

15568 MR. COLES, EXAM. BY MR. MacDONALD

1 MR. MacDONALD

2 Yes, My Lord, the next witness is going to be Mr. Coles.

3 MR. GORDON COLES, recalled and still sworn, testified as follows:

4 EXAMINATION BY MR. MacDONALD

5 Q. Good morning, Mr. Coles. Welcome back for the last time.

6 MR. COLES

7 You hope.

8 MR. MacDONALD

9 We hope.

10 Q. Mr. Coles, we're dealing as you know with the case of the  
11 expense claims submitted by Mr. Billy Joe MacLean. When  
12 did this matter first come to your attention?

13 A. Well, I think it was in November of '83.

14 Q. And how did it come to your attention?

15 A. I received a telephone call from Mr. Cormier, the...I think  
16 then the Deputy Auditor General, and as a result of those  
17 conversations we arranged a meeting that I attended at his  
18 office to discuss the matter.

19 Q. Were you advised in advance the purpose of the meeting?  
20 And perhaps I can help you, if you turn to page 27 in  
21 Exhibit 173. That is a letter from Mr. Cormier to you of  
22 November 14, 1983. Was that your first knowledge of this  
23 particular matter?

24 A. Well, he makes reference to the telephone call to arrange a  
25 times, yes.

1 Q. Okay. Thank you.

2 A. This was my first.

3 Q. Now did you know which individuals, who were members of  
4 the legislature, were going to be discussed?

5 A. Not to my recollection.

6 Q. Were you given any information in advance of the meeting  
7 in forms of documents or otherwise?

8 A. No.

9 Q. Was this the...was it a surprise to you that you were being  
10 asked to confer with the Auditor General on a matter such  
11 as this?

12 A. Well, I don't recall having any particular knowledge of what  
13 the nature of the meeting was, no, I ...it didn't come as any  
14 surprise. I meet with senior people involved with  
15 government.

16 Q. Were you aware that the RCMP were going to be in  
17 attendance at the meeting?

18 A. No.

19 Q. Let me ask you to turn to page 28, which is a letter from the  
20 Auditor General and that letter was enclosed with the  
21 earlier letter I just referred you to.

22 A. Yes.

23 Q. Now you were aware, I guess, that the RCMP had been  
24 contacted first by the Auditor General.

25 A. Yes.

1 Q. But not that they were going to be in attendance at the  
2 meeting.

3 A. Yes, and I did not know the nature of the contact, I didn't  
4 know any of the particulars involved.

5 Q. Do you have recollection of that meeting, Mr. Coles?

6 A. I have a recollection. I don't know how specific it may be,  
7 but I have a general recollection of the meeting, yes.

8 Q. Tell me as best you can then what took place?

9 A. Well, I was accompanied by Mr. Gale of our department,  
10 director of criminal, and when we arrived there, the two  
11 police officers were there, it's my recollection they were  
12 there. We exchanged pleasantries and I don't think there  
13 was anything else said and we were taken into the board  
14 room and there I think Mr. Sarty, the then Attorney General,  
15 Auditor General, sorry, and Mr. Cormier, and I think he had  
16 another staff member there. I'm not certain of that. And I  
17 think we were then made aware that the RCM Police that  
18 were out there had been invited and I think I expressed the  
19 opinion, "Well, let's see what this is all about before we  
20 involve the RCM Police," and...or words to that effect. So we  
21 met and they identified the particulars of their concerns  
22 that they, as I recall, their concerns were largely and  
23 exclusively about the supporting documentation that was  
24 submitted in support of a claim for reimbursement for  
25 expenses, and identified the areas of the concerns and

1 that...and informed me or informed us that they had  
2 discussed this with the RCM Police and my recollection of  
3 their advice was that, well, it's a matter you should refer to  
4 the Attorney General's Department. And they were, in fact,  
5 so referring it to the...to us and that was in essence the  
6 meeting. I think the RCM Police then were invited to join  
7 and I'm not sure that we stayed, Mr. Gale and I stayed,  
8 throughout the meeting with the RCM Police or not. I think  
9 they were told when we were there that they had referred  
10 this matter to us and that was in essence my recollection of  
11 the meeting.

