision, the course of  
22 action to be followed subsequent to the meeting was that  
23 the Attorney General's Department would take it under  
24 advisement, be in contact with the RCMP and decide what  
25 action should be taken.

1 Q. I understand...

2 A. I don't think there was a definitive decision. Certainly the  
3 Attorney...the Deputy Attorney General did not make any  
4 decision that we shall now do this, now do that at that  
5 meeting.

6 Q. I understand that to be the resolution, but during the  
7 meeting itself was there any recommendation by the RCMP  
8 that the matter should be now investigated because of these  
9 possible offences?

10 A. The meeting was a relatively general one in terms of us,  
11 first of all, providing the background. And the bulk of the  
12 meeting was with only the four of us: Sarty, myself, Coles  
13 and Gales, Coles and Gale. MacGibbon and Blue came in  
14 latterly only for a relatively short time in relation to the  
15 total duration of the meeting. Now...

16 Q. If you don't ...

17 A. Was there a specific recommendation by the RCMP to them?  
18 I don't recall, you know, other than that the thing was going  
19 to be taken under advisement. You know, this didn't  
20 concern us. We weren't looking for a recommendation. We  
21 weren't looking for the RCMP and/or the Attorney General  
22 at this meeting to say, "We're now going to invest...we're  
23 now going to investigate, we're now going to do this, we're  
24 now going to do that." It was in their hands and they had it,  
25 and as far as we were concerned, that satisfied us at that

1 point in time.

2 Q. Okay. Do you understand that following this that on the  
3 29th of November you provided in the normal course of  
4 your responsibilities a report to the Speaker outlining some  
5 of the deficiencies that you had found in your audit?

6 A. On the 29th of November, I'm not sure of the exact date.

7 Q. Yeah. If I can direct your attention to page 7 of the...7 of the  
8 materials, an extract from one of your reports, if you need it.

9 A. I have the report here. I just wanted to double check the  
10 date. Yes, you're correct. It was November 29th.

11 Q. Okay.

12 A. You're right.

13 Q. And was this report provided in furtherance of your normal  
14 responsibilities as Auditor General?

15 A. That's correct, yes, yeah. This was the complete report on  
16 the entire audit, that's what it was.

17 Q. Yes. Now, do I understand that in January of 1984 you had  
18 occasion to meet with the speaker and Mr. MacLean  
19 himself?

20 A. That's correct.

21 Q. If I can direct your attention briefly to page 3 of the  
22 materials. Are these your notes, Mr. Cormier?

23 A. Yes, yes, they are.

24 Q. And can you indicate roughly when and why they were  
25 prepared?

- 1 A. Well, these were prepared quite a bit later.
- 2 Q. Yes.
- 3 A. In the year, Novemberish, for...as part of a... May I just look  
4 at those again quickly? See these were prepared in  
5 connection with the meeting held in November.
- 6 Q. Yes.
- 7 A. With the Attorney General and the Speaker, just to provide  
8 a focus for myself for the meeting.
- 9 Q. Okay, we'll come...
- 10 A. Yes.
- 11 Q. Come back to that, we can just...
- 12 A. Yes.
- 13 Q. Leave page 3 open for a moment.
- 14 A. All right.
- 15 Q. We'll come back to it in a second. Do you have any  
16 understanding of at whose initiative this meeting between  
17 the speaker and Mr. MacLean was called?
- 18 A. My understanding was that the speaker was requested by  
19 the Deputy Attorney General, Mr. Coles, to meet with Mr.  
20 MacLean to obtain his explanation for the documentation  
21 provided for these expenses.
- 22 Q. How did you get that understanding?
- 23 A. Well, he advised me, the Speaker called me to ask if I would  
24 attend the meeting and that was the reason.
- 25 Q. And you have a brief note about that meeting on page 3

- 1 under the heading "Process."
- 2 A. Excuse me, I'm not sure that I follow you are on page 3.
- 3 Q Page 3. It's the heading "Purpose".
- 4 A. Oh.
- 5 Q And underneath that there's a heading, "Process". Do we  
6 have the same page?
- 7 A. Are we on the right page 3, or am I... Oh, "Process", yes, yes,  
8 yes.
- 9 Q And if I read your note correctly...
- 10 A. Yes, yes.
- 11 Q ...it says, "Meeting January 10th, '84, my problem in going,  
12 no opinion point of view, only listen, not too plausible  
13 believe conveyed to Art."
- 14 A. Yes.
- 15 Q That's Art Donahoe the Speaker.
- 16 A. Yes.
- 17 Q Could you elaborate on your notes, sir?
- 18 A. When I received the request from the Speaker to attend the  
19 meeting, I wasn't sure what I should do, whether I should  
20 attend or not. So I phoned Inspector Blue to get his counsel  
21 and he suggested two things to me, that there's no reason  
22 not to go, but if I did go, not to express any opinion with  
23 respect to the documentation. In other words, not to...not to  
24 indicate to either Mr. MacLean or the Speaker that I was, in  
25 fact, accepting the explanations, to maintain a fairly low

1 profile which, in effect, is what I did. I just listened. That's  
2 line 1. Line 2, "Not too plausible," is a very succinct way of  
3 expressing my reaction to the explanations provided. I  
4 just...they didn't seem reasonable to me in the  
5 circumstances, but I did not indicate that to either one of  
6 them. And "I believe conveyed to Art," oh, "Believe  
7 conveyed to Art," is maybe subsequently I conveyed to  
8 Donahoe that the explanation was not a...not one that would  
9 satisfy an auditor.

10 Q. If I could ask you to turn to page 23, which is part of the  
11 RCMP chronology. The date on the left-hand side is 84-01-  
12 11.

13 A. 23, yes.

14 Q. Do you have that with the date?

15 A. 84-01-11.

16 Q. This is the following day and it's Staff Sergeant's Leigh's  
17 record of a conversation with you.

18 A. Uh-hum.

19 Q. And he attributed this to you, "He said he had no input at  
20 the meeting and felt that he was, " I guess, "...placed there as  
21 a sitting duck." Is that your phrase, Mr. Cormier?

22 A. It sounds like something I would say, yes.

23 Q. What would lead you to say that?

24 A. Probably I had the feeling that the mere fact that I was  
25 there and said, excuse me, that I was there and didn't say

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1 anything to challenge or to in any way question the  
2 plausibility of explanations provided, might lead particularly  
3 the member concerned, not necessarily the Speaker, because  
4 I indicated to him that I wouldn't be participating, but it  
5 might have indicated to him that I was...that I had accepted  
6 the explanations.

7 Q I'm sorry.

8 A. It might have led the member to conclude that since I had  
9 not challenged or commented on his explanations that I was,  
10 in fact, accepting them and that's what I would have meant  
11 by being a sitting duck.

12 Q Aside from Inspector Blue, did anybody tell you that you  
13 could not comment or could not challenge the explanations?

14 A. The only counsel I had prior to going to the meeting was  
15 with Inspector Blue because I knew that, you know, they  
16 had been involved from the start and were continuing some,  
17 I guess, discussions with the Attorney General's Department,  
18 I'm not sure, but they were aware that the investigation was  
19 still underway. But no, I didn't contact anyone else, no.

MR. CHAIRMAN

20  
21 So, if you were indeed a "sitting duck" you were as such by  
22 following the advice of Inspector Blue.

MR. CORMIER

23  
24 Yes. I just didn't feel that it was, on the basis of what he  
25 said, and I just didn't want to get in to a confrontational mode

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1 with him at this point in time.

2 MR. CHAIRMAN

3 I'm not quarreling with the wisdom of it.

4 MR. CORMIER

5 No, no, no, no, but that's why I guess I said I... I would  
6 rather not have been there, let's put it this way.

7 MR. ORSBORN

8 Q Is it fair to say that you were a duck of your own making  
9 rather than...

10 A. All right.

11 Q ...rather than somebody in government, the Department of  
12 Attorney General or Speaker.

13 A. Yeah, okay, okay.

14 Q Putting you into a situation.

15 A. Yeah.

16 Q Is that fair?

17 A. Yeah, I guess.

18 Q Okay.

19 A. I guess. Not being a duck I'm not sure.

20 Q On that same page, Mr. Cormier, the bottom paragraph on  
21 the page, there is, I think, an unnecessary deletion there.

22 A. Yes, yes.

23 Q And with the consent of my friend, the counsel for the  
24 Attorney General, it's a deletion in the fourth last line, it  
25 should read "Speaker".

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1 A. Yes, yes.

2 Q. So I take it that you advised...you advised Staff Sergeant  
3 Leigh that the Speaker was reporting directly to Mr. Coles.

4 A. That's correct. He has undertaken to do that.

5 Q. Were you of the view that the Speaker was, in fact,  
6 investigating the matter?

7 A. No, no. The Speaker wasn't investigating the matter as I  
8 under...well, whatever you call investigating. He was...he  
9 was just giving Mr. MacLean an opportunity to convey to the  
10 two of us his explanation of the documentation provided.

11 Q. Yes. The reason for asking is that there are a couple of  
12 references in this paragraph to an investigation by the  
13 Speaker and the fact that the Speaker's investigation was  
14 hampering a police investigation. Do you have any  
15 knowledge of the Speaker's investigation such as would  
16 hamper a police investigation?

17 A. Gee, I have no awareness of that, none.

18 Q. There is also reference at the bottom of page 23.

19 A. Yes.

20 Q. "Coles is not interested in having the matter investigated by  
21 the police. Mr. G. Gale is not opposed to a police  
22 investigation although he will go along with Coles' wishes."  
23 Do you remember making any statement of that nature to  
24 Staff Sergeant Leigh?

25 A. That would have been a conveying to Staff Leigh my

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1 conversation I had had on the street with Mr. Gale at that  
2 time.

3 Q. Can you elaborate on that, please?

4 A. Well, I on occasion used to meet him behind our building as  
5 I was leaving our office and he was going to his parking lot  
6 being on...somewhere along Bedford Row likely. We met  
7 several times during the months that this was under  
8 investigation and we would normally stop and talk for a few  
9 minutes about some aspect of it and this was conveyed to  
10 me in one of these conversations. The exact time and date  
11 of it I'm afraid I can't recall.

12 Q. And so that we are clear, what was conveyed to you was  
13 that Mr. Coles was not interested in having the matter  
14 pursued by police.

15 A. Gale conveyed to me that he felt there should be an  
16 investigation but Coles did not seem to think that it was  
17 necessary at that point in time and, but Gale, of course,  
18 would be following the wishes of the Deputy  
19 Auditor...Deputy Attorney General.

20 Q. Were there any reasons given to you as to why Mr. Coles  
21 thought it should not be pursued?

22 A. No. No.

23 Q. Now, your report comes out in April of each year for the  
24 financial year, end of the year, prior to that.

25 A. Correct.

1 Q. So in April, 1984, you would report on the year ending  
2 March '83.

3 A. That's right. That's right.

4 Q. If I can direct your attention to page 6 of the materials.  
5 This is an extract from your...from your 1984 report which  
6 was tabled in April of '85.

7 A. Right.

8 Q. Okay. And on the right-hand side, which the page number  
9 is 57, on the right-hand side of that page there is reference  
10 to your March '83 report which would have been tabled  
11 around this time in April of '84.

12 A. Just a minor item, if I might, the '83 report went out under  
13 Sarty's signature and since he was Auditor General for most  
14 of that audit year. The '84 one is mine.

15 Q. I understand that. But in any event, there is a reference to  
16 the expense accounts in the report which was tabled in April  
17 of '84, but the reference is very fleeting.

18 A. Uh-hum.

19 Q. And quite general. My question is given what you knew in  
20 April of '84, why would the reference be as brief as this?  
21 10:45 a.m.

22 A. This was a decision jointly arrived at by Sarty and myself.  
23 Sarty retired effective October 31st, '83, but part of the  
24 arrangements associated with his retirement were that he  
25 would sign the '83 Auditor General's Report and he would

1 personally go before the Public Accounts Committee for their  
2 review of it in the spring when it was tabled. I was Acting  
3 Auditor General at the time and we decided that because of  
4 the very serious situation with respect to the expense  
5 accounts, in particular the expense accounts of Mr. MacLean,  
6 the fact that it was with the Department of the Attorney  
7 General for their consideration as to whether further  
8 investigation would take place that we would not go into any  
9 great detail in this year's report. This decision would have  
10 been made in January because this report probably went to  
11 print about the latter part of January. This would be January,  
12 1984. And it was our decision, we conveyed this to the  
13 Speaker, mind you, because at this point in time, he would  
14 have had in his possession in November '83, a full report.  
15 And it was decided that we would make a very brief  
16 reference, that we do on pages 49 and 50 of the '83 report,  
17 and hold, for the following year, the complete details.

18 Q. Just a quick point, Mr. Cormier, while we're looking at this.  
19 On page nine of our materials, and it will be page 63 of the  
20 '84 report.

21 A. Yeah.

22 Q. Looking at the right-hand side of our page nine, page 63 of  
23 your report, under Item #3. One member's expense claims  
24 and the amount being questioned there is \$6,952. and I have  
25 no wish to get into any specifics at all other than to ask you, is

1 this the magnitude of the dollar amounts that you were  
2 concerned with with respect to receipts for accommodation?

3 A. That's correct.

4 Q. Okay. Now I'd ask you to turn to page 37 of the materials.  
5 And do I understand this to be a letter from Mr. Giffin, the  
6 Attorney General, to Mr. Donahoe and it was copied to  
7 yourself?

8 A. Right, that's correct.

9 Q. It's dated April 18th, 1984.

10 A. Yes.

11 Q. And I read this to be the response of the Department of  
12 Attorney General to the concerns raised by yourself. What  
13 reaction, if any, did you have when you received a copy of  
14 this correspondence?

15 A. I suppose I had two reactions. Somewhat disappointed in the  
16 decision not to pursue it further, but not in a position to  
17 question the legal ramifications that gave rise to this, not  
18 being a lawyer. Second reaction was that knowing, as we just  
19 discussed a moment ago, that the '83 report had only a brief  
20 reference to our audit. That the '84 report, when it was  
21 presented to the Legislature, would contain more complete  
22 details on our audit findings and also would have to contain  
23 an expression of opinion by myself with respect to the  
24 acceptability of the documentation.

25 Q. On page 38, the second page of that letter, the third

1 paragraph, and I'm looking at the last three or four lines of  
2 that paragraph. It refers to the provision of a receipt and  
3 acknowledging receipt of the approximate sum of two  
4 thousand dollars during June to December '82 in respect of  
5 accommodation. The only question I have with respect to  
6 that, was it your understanding that that receipt for two  
7 thousand dollars related to the sixty-nine hundred dollar sum  
8 that we spoke about?

9 A. It was related to it, yes.

10 Q. Okay. Now your notes on page three of the materials in  
11 respect of this letter of Mr. Giffin read:

12 I was surprised of the letter contents, not the  
13 decision to proceed further, but the lecture and  
14 detail provided.

15 You told us a minute ago you were disappointed with that  
16 decision. Do I read this as saying you were not surprised at  
17 the decision?

18 A. I was surprised, oh, yes.

19 Q. You were surprised.

20 A. I fully expected an invest... Maybe it was a hope rather than  
21 expectation that there be an investigation.

22 Q. Why did you hope that there would be an investigation?

23 A. Because of what we had indicated, what we had found  
24 initially and the indications of the R.C.M.P. that it smacked of  
25 fraudulent activity.

1 Q. Looking at page 35 of the materials, Mr. Cormier, it's a memo  
2 from Mr. Coles to Mr. Giffin, presumably used to support Mr.  
3 Giffin's letter. The second paragraph on that page 35 says:

4  
5 The irregularities in Mr. MacLean's  
6 compliance are more accounting irregularities  
7 rather than such as to warrant any further  
8 criminal investigation.

9 The matters which were of concern to you, were they, in your  
10 opinion, only accounting irregularities?

11 A. No, and I think that the reason is, the reason I say no is very  
12 simple. The expenses incurred are travel expenses and there  
13 is an accepted normal way to substantiate travel expenditures  
14 made. And Mr. MacLean and others have been in the practice  
15 of documenting, substantiating their expenses by normal type  
16 expenditure documentation. This was not done in this case.  
17 That's not an accounting irregularity, in my view. That's a  
18 documentation deficiency.

19 Q. To your knowledge, were you or anybody in your department  
20 asked to provide to the Department of Attorney General an  
21 opinion on what constituted good or improper accounting  
22 practice?

23 A. Not to my knowledge.

24 Q. That paragraph goes on further to state:

25 Mr. MacLean's explanation of the manner in

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1 which he filed his statement of travel and living  
2 allowances is, in our opinion, a reasonable  
3 explanation.

4 And I take it from your earlier comments that you did not  
5 view the explanation as plausible.

6 A. No, and in view of what I just said a moment ago.

7 Q. Yes. Also on that page in the fourth paragraph, Mr. Coles  
8 writes:

9 We have communicated our opinion in the  
10 matter to the R.C.M.P. who, although they were  
11 not formally asked to investigate the matter,  
12 nevertheless were made aware of the concerns  
13 of the Auditor General since Mr. Arnold Sarty  
14 had spoken to them on an informal basis.