12 Q. What was it being referred to you for? What did you  
13 understand you were being asked to do?

14 A. Well, at the time I...that it was referred for our  
15 consideration, nothing more and nothing less. They...

16 Q. Consideration of what?

17 A. Of whether or not this material that was submitted to  
18 support the claims had any...there was any fraudulent  
19 aspects to it. I left with the feeling that the Auditor General  
20 quite properly raised concerns in respect to this material  
21 and considered it his obligation to refer it, identify those  
22 concerns and refer them, which is in fact what he did and  
23 what I understood he intended to do.

24 Q. You were to look at the information and determine whether  
25 in your opinion there...



1 A. Whether there was any action to be taken with respect to  
2 that matter.

3 Q. Any action...

4 A. I had the feeling it was left with us.

5 Q. Yes.

6 A. But I wasn't...

7 Q. Any action to be taken in the form of what, whether an  
8 investigation should be conducted?

9 A. I don't think there was any specific references to what it  
10 was...he had...he had concerns, he identified them and he  
11 referred them to us which I concluded that that was  
12 he...that's what he thought was his responsibility and having  
13 done that, then it was up to us to do whatever...whatever in  
14 our opinion that material warranted.

15 Q. Okay. And I suggest to you that one of the things you would  
16 have to look at is whether the information made available to  
17 you was such that an investigation should be carried out to  
18 obtain additional information.

19 A. Well, that may be. I'm not sure we...I specifically addressed  
20 anything. We took the material back and we were going to  
21 look at it and see whether there was anything irregular and  
22 if so, if there were irregularities whether or not they were  
23 actionable, whether there was any wrongdoing involved.  
24 And if there was wrongdoing involved, of course, then we  
25 would have presumably asked for an investigation. I'm not

1           sure at this point of what...at that meeting that these were  
2           the things going through our heads. We went down to find  
3           out what it was all about and this is...this is what we were  
4           told.

5       Q.    Were you aware that the RCMP had already looked at the  
6           information and had determined, to their satisfaction, that  
7           the matter did require investigation and that there  
8           appeared to be criminal activity involved?

9       A.    Not at that time or any time subsequent.

10    Q.    Thank you.

11    A.    I might say I did express concern that...where they  
12           were...the Auditor General had decided that they were going  
13           to refer this matter to us, I expressed concern that they  
14           would seek an opinion in advance from the RCM Police, they  
15           had said they had discussions with the RCM Police for an  
16           opinion. I wasn't too sure why they would consult the RCM  
17           Police for an opinion, but that's my recollection of what was  
18           said. It seemed to me they were putting the cart before the  
19           horse.

20    Q.    Well, why is that? Surely there is nothing wrong with going  
21           to the police and saying "Here's the information. In your  
22           view does this warrant investigation? Is there evidence of  
23           some criminal activity?"

24    A.    No. I didn't say there was anything wrong with. I  
25           expressed surprise that they...that they did that where they

1 obviously were of the view they were going to refer it to us  
2 for our consideration. I...it just seemed to me to be doing  
3 the things wrong way to, if they were going to refer to the  
4 RCM Police for whatever reason, fine. I had no objection to  
5 that. I just expressed concern that they would seek an  
6 opinion, well, that's what I...my recollection of what I was  
7 told, and the opinion was referred to the AG's Department.

8 10:20 a.m.

9 Q. Look at page 28. Again, I think you have it opened there.

10 A. Yes.

11 Q. The last paragraph where it says "The RCMP have now  
12 responded to us. Based upon the evidence that we laid  
13 before them, they feel there is justification to take the  
14 matter further." What did you understand they were telling  
15 you there?