15 Was it your view that you had been speaking to the R.C.M.P.  
16 on an informal basis?

17 A. Well, I certainly wouldn't term it "informal." You're referring  
18 to our two meetings on October the 26th and 28th?

19 Q. 26th and 28th, yes.

20 A. Those are quite formal sessions, in my view.

21 Q. Did you or, to your knowledge, Mr. Sarty, at any time, advise  
22 Mr. Coles or others in the Attorney General's Department that  
23 the meetings were only informal?

24 A. Not that I can recall.

25 Q. Now the Speaker had reported to, I believe, to Mr. Coles  
following your meeting with Mr. MacLean when you met him  
in January.

1 A. Yes, yes.

2 Q. And if I can direct your attention to page 31, which is the  
3 final page of that letter. And Mr. Donahoe has reviewed the  
4 meeting with Mr. MacLean and sets out the explanations  
5 given. The final paragraph reads:

6 I should add that Mr. Cormier has seen the  
7 contents of this memorandum and agrees that it  
8 accurately sets forth the discussion.

9 You then looked at this letter before it was sent?

10 A. Yes, I did.

11 Q. And did it accurately set forth the discussion?

12 A. It did.

13 Q. I take it that that paragraph should not be read as indicating  
14 you agreed with the explanation given.

15 A. That's correct as well.

16 Q. In the preceding paragraph, it talks about Mr. MacLean, in  
17 fact, trying to get a receipt and do I understand that, again,  
18 the amount in question was this sixty-nine hundred dollars  
19 that we spoke of?

20 A. That's correct.

21 Q. And the eventual receipt that was provided was for around  
22 two thousand?

23 A. That's right.

24 Q. Although Mr. Giffin's letter appears to close off the matter  
25 from the Auditor... from the Attorney General's point of view,

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1 did it complete the matter from an Auditor's point of view, as  
2 far as you were concerned?

3 A. As I indicated a few minutes earlier, I recognized that I  
4 would have to detail in the 1984 annual report the findings of  
5 the report and my opinions concerning certain matters,  
6 included, among them, this MacLean expense.

7 Q. So you felt you had to report on it for...

8 A. Oh, yes, no question.

9 Q. The 1984.

10 A. Oh, yes.

11 Q. And what did you in furtherance of that?

12 A. In furtherance of that, I requested a meeting with the  
13 Attorney General. Is it okay to go to that point in time now?

14 Q. By all means.

15 A. Yes, requested the meeting with the Attorney General which  
16 was held...

MR. CHAIRMAN

18 Are you moving into another area?

MR. ORSBORN

20 Certainly another time period. If you wish a break, it would  
21 be a convenient time to do it.

BREAK

23

24

25

1 INQUIRY RESUMES - 11:15 a.m.

2 Q Mr. Cormier, I understand that in November of '84 there  
3 was a provincial election.

4 A. Right.

5 Q And I understand that the matter of these expense accounts  
6 became somewhat of an issue in the election and that during  
7 the election campaign the Attorney General's letter of April  
8 18th of '84 was released to the press as an explanation.

9 A. That's correct.

10 Q Yeah. There is a clipping on page 40 of the materials that  
11 indicated that you were asked to comment on that and, in  
12 fact, said, "I'm sorry, you're going to have to wait until I file  
13 the report, but the documentation is unusual," something to  
14 that effect.

15 A. Yes.

16 Q Is that a fair summary?

17 A. Yeah.

18 Q And you then started to talk about a meeting that you  
19 attended with the Attorney General and the speaker on  
20 November 20th, 1984. Was that meeting called at your  
21 request?

22 A. Yes, that meeting was called at my request.

23 Q And was it called in furtherance of your responsibilities as  
24 Auditor General?

25 A. Yes.

1 Q. In what respect?

2 A. I wanted to convey to the Attorney General the essence of  
3 what my conclusions were and what I would likely be  
4 reporting in the forthcoming Auditor General's report for the  
5 '84 fiscal year.

6 Q. The Speaker was still your client in respect to the claims in  
7 question?

8 A. Yes.

9 Q. Why were you involving the Attorney General?

10 A. Well, I should have introduced this, I mentioned this  
11 initially to the speaker and suggested that the Attorney  
12 General should be made aware of this and he concurred and  
13 if, I'm not mistaken, he arranged the meeting.

14 Q. Yes. If I could ask you to turn to the first two pages of the  
15 material, they appear to be typed notes. Are these your  
16 notes, Mr. Cormier?

17 A. Yes, they are. These were notes I typed in preparation for  
18 the meeting.

19 Q. You typed them in preparation for the meeting?

20 A. For the meeting with the Attorney General, yes.

21 Q. And apart from yourself who attended the meeting?

22 A. From my office Mr. Butler, the assistant Auditor General, the  
23 Speaker, Mr. Donahoe, the Attorney General, Mr. Giffin, the  
24 Deputy Attorney General, Mr. Coles, and the director, Mr.  
25 Gale.

1 Q. And on page 1 under "Introduction and Essentials" you have  
2 a number of points. I wonder if you could just briefly  
3 review them for us and indicate whether or not this reflects  
4 your presentation at that meeting?

5 A. Well, it does reflect my presentation in that in order to  
6 ensure organization and completeness I prepared these in  
7 advance and essentially read from them and I...did you want  
8 me to go through what is on here or is that sufficient?

9 Q. I think if you would, just very briefly, yes.

10 A. All right. I introduced by referencing the responsibilities  
11 under the Act, section 8 of the Act, (d), and explained, as I  
12 have already indicated earlier, why the '83 report did not go  
13 into greater detail, but in '84 we would, and the essentials of  
14 our point of view that the claims and the documentations  
15 were irregular, did not meet acceptable standards. No,  
16 excuse me, this is the essentials of our meeting with the...

17 Q. Yes.

18 A. Felt it necessary to consult with the RCMP. I went through  
19 all of this which I felt was worthwhile preamble. My second  
20 paragraph at the legal level, they had arrived at their  
21 decision as conveyed in their April, '84, letter. I wasn't  
22 commenting on that, it was not my responsibility nor  
23 competence. The critical point, I think, is the third  
24 paragraph, "However, the additional documentation and  
25 explanation received does not provide, from an audit

1 perspective, adequate or proper support of a payment."

2 And this was what I was conveying to them. And also that  
3 I found it difficult to accept the veracity of the explanation  
4 and the documentation provided, as an auditor.

5 Q. And I take it the following concerns...

6 A. Then going into detail, that was supporting, you know, why I  
7 did. I don't know that you need all of that or do you?

8 Q. No.

9 A. No, not necessarily. And then I must report, which goes to  
10 the next page. I must report a follow up to the '83 article, in  
11 several areas, some of which don't impact directly on the  
12 MacLean situation, but deal with other issues such as the  
13 adequacy of the legislation on the guidelines and so on.  
14 Unable to indicate what precisely will be stated. At that  
15 point in time I had not drafted the article. I think this is  
16 important. But I had an idea of what I would be saying and  
17 the subsequent wording of it you see in the article. But I  
18 would be...I would be talking about progress to date and  
19 we'll avoid names and have to describe briefly the types of  
20 occurrences that took place.

21 Q. Is it fair to say in sum and substance that you called the  
22 meeting for the purpose of advising both the Attorney  
23 General and the Speaker that while you had to accept the  
24 Attorney General's decision on criminality, that from an  
25 audit point of view you felt the matter still had to be

1           commented on in your report and you were so advising  
2           him?

3           A.    That's correct.

4           Q.    Was there any reaction by either the Attorney General or  
5           the Speaker with respect to your indication that this matter  
6           would be included in your report?

7           A.    No, there was no reaction, just acceptance of it. I conveyed  
8           it to them and it was...I wasn't expecting any nor did they  
9           feel that I required any.

10          Q.    Given the earlier conclusion that there was no need for the  
11          police to pursue the matter, was there...was there any  
12          suggestion to you that, look, this matter is being dealt with,  
13          what are you bothering with it?

14          A.    No, no, no such indications.

15          Q.    At the bottom of the second page of your notes, Mr. Cormier,  
16          there is a notation under "other matters" which reads,  
17          "What is process re referral to and action by RCMP, refer to  
18          Premier's remarks." Could you elaborate on that for us,  
19          please? It's the last note under "Other matters."

20          A.    Yes, yes, yes. I guess I'm going to have to...to give, to give  
21          you a bit of background to put this in context. Until this  
22          MacLean situation came to our attention, and that would be  
23          in calendar year '83 and in to early '84, I for one was not  
24          entirely certain of what the legal processes were with  
25          respect to what the RCMP could do on their own initiative

1           apart from direction by, say, a department such as the  
2           Attorney General. And in conversation with Inspector Blue  
3           somewhere in the spring of 1984, I can recall asking him  
4           this question and he indicated to me that investigations of  
5           this nature can be undertaken by the RCMP without  
6           approval.

7           Q. Did you say can be or...

8           A. Can be.

9           Q. Can be.

10          A. Can be, yes. And my reason in putting, and I think  
11          in...during the election campaign, as I recall, the Premier  
12          made a statement to the effect, that's why the reference to  
13          the Premier, the Premier made a statement to the effect that  
14          the RCMP can undertake these investigations if they so see  
15          fit. And I as just confirming my understanding of the  
16          process as I now knew it with them and that was the  
17          purpose of that note at the bottom, that we could, in fact,  
18          request the RCMP on our own to conduct an investigation,  
19          the RCMP or any other police body for that matter could  
20          undertake it. They would then file a report with those who  
21          were charged with prosecution and at that point a decision  
22          is made whether or not to proceed with prosecution.

23          Q. Yes.

24          A. And I was just running through the...

25          Q. Was there any either contrary or confirming...

1 A. No, no.

2 Q. ...view expressed to your conclusion?

3 A. No. But this was more background information for myself.  
4 It wasn't necessarily that I was intending at that point in  
5 time to initiate a request. Nor was I going to request of the  
6 RCMP to do it. As far as I was concerned, it had been settled  
7 as far as the legal authorities within the government were  
8 concerned by the letter of April '84.

9 Q. So..

10 A. But I was just trying to get...trying to run by them my  
11 understanding of it to make sure that I was not in any way  
12 improperly informed or unaware of the circumstances.

13 Q. Are you saying that in retrospect there was no need for you  
14 to have approached the Attorney General after you got the  
15 RCMP involved?

16 A. I suppose that's true, yes.

17 Q. And there was no disagreement.

18 A. No.

19 Q. To that expressed by either Mr. Giffin or Mr. Coles?

20 A. No.

21 Q. Just very briefly, Mr. Cormier, on page 41 of the materials, a  
22 letter dated January 4th, 1985, from the speaker to yourself  
23 and he comments on matters which you raised in your  
24 earlier letter of November 29th, '83. The first paragraph he  
25 says, second sentence, "Six items were raised in your report,

1 one of which relating to documentation supporting expense  
2 claims made by Mr. MacLean has been otherwise dealt  
3 with." With respect to the phrase, "...has been otherwise  
4 dealt with," what did you take that to mean?

5 A. I took that to mean that it was decided by virtue of the  
6 April '84 letter of the Attorney General that no further  
7 action or no investigation would be...would be undertaken.

8 Q. The other matters that you raised in your report were dealt  
9 with by the Speaker's office.

10 A. Yes.

11 Q. And he commented on those.

12 A. That's right.

13 Q. And your reply on page 43 and 44 accepts his explanations.

14 A. Yes, because in all cases reimbursement was made for these  
15 other items.

16 Q. Now your report that was tabled in April of 1985 for the '84  
17 did you, in fact, provide a draft copy of the relevant extract  
18 to the Speaker?

19 A. I showed the article to the Speaker in it's final draft form  
20 just before it went to the printer, not for change or  
21 discussion or debate but just for information purposes which  
22 is our normal practise on matters of import for an annual  
23 report.

24 Q. And was there any reaction by the speaker as to what you  
25 proposed to say?

1 A. His reaction was that it was a fair statement of the situation.

2 Q. And in our materials at pages 6 through 11.

3 A. 6 through 11.

4 Q. 6 through 11, yes, the extracts from your report.

5 A. Uh-hum.

6 Q. Now I understand that then to be the extract from your  
7 1984 report tabled in April '85 which dealt with the  
8 expense account question?

9 A. Correct.

10 Q. And do I understand that as a result of that there were  
11 questions raised that led to a further RCMP investigation?

12 A. Correct.

13 Q. That report is, of course, tabled in the House and made  
14 public.

15 A. Yes, it is.

16 Q. And would I be correct in stating that the RCMP  
17 investigation itself, which ensued, was considerably more  
18 extensive both in scope and in time, than your earlier audit?

19 A. It was, it was quite a bit more extensive.

20 Q. Did you provide any assistance to the RCMP in their  
21 investigation?

22 A. Yes, we did.

23 Q. What was the nature of that assistance?

24 A. We provided them with the documentation that we had  
25 derived from our initial audit in '83 and some subsequent

MR. CORMIER, EXAM. BY MR. ORSBORN

1           audit work in '84 and we also reacted to various findings they  
2           had during their investigation which took place during '75  
3           and '76, maybe mostly in '76.

4           Q. At the commencement of your testimony you voiced the  
5           concern about the matter being taken lightly by the  
6           Department of Attorney General. At the conclusion of the  
7           matter, say up to the time that your '84 report was tabled in  
8           April of '85, did you have any view of your own with respect  
9           to how the matter had been responded to or looked at by the  
10          Department of Attorney General?

11         11:30 a.m.

12         A. I suppose it's fair to say that I didn't think of it much beyond  
13         what I had indicated to you earlier in reaction, in my...  
14         expressing my reaction to the April letter. But surprised,  
15         disappointment. Thought it warranted maybe an  
16         investigation. No, maybe about it. I thought it warranted a  
17         further investigation and then the other aspect that I would  
18         have to report upon it. But I didn't, you know, I didn't  
19         continue to reconsider after that time what they should or  
20         should not have done, or even considered making any further  
21         overtures to them.

22         Q. Is it fair to say that you left the issue of legality and  
23         criminality to others and you focused on your own  
24         responsibilities as Auditor General?

25         A. That is a correct way of stating it, yes.

MR. CORMIER, EXAM. BY MR. ORSBORN

1 MR. ORSBORN

2 Thank you, sir.

3 MR. MERRICK

4 Mr. Ruby?

5 EXAMINATION BY MR. RUBY

6  
7 Q. Mr. Cormier, it would seem to me that the system for  
8 reimbursement of members' expenses is basically a system of  
9 trust. Is that true?

10 A. A system of trust? I'm not sure, Mr. Ruby. These are just  
11 regular type of expenses, the ones that we're speaking of,  
12 travel expenses.

13 Q. You don't have an investigative staff that goes out routinely  
14 and checks whether or not the expenses, in fact, occurred...  
15 incurred if you get a voucher?

16 A. If I get, excuse me?

17 Q. A voucher of some kind.

18 A. A voucher, a satisfactory voucher that appears reasonable in  
19 the circumstances. If the House was sitting, a committee was  
20 meeting, what have you, yes.

21 Q. If it looks reasonable on its face, you conduct no independent  
22 investigation.

23 A. That's correct.

24 Q. So, in that sense, you trust the Member to be honest.

25 A. In that sense, yes.

1 Q. So it's a system of trust in that sense?

2 A. Yes, but it's a normal type of expense. It's nothing out of the  
3 ordinary. There are all kinds of travel expenses being  
4 incurred by public servants, other Ministers, Members, and so  
5 on. So there's nothing really unique about these expenses.

6 Q. The process is routine.

7 A. Yes.

8 Q. These particular receipts, I've not seen them, but do they  
9 contain figures that are attributable to meals, for example?

10 A. Yes, they do.

11 Q. And when I buy a meal, ordinarily, I pay some tax to  
12 whoever is receiving the money for the meal.

13 A. Uh-huh.

14 Q. Do these bear amounts allocated or indicating they're  
15 allocated for that purpose as well?

16 A. Yes, they do.

17 Q. And would the meal amounts be the same in each case, or  
18 would they be different?

19 A. Well, I haven't looked at them for awhile. I think they vary.  
20 You know, it wasn't necessarily an identical charge.

21 Q. So the tax payable in each case would be different as well.

22 A. Yes.

23 Q. The room accommodation portion of them, would that have a  
24 tax portion payable as well?

25 A. Yes, I think it did. I think there was tax at that time. If there

1 was tax applicable, it was charged, yeah. Because if you go to  
2 page one of the submission, if I might, there were 42 cases  
3 there in continuity. They included meals and tax charges as  
4 well.

5 Q. You're looking at which document?

6 A. I'm looking at page one of what I received. Just consider that.  
7 Four lines from the bottom, five, six lines. Six lines from the  
8 bottom.

9 Q. They include meal and tax charges as well.

10 A. Yes.

11 Q. One of the problems with any explanation that was given, I  
12 take it, you said at one point that you had difficulty accepting  
13 it. I believe that's at page three where you say the  
14 explanation was not too plausible, in the middle of that page?

15 A. Okay, yes, not too plausible, right.

16 Q. One of the reasons, I take it, why it was not too plausible was  
17 that there would be no explanation for why he had submitted  
18 vouchers for tax when, obviously, there had been no tax on  
19 the account he was giving.