16 A. I'm not so sure I understood anything from that. I...this was  
17 material for the meeting. At the meeting I understood what  
18 they said, they were referring the matter to us and I didn't  
19 understand anything further than that. I didn't...I presume  
20 if I had addressed that, I would have thought that meant  
21 holding a meeting with us and referring the matter to us.  
22 Certainly the advice that I recall or the information I recall  
23 getting at the time was they were advised by the RCM Police  
24 to refer the matter to the AG's Department and that's what  
25 I...

1 Q. But you had a letter that was saying based upon the  
2 evidence that the RCMP had looked at, they felt there was  
3 justification to take the matter further. Now I suggest to  
4 you that necessarily that would mean that the RCMP looked  
5 at the materials and concluded that there was some sort of  
6 an investigation was necessary.

7 A. Well, I didn't interpret it that way. I, as I say, I don't recall  
8 paying particular attention to that, but if I had, it would  
9 have meant that's what the purpose of the meeting was, to  
10 refer the matter to the AG's Department.

11 Q. Now is that a normal sort of thing to happen, that matters  
12 are referred to the Attorney General's Department for  
13 consideration whether, I think you said, there was any  
14 wrongdoing involved?

15 A. Well, I don't know how normal it is. It has happened.  
16 We've had instances that I recall speaking of in the previous  
17 session I was here about departments having matters, but  
18 the Attorney...the Auditor General was in a very special  
19 position. His function is to audit and satisfy himself on the  
20 legitimacy of it and having done so, he doesn't get involved  
21 in a prosecutorial sense that I'm aware of.

22 Q. What information was given to you by the Auditor General  
23 at that meeting?

24 A. It wasn't very much. There was specimens of statements of  
25 expenses primarily.

1 Q. Just specimens, you weren't given the entire file.

2 A. Oh, I don't think I had the entire file. I think there was  
3 selected specimens, not specimens, they were copies of  
4 actual material in support of the claim.

5 Q. Did you consider you had all the information required to  
6 enable you to make a determination whether there was any  
7 wrongdoing, to use your words?

8 A. Well, this was the material that they identified that  
9 concerned them, and I expected they gave to us what they  
10 thought were sufficient samples for us to consider whether  
11 or not they represented any wrongdoing or what the nature  
12 of them may have been.

13 Q. Regardless of what they did, Mr. Coles, did you consider, sir,  
14 that you had sufficient information, sufficient  
15 documentation, to enable your department to determine  
16 whether there was any wrongdoing taking place here?

17 A. Well, I would have to answer yes to that. I left it to Mr. Gale  
18 to consider the matter and give me his opinion and advice  
19 and I presume that he must have been satisfied that he had  
20 sufficient evidence or information to respond to.

21 Q. How long was the meeting?

22 A. It wasn't a very long meeting. I'm not certain. I would  
23 think probably, certainly less than half an hour, an hour. It  
24 was a relatively short meeting. They had the material  
25 ready that they wanted us to have and it didn't take very

1 long for them to identify their concerns with that material.

2 Q. I think you said earlier you said when you arrived that the  
3 RCMP were there and you said, "Let's find out what it's all  
4 about first before we involve the RCMP," words to that  
5 effect.

6 A. Well, I'm not so sure I said that to anybody. That's...

7 Q. That's what you said this morning, at least that's what I  
8 understood you to say.

9 A. Well, I may have said that when I was inside when they  
10 said, "Shall the RCMP come in?" and I may have said that;  
11 that was certainly my attitude.

12 Q. So you wanted to be briefed, if you will, by the Auditor  
13 General before the RCMP came in to the room.

14 A. Well, certainly.

15 Q. Why?

16 A. Well, I didn't know what I was there for and I wanted to...I  
17 wanted to know. It seemed to me to be appropriate that if  
18 they had any instructions or anything to turn over, had any  
19 questions of me, I didn't see any need for the RCM Police to  
20 be present.

21 Q. But you knew the RCMP had already been involved and, in  
22 fact, had determined that based on the evidence before  
23 them they thought there was justification to take the matter  
24 further. I don't understand why you want to exclude them.