20 A. But if you will remember, I had agreed at that meeting that I  
21 was not going to question him further with respect to the  
22 authenticity of the documentation.

23 Q. Got it. But I might clarify, when you say that it was not too  
24 plausible, that would be one of the reasons why it was not  
25 plausible.

1 A. If they were memos, as he purported them to be, they  
2 wouldn't have all that detail on them, which made me  
3 conclude that they were being used to be represented as bona  
4 fide travel expense vouchers, which in fact they were not.

5 Q. And is my reasoning correct, and I think it is but you may  
6 not... I want to put it to you squarely. He announced as well  
7 that these weren't intended to represent the actual occasion,  
8 but they were intended to represent the expenditures  
9 actually made. That explanation could not be true in your  
10 view because *inter alia*, there were tax portions on the  
11 accounts which were submitted which, on his present  
12 explanation, should not have been there. Does that make  
13 sense? Am I right or wrong?

14 A. That's right, and if I might refresh on one other thing, can I  
15 pause for a second and look at...

16 Q. Sure, because I'm going to ask you what else made it not too  
17 plausible, so I understand.

18 A. Yeah, that's what I'm seeking out. If I might find it in here.  
19 I'm looking for Mr. Donahoe's memo to Mr. Coles on the  
20 meeting.

21 MR. PINK

22 Page 29.

23 MR. CORMIER

24 A. Page 29? Thank you. All right, page 30, third paragraph  
25 from the top:

1                   The procedure he followed was to keep track of  
2                   these trips. On his return to Port Hawkesbury,  
3                   he would advise a female employee, have her  
4                   ring through receipts for accommodation after  
5                   first clipping off the name and submit these  
6                   receipts in support of his expenses.

7                   That is not, in fact, what took place because they were in  
8                   continuity. It had been done all at one time and not after  
9                   individual trips.

10                  Q. So you knew that explanation, as you sat there, could not  
11                  have been true.

12                  A. That's right.

13                  Q. Is there any other reason why you found it not too plausible?  
14                  And I'm asking these questions because later on, I want to  
15                  speak to the Deputy Attorney General and ask him whether  
16                  he considered these matters?

17                  A. Those, Mr. Ruby, would have been the principal ones.

18                  Q. You went to a meeting early on with Mr. Coles and Mr. Sarty  
19                  and yourself, I think it was the first meeting with Mr. Coles, if  
20                  I remember correctly, and you told us that Mr. Coles said that  
21                  he thought you should have gone to the Attorney General's  
22                  Department before you went to the R.C.M.P. But you didn't  
23                  tell us why he said that. Can he advance any reason for that?

24                  A. I can't recall any reason. He might have said that that's  
25                  normal practice in government departments to come to us,

MR. CORMIER, EXAM. BY MR. RUBY

1 but I do know that Sarty replied, as I indicated earlier,  
2 because of our position, we felt it was the thing to do.

MR. CHAIRMAN

3  
4 Q. You're not really [in a department of government?]

5 A. Not really, not in the sense that others are, no. A far different  
6 reporting responsibility. A lot of the things are similar, but  
7 we are different.

MR. RUBY

8  
9 Q. There's an area that I'm confused on and I want you to help  
10 me, if you would. At page 33 of our booklet, I'm the middle  
11 of the letter you referred to from Mr. Coles to Mr. Gale... from  
12 Mr. Gale to Mr. Coles, at page 33.

13 A. I'm seeing this for the first time, you realize that.

14 Q. I think the information that I'm going to refer you to, you're  
15 familiar with.

16 A. All right.

17 Q. Under the first paragraph, the last part of the first paragraph,  
18 he was asked to obtain a letter verifying the fact that he did  
19 stay with him and verifying the amount paid by him. We  
20 now have a short note stating that Mr. MacLean stayed with  
21 him approximately 40 or 45 days between June and  
22 December and contributed in the area of two thousand dollars  
23 as compensation. I'm confused about this now. See if you can  
24 help me. The note accounted for two thousand dollars of a  
25 total of sixty-nine hundred dollars worth of expenses?

1 A. Yes.

2 Q. Okay, the balance of the sixty-nine hundred, was it  
3 accommodation expense as well, covering the forty or forty-  
4 five days between June and December, or was it something  
5 else?

6 A. There were meals and, as we talked about earlier, the other  
7 charges were in there. The meals, tax charges, and there  
8 were associated mileage charges with them, too, I think. I  
9 don't have the schedule with me that takes it out to the final  
10 amount. I didn't bring those with me, but there would be  
11 other costs. The two thousand was purported to represent a  
12 contribution for accommodation at this person's residence.

13 Q. And the rest of the eighty-five dollars per day per diem  
14 would be for the ancillary costs -- meals, travel, and so forth.

15 A. That's right.

16 Q. Forty or forty-five days... Was there anything wrong with  
17 those figures? I'm looking at them and I'm having some  
18 difficulty. Was that a reasonable amount, two thousand  
19 dollars for the forty to forty-five days? Does that make sense  
20 or does it not make sense?

21 A. That's a difficult one to respond to.

22 COMMISSIONER EVANS

23 It works out to be about fifty dollars a night.

24 MR. CORMIER

25 A. Yeah, I suppose for that part of it, it's not out of line for fifty

1 days... for forty days, excuse me, yeah.

2 Q. That's in line with the other kinds of submissions you'd be  
3 getting from other Members.

4 A. Yeah, that would be a hotel charge about that time, yes.

5 Q. Last question. Did you have any difficulties, did anyone put  
6 any pressure on you or any consequences to you as a result of  
7 your involvement in this case and what you did? Was there  
8 any backlash or any response?

9 A. No, none whatsoever.

10 Q. Thank you very much, sir. Before you... One last issue. At  
11 page two, the third last paragraph, I don't understand it.  
12 Could you just explain what you mean: Regarding media.  
13 "I'm not prepared to say which media have what and prefer  
14 to have their permission to advise you." What was that  
15 about?

16 A. I'm just trying to pin-point the timing for a second.

17 Q. Sure, take your time.

18 A. The election, as I recall, in 1984 was 6th, 7th of November...  
19 3rd, 4th? I can't recall the exact day, but it was a Tuesday of  
20 the first full week of November. Roughly, three to four weeks  
21 prior to the election, I became aware that the media had  
22 certain information concerning these expense accounts. Like  
23 our summary of the MacLean situation.

24 Q. And I don't understand what that entry means then.

25 A. Oh, I think... Excuse me, to fill in its entirety. I made the

1 Speaker aware of this after the election and before my annual  
2 report came out, that this certain information was known to  
3 some members of the media and I believe the Attorney  
4 General's Department probably knew it at this time as well.  
5 I'm not sure but, in any event, I was conveying to them that  
6 fact, that the details of the MacLean situation were known not  
7 just to Auditor General, Attorney General, R.C.M.P.

8 Q. Right, and you indicated that you were not prepared to say  
9 which media had what information?

10 A. That's correct.

11 Q. So the word "information" is what you were referring to  
12 there.

13 A. That's right.

14 Q. And "their permission," would be the permission of the media,  
15 who you had spoken to.

16 A. That's correct.

17 MR. RUBY

18 Thank you very much. That's all I have.

19 11:45 a.m.

20 EXAMINATION BY MR. PRINGLE

21 Q. Just two minor little areas. Mr. Cormier, would you refer to  
22 page 19 on the booklet, Exhibit 173. Have you got that?

23 A. Page 19, yes.

24 Q. Yes. It refers there to a note of a telephone conversation  
25 from yourself to Staff Sergeant Leigh setting the time for the

1 meeting with the Attorney General's Department on  
2 November the 22nd at 2:00 p.m., in the middle paragraph.

3 A. Oh, yes, excuse me, yes.

4 Q. Yes. Do you recall that, you setting the time for the meeting  
5 with the Deputy Attorney General as being 2:00 p.m. on that  
6 Tuesday?

7 A. I can't recall setting it. I'm just looking at what I extracted  
8 from my diary on the exact timing of that.

9 Q. Yeah.

10 A. It was...it was not...it was a morning meeting.

11 Q. No. To assist you, if you'd turn to page 27 of the booklet.

12 A. Oh, excuse me...we're in the...we're in the wrong year, I'm in  
13 the wrong year, excuse me, yes.

14 Q. Oh, okay.

15 A. I'm sorry.

16 Q. All right. Do you recall the meeting as being set at 2:00 p.m.,  
17 that is being set by yourself with the Deputy Attorney  
18 General?

19 A. Yes, I phoned his secretary and made that time while he  
20 was out of town, yes.

21 Q. Because I'm wondering if you...you set the 2:00 p.m. and  
22 then advised the RCM Police that the meeting was 2:00 p.m.,  
23 and how did you happen to get there and have that earlier  
24 briefing with the Deputy Attorney General before the police  
25 arrived?

1 A. My recollection was that we would meet with the Deputy  
2 Attorney General and his Director prior to and go over it  
3 with them. Now whether I arranged that with Inspector  
4 Blue or Superintendent MacGibbon or whether they  
5 suggested it, I can't recall.

6 Q. Let's have a look at page 27 to see if it assists you, a letter of  
7 November 14th, '83 to Mr. Coles from yourself. The second  
8 last paragraph, you set the time of 2:00 p.m., is that correct?

9 A. Yeah, when you say "I set it," I talked to his secretary.

10 Q. Okay.

11 A. And she said he was away and that he has a free time, he'll  
12 meet with you then, yes.

13 Q. Right. One other matter, Mr. Cormier, at page 31 of this  
14 booklet, the last page of the letter from Mr. Donahoe to Mr.  
15 Giffin of January 13th, 1984. In the second-last paragraph,  
16 it's indicated "Mr. MacLean indicated that he would obtain a  
17 letter from (blank) verifying the fact that he did, in fact,  
18 stay at (blank) apartment and insofar as is possible  
19 verifying the amount paid to him (blank). Mr. Cormier and I  
20 indicated that it would be desirable if this letter could be  
21 obtained as quickly as possible." Do you recall so indicating  
22 to Mr. MacLean at that meeting of January 10th, 1984?

23 A. When the minutes of the meeting were given to me by Mr.  
24 Donahoe, that was the one item that I thought, well, I can't  
25 remember telling Mr. MacLean to get it as soon as possible.

1 Q. Uh-hum.

2 A. But it struck me as being so insignificant I didn't bother  
3 with any revision. The rest of it conveyed the sense of the  
4 meeting.

5 Q. You didn't bother. Yeah.

6 A. I mean it didn't...to me it was in the material.

7 Q. Uh-hum.

8 A. Whether he or I or both, but remember Mr. Donahoe, as  
9 Speaker, was conducting the meeting, asking the questions,  
10 taking the notes and I was...

11 Q. Yeah. You didn't do anything about it because the last  
12 paragraph, and you've agreed with that this morning in  
13 direct evidence.

14 A. Yeah.

15 Q. Says "I should add that Mr. Cormier has seen the contents  
16 of this memorandum and agrees that it accurately sets forth  
17 the discussion."

18 A. But I think it clear to understand one thing, it was not my  
19 initiative of MacLean to produce this as soon as possible.

20 Q. Uh-hum.

21 A. I was taking no initiatives at that meeting.

22 Q. Just one further area, page 14 of this booklet, Exhibit 173.

23 A. Page 14, yes

24 Q. Yes, it's a...part of the continuation report of Staff Sergeant  
25 Leigh under date of the 26th of October, 1983, you see that

1 from the previous page.

2 A. Yes.

3 Q. The bottom of page 14, Staff Sergeant Leigh has written,  
4 "The Auditor General did not know if he should make a  
5 formal request for investigation to the police, the Speaker of  
6 the House, or the Attorney General." Do you recall saying  
7 that to Staff Sergeant Leigh or indicating that?

8 A. Yes, I think he did, but if you take it in the context of the  
9 next following sentence.

10 Q. Sure.

11 A. We had an on-going agreement to meet again with the RCMP  
12 and at that point decide, and this is what we did on the  
13 28th.

14 Q. Sure. My only point, sir, is I take it there was some  
15 confusion, at least in your mind, as to whom you should be  
16 reporting these irregularities to and what the process should  
17 be at that time?

18 A. I wouldn't say confusion as to whom we should be reporting  
19 the irregularities. It goes back to the point I discussed a few  
20 moments ago. I don't think either Mr. Sarty or myself were  
21 completely certain of what rights or processes there were  
22 from us...for us to request the RCMP to do an investigation  
23 apart from the other. But there was not too much confusion  
24 in our minds as to whom we should run this by first.

25 Q. Okay. Thank you.

MR. CORMIER, EXAM. BY MR. PINK

1 A. All right?

2 EXAMINATION BY MR. PINK

3 Q. Mr. Cormier, could you look again at page 14, just where Mr.  
4 Pringle was referring you to? You'll note there that there's a  
5 reference that says, "The Auditor General," I take it that  
6 refers to Mr. Sarty, "Explained that the meeting was an  
7 informal information meeting in which he was seeking  
8 advice."

9 A. Yes.

10 Q. Is that your recall, do you have that recollection of what Mr.  
11 Sarty said?

12 A. Well, we were seeking advice but, you know, I have a tough  
13 time using the word "informal" when an Auditor General sits  
14 down with the RCMP, if I...if I might, you know, respond. I,  
15 ah, he was seeking advice. I would say it was a meeting, an  
16 information meeting. Whether it was informal or not I really  
17 have trouble with the word "informal" in here, I do, Mr.Pink.

18 Q. I take it that when you requested the RCMP to come in  
19 initially you wanted an objective third party with some  
20 expertise in this area to look at the material that you had...

21 A. Exactly, exactly, yes.

22 Q. And what was going to result from their examining the  
23 material was yet...had yet to be determined.

24 A. Precisely.

25 Q. You gave the RCMP some material to take away with them.

MR. CORMIER, EXAM. BY MR. PINK

1 A. Yes.

2 Q. And they were some of the expense claims that were the  
3 cause of your concern.

4 A. That's correct.

5 Q. You subsequently gave some material to the Attorney  
6 General's Department.

7 A. Yes.

8 Q. Are we talking about the same material?

9 A. Yes.

10 Q. So the RCMP had the same material to look at that that the  
11 Attorney General's people had eventually.

12 A. Yes. We probably gave the RCMP samples without  
13 necessarily the full file because they didn't need it. The  
14 Attorney General would have been provided with more  
15 information, more complete...the complete documentation.

16 Q. But we're still concerned with these expense vouchers.

17 A. Yes.

18 Q. That was the issue.

19 A. That's correct.

20 Q. Could you look at page 19 in that booklet again, sir?

21 A. Yes.

22 Q. I'd like to just deal briefly again with the meeting that you  
23 had with the Speaker and the series of events that led up to  
24 that meeting with the Speaker and Mr. MacLean. That was  
25 in January, correct?

MR. CORMIER, EXAM. BY MR. PINK

1 A. Uh-hum, January '84, yes.

2 Q. Now the indication from the RCMP's report on page 19 is  
3 that the matter was going to be brought to the attention of  
4 the Attorney General.

5 A. Yes.

6 Q. Do you know if the Speaker had separate discussions with  
7 the Attorney General's personnel other than where you  
8 were present?

9 A. I'm not aware, he may well have, I, you know, this wasn't  
10 up to us to pursue.

11 Q. And at the bottom of page 19, there's a reference to, ah, that  
12 the speaker felt an obligation to advise the Premier on the  
13 matter...

14 A. Yes.

15 Q. ...as soon as possible.

16 A. Yes.

17 Q. What do you recall of the Speaker's advice to you on that  
18 particular issue?

19 A. When he met with Mr. Sarty and myself on, what was the  
20 date? November the 10th. Remember that we had had our  
21 second meeting with the RCMP and we had decided that we  
22 would go to the Attorney General's Department with it,  
23 correct? That decision was made when we came out of the  
24 second meeting with the RCMP.

25 Q. The second meeting with the RCMP was on the 28th of

1           October.

2           A.    That's correct. We had made that decision and, in fact, Sarty  
3           had written a letter that day to Coles indicating that we  
4           wanted to speak to him about it. But we felt that we should  
5           review these findings with the Speaker in the interim as  
6           being the client executive responsible. All right. The  
7           Speaker, unfortunately, was out of the country and that's  
8           why we were not able to meet with him until November the  
9           10th, was it? November the 10th, yes. And the Speaker  
10          conveyed to us that he felt he should advise the Premier of  
11          the situation and Sarty and myself agreed that that was not  
12          an inappropriate advice for him to take.

13          Q.    Did the Speaker tell you about the discussion that he had  
14          with the Premier?

15          A.    Well, this was...this was at the meeting. He hadn't had the  
16          discussion with the...

17          Q.    I appreciate that.

18          A.    Subsequently.

19          Q.    Subsequently, yes.

20          A.    Oh, subsequently, excuse me, yes, and it would be  
21          subsequent to this memo here. Yes. That the Premier was, I  
22          guess, surprised and disappointed, I can't remember the  
23          exact words, but it was...it was a bit of a surprise and I  
24          suspect a shock to the Premier.

25          Q.    And did the Speaker indicate if the Premier had given him

1 any advice?