25 A. Well, I had...I acknowledge I had this copy of the letter. It

1 didn't mean much to me. I didn't know what the subject  
2 matter was. I didn't know what the particulars were. I  
3 didn't...I didn't pay particular significance to the letter.

4 Q. Let's look at the letter again on page 28. You're advised by  
5 the Auditor General, in the second paragraph, that his  
6 department has uncovered two situations "Where based  
7 upon the evidence before us, it appears to us that abuses of  
8 the system of a fraudulent nature may have occurred." So  
9 you knew you were going to be dealing with something, at  
10 least the Auditor General concerned...was concerned that  
11 may be fraudulent.

12 A. Um.

13 Q. And then you were aware that the RCMP, commercial crime  
14 division, had looked at it and based on their review of the  
15 evidence, considered there was justification to take the  
16 matter further.

17 A. Oh, sure, I presume I read the letter, was aware of it.

18 Q. And when you arrive at the meeting you tell the Auditor  
19 General "I'd rather meet with you alone without the RCMP  
20 first, until I understand what this is all about." Is that  
21 generally...?

22 A. Words to that effect, yes.

23 Q. Okay. And the Auditor General then lays before you the  
24 information that you consider is sufficient to enable you to  
25 understand the nature of the...their concern.

1 A. Well, I don't want to be picky. But I don't know if I  
2 considered it sufficient. This is the information that, in  
3 respect to which he had his concerns and which he was  
4 referring to us for our consideration. I don't think there was  
5 anything more said or...than that.

6 Q. But surely now as a lawyer taking a briefing, you're going to  
7 be satisfied that you're being given sufficient information to  
8 enable you to understand what you're being asked to do and  
9 to give an answer.

10 A. Well, we...at that point we were not in any position, or  
11 certainly I was not in any position, to make any comment on  
12 it. This is the material they...that they represented as  
13 evidence of their concerns and asked us to consider it.

14 Q. And then they explained what their concerns were to you.

15 A. Yeah, that it ...that in their opinion it didn't satisfy the rules  
16 required to support the claim.

17 Q. Well, did they not tell you that they considered it to be  
18 fraudulent?

19 A. Yes, well, I think they said and it may be fraudulent and  
20 that's what they wanted us to consider.

21 Q. Thank you. Then you brought the RCMP into the room, is  
22 that correct?

23 A. Well...

24 Q. Or then the RCMP was brought into the room.

25 A. Yeah, I don't think I had any say about them coming or



1 going.

2 Q. Well, you had something to say about them not coming.

3 A. Well, I suggested that we meet and I find out what it's all  
4 about and that's right, sure, and Mr. Sarty agreed to that.

5 Q. And then, in any event, the RCMP then were brought into  
6 the room, sir.

7 A. At the...towards the end of our...the briefing that we had  
8 received, yes.

9 Q. Chief Superintendent MacGibbon was there.

10 A. Yes.

11 Q. And Inspector Blue.

12 A. I presume so. I don't specifically remember Inspector Blue  
13 or not.

14 Q. Now what input did they have then? What did they add to  
15 your briefing?

16 A. I don't recall any input. I don't recall anything said. I  
17 think...I think they were told that the matter was...that they  
18 had referred the matter to us and that was it and I think at  
19 that point Mr. Gale and I left. I don't recall them having any  
20 input.

21 Q. Wouldn't you want to know why these senior people in  
22 commercial crime division in Nova Scotia considered that  
23 there was justification based on their review of the evidence  
24 to take the matter further?

25 A. No.

1 Q. You weren't interested in the views of these senior Mounted  
2 Policemen.

3 A. The only...

4 Q. Why they considered the matter should be looked at?

5 A. Well, you know, counsel I don't want you to put words in  
6 my mouth. The only advice, only information I recall  
7 getting as to the views of the RCM Police was that the matter  
8 should be referred to the Attorney General's Department.  
9 That's the only advice I recall being told at that meeting.

10 Q. I understand that, sir, but what I'm trying to determine is  
11 why you wouldn't have been interested to know why they  
12 considered the matter should be referred. The police who  
13 looked at this independently and came to that conclusion.

14 A. Well, you know, I don't know what conclusion they came to  
15 and I don't know what they looked at.

16 Q. Well, you know that. It's in the letter of...

17 A. Well, I'm sorry, I don't...

18 Q. That's sent to you by the Auditor General.

19 A. I don't read the letter that way, Mr....

20 Q. Well, how do you read it? I can't read it in any other way.

21 A. That they had some involvement with the Auditor General  
22 and that based on what they saw that there is justification  
23 to take the matter further, and my information that I was  
24 told was that their advice was to refer it to the Attorney  
25 General's Department. That's all I concluded from it.

1 Q. Wouldn't you conclude that when the RCMP suggest that a  
2 matter be referred to the Attorney General, it's because they  
3 believe a crime has been committed?

4 A. Not necessarily.

5 Q. Okay. Having left the meeting...

6 A. If they believe there is a crime that was committed, I would  
7 have thought they would have taken charge of the  
8 investigation at that point. They refer for legal opinions on  
9 a whole range of things, not necessarily because there's a  
10 crime.

11 Q. Was it your expectation at the end of that meeting then that  
12 you were going to give a legal opinion to the RCMP?

13 A. No. I had no expectations that there was anything required  
14 of us to go the RCMP. We will look at it, and consider it, and  
15 if there was a nec...in our opinion a basis for an  
16 investigation, then we would have asked the RCMP police for  
17 an investigation. That's the way I would have thought.

18 Q. So you were going to look at whether in your opinion there  
19 would be a basis, a requirement for an investigation to be  
20 carried out.

21 A. No, no, to see whether or not the documentation evidenced  
22 any wrongdoing and if so then there would, of course, have  
23 to be an investigation.

24 Q. Okay. After the meeting then, Mr. Coles, sir, what did you  
25 do?

1 A. Oh, I don't recall specifically. At some point after the  
2 meeting I called the Speaker, the Honourable Arthur  
3 Donahoe, to inform him that we had met with the Auditor  
4 General and that we had certain material that we were  
5 considering and that I think at that time I probably  
6 mentioned to him that we would need to have copies of the  
7 rules that were in force during that period. It was...I think  
8 it was a period in '82, I'm not sure right now, I think it was  
9 in two short periods in the year 1982. And I think that was  
10 the meeting, and I understood him to say that he was going  
11 to be meeting with Mr. MacLean to ascertain explanations  
12 that weren't, you know, apparent and that he would advise  
13 me or get back to me or words to that effect. So I don't  
14 think I did anything further prior...other than that.

15 Q. When you advised the Speaker of the involvement of your  
16 department, he was already aware of that, was he not, or  
17 aware that you were going to become involved?

18 A. I think so. I think so. He wasn't surprised to hear from me.

19 Q. And why is it that you were in contact with the Speaker?  
20 Why would you do that? The Auditor General asking you  
21 for advice, why would you go to the Speaker and inform him  
22 what you were doing?

23 A. Well, the Speaker really wasn't in his capacity as Speaker, it  
24 was in his capacity as chairman of the Internal Economy  
25 Board and that was a board that controlled members'

1 expenses and provided for them and had the rules that  
2 pertained to them, and so I had to contact him, in my  
3 opinion, to have access to that material.

4 Q. He also indicated to you, I believe you said, that he was  
5 going to be meeting with Mr. MacLean?

6 A. It's my understanding that it was at that time that I learned  
7 that...that he said that he would be meeting with Mr.  
8 MacLean.

9 Q. Was...could that have been a suggestion from you that he  
10 meet with Mr. MacLean to get an explanation?

11 A. It could have been. I don't recall.

12 Q. You would see, I take it, nothing wrong with the Speaker  
13 interviewing Mr. MacLean and getting his explanation.