2 A. Oh, no, there was no advice to do anything other than what  
3 we were doing. There was nothing conveyed to me that we  
4 should proceed any differently or that there should be any  
5 different process followed other than us now meeting with  
6 the Attorney General... Deputy Attorney General, excuse me,  
7 when he returned.

8 Q. Did you have any communication with the Premier  
9 regarding this matter?

10 A. Did I have any communication? Not at that time.

11 Q. That time being when?

12 A. The fall of 1983. My first, and I think only, communication  
13 with the Premier on this matter would have been, I don't  
14 know the date, but I know the day. It was Easter Saturday  
15 morning, 1985, when I met with him on another matter.

16 Q. Okay.

17 A. And...

18 Q. I'd like to take you back then...

19 A. Yeah.

20 Q. ...to the time that we're dealing with, the end of '83, early  
21 '84. From your previous answer, I take it you had no  
22 discussions with the Premier at that point.

23 A. No, no, no, no.

24 Q. Could you look at page 23? Again this is a document  
25 produced by the RCMP, and it starts, it's a memo as a result

1 of a conversation with you in January, 1984. January 11th,  
2 and I believe the author is Staff Sergeant Leigh. I'm advised  
3 that the...in the second line there, the word that's blacked  
4 out indicates the Premier. So it would read, "Telephone call  
5 from Mr....from Paul Cormier, Deputy Auditor General," I  
6 don't know what the last word is, "NS". He advised that  
7 yesterday on the advice of the Premier and Arthur Donahoe,  
8 the Speaker, he attended a meeting in Speaker's office  
9 between Speaker and W. J. MacLean." My question, sir, is...

10 A. Oh, I can't recall that.

11 Q. Did you...first of all, my first question is, did you receive any  
12 advice from the Premier that you should attend that  
13 meeting?

14 A. I can't recall that at all, Mr. Pink, I'm sorry. That's...in my  
15 recollection and, you know, it's relatively clear because  
16 these were fairly significant events, receiving a call from the  
17 Speaker to attend the meeting, indicating some surprise and  
18 saying "I'd get back to you," contacting Blue, getting his  
19 advice which I've already indicated, and then going to the  
20 meeting. I, for the life of me, can't recall talking to the  
21 Premier and getting his advice to go to the meeting. I'm  
22 sorry, but I might have, but I certainly can't recall it and I  
23 think it would stand out.

24 Q. In going to the meeting itself you had the concurrence of  
25 Inspector Blue.

1 A. Concurrence, I suppose if you want to term it concurrence. I  
2 asked for advice and he advised that there would be nothing  
3 wrong providing I adopted the stance which I did.

4 Q. Which was to go and listen and say nothing.  
5 12:00 p.m.

6 A. Yes.

7 Q. And you followed that advice.

8 A. Yes.

9 Q. And advised the R.C.M.P. of the results of that meeting.

10 A. Yes.

11 Q. And the gist of the advice is contained or the gist of your  
12 report is contained on page 23.

13 A. I'm having trouble with the missing blanks, of course, but  
14 you're asking me to respond to that full paragraph on page  
15 23?

16 Q. Yes, I'm wondering if that's a fair representation of the report  
17 that you gave to Mr. Blue?

18 A. Staff Leigh.

19 Q. Or to Staff Leigh, sorry.

20 A. I would say so. May I just read it slowly again to see if...  
21 Seeing that, we've already talked about that. Asking for an  
22 explanation, yeah. The information... I'm not sure what's in  
23 parenthesis. I'm not sure about that parenthetically enclosed  
24 sentence. I have trouble with that. I'm not sure what that  
25 means.

MR. CORMIER, EXAM. BY MR. PINK

1 MR. PINK TO MR. MACDONALD

2 George, can you help us out there?

3 MR. CORMIER

4 A. But from there on, it looks all right to me, if I might just go  
5 through it again quickly.

6 Q Mr. MacDonald advises me, Mr. Cormier, that every blank,  
7 except for the one I pointed out on Line 2, refers either to the  
8 Speaker or Mr. Donahoe, one in the same person, but just by a  
9 different name.

10 A. Okay. "Speaker had the information in a report dated..."  
11 Okay, that would be one of the informations that we  
12 submitted to the Attorney General for their back-up  
13 documentation on the case. I guess that's what that is, yes, all  
14 right. "MacLean explained the matter..." I'm not sure if I can  
15 pick up the blanks in the last letter... in the last sentence.

16 Q Again, they're the same words.

17 A. "Stated that the Speaker..."

18 Q That's a third person, I take it, that's not related with this  
19 investigation.

20 MR. MACDONALD

21 That last sentence is not relevant to this...

22 MR. CORMIER

23 A. Oh, okay, okay. Okay, fine, thank you. So, yes, it does convey  
24 the essentials of the meeting, yes.

25 Q And in summary fashion, it reflects the content of Mr.

1 Donahoe's memorandum to Mr. Coles found on page 29.

2 A. Yes.

3 Q And the gist of what Mr. MacLean was saying was that he had  
4 actually incurred the expenses and had gone back to his  
5 residence, recorded them through this method of these motel  
6 receipts, and submitted them with his statements of expense  
7 claims.

8 A. That's correct.

9 Q And that was the explanation that you had difficulty with.

10 A. Yes, I did.

11 Q But, in any event, that was the one that was communicated to  
12 the R.C.M.P., correct? That explanation?

13 A. By me in my conversation with Staff Leigh, yes.

14 Q And that was the one that was communicated to the Attorney  
15 General's Department.

16 A. By Mr. Donahoe in his letter of January 13th, that's correct,  
17 yes.

18 Q Just one question that I neglected to ask you. When you  
19 advised Mr. Blue earlier on that the Speaker was going to  
20 advise the Premier, he did not object to that?

21 A. Not that I can recall. Not that I can recall. I mean it certainly  
22 didn't strike us as an unreasonable request of the Speaker.  
23 He was conveying this to the person to whom Mr. MacLean  
24 reported as a Minister.

25 Q The information given by Mr. MacLean was communicated to

MR. CORMIER, EXAM. BY MR. PINK

1 Mr. Coles in the memo from the Speaker. Correct?

2 A. The?

3 Q. Page 29.

4 A. Yes, back to 29, that information was conveyed.

5 Q. From the Speaker to Mr. Coles.

6 A. Yes.

7 Q. And then the next involvement you had was the letter of  
8 April from the Attorney General to the Speaker and copied to  
9 you?

10 A. Correct.

11 Q. And it appeared that the Attorney General's Department  
12 accepted the explanations given by Mr. MacLean and  
13 communicated in the way that we've already discussed.

14 A. That would seem to have been their conclusion, basis of their  
15 conclusion.

16 Q. And you were content that they were the authority to deal  
17 with the "criminality" and you were going to deal with it  
18 subsequently as an audit matter.

19 A. Right.

20 MR. PINK

21 Thank you, sir. Those are my questions.

22 MR. ORSBORN

23 Very briefly, Mr. Chairman.  
24  
25

RE-EXAMINATION BY MR. ORSBORN

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Q. Mr. Cormier, back on page 23, the top couple of lines there that my friend, Mr. Pink, referred you to, apparently involvement of the Premier. Was there anything in the request from the Speaker to you in connection with attending this meeting that would suggest that the Speaker had been consulting or talking to the Premier about the process to be followed?

A. Again, let me make sure I understand your question, Mr. Orsborn. Could I get the timing again, please? I'm sorry.

Q. Yeah, you told us earlier that it was your understanding that the Speaker had been asked to convene this meeting with Mr. MacLean and yourself at the request of the Department of Attorney General.

A. Yes.

Q. Just the Department or can you remember whether it was the Attorney General or Mr. Coles or Mr. Gale?

A. No, I can't recall that. I presume it was Coles or Gale, but I don't know. I don't know precisely who it was.

Q. This note of Staff Leigh's would suggest that the meeting was being called on the advice of the Premier and the Speaker. Was there anything in your conversation with the Speaker when he called you to attend the meeting that suggested an involvement of the Premier?

1 A. No, what this is saying, if I read through the blacked out lines,  
2 it was on the advice of the Premier and?

3 Q. And Mr. Donahoe. What the note says is that this is reporting  
4 a conversation that you apparently had with Staff Leigh, and  
5 Staff Leigh writes that you said that you attended a meeting  
6 in the Speaker's office on the advice of the Premier and Mr.  
7 Donahoe.

8 A. I'm having real trouble with that. As I recall it, it wasn't  
9 advice, it was a request from the Speaker to attend a meeting  
10 and the meeting had been requested of him by the Attorney  
11 General's Department, whomever, because to this point in  
12 time, MacLean had not been confronted with our audit  
13 findings.

14 Q. But at that time, do you recall any...

15 A. Now... Yeah, well, then I said I would rather not go. I  
16 probably... I would rather not go and I said, "I'll get back to  
17 you." And then the only person that I thought I could go to  
18 and get a point... I shouldn't put it quite that way. A person I  
19 thought I could go to and get a reasonable point of view with  
20 respect to the proceedings in an investigation was Blue  
21 himself. So I called Blue and I've conveyed to you what Blue  
22 said, "Go and keep quiet."

23 Q. So you can't offer us any assistance as to...

24 A. The Premier is...

25 Q. Okay.

1 A. It may well have been, but I'm sorry, I can't recall that. I  
2 can't recall that at all.

3 Q. You started to tell Mr. Pink about a discussion you had with  
4 the Premier on Easter Saturday '85. Was that discussion with  
5 respect to the MacLean matter?

6 A. It was asked if I had ever talked to the Premier about the  
7 MacLean matter. I had a meeting with the Premier... Why it  
8 was Easter Saturday, he had been away that week. I had  
9 another matter to discuss with him, a fairly important matter.  
10 And, at that time, there was a lot of talk in the Legislature  
11 about MacLean's expenses. He was saying one thing and  
12 other people were saying others and it was in the media and  
13 so on.

14 Q. Was this before or after your report was filed?

15 A. After my report was filed.

16 Q. Yes?

17 A. And I felt the Premier should know what was the basis for  
18 our statement in the annual report and, hopefully, he would  
19 advise Mr. MacLean to be more cautious in the some of the  
20 statements he was making publicly to the press. Because to  
21 that point in time, I had not been requested to comment. I  
22 had been very, trying to be very careful in what I was saying  
23 to the press, but I didn't want it to blow up into MacLean  
24 saying this, Cormier saying that, and get into a big discussion  
25 in front of the media. And I wanted, that was why I advised

MR. CORMIER, RE-EXAM. BY MR. ORSBORN

1 the Premier. Subsequent to that, MacLean didn't say  
2 anything too much before the press.

3 Q. You advised the Premier of some of the details of your  
4 knowledge so he, in turn, could advise Mr. MacLean to keep  
5 quiet?

6 A. Essentially, yes, yes, yes.

MR. CHAIRMAN

7  
8 Thank you very much, Mr. Cormier.

MR. RUBY

9  
10 Excuse me, My Lord, could I ask him another question to  
11 that?

MR. CHAIRMAN

12  
13 All right.

RE-EXAMINATION BY MR. RUBY

14  
15  
16 Q. About the meeting with the Premier that you've described,  
17 what did the Premier say, if anything. You've told us what  
18 you said. What did he say, if anything?

19 A. Mr. Ruby, I was there on another matter that was extremely  
20 important to me. It was the appointment of a Deputy Auditor  
21 General...

22 Q. I don't want.. I don't have...

23 A. I'm sorry, but I mean that was on my mind. That was the  
24 premier thing before me at that point and I wanted that  
25 resolved and this was an off shoot and I said, "By the way,

15410 MR. CORMIER, RE-EXAM. BY MR. RUBY

1 you should be aware of this and I don't want this to happen."  
2 And I can't recall exactly what the Premier said. He maybe,  
3 as I recall, just accepted my explanation of it.

4 MR. RUBY

5 Thank you, sir.

6 MR. CHAIRMAN

7 Thank you very much.

8

9 MR. MACDONALD

10 My Lords, perhaps, first of all, if I could get you to go  
11 through this booklet. What's the number on that now?

12 CLERK

13 173.

14 MR. MACDONALD

15 There are a few other blanks that I think have to be filled  
16 in, My Lords, and if I can just obtain that information this  
17 morning. On page 19, there are three blanks. All of those blanks  
18 refer to Arthur Donahoe, the Speaker of the House. On page 20...

19 MR. RUBY

20 Speaker and Speaker?

21 MR. MACDONALD

22 And Speaker.

23 MR. MACDONALD

24 Yes. "He had been in conversation with Speaker, Donahoe,  
25 and Donahoe was concerned."

DISCUSSIONMR. RUBY

Ah, thank you.

MR. MACDONALD

On page 20, the first blank, "I saw no problem with Donahoe advising the Premier." On page 23, as has been pointed out to Mr. Cormier, the first blank in the original document says "Premier," "On the advice of the Premier," and the next blank is "Arthur Donahoe, Speaker of the House." All other blanks on that page refer to Mr. Donahoe, with one exception. The last sentence in that long paragraph refers to another matter and is not relevant to this MacLean issue. And on page 24, there is one blank and it also is referring to Mr. Donahoe.

The next witness, My Lord, is Chief Superintendent MacGibbon of the R.C.M.P. Do you intend to proceed now or do you want to...

CHAIRMAN

Well, you might get the preliminaries out of the way.

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

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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

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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?

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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

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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

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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 be 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,

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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

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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.

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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.

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3:30 p.m.

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

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

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

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

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

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

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

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

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

A. I think there was sufficient communication in that very short 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,

1 4:15 p.m.

2 MR. ORSBORN

3 My Lord, a final witness for today would be Mr. Martin  
4 Herschorn who is not unfamiliar to you. I might also advise you  
5 that our anticipated schedule of witnesses for tomorrow will be  
6 Mr. Gordon Coles, Mr. Gordon Gale and Mr. Joel Pink.

7 MARTIN HERSCHORN, previously sworn, testified as follows:

8 EXAMINATION BY MR. ORSBORN

9 Q. Mr. Herschorn, in late 1983 and into 1984, were you Assistant  
10 Director of Criminal or Director of Prosecutions?

11 A. Assistant Director of Criminal at that point.

12 Q. When were you made Director of Prosecutions?

13 A. My best recollection is March of 1986.

14 Q. In late '83, early '84 were you aware of any work being done  
15 within the Department of Attorney General with respect to  
16 concerns raised by the Auditor General over Mr. MacLean's  
17 accounts?

18 A. I don't recall being apprised of the matter. I may have heard  
19 through indirect routes, or seen something on someone's desk  
20 but I don't ...

21 Q. Did you play any part in the review of that material by the  
22 Attorney General's Department?

23 A. In 1983 or '84?

24 Q. Yes.

25 A. No.

# Margaret E. Graham Discovery Service

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

PHONE: 469-5734

September 30, 1988

To: All Solicitors

From: Margaret Graham

Re: Daily Transcripts

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

I apologize for any inconvenience this has caused.



M. Graham

1 carried out an inspection, or an investigation based on the  
2 same allegations and following a complete investigation  
3 concluded that there was sufficient evidence to lay charges,  
4 charges were laid, a conviction was secured.

5 A. You're telling me that I ...

6 Q. Did you not know that?

7 A. I, well I guess I read the papers like most people. That's my  
8 only source of information.

9 MR. MacDONALD

10 Okay. Thank you. That's all, thank you.

11 CHAIRMAN

12 Thank you very much, Chief Superintendent MacGibbon.

13 WITNESS WITHDREW

14 BREAK

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- 1 Q. Were you aware subsequent to April 1985 that the RCMP was  
2 investigating the matter?
- 3 A. Yes.
- 4 Q. Did you receive copies of the RCMP reports as they came in to  
5 the Department?
- 6 A. I believe I would have had access to them, would have  
7 probably perused them.
- 8 Q. did you have any involvement in the assignment of a  
9 prosecutor to the file?
- 10 A. Not to my recollection, no.
- 11 Q. Do you have any knowledge of how a prosecutor was  
12 assigned?
- 13 A. I believe the matter would have been dealt with by Mr.  
14 Thomas, the prosecuting officer for Halifax County.
- 15 Q. And would that be the normal course of events?
- 16 A. Yes, unless there had been a direction from the Department  
17 that some other route should be followed.
- 18 Q. Did you have any involvement in the drafting of the  
19 information which was laid in April '86?
- 20 A. No, I did not.
- 21 Q. If I could ask you to turn to that information which is found  
22 at page 47 and following...
- 23 A. Yes.
- 24 Q. In the Exhibit 173, and perhaps I might just ask you to  
25 explain to us the counts that are included in there. Am I

1 correct in reading this information that it includes one count  
2 of fraud under Section 338(1)(a) of the Code?

3 A. Yes.

4 Q. And that it includes five counts of uttering under 326(1)(b)?

5 A. Yes.

6 Q. And four counts of fraud, forgery under 325(1).

7 A. Yes, that's my recollection.

8 Q. Uttering is the use of documents that you know to be forged,  
9 is that right?

10 A. I think that's a fair interpretation of the offence.

11 Q. Okay. And with respect to fraud, do I understand correctly  
12 that that is an indictable offence, punishable by up to ten  
13 years imprisonment?

14 A. I believe fraud is a dual-character offence and in this case it  
15 was charged indictable, yes.

16 Q. Yes. And uttering an indictable offence is up to 14 years?

17 A. That's my recollection, yes.

18 Q. And forgery up to 14 years indictable?

19 A. I believe so.

20 Q. On page 50 and 51, Mr. Herschorn, there is a copy of a letter  
21 from Mr. Joel Pink who was defence counsel for Mr. MacLean,  
22 writing to Mr. Clair talking about some difficulties with  
23 disclosure and mentioning some difficulties with alleged  
24 pressure on witnesses. Do you have any knowledge of that  
25 and did you have any discussions with Mr. Clair concerning

1 disclosure?

2 A. No.

3 Q. Were you involved in the process of plea bargaining involving  
4 Mr. MacLean?

5 A. Yes, I was.

6 Q. I have distributed, My Lords, an exhibit, numbered as 174,  
7 which is a three-page exhibit, including two pages policy  
8 statements, negotiations with defence counsel concerning plea  
9 and sentence and attached to which is a memorandum dated  
10 November 22nd, 1985, from Mr. David Thomas to all  
11 prosecutors. And I can advise you that this statement is  
12 taken from the Crown Prosecutor's manual of the Department  
13 of Attorney General.

14 EXIHIBIT 174 - POLICY STATEMENT FROM CROWN PROSECUTOR'S  
15 MANAGER OF THE DEPARMTENT OF THE ATTORNEY GENERAL  
16 WITH ATTACHMENTS

17 A. If I could just clarify, the first two pages are contained in that  
18 memorandum, the third page, Mr. Thomas' memorandum to  
19 his staff of November 22nd, 1985, is not contained in...

20 Q. Not contained in the manual.

21 A. No.

22 Q. But is addressed to the subject matter contained in the  
23 manual.

24 A. Yes. It is directed to prosecuting, assistant prosecuting  
25 officers in Halifax County.

1 Q. As Director of Prosecutions from March 1986 and following, is  
2 it your responsibility to assist in the development of policy  
3 concerning plea bargaining?

4 A. Yes, it has been since my appointment as Assistant Director of  
5 Criminal.

6 Q. And it would, accordingly, then be your responsibility to see  
7 that this policy is followed?

8 A. Yes.

9 Q. Could you review for us briefly, Mr. Herschorn, the situations  
10 in which plea bargaining may take place? I realize that the  
11 three of them are set out here but I'd ask you, if you would,  
12 to indicate for us the procedure which your policy requires in  
13 each case. And that is, who are approvals required from in  
14 each case before a plea bargain may be entered into.

15 A. Well as the memorandum indicates which respect to the first  
16 scenario, "An offer from defence counsel to plead his or her  
17 client guilty in return for the Crown reducing the charge to a  
18 less serious included offence." There the decision making is  
19 left with the prosecuting officer for the County. He's given  
20 some guidance there. There's an exception to that where the  
21 charge is murder and there it is necessary to seek the  
22 approval of the Department before a plea of guilty to a less  
23 serious included offence of manslaughter is entertained.  
24 Basically beyond that type of situation any other  
25 arrangement, prosecuting officers are urged to consult with

1 the Head Office of the Department.

2 Q. Over on the second page it says, "Assistant prosecuting  
3 officers are advised they must seek the approval of the  
4 prosecuting officer prior to concluding any negotiations with  
5 defence concerning plea and sentence."

6 A. Yes. That was a, that paragraph constitutes an addition to  
7 what was an earlier draft of this policy statement. I can't be  
8 precise as to when that would have been inserted but I  
9 suspect it would have been shortly before November 22nd,  
10 1985 which is the date of the third page, the attachment from  
11 Mr. Thomas and I say that because I assume Mr. Thomas'  
12 memorandum was prompted by the revised, issuance of the  
13 revised statement with that added paragraph.

14 Q. I'm not clear from the policy statement in which situations  
15 the prosecutor must go to the Assistant Director or the  
16 Director and in which cases he can stop at the prosecuting  
17 officer for the County.

18 A. Well, I'd refer you to the third full paragraph on the first  
19 page, page 7.20 it's marked, wherein it states, "Any  
20 arrangement proposed which goes beyond the Crown agreeing  
21 to reduce the charge to a less serious included offence must  
22 be approved by the Assistant Director or Director Criminal."  
23 The memorandum still retains the previous terminology of  
24 positions in the Department, ie. Director of Criminal and  
25 Assistant Director of Criminal.

1 Q. Yes. And then when it says on the second page that, "They  
2 must seek the approval of the prosecuting officer prior to  
3 concluding any negotiations" do they then have to go beyond  
4 the prosecuting officer to the Assistant Director or Director  
5 Criminal?

6 A. Yes, that was inserted to insure that the prosecuting officer  
7 for the County was ultimately responsible for the decisions of  
8 his assistants, is advised and concurs with the position that  
9 the, which is eventually referred to the Department for final  
10 concurrence.

11 Q. And does this policy apply to negotiations strictly on sentence  
12 as well as with respect to plea?

13 A. It applies to both. I should add that this policy statement is  
14 currently under review. The exercise that has been ongoing  
15 with Professor Archibald, Bruce Archibald, and his research  
16 work on the role of the Crown Prosecutor, and prior to that  
17 point it was recognized that this policy statement is not as  
18 complete and as thorough as it should be in covering, in  
19 defining what is meant by plea bargaining. Although you'll  
20 note that the term "plea bargaining" has been steered away  
21 from in the title, it's referred to rather as "Negotiations with  
22 Defence Counsel Concerning Plea and Sentence." But what  
23 we're talking about is the common prevalence of plea  
24 bargaining.

25 Q. Yes.

1 A. And it is a statement which is under review at present.

2 Q. Well is it fair to say, then, that at least in 1986, all plea  
3 bargaining required your approval or Mr. Gale's approval?

4 A. In terms of the...

5 Q. Except for matters involving...

6 A. A reduction of a charge.

7 Q. Only an included offence.

8 A. Yes. That's the wording of the statement. I think it's  
9 acknowledged, it's acknowledged by myself that, while that  
10 may be the policy that in practice there are arrangements  
11 which are entered into which, in which there hasn't been that  
12 consultation. And it's a matter of not having sufficient staff,  
13 really, to adequately monitor that. As I indicated in earlier  
14 evidence, in terms of support staff to Director of  
15 Prosecutions, there was none beyond a secretary.

16 Q. What are the factors that persuade the Crown to enter into  
17 plea bargaining the first place?

18 A. An approach from a defence counsel. A reassessment of the  
19 case by the prosecuting officer and a determination that there  
20 may be some difficulties in establishing some of the essential  
21 elements of the offence that's been charged. But there is a  
22 basis for acceptance of a plea to a less serious included  
23 offence. That would be one. No other areas, really, spring  
24 into mind at the moment. I know there are a number of  
25 others...

1 Q. Are you suggesting that it's not unlike a civil negotiation  
2 where you weigh your chances of success?

3 A. No. It's not at all like a civil negotiation.

4 Q. It's not one of the prime factors.

5 A. It's not, the use of the term "bargain" is a misnomer in my  
6 perception of the term. It's not a matter of the Crown  
7 bargaining away something just for the simple, for the sake of  
8 a bargain, for expediency.

9 Q. No, I didn't mean to suggest that. But you indicated that one  
10 of the factors that would persuade you to enter into it was  
11 some assessment of difficulties in the case.

12 A. Difficulties in the ability of Crown to adduce evidence of all  
13 the essential elements of the principal charge.

14 Q. Yes. And the point I was making is that in a civil case you  
15 look at your possible chances of winning or losing. If you're  
16 100 percent sure that you'd win you might not negotiate at all  
17 but given there's always the possibility of losing there's some  
18 benefit to negotiation.

19 A. That can be...

20 Q. Is that the same sort of principle?

21 A. That can enter into it at times. It's not always that scenario.

22 CHAIRMAN

23 Would it take into the account the anticipated length of the  
24 trial and the cost to the State of going through a preliminary and  
25 then...

MR. HERSCHORN, EXAM. BY MR. ORSBORN

1 A. To date, My Lord, in my understanding that has not, those  
2 have not been factors which have been taken, we have no  
3 direction from the Attorney General to take that type of  
4 factor into consideration.

CHAIRMAN

6 So when judges hear pleas from defence counsel about all  
7 the money that's been saved to the State, we can ignore it.

8 A. Well it's not ignored, My Lord. Formally there's no direction  
9 in that area. In practical terms a prosecutor will be cognizant  
10 of that and will put it into the balance, I think, in making his  
11 determination.

MR. ORSBORN

13 Q. All right, I'd ask you turn, Mr. Herschorn, to page 52, a letter  
14 from defence counsel dated September 2nd, 1986. I would  
15 understand this to be the first approach by defence counsel in  
16 respect of a negotiation in this matter?

17 A. I cannot answer that. You'd have to ask that of Mr. Clair.

18 Q. The first one we have on the record, thank you. Do I  
19 understand that the position being put by defence counsel is  
20 that his client would plead guilty to two counts of uttering  
21 and in return for that the Crown will withdraw all other  
22 charges and will press for a fine rather than for any  
23 imprisonment?

24 A. That seems to be the thrust of the letter, yes.

25 Q. And on page 53 Mr. Clair writes you a lengthy letter,

1           September the 8th, 1986, in which he sets out the details of  
2           the charges and the estimated amounts of money involved in  
3           each one of them. And would I take it that he is sending you  
4           this because he is asking for instructions on the matter so that  
5           you may be advised?

6           A. Mr., I guess that's a fair statement, yes. He was seeking,  
7           rather than, I guess instructions or concurrence with the  
8           parameters of an arrangement which had been discussed  
9           between the Crown and defence counsel.

10          Q. Had you instructed Mr. Clair to respond directly to you?

11          A. No, I think it just happened in the normal course of events.  
12                There was no specific instruction. Mr. Clair knew to whom  
13                he should turn in such matters. There's reference in the  
14                memoran-, in the policy statement to my position.

15          4:30 p.m.

16          Q. Would it be normal that he would approach you directly  
17                rather than going through Mr. Thomas?

18          A. In a case, in this type of case, yes. In fact, virtually in most  
19                types of situations where this policy statement came into  
20                play and there was a decision to be made by the head office  
21                of the department, Mr. Thomas' approach has been to refer  
22                the assistant prosecutor directly to myself.

23          Q. I note in his letter that Mr. Clair does not make any  
24                recommendations to you. Would you have expected him to  
25                provide recommendations?

1 A. I wouldn't use the terms "recommendations." I was...there  
2 were certain parameters of which I was aware of the  
3 discussions which had ensued to that point between Mr.  
4 Pink, defence counsel, and Mr. Clair, and this letter I recall...I  
5 think this was a request, this was prompted by a request  
6 from me for clarification of an earlier, much more concise  
7 letter which Mr. Clair had sent to me, I think sometime after  
8 September 2nd, but prior to September 8th. I don't see it  
9 included in the material, but...

10 Q. I see.

11 A. My recollection was another letter which he...in which he  
12 had outlined in rather brief form the essence of the charges  
13 and I went back to him and asked him for an expanded  
14 detailing of the evidence in support of the charges.

15 Q. That's a factual review being provided to you.

16 A. Yes.

17 Q. Did you request either Mr. Thomas or Mr. Clair to give you  
18 their opinion on the request from defence counsel?

19 A. Yes, not in that structured fashion. There is a flow of  
20 dialogue which ensues between myself as the director of  
21 prosecutions and the prosecuting officer on the point. We  
22 discussed the merits of entertaining the proposal made by  
23 the defence counsel.

24 Q. Did they express any opinion to you on what approach  
25 should be taken?

- 1 A. I was aware from those discussions, I believe it was...my  
2 source of information would have been those discussions  
3 that Mr. Clair had had discussions with Mr. Pink concerning  
4 a Crown position on sentence which included a fine,  
5 included, I think at that point, the Crown seeking restitution,  
6 the obligatory under the Code nominal day in jail, sort of  
7 thing, to respond to the requirements of, I believe, Section  
8 646 (2) and...
- 9 Q. Did either...
- 10 A. I think those were the essential parameters of what was  
11 discussed.
- 12 Q. Did either Mr. Thomas or Mr. Clair express to you the view  
13 that...
- 14 A. I had no discussions with Mr. Thomas on this matter.
- 15 Q. Did Mr. Clair at any time express the view to you that a fine  
16 by itself, leaving aside the one day, would not be an  
17 inappropriate sentence to agree to?
- 18 A. I believe...I can't be certain, either because he stated it to  
19 me directly or because I was aware of the position he had  
20 taken in preliminary discussions with defence counsel, that  
21 he was of the view that a fine was not inappropriate here or  
22 what...to put it in the positive, was appropriate here.
- 23 Q. I'm sorry.
- 24 A. That a fine was appropriate here.
- 25 Q. Of itself.

1 A. Yes.

2 Q. By itself.

3 A. By itself without a period of incarceration.

4 Q. Uh-hum. After you received the letter from Mr. Clair on  
5 page 57, you write a short memorandum to Mr. Giffin  
6 enclosing both the information and Mr. Clair's letter.

7 A. Yes.

8 Q. Why would you ask for Mr. Giffin's direction in this case?

9 A. The case was of an obvious profile and it was one that, in  
10 my view, warranted the concurrence of the Attorney  
11 General and the Deputy Attorney General in the eventual  
12 decision taken by the Attorney General's Department.

13 Q. Had you on any previous occasion involving a plea bargain  
14 had occasion to approach the Attorney General directly?

15 A. Yes.

16 Q. And can I ask you if that was in any kind of a "political"  
17 kind of a case? I'm not looking for the details, but sort of a  
18 generic description.

19 A. No, I don't recall there having been any precedent of any  
20 sort of "political" case that comes to mind. Certainly in cases  
21 of profiles, a murder situation where manslaughter was  
22 being discussed, as one example, there would be discussions  
23 with the Attorney General.

24 Q. So in your discretion, if a matter is viewed as high profile  
25 you may involve the Attorney General with respect to...

1 A. Not necessarily high profile. Anything that I feel in my  
2 assessment warrants the concurrence of the Minister, and  
3 that is hard to categorize the types of cases that I would  
4 want to discuss with him.

5 Q. It's my recollection...

6 A. It may be, if I could just continue for a second, it may be a  
7 matter in which the particular crime was notorious in the  
8 area and there was public concern about it and I wanted to  
9 ensure that he was...I would want to ensure that the  
10 Minister of the day was comfortable with the position which  
11 his agents would be taking before the courts.

12 Q. Were you instructed to communicate with Mr. Giffin, or was  
13 it your initiative?

14 A. No, this would be my initiative, I think.

15 Q. You appeared to have copied Mr. Coles, but there is no  
16 reference anywhere to Mr. Gale? Was Mr. Gale involved in  
17 this process at all?

18 A. No, he was not.

19 Q. It's my recollection from Mr. Gale's earlier evidence that he  
20 was aware of only one situation in which the Attorney  
21 General was directly involved in approving a plea bargain. I  
22 take it your evidence is contrary to that?

23 A. Sorry, your source was Mr. Gale.

24 Q. My recollection is when Mr. Gale testified previously before  
25 this inquiry he did indicate, without giving any details, that

1 he was aware of only one case where the Attorney General  
2 had been directly involved in plea bargaining negotiations.

3 A. Well, certainly I can think of examples in murder-  
4 manslaughter situations where there have been discussions  
5 with the Minister. I would differ with that.

6 Q Did you, in fact, meet with Mr. Giffin to discuss the  
7 arrangement?

8 A. Yes, I did, myself and Mr. Coles, the Deputy Attorney  
9 General.

10 Q And can you indicate to us the views of Mr. Giffin? Well,  
11 before you do that. Did either you or Mr. Coles make any  
12 recommendation to Mr. Giffin?

13 A. I think Mr. Coles would have assessed the points which were  
14 under discussion and made a...made his position known to  
15 the minister. I, as well, would have basically given him my  
16 thoughts on the matter.

17 Q Had you previously involved Mr. Coles in discussions  
18 concerning plea bargaining?

19 A. On this case.

20 Q In other cases.

21 A. In other cases.

22 Q Yes.

23 A. Yes.

24 Q What position did you express to the Minister?

25 A. I felt that the position being put forward by the prosecuting

1 officer was a...basically a tenable one. I had some concerns  
2 which were voiced at the meeting as to whether the Crown's  
3 representations ought to include a period of imprisonment,  
4 but I...and it's difficult for me to recall the precise views of  
5 Mr. Coles or Mr. Giffin at the time as expressed at that  
6 meeting, but I think it's...what I can say is I think the  
7 consensus was at the end of the day that the position that  
8 Mr. Clair had brought forward for consideration was one  
9 which we could concur in.

10 Q. And if I understand you correctly, was it Mr. Clair's position  
11 that a fine of itself would be acceptable?

12 A. Yes, there is...I'm not sure if it's here, but there is...there is  
13 correspondence in the Department's files which concur,  
14 which reflect that. I don't see that here.

15 Q. You respond to Mr. Clair on page 58 and 59, and if I read  
16 that correctly, you give him two alternatives on plea. One is  
17 to plea guilty to the first count of fraud or, alternatively, if  
18 the defence doesn't like that, to four counts of uttering, and  
19 that you would agree that a fine is appropriate, and the  
20 range should be five to ten thousand dollars, and then you  
21 speak to an order for restitution.

22 A. Yes.

23 Q. Why would your preference be to a guilty plea on the first  
24 count of fraud as opposed to uttering or forgery?

25 A. I think the...my view would be premised on the fact that the

1 fraud count, the first count on the indictment was so-called  
2 an umbrella count, it encompassed all the fraudulent or  
3 deceitful activity on the part of the accused, and it would  
4 have been our preference for a plea to have been entered to  
5 that count.

6 Q. Just run that by me again.

7 A. The first count, if I could refer you to the indictment.

8 Q. Uh-hum.

9 A. If you look at page 47.

10 Q. 47.

11 A. The, you'll see the date set out in the first count, the 1st day  
12 of January, 1982, through the 1st day of March, 1986.

13 Q. Uh-hum.

14 A. And if you contrast that with the dates set out in the nine  
15 counts that follow, you'll see that there's a correlation there,  
16 that that encompasses all of the time frames set out in the  
17 nine counts that do follow. And that count, in my...it was my  
18 understanding, and I think it's reflected in Mr. Clair's report  
19 letter to me, is...is to use not uncommon parlance, an  
20 umbrella count which encompasses all of the alleged  
21 criminal activity. That would have been and was the  
22 preferred position at the outset.

23 Q. So there was nothing in your mind about the distinction in a  
24 fraud charge as opposed to an uttering or forgery charge.

25 A. No, I would have been comfortable with the...more

1 comfortable actually with the entering of a conviction for  
2 fraud here.

3 Q. You would have been more comfortable with a conviction  
4 for fraud.

5 A. I think...well, the letter I think states the position of the  
6 department as we took it, and...

7 Q. That was your first choice.

8 A. "The department is of the view that a plea of guilty under  
9 the first count would be more appropriate than the entering  
10 of one or more pleas to individual counts of either uttering  
11 or forgery."

12 Q. But did you view it as more appropriate simply because it  
13 was an umbrella count or something in the nature of the  
14 offence itself?

15 A. No, I think the former because it was an umbrella count.

16 Q. Did you have any concerns about the strength of your case  
17 on any of the counts that were in the information?

18 A. I had understood from Mr. Clair that there were concerns in  
19 two areas, I think, with respect to one count, and here I'm  
20 going from memory. I can't really pin it to the appropriate  
21 count. It might have been the one involving Ms. or Miss  
22 DeCoste concerns...I believe she was a fairly elderly lady and  
23 there was some concerns there. Overall there were concerns  
24 and they're alluded in Mr. Clair's ...in the communication  
25 from Mr. Pink to Mr. Clair, I think, earlier which we alluded

1 to, of approaches being made by the accused person to  
2 witnesses, and there were concerns there as well.

3 Q. What type of concerns?

4 A. Concerns that the Crown's case at a trial would not unfold as  
5 per the evidence we had going into the trial.

6 Q. Because approaches had been made or allegedly made to  
7 witnesses.

8 A. Yes.

9 Q. It's our understanding that Mr. Clair will testify that he  
10 believed he had a good case on all counts. Do you quarrel  
11 with that?

12 A. He's in a much better position to give evidence on that point.  
13 I didn't address my mind to...

14 Q. But in terms of what he advised you, did he give you any  
15 different advice?

16 A. No, not that I recall. It probably would have been  
17 consistent with what he...

18 Q. If you have a good case on all counts why do you bargain at  
19 all?

20 A. Well, particularly where you have an umbrella count  
21 followed by nine counts which are really part and parcel, in  
22 a sense components of the umbrella count, it's not...it's not  
23 inappropriate nor uncommon for a plea to be entered, either  
24 that way or the reverse as was done here, the...you're  
25 entering of pleas to four substantive counts with the Crown

1 not offering evidence on the umbrella count.

2 Q. What factors led you to agree that a fine of itself would be  
3 appropriate to ask for rather than a period of  
4 imprisonment?

5 A. Number one, the position which the prosecuting officer was  
6 advancing in his discussions with me on the point. Number  
7 two, the absence to my knowledge of any precedent for a  
8 MLA being convicted in circumstances such as these.

9 Q. If I can just stop you there.

10 A. Yes.

11 Q. Can you just explain to me in what sense the absence of  
12 precedent for a MLA being convicted in circumstances such  
13 as these would lead you to chose a fine over imprisonment?

14 A. Well, I guess to expand on that, the generally stated position  
15 of the courts that a first offender, as I understood  
16 Mr. MacLean to be at this point in time, is generally,  
17 receives a sentence which does not include incarceration.

18 Q. A first offender for what types of offences?

19 A. For...for a variety of...I would say generally across the board  
20 with certain obvious exceptions.

21 Q. Does that prevent you from asking for it?

22 A. No, it does not, but it's a factor which would weigh in a  
23 prosecutor's mind in assessing the case, one factor.

24 Q. Did you have any authority in your jurisdiction to suggest  
25 that for first offences involving fraud, theft, forgery or

1           whatever in the amounts of twenty to twenty-five thousand  
2           dollars that imprisonment was not appropriate?

3       A.    No, I think there was...I think there are some cases, there  
4           were some cases at this relevant point in time which...in  
5           which incarceration resulted, in which incarceration...

6       Q.    In which it did result.  
7           4:45 p.m.

8       A.    Yes.

9       Q.    So were you, in effect, going against the tide by saying that...

10      A.    No, I...

11      Q.    Will accept the final...

12      A.    Not in the face of what I understood to be the position of the  
13           prosecutor in the matter and the position that the police, as I  
14           understood, were in agreement, a position which I understood  
15           the police to be in agreement with the R.C.M.P. investigator, I  
16           didn't feel it inappropriate. The prosecutor had the best  
17           gauge on viability of that point.

18      Q.    Do you normally involve the police in discussions on plea and  
19           sentence?

20      A.    Yes.

21      Q.    Why is that?

22      A.    Because to use them as a sounding board, what their opinion.  
23           They have a key role to play in the matter and I don't think  
24           it's appropriate for the Crown to enter into an arrangement  
25           without having consulted with the police.

1 Q. And, to your knowledge, did the police share the view that a  
2 fine of itself was appropriate?

3 A. Yes.

4 Q. Was that view expressed to you directly?

5 A. I believe so. I can't state definitively.

6 Q. By whom?

7 A. It would have been by Mr. Clair.

8 Q. But not by the police directly.

9 A. No.

10 Q. In your Department, are there any categories of offences in  
11 the nature of fraud in which you have a policy of requesting  
12 imprisonment for a first offence?

13 A. Not to my knowledge.

14 Q. I understand that there are cases involving what is called  
15 "welfare fraud", where there is possible frauds in the  
16 Department of Social Services. Do you have any knowledge of  
17 a policy which would support imprisonment on a first offence  
18 of welfare fraud?

19 A. No, I do not.

20 Q. You were again... If you turn to page 60, I'm sorry.

21 A. 60?

22 Q. 60, yes. Make that 63. Do I understand that following your  
23 letter to Mr. Clair that you were contacted by him and he  
24 indicated that Mr. MacLean's defence counsel was prepared to  
25 go along with a guilty plea on the four most serious uttering

1 charges. That the range of fine was appropriate and that  
2 restitution would not be possible.

3 A. Yes.

4 Q. And did you subsequently discuss that matter with the  
5 Attorney General?

6 A. I did.

7 Q. And also with Mr. Coles?

8 A. I have no specific recollection of discussing this particular  
9 point with Mr. Coles.

10 Q. And do I understand that the Attorney General had no  
11 difficulty with that position?

12 A. No, as the memo indicated, and I'll quote it:

13  
14 The Attorney General indicated that with respect  
15 to restitution, the province would have other  
16 means of recovery of the defrauded monies  
17 through access to funds Mr. MacLean would be  
18 entitled to from the province; i.e., pension funds  
19 or the annual stipend. Hence, the Attorney  
20 General was of the view that the entering of a  
21 plea of guilty to four counts of uttering with the  
22 Crown seeking a fine in the range from five  
23 thousand to ten thousand dollars would be  
24 appropriate.

21 Q. And that was relayed back to Mr. Clair?

22 A. That's right. I would assume that I was unable to involve the  
23 Deputy Attorney General in such discussions because of the  
24 urgency of getting a decision to Mr. Clair.

25 Q. In the normal course of events, would you have involved

1 him?

2 A. If time had permitted, I probably would have, yes. It's  
3 normal to attempt to involve the Deputy when discussing  
4 matters with the Minister, so that the Minister has the benefit  
5 of the Deputy's advice.

6 Q. Do I understand then that there was a further request for Mr.  
7 Pink to firm up the amount of the fine to five thousand  
8 dollars, rather than in the range of five to ten?

9 A. I believe there's a letter which suggests that.

10 Q. That's suggested at the bottom of page 63 at least.

11 A. Yes, it's suggested there. That was related to Mr. Clair. I  
12 think Mr. Clair, as the transcript of the sentencing proceeding  
13 will indicate, maintained a position before the court, before  
14 His Honour Judge Atton, of a minimum five thousand dollar  
15 fine. In other words, five thousand dollars as a minimum for  
16 the judge's consideration.

17 Q. Was that the instructions that you were given by the  
18 Attorney General?

19 A. It wasn't a matter of instructions. We were, this... It was a  
20 matter of what the Attorney General would be comfortable  
21 with. The end decision was left to the prosecuting officer, Mr.  
22 Clair. He had the general parameters of what the Department  
23 was comfortable with.

24 Q. Do you know if Mr. Giffin was getting information elsewhere  
25 about the availability of funds that the province could hold

1 back from Mr. MacLean?

2 A. I have no particular knowledge of Mr. Giffin's sources of  
3 information. Perhaps his own experience as an MLA. I know  
4 that Mr. Clair had had discussions with the Speaker's office  
5 concerning that aspect of the matter.

6 Q. Mr. Pink tries again on September 15th. It's found at page  
7 62, confirming the agreement that in return for a guilty plea  
8 on four counts of uttering, an agreed fine of five thousand  
9 dollars. Again, I take it that your instructions to the  
10 prosecutor was that the five thousand would be a minimum  
11 acceptable amount?

12 A. My evidence is that those were not necessarily my  
13 instructions. That was, as I understand it, the position which  
14 Mr. Clair took with Mr. Pink and that that is reflected in the  
15 transcript.

16 Q. Did you give him instructions?

17 A. I don't recall giving specific instructions on that point beyond  
18 the earlier...

19 Q. Range of...

20 A. Parameter given, yes.

21 Q. But you do say on page 63, the bottom of page 63, that Mr.  
22 Giffin had agreed that a Crown representation to the effect of  
23 a firm representation from five thousand dollars was  
24 satisfactory.

25 A. Yes, I would have, I assume would have relayed that

1 information to Mr. Clair.

2 Q. And, reasonably speaking, he would take from that that the  
3 Attorney General's position was that a five thousand dollar  
4 minimum was acceptable.

5 A. Yes.

6 Q. Mr. Pink asks on September 15th, page 62:

7 The Crown will not use the words "fraud",  
8 "forgery", or that my client "personally  
9 benefitted."

10 Was that request made known to you?

11 A. I don't believe at the time, no. I think I learned of that from  
12 reading this letter on subsequent occasions.

13 Q. I think in a reading of the sentencing, sentencing hearing that,  
14 generally, Mr. Clair, in fact, acceded to that. He might have  
15 used the word "false" a couple of times, but those words  
16 "fraud", "forgery," and "personal benefit" were not used.

17 A. I wouldn't characterize that as that, Counsel. I would say that  
18 Mr. Clair was constrained by the counts to which the accused  
19 person had plead guilty. In a situation where other counts, in  
20 other counts, the Crown had offered no evidence. So the  
21 Crown is restrained by those factors in terms of what it can  
22 state.

23 Q. Well, you're not really restrained from...constrained from  
24 using the word "forgery," if you're dealing with an uttering  
25 charge, are you?

1 A. No, I don't believe Mr. Clair was so constrained, but I'd have  
2 to review the transcript to confirm that.

3 Q. Okay. Looking at this process as a whole, Mr. Herschorn, it  
4 appears that the defence pretty well got everything they  
5 wanted. The fraud charge was dropped. The range of fine,  
6 being suggested as applicable, was settled at the minimum  
7 rather than anywhere in between. There was no order for  
8 restitution at the request of the defence, and I appreciate  
9 there were some other avenues open. And my own reading  
10 of the sentencing hearing is that the defence counsel's wish  
11 about not using perjorative words was also granted.

12 A. All I can say, Counsel, is that's your characterization. It would  
13 not be mine. I would not characterize this as a situation  
14 where the defence got everything it wanted. The defence  
15 ended up with convictions on four serious criminal offences.

16 Q. When the Crown went into this process, was it the Crown's  
17 view that it, the Crown, should get as much as possible from  
18 Mr. MacLean, both by way of fine and a sentence?

19 A. No, I don't think that the position a responsible Crown should  
20 take in any discussion. It's not a matter of seeking the  
21 utmost. It's seeking what's appropriate in the context of the  
22 authorities.

23 Q. Well, you can...

24 A. Perhaps in that limited context perhaps, yes, seeking the  
25 maximum that the range of sentence as articulated by the

1 Appellate Courts is indicated.

2 Q. Were you concerned with fairness?

3 A. Always concerned with fairness.

4 Q. Fairness to Mr. MacLean?

5 A. Always concerned with fairness to Mr. MacLean, as we were  
6 concerned with the fairness with respect to any accused  
7 person.

8 Q. We've heard evidence from Mr. Endres when he was dealing  
9 with compensation for Mr. Marshall, that he was not  
10 concerned with fairness and that his sole approach was to  
11 give as little as possible in the compensation negotiations. I  
12 appreciate that the two matters are diametrically opposed in  
13 what is being dealt with, but in terms of the approach of the  
14 Crown, is it fair to say that in philosophy and in principle, that  
15 the same approach is not being used?

16 A. Yes, it is fair to say that. The prosecuting officer is under an  
17 ethical obligation to be fair to accused persons, to insure that  
18 there's a fair trial upon the merits.

19 Q. Is it your view, based on your experience with the Crown's  
20 office, Mr. Herschorn, that if John Q. Public, not an MLA, were  
21 in the same situation, had the same circumstances as this, that  
22 he would be able to get the same deal?

23 A. Yes, it is.

24 Q. A small point on the restitution, my final question. The  
25 amounts that Mr. Clair set out in his very early letter to you

1 when he went through the counts and the evidence, the  
2 estimated amounts were something over \$28,000. The  
3 restitution that was mentioned in the sentencing hearing was  
4 21,800 and change. Do you have any knowledge of whether  
5 or not that amount changed simply because the calculations  
6 had been refined, or whether the amount changed because a  
7 number of charges were dropped?

8 A. I can't answer that. That question would be better directed to  
9 Mr. Clair. I'm sure he can definitively answer it.

10 MR. ORSBORN

11 Thank you.

12 EXAMINATION BY MR. RUBY

13  
14 Q. Mr. Herschorn, if you'll turn with me to page 47, which is the  
15 information that was laid. You've referred to Count 1 as an  
16 umbrella, or global count.

17 A. Yes, sir.

18 Q. It doesn't seem to me to include the monies charges to the  
19 nonexistent company for the nonexistent constituency office,  
20 because it particularizes the fraud in terms of travel and  
21 living allowances. Do you agree with that?

22 A. I wouldn't, Mr. Ruby. I believed that the meth... the form  
23 through which a member submitted his claims for  
24 reimbursement of expenses is generally entitled "Statement  
25 of Travel and Living Allowance" and it may be used for

1 broader purposes by the MLA. I'm not certain of that, but  
2 that's my impression or understanding.

3 Q. Thank you. You've told us that in terms of the approach of  
4 the Crown in Nova Scotia to negotiations which, I'll call "plea  
5 bargaining" because I'm used to calling it plea bargaining, if  
6 you don't mind, that the saving of the state money and court  
7 time is not a factor for consideration?

8 A. It's not a factor which appears at present in our policy  
9 statement. It's not a factor that I have been requested by the  
10 Minister or Deputy to instruct prosecutors on. But, yet, I'm  
11 sure it's a factor of which prosecuting officers are cognizant in  
12 their everyday practice and influences them in the position  
13 they take in plea bargaining discussions.

14 Q. There's nothing wrong with taking that into account then.

15 A. No, I don't think so.

16 Q. It's a proper part of the plea bargaining process?

17 A. Not as a formal criteria that one would for that reason alone.  
18 But as one factor to be considered in a mix of others.

19 Q. Take a look with me at page 75, if you would, which is a  
20 passage from the, starting at Line 15, from the Submissions of  
21 Crown Counsel, Mr. Clair, in this particular case. Page 75, at  
22 Line 15:

23  
24 In the Crown's recommendation, I have taken  
25 the following factors into consideration. Before  
making a recommendation, I asked the court

MR. HERSCHORN, EXAM. BY MR. RUBY

1 also. Mr. MacLean has no previous criminal  
2 convictions. By my calculations, he is now  
3 presently 49 years of age. He has plead guilty  
4 before preliminary hearing or trial saving the  
5 courts valuable time and money.

6 Would you have wanted that taken into consideration by  
7 Crown Counsel, first of all?

8 5:00 p.m.

9 A. I think, Mr. Ruby, that's a different factor. I think it's, there  
10 he's alluding, counsel is, the prosecutor is alluding to the  
11 factor of what is obvious. That the entering of a plea of guilty  
12 does save time and expense to the State. But that's a  
13 different factor, I think, from whether the prosecuting officer  
14 rests his decision to enter into a plea bargaining arrangement  
15 solely on the criteria that an extreme amount of money will  
16 be saved or time of the courts...

17 Q. And if I understand you correctly, you're just saying is that  
18 should not be the sole criterion, but it is a relevant factor to  
19 consider.

20 A. It can be a relevant factor, yes.

21 Q. And as for completeness you see nothing wrong with a judge  
22 considering that as part of the mitigation in the case, the  
23 saving of the court time.

24 A. No, I ...

25 Q. The bottom of page 86.

A. I think such an eminent text is Ruby on Sentencing may  
include that as a factor which has been recognized by the

1 courts as appropriate.

2 Q. I believe it does. I want to come now to your view of the  
3 propriety of a fine in the amount of \$5000. First of all, would  
4 you agree with me that one of the principles in the assessing  
5 the fine is that one tries, through the fine, to approach the  
6 amount of the loss suffered. Is that so?

7 A. I think that's generally speaking correct, yes.

8 Q. Here the loss is about \$21,000.

9 A. That's right.

10 Q. Why, then, a fine of 5000? It seems petty and to minimize  
11 the seriousness of the offences. Do you not agree?

12 A. No, I wouldn't, I think it's a, I think there are other factors  
13 which impact upon, on that point. The loss of reputation, the  
14 disgrace which is brought upon an individual having been  
15 convicted of a criminal offence. The obvious amount of  
16 publicity which accrued, accrues and did accrue in this case,  
17 to the accused person which has, and it's an own inherent  
18 deterrent factor.

19 Q. These are factors which are relevant to a case like this? This  
20 was a high-profile person, I take it. Especially relevant to  
21 such a case.

22 A. Yes.

23 Q. You took those into account.

24 A. Yes, I think those would have been part of the thought  
25 process. I should, I think I alluded to earlier, I, at a point in

1 my deliberations over this case, had some concerns as to  
2 whether the prosecuting officer ought not to include  
3 incarceration as part of the position. But as I think I  
4 expressed it earlier, the consensus following the meeting with  
5 the Attorney General and the Deputy Attorney General and  
6 myself was that the position which Mr. Clair was bringing  
7 forward was one that we could live with.

8 Q. Did you take into account that this was a case that is certainly  
9 akin to, if not a case of breach of trust by the accused?

10 A. Yes, I believe Mr. Clair alluded to that in his sentencing  
11 remarks.

12 Q. You'll agree with me that the usual rule in courts at appellate  
13 levels all across Canada, and I think Nova Scotia as well, is  
14 that in cases of breach of trust, leaving aside the trivial cases,  
15 the ordinary result which the courts have required is a period  
16 of incarceration, usually a substantial one.

17 A. Well obviously I didn't think that was the constraining factor  
18 in this particular set of facts.

19 Q. But you knew that was the rule.

20 A. I can't...

21 Q. In breach of trust cases.

22 A. I can't state that I did at that point in time, no.

23 Q. You didn't know that.

24 A. No. I didn't look at authorities on criminal breach of trust.

25 Q. You didn't look at Ruby on Sentencing.

1 A. Perhaps not at that point in time.

2 Q. Did you do any research preparatory to accepting this offer  
3 from Mr. Pink?

4 A. I think I did some. I can't, I wouldn't classify it as extensive.  
5 I recall being concerned about the decision in the Province of  
6 British Columbia where a former provincial Cabinet minister  
7 was convicted, I believe of fraud, in relation to, or perhaps  
8 theft it was, the Davis case, I think it was, of theft in relation  
9 to exchanging first-class air tickets for economy air tickets  
10 and then pocketing the difference. There, if I recall correctly,  
11 a monetary penalty was imposed.

12 Q. It was a trivial amount, was it not? I can't remember the  
13 exact amount but it was \$100 or something like that?

14 A. I don't recall the amount being that small but I don't believe  
15 it was the same amount of money involved as in this case.

16 Q. And there was the explanation in that case that he thought  
17 that he had a right to do that.

18 A. I believe, as we have here. Mr. MacLean, perhaps if not in  
19 court, certainly out of court attempted to explain away his  
20 criminal activity.

21 Q. It's a little hard to explain away as saying, "I've got a right to  
22 do it" putting names of somebody else on documents, don't  
23 you agree?

24 A. I certainly do.

25 Q. That's not something you could have seriously considered as

1 being mitigating?

2 A. No.

3 Q. Because it's not credible, right?

4 A. Exactly.

5 Q. So the Davis case really is not very apt as a comparison,  
6 having that as a differentiating factor.

7 A. No. You asked me the question whether I conducted any  
8 research and I responded by referring to that case. I may  
9 have, that's the only one that springs into mind. I may have  
10 looked at some other authorities.

11 Q. But certainly that one would not have been one which would  
12 have held you to the conclusion that a fine was appropriate. It  
13 seems to go the opposite way. It's got special factors.

14 A. No, I wouldn't necessarily categorize it that way. I think it  
15 was a case of a provincial Cabinet minister, which is the  
16 situation here, who was convicted of a criminal offence and  
17 received a monetary penalty as opposed to incarceration for  
18 a, depending on how you categorize it, a breach of trust-type  
19 situation.

20 Q. Why should a Cabinet minister, you keep focusing on the fact  
21 that you're looking for a case of a Cabinet minister. Why  
22 should a Cabinet minister be treated differently than anybody  
23 else who commits a substantial breach of trust?

24 A. Because this particular accused was, in fact, a Cabinet minister  
25 and, hence, one looks for authorities. Just as one looks for in

1 other sentencing situations relevant authorities with similarly  
2 cast accused.

3 Q. See, I have never done that. If a robbery is committed by a  
4 cab driver who's my client I don't look for other cases  
5 involving cab driver robbers. I look to other cases involving  
6 robbery generally. Don't you work that way?

7 A. No, the factor is the age and circumstances of the accused in  
8 the, as I understand, the decisions of our Appeal Court are  
9 certainly relevant and are often considered by our Court of  
10 Appeal.

11 Q. And aren't they of limited relevance except in terms of  
12 reform and rehabilitation is a consideration which, as you, I  
13 think, will agree in cases of substantial fraud are not very  
14 significant factors.

15 A. That may be a fair characterization, yes.

16 Q. Perhaps we can mark this and give it a number because I'll  
17 be using it with other witnesses as well, My Lords.

18 EXHIBIT 175 - PHOTOCOPIES OF CASES APPEARING ON SENTENCE

19 Q. Take a look at Robillard and Charbonneau. You said loss of  
20 reputation and disgrace and publicity particularly in the case  
21 of somebody who is of high standing in the community, a  
22 public figure, is a matter that you considered. If you turn to  
23 page 273 the Quebec court quotes a judgement of Madame  
24 Justice L'Heureux-Dubé, a 1984 decision and reported then.  
25 It was reported in the C.C.C. series at the time you made your

1 decision. Tell me if you agree with what she says about that  
2 factor and how to deal with it. On page 273 she says,

3  
4 With respect to individual considerations, it is  
5 evident that every time a crime is committed by  
6 a public figure, a person in authority, a star, etc.,  
7 all the factors emphasized to us, or almost all of  
8 them, are present: the crime and the  
9 punishment are given much more publicity, the  
10 shame and the disgrace are therefore amplified,  
11 the financial loss resulting from the loss of  
12 employment is a function of the higher income.  
13 In this sense, it is true that for such a person the  
14 punishment appears cruel.

15 Popular wisdom has it that the farther one falls,  
16 the more it hurts. More elegantly, the proverb  
17 goes: noblesse oblige. Of course, that does not  
18 make law, but the law does not ignore common  
19 sense and what have been characterized here as  
20 mitigating circumstances are rather inevitable  
21 consequences to which a person in such  
22 circumstances exposes himself, which he must be  
23 ready to deal with, and to have been able to  
24 appreciate, particularly when there is no  
25 question of spontaneity or single offence.

18 That's true here, is it not? No question of spontaneity or  
19 single offence?

20 A. The facts didn't indicate that, no.

21 Q. That's right.

22  
23 To reason otherwise, in order to be consistent,  
24 one would have to adopt the principle that the  
25 higher a person is in society or the greater his  
function in society, the more he is known and

MR. HERSCHORN, EXAM. BY MR. RUBY

1 the lighter should be his sentence and,  
2 conversely, the more humble or obscure a  
3 person, the more severe should be his sentence.  
4 I do not accept this proposition: the scales of  
5 justice must not provide for such unequal  
6 treatment. Justice must be the same for all,  
7 famous or unknown, rich or poor. I would  
8 quickly add however that this does not mean,  
9 and must not be interpreted as meaning, that the  
10 same sentence must be imposed on all persons  
11 for the same crime. The jurisprudence has  
12 developed certain criteria, both objective and  
13 subjective, which should be considered in order  
14 that the sentence imposed be fair and  
15 appropriate to the crime committed and to the  
16 person who committed it. The mere fact that the  
17 crime was committed by a rich or a poor person,  
18 but a famous or unknown person, with all the  
19 consequences flowing therefrom, must not in my  
20 view be one of these factors. Rather, they are  
21 non-aggravating circumstances.

22 Would you agree with me that you have treated them not as,  
23 as she puts it, non-aggravating circumstances, but as  
24 mitigating factors?

25 A. To some degree, yes.

Q. To a total degree, yes?

A. No, to some degree.

Q. To the extent that you consider them at all, you accepted  
them as mitigating. That's what you told me.

A. Yes.

Q. I take it you did not agree with this view when you made the  
decision as to accept the \$5000 fine.

A. No, I have the greatest of respect for the decision which you

1 cite. It is a decision of a Quebec court, not of a court in Nova  
2 Scotia and I think there are other authorities which I cannot  
3 cite to you off the top of my head, which cast the legal point  
4 in slightly different terms.

5 Q. This was not a view you shared in any event.

6 A. Which view is that, sir?

7 Q. The view of Madame Justice L'Heureux-Dubé.

8 A. Not to the same degree, no.

9 Q. All right. Have you heard of any case where fines have been  
10 imposed with a substantial amount being the consequence of  
11 the crime where, first of all, it was planned and deliberate?  
12 Any such case?

13 A. Difficult for me to count, Counsel, to answer your question  
14 without researching it. I'm placed at a disadvantage in  
15 attempting to answer that question off the top of my head.

16 Q. I understand that you're recalling. Do you recall any such  
17 case?

18 A. Planned and, your factors were again, planned and  
19 deliberate?

20 Q. Planned and deliberate.

21 A. Substantial amounts of money?

22 Q. Yeah.

23 A. And a resulting monetary penalty as contrasted with  
24 imprisonment?

25 Q. Yes.

1 A. Yes I can.

2 Q. Which one would that be?

3 A. In the social welfare fraud area, particularly where female  
4 offenders are involved. There are precedents in this province  
5 where Crown appeals have resulted from monetary penalties  
6 imposed and the Appeal Court has not varied the, has  
7 affirmed the decision of the trial court with respect to  
8 sentence.

9 Q. Would you agree with me that the rationalization in that case,  
10 where that occurs, and assuming it to be the case, is it the  
11 welfare mother is pushed to this by circumstances of poverty  
12 by virtue of the fact that she's on welfare in the first place.  
13 Isn't that the principal rationale behind those cases where  
14 non-custodial terms have been imposed in welfare fraud?

15 A. That may be one aspect of it, yes.

16 Q. Is it not the principal one? The sympathy, we'll go for that  
17 aspect of the case.

18 A. I don't think the courts express themselves in terms of  
19 sympathy for the individual. But that may underlie the  
20 decision.

21 Q. You'll agree with me that's not an underlying factor here.

22 A. No. No.

23 Q. This was a rather sophisticated crime involving putting in  
24 false documents?

25 A. Yes.

1 Q. Preparing them on machinery and so forth? That's a factor I  
2 think you'll agree with me usually militates in favour of a  
3 harsher penalty, not a lighter penalty?  
4 5:15 p.m.

5 A. Yes, although I don't know whether I'd categorize this activity  
6 as sophisticated in the commercial crime sense of  
7 sophisticated frauds. Perhaps you'd go the reverse and say  
8 it's somewhat unsophisticated in terms of the lack of thought  
9 used by the accused person in perpetrating his criminal acts.  
10 There were obvious, as events unfolded, there were obvious  
11 areas where he was going to be tripped up on, and he was.

12 Q. This was an offence that he committed, not in a private  
13 capacity but in his capacity as an MLA?

14 A. Yes.

15 Q. You'll agree with me...

16 A. Yes.

17 Q. That's ordinarily an aggravating factor of a very serious  
18 nature?

19 A. Yes, it is.

20 Q. Because of the position which he holds.

21 A. Yes.

22 Q. And they would ordinarily militate in favour of a custodial  
23 term.

24 A. Yes, I think that was a factor which initially had me of the  
25 view that incarceration ought to be considered. But there was

1 the whole parameter of the case and a particular...of concern  
2 to me as I was being informed by the prosecutor was  
3 concerns about the viability of the prosecution, premised  
4 upon pressures that were being brought to bear upon Crown  
5 witnesses.

6 Q. That, I understand, because that's in both our experiences  
7 common. If you haven't got anything in hand, you take what  
8 you can get, rather than see someone go off and be acquitted  
9 completely. That's a decision prosecutors make from time to  
10 time in appropriate cases.

11 A. Yes.

12 Q. So if that was the impelling rationale, that would supersede  
13 all the others, would it not?

14 A. That was, again, a factor. I can't, I have difficulty categorizing  
15 one as opposed to the other as predominant.

16 Q. And did you believe that your case had fallen apart?

17 A. No.

18 Q. Then why would it be taken into consideration?

19 A. Because it's always a concern to the Crown, both pressures  
20 being brought to bear on witnesses and also just the anguish  
21 or inconvenience which results to witnesses in being  
22 subjected to a criminal trial.

23 Q. Yeah, but you don't usually plea bargain cases away in order  
24 to avoid difficulty for witnesses.

25 A. No.

1 Q. And when you do, it's in a rare category of cases of sexual  
2 assaults and so forth, correct, or incest?

3 A. Yes.

4 Q. The details are particularly humiliating.

5 A. In those situations, yes.

6 Q. Not in this class of case.

7 A. No, although there was perhaps a unique aspect in terms of  
8 the proximity of Mr. MacLean to the persons who would be  
9 Crown witnesses, the long-standing relationships that had  
10 developed between those persons.

11 Q. But if you had no information that the case was falling apart,  
12 why would you take that into consideration?

13 A. The prosecuting officer was alluding to it as a factor and that  
14 was brought to my attention and I took it into consideration.

15 Q. Was it a factor that there was some risk or that he was  
16 worried about it or that he had some reason to believe it was  
17 going to fall apart?

18 A. I think he had some worry about it, I would put it in that  
19 category.

20 Q. Almost any prosecutor would have a worry. The worries  
21 usually don't materialize, correct?

22 A. Well, no, here it went beyond that. I'd refer you to Mr. Pink's  
23 correspondence where he acknowledges there had been some  
24 pressures brought to bear. I can't find the reference at the  
25 moment.

1 Q. I didn't think he had acknowledged it, I thought he had side-  
2 stepped it, but that's...

3 A. Again, Mr. Clair is in a much better position than I to speak  
4 definitively on the factual underpinning of what you're asking  
5 me.

6 Q. Page 50, Mr. Pink in the last paragraph says:

7  
8 I appreciate that you are somewhat concerned  
9 about my client bringing pressure upon certain  
10 witnesses but let me assure you that if, in fact,  
11 he does so, the Crown has the remedies available  
12 in order to prosecute him further. He has  
13 assured me that he will not contact any of the  
14 witnesses to be called other than for personal  
15 businesses and that these witnesses may be  
16 involved with which are of concern to my client.

17 A. I understand Mr. Clair has some evidence which will bear on  
18 this. I'd rather not get into it, if I can avoid it.

19 Q. But you had no evidence that any witness had come forward  
20 and said, "I'm changing my story" or "I'm not going to testify."

21 A. No.

22 Q. All right. And if you had such a situation, you would no  
23 doubt have commissioned a police investigation with a view  
24 to laying charges of obstruction of justice, correct?

25 A. Yes.

Q. And that was not done. If you look...

A. Although I should, you know, my role as, I would not be the  
predominant... the principal person making that assessment.

1 It would be more so Mr. Clair and, hence, I think the question  
2 is better directed to him.

3 Q. But if Mr. Clair had overlooked that for some reason, you  
4 would have suggested it because you're an experienced  
5 prosecutor.

6 A. Hopefully.

7 Q. Were you familiar in your research with the case of Perry,  
8 Dennis Perry? It's an unreported case dated September 12,  
9 1979? A decision of the Nova Scotia Court of Appeal and  
10 delivered by the Chief Justice?

11 A. Perry? P-E-R-R-Y?

12 Q. Yeah. It's in the pile before you, P-E-R-R-Y.

13 A. Oh, I'm sorry, It is here?

14 Q. Take a look at it and see if you're familiar with it. Perry was  
15 charged with a series of frauds and thefts empowered in a  
16 company he organized and helped to finance.

17 A. Yes, I am familiar with that one.

18 Q. You're familiar with this case?

19 A. Yes.

20 Q. And he made a false representation to the Federal Business  
21 Development Bank. The amounts seem to be about \$36,000.  
22 total.

23 A. Yes.

24 Q. So the amount is not dissimilar, though it's somewhat larger  
25 than the one we're concerned with.

1 A. Yes, somewhat larger.

2 Q. He is an accountant, he had a good family, he had no assets of  
3 substance, and he had exhibited remorse and so forth.

4 A. Mr. Ruby, it was precisely that case which prompted my  
5 concerns.

6 Q. And the court took a suspended sentence and said at the top  
7 of page three:

8  
9 We are unable to see that there is anything  
10 exceptional about these offences. They were  
11 typical so-called white colour thefts or frauds.  
12 They occurred over a considerable period of  
13 time, nearly a year and a half. They obviously  
involved premeditation. The fraud of the bank,  
in particular, required considerable planning and  
sophisticated arrangements.

14  
15 About the same level of sophistication, I'd suggest, as Mr.  
16 MacLean's case? Yes? You'd agree?

17 A. Without knowing more precise terms of the evidence that  
18 supported these counts, I can't answer that question.

19 Q. The court went on:

20  
21 There is no doubt of this man's otherwise good  
22 character and his repentance. This is not a case  
23 where rehabilitation or personal deterrence is  
24 concerned. We must emphasize, however, that  
25 those committing this type of offence and others  
tempted to act similarly, must be shown that  
they cannot escape severe punishment merely  
by repentance or restitution and that a

substantial measure of public deterrence has to be administered.

And, in the event, they sentenced him to one year in jail and one year probation. You were aware of that case?

A. Yes, I was.

Q. And this was the one, you say, which gave you the pause.

A. I think, if I recall my thought processes, I had some involvement with this particular case or file in terms of the appeal which ensued and it was one case that stuck in my mind as being relevant and, hence, prompted me to have some concerns as to whether a position in the Billy Joe MacLean case, which did not include Crown representation for incarceration, was appropriate.

Q. Why didn't you stick with that position? Why did you abandon it?

A. I would say I was persuaded, although I would start at the outset by saying that it was ultimately a decision for the Attorney General to make, having involved him in the decision-making process. The factors such as public embarrassment, loss of reputation, these factors didn't exactly pan out as subsequent events revealed. It was my view that that coupled with the concerns about the possible intimidation of witnesses and the Crown securing convictions on four counts, which represented a large part of the criminal activity which the Crown initially alleged as having been

1 involved here, that that represented an adequate deterrence,  
2 an adequate Crown position. It's a position shared by the  
3 Attorney General, the Deputy Attorney General, the  
4 investigating police officer, and the prosecuting officer who  
5 initially recommended the proposal.

6 Q. You come back to those mitigating factors that Madame  
7 L'Heureux Dubé discussed, and I don't want to take you  
8 through that again, but would you turn to Morrison, because  
9 it seems to me that this Nova Scotia Court of Appeal and  
10 Morrison had dealt, though more briefly with the same  
11 factors with the same effect. Morrison is in the package that  
12 is before Your Lordships.

13 A. Yes.

14 Q. It's a decision of October 6th, 1975 and the Chief Justice at  
15 page 102, it was again a fraud case. And at page 102, at line  
16 15 approximately, speaking about of what the trial judge had  
17 said in giving a low sentence as a reason for a low sentence:

18  
19 He then concluded that the respondent having  
20 lost his family and his profession had suffered  
21 enough or almost enough. I do not consider that  
22 society has the right nor indeed the need to  
23 exact further retribution from this accused. He  
24 then directed suspension of sentence for two  
25 years. With much reluctance, I must disagree  
with the learned judge. I am respectfully of the  
opinion he overlooked the inescapable duty of  
imposing for a calculated crime of this sort a  
sentence which would reflect a substantial

element of deterrence to others.

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Were you familiar with that case?

A. Yes.

Q. And that comment?

A. Not with that comment, in particular, but I am familiar with the case.

Q. Had this been present to your mind, would you agree with me that you would not have given the weight you did to the mitigating factors of loss and suffering and so forth?

A. I can't recall whether it was current in my mind at the time or not. It is a case which involves a lawyer in a position of, obvious position of special duty, as the headnote to the case indicates, and there are some distinguishing factors.

Q. Well, let's just look at that. Page 101, Line 13. This was not a fraud qua lawyer. But in the investment scheme, people trusted him because he was a lawyer. The court said:

Furthermore, even had no client been involved, we must especially denounce crimes of fraud and forgery committed by a member of the bar, a sworn officer of this court. Such a man has a special duty.

Would you not agree that an MLA is in exactly that position?

He has a special duty because of his position?

A. I would agree. However, this authority to which you're referring is, does not refer to an MLA. It refers to a lawyer.

Q. Sure, but you're just agreeing that it should be treated exactly

1       alike.

2       A. I don't dispute the fact that it could have application.

3       Q. It does seem applicable, doesn't it, that language, "special  
4       duty"?

5       A. It could have application to this situation, yes.

6       Q. Morrison got two years imprisonment?

7       A. That's my recollection, yes.

8       Q. And, lastly, Your Lordships have been very patient with me,  
9       on the question of the plea bargain itself, the substantial part  
10       of it, were you familiar with the case of Terrance Power,  
11       which was delivered shortly before you made your decision  
12       on March 11, 1986 by the Nova Scotia Court of Appeal?

13       A. Yes.

14       Q. You didn't accept what Madame Justice L'Heureux Dubé said  
15       because you said it wasn't the law in the Province. But look  
16       at page two, middle paragraph.

17  
18               So far as we are aware, four years is the longest  
19               sentence imposed in this province against a  
20               professional person for offences of this nature.  
21               The respondent was a lawyer of some years  
22               standing. He had been disbarred by the Nova  
23               Scotia Barrister's Society. He has declared  
24               bankruptcy. He and his family have  
25               undoubtedly suffered much agony and anxiety  
             as a result of the ill-conceived ventures which  
             led the respondent to this unhappy fate. As a  
             lawyer, he was in a position where much trust  
             and confidence were placed in him by those with  
             whom he had dealings.

1           Isn't that opposite to this particular case?

2           A. No, with respect, I would say those are comments directed at  
3           the legal profession, and not at MLA's. However, I don't  
4           dispute the underlying premise that I think you're trying to  
5           articulate, that that type of comment, denuded of the  
6           references or the context of a lawyer, is applicable and has  
7           some bearing on the situation. I don't dispute that.

8           Q. In particular, I'm suggesting to you that the court took into  
9           account the submission that he had suffered much agony in  
10          his family and anxiety and so forth, but didn't give it any  
11          weight. They upheld a four-year sentence. Isn't that so?

12          A. Yes, in Terrance Power, that was the case.

13          Q. So they didn't give any effect to that submission, in the  
14          context of a serious fraud. Yes?

15          A. Very serious fraud involving hundreds of thousands of  
16          dollars.

17          Q. It must have been very large. They don't have the numbers  
18          here, but was it hundreds of thousands?

19          A. My recollection is, if not higher. Many innocent people were  
20          defrauded in that situation.

21          Q. A much more serious case than this one, is that fair?

22          A. In dollar terms, yes, and certainly in anguish caused to  
23          members of the public and financial loss, much more serious.

24          Q. In terms of the impact of the crime on the public, much more  
25          serious.

1 5:30 p.m.

2 A. Well that's, I would say so, yes.

3 Q. Yeah. I'm not suggesting that's not the case. The last area  
4 that I want to, oh sorry, one more area before I leave it. You  
5 say you took into account the position of the prosecutor and I  
6 don't understand that very much. You explain it to me  
7 because it seems to me that if he comes and says, "I think the  
8 fine is appropriate" the decision ultimately remains for those  
9 higher up to make and not for him. Why would you give  
10 weight to his position?

11 A. I would always give weight to the opinion of the prosecutor  
12 who has carriage of the file. His views on the case are very  
13 important, it may be very persuasive to me.

14 Q. You have no idea whether he did any research at all. No idea  
15 of the breadth of his experience for this kind of case.

16 A. Well I did, to the contrary. I did have, I was involved in the  
17 hiring of Mr. Clair, coming here from the Province of Alberta,  
18 where he had been a prosecutor for a considerable period of  
19 time. I forget the precise number of years he spent in  
20 prosecuting. And once in Nova Scotia he had been involved in  
21 commercial crime work and, hence, I was aware of his  
22 background.

23 Q. All right.

24 A. And I consider him a very competent, thorough prosecuting  
25 officer.

1 Q. I suggest to you that the position stands or falls on its merits.  
2 And either what he says persuades you that he's right or it  
3 doesn't, but that the fact that he took the position should not  
4 be a matter of substance. Do you agree with that?

5 A. I'm not sure I follow you, Mr. Ruby.

6 Q. Let me rephrase it. I may not be as clear as I might and  
7 we're late in the day. I'm suggesting to you that when the  
8 prosecutor puts forward a position what you should be  
9 looking at and considering is the merits of it. But the mere  
10 fact that it's his position, that he puts it forward, should not  
11 influence you at all. Do you agree with that?

12 A. Yes, as a general statement, I would.

13 Q. And is that what you did in this case or did you also give  
14 weight to the fact that it was his position?

15 A. No, I think I would be concerned with the merits and, hence,  
16 as I alluded to, my concern about whether the  
17 appropriateness of a Crown position which did not include  
18 incarceration. I think subsequent events, in particular,  
19 another case which came before the courts several years  
20 subsequently involving the same prosecuting officer, did not  
21 involve a plea bargaining situation. A member of the  
22 Legislature wherein a, I believe, one-year jail sentence was  
23 imposed. And we all learned from previous experience.

24 Q. Let me ask you to turn with me to page 62. You didn't know,  
25 as I understand it, that the Crown had agreed that they would

- 1 not use the words "fraud," "forgery" or "that my client  
2 personally benefited."
- 3 A. No, I wasn't aware of Mr. Pink's request in that regard.
- 4 Q. That strikes me, and you tell me if I right or wrong, is an  
5 extremely unusual request to be made and to have granted in  
6 a case of this sort.
- 7 A. I don't, I can't respond to the first part of your question. It's  
8 not something I've seen before. It's not something that I  
9 believe Mr. Clair did agree to.
- 10 Q. It would have been wrong to agree to it, would it not?
- 11 A. You're referring to the second paragraph, are you?
- 12 Q. Yes.
- 13 A. "If your submission was to take on ..."
- 14 Q. I'm sorry, the first paragraph. That, "The Crown will not use  
15 the words 'fraud', 'forgery' or suggest [is what I think is  
16 missing there] that my client personally benefited." That's  
17 what I suggest I've never heard of and you've never heard of.
- 18 A. I don't, I find that an inappropriate request and one that the  
19 Crown should not accede to.
- 20 Q. You don't like my word "wrong".
- 21 A. No, it implies some guilt perhaps and I don't, I can't ascribe  
22 that to Mr. Pink in these circumstances. He's representing his  
23 client and putting forth a position to see whether the Crown  
24 will buy it. In this case it was not tenable.
- 25 Q. I'm not faulting Mr. Pink. I'm too often on the same side of

MR. HERSCHORN, EXAM. BY MR. RUBY

1 the boat. But what about the Crown here? The Crown's got  
2 the duty you spoke of ...

3 A. Yes.

4 Q. To be fair to the accused and to be fair, I suggest, to the  
5 public.

6 A. Yes.

7 Q. This doesn't meet that need, does it? The latter need.

8 A. No, it doesn't.

9 Q. So it's wrong to do it, right? The Crown.

10 A. On that test, yes. And I don't believe the Crown Prosecutor in  
11 this case did accede to the request as is evidenced by his  
12 representations before Judge Atton.

COMMISSIONER EVANS

13  
14 Mr. Ruby, no request from a defence counsel is unusual.

MR. RUBY

15  
16 Q. If you turn to page 77. I think you'll find in Mr. Clair's  
17 submissions and my friends maybe will find it differently  
18 that I do that, in fact, he does live up to that bargain and then  
19 Mr. Pink, at the bottom of page 77 says,

20  
21 The law of uttering a false document does not  
22 include the element of fraud and/or personal  
23 benefit. My client maintains that at all times in  
24 making the claims that he did, that there was no  
25 fraud, there was no forging of signatures and  
there was no personal benefit gained by him.

Mr. Pink was in a position to make that submission only

MR. HERSCHORN, EXAM. BY MR. RUBY

1 because the Crown had agreed. You'll agree with me?

2 A. Well I alluded to earlier the constraints which I feel the  
3 prosecuting officer was under in these circumstances in terms  
4 of what reference. He would have been on very dicey ground,  
5 I think, to, in a situation where the Crown had just moments  
6 before agreed not to offer any evidence with respect to the  
7 offence of fraud or forgery to include extensive references to  
8 those terms in his sentencing representations on what are  
9 other offences.

10 Q. But the fact that no personal benefit was gained is almost  
11 always, you'll agree with me...

12 A. That's so ludicrous it doesn't even merit any, there's obvious  
13 personal benefit and that point was mentioned by Judge  
14 Atton further in his remarks in imposing sentence.

15 Q. I know. But the only reason he ...

16 A. It couldn't even merit prosecutor attention, I don't think.

17 Q. If you turn to page 86 you'll see what the learned trial judge  
18 said at line 17...

COMMISSIONER EVANS

19  
20 Mr. Pink is going to be called so ...

MR. RUBY

21  
22 Yes, he will.

COMMISSIONER EVANS

23  
24 Will he be in a position to answer some of these questions  
25 you're putting?

1 MR. RUBY

2 I think he will. I'm just pointing out to this man who thinks  
3 that it was not a deal that was accepted what the transcript in fact  
4 say. I'm almost through that, My Lord.

5 Q. But lastly, I want to point out to you at page 86, line 17, the  
6 judge says,

7  
8 I might say that I find it rather hard to accept  
9 Mr. Pink's explanation, that none of this was  
10 done for personal gain. It seems to me that  
11 regardless of where the money goes it was being  
12 done through the defendant for his own personal  
13 purposes.

14 So it does appear that that was open to Mr. Pink only because  
15 of the position taken by Crown counsel and not mentioning  
16 any of those words or suggesting that there was personal  
17 gain.

18 A. No, I can't accept that characterization at all.

19 Q. Can you find any place in the submissions of Crown counsel  
20 where he suggests they were a personal gain?

21 A. It's implicit in the factual situation. It's obvious to anyone  
22 with common sense, I would suggest. It's certainly obvious to  
23 an experienced trial judge as the record confirms.

24 Q. I quite agree. And he clearly was not accepting this as being  
25 a factual assessment on these facts.

A. From the quote that you referred the Inquiry to I...

Q. I'm sorry, I just couldn't hear you.

MR. HERSCHORN, EXAM. BY MR. RUBY

1 A. From the quote that you alluded to at page 86 I would agree.

2 MR. RUBY

3 Those are my questions, sir. You've been very patient with  
4 me, thank you.

5 CHAIRMAN

6 Mr. Pink?

7 MR. PINK

8 We have no questions.

9 CHAIRMAN

10 I'm sorry...

11 MR. PRINGLE

12 No questions, My Lord.

13 RE-EXAMINATION BY MR. ORSBORN

14 Q. Just one, My Lord. Mr. Herschorn you mentioned that about a  
15 year later there was a further case in which, the MacIsaac  
16 case, that a term of imprisonment was, in fact, imposed, a  
17 one-year term.

18 A. Yes.

19 Q. For a fraud-related...

20 A. I confess I'm a little weak. I believe it was one year. It may  
21 have been nine months, but my best recollection is one year.

22 Q. Fraud-related cases? A fraud-related charge?

23 A. Yes.

24 Q. Did you consider that to be a change in the law?

25 A. I wouldn't necessarily characterize it as a change in the law.

MR. HERSCHORN, RE-EXAM. BY MR. ORSBORN

1 It's, I think it was a recognition in that particular case of a,  
2 unfortunately it was an increasing problem and a need to  
3 resort to a sentence which contained a greater component of  
4 deterrence, individual deterrence.

5 Q. There would have been nothing preventing that recognition  
6 from taking place in the MacLean case had it, in fact,  
7 proceeded to court?

8 A. No.

MR. ORSBORN

9  
10 Thank you.

CHAIRMAN

11  
12 Thank you very much, Mr. Herschorn. I believe I can say  
13 with some degree of certainty that this will be the last time you're  
14 going to appear before this Commission.

WITNESS WITHDREW

15  
16 5:39 p.m. - ADJOURNED TO 20 SEPTEMBER 1988 - 9:30 a.m.

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## REPORTER'S CERTIFICATE

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

  
\_\_\_\_\_  
Margaret E. Graham

DATED THIS 19 day of September 1988 at Dartmouth, Nova Scotia