14 A. No, I don't see anything wrong with it.

15 Q. There was a suggestion yesterday, Mr. Coles, and perhaps I  
16 can get you to look at page, I think it's page 23. In the...at  
17 the top of that page, and these are notes made by Staff  
18 Sergeant Leigh and I'm not suggesting that you've seen  
19 them before, but...

20 A. Well, I haven't.

21 10:35 a.m.

22 Q. At the top of that page, it says "telephone call from Paul  
23 Cormier, Deputy Attorney General of Nova Scotia. He advised  
24 that yesterday on the advice of the..." And there's a blank  
25 there. That says "Premier" in the original. "On the advice of

1 the Premier and Art Donahoe, Speaker of the House, he  
2 attended a meeting at the Speaker's office." Did you have any  
3 discussions with the Premier concerning this, what was being  
4 done with the Attorney General?

5 A. None whatsoever.

6 Q. Did you have any discussions with the Attorney General  
7 telling him what you were doing?

8 A. At this point in time?

9 Q. At the point in time that you were reviewing this matter to  
10 determine whether, in your opinion, any wrongdoing had  
11 taken place?

12 A. Oh, I'm sure I had with the Attorney General, but I don't  
13 recall. They wouldn't, it would not be other than just to say  
14 that we have been asked by the Auditor General to consider  
15 this matter. I doubt if there was anything more than that.

16 Q. Did you review the information given to you by the Auditor  
17 General?

18 A. Oh, I was familiar with it but I asked Mr. Gale to consider the  
19 matter and give me his opinion and advice. I was waiting on  
20 Mr. Gale's advice on the matter, but I was familiar with it,  
21 yes. There wasn't that much material.

22 Q. What type of materials were there?

23 A. Well, as I say, my recollection was that there were copies of  
24 statements that were submitted in support of the expense  
25 claims for lodgings and food and normal type of expenses.

1 Q. Did you notice that all of the receipts were sequentially  
2 numbered, for example?

3 A. Yes.

4 Q. You noticed that.

5 A. Yes, and they were all run through on what we learned to be  
6 a hotel stationery.

7 Q. And the hotel being the Sheiling Hotel in Port Hawkesbury?

8 A. That is correct. The hotel was not, that part of the... That part  
9 of the invoice was cut off. There was no representation that it  
10 was the Sheiling Hotel.

11 Q. But you did subsequently learn that that's where they came  
12 from.

13 A. Yes.

14 Q. And that they were sequentially numbered.

15 A., Yes.

16 Q. Did you also note that there was claims for taxes and meals on  
17 those receipts?

18 A. Well, I don't recall. If they were there, I would have noticed  
19 it. I don't recall.

20 Q. And that they were used or submitted as expense receipts for  
21 expenses incurred while the Member was in Halifax.

22 A. I'm not sure. They were expense receipts. They were  
23 statements of expenditures.

24 Q. were they not submitted as receipts?

25 A. They were submitted in support of the expenditures and the

1 explanation that I understand, that I recall, was they were  
2 not intended to be receipts per se. They were an accounting  
3 of the monies expended.

4 Q. Who gave you that explanation?

5 A. I think that was set out in a letter I received from Mr.  
6 Donahoe following the meeting he had with Mr. MacLean.  
7 Either that source or when I received Mr. Gale's opinion.

8 Q. All right, let's go to the letter to you from the Speaker, and  
9 that's on page 29. Did you consider it important that Mr.  
10 MacLean be interviewed and explain what the various  
11 receipts were intended to be?

12 A. No, I don't think I considered it important. It was useful to  
13 have an explanation of what they were.

14 Q. Let me take you to page 30 of that letter and the second full  
15 paragraph where it starts out "The procedure..." Do you see  
16 that?

17 A. Yes.

18 Q. "The procedure he followed..." That's Mr. MacLean, "was to  
19 keep track of these trips." He's talking about trips he took to  
20 Halifax and had stayed in other people's apartments and so  
21 on. "On his return to Port Hawkesbury, he would advise a  
22 female employee of the motel, have her ring through receipts  
23 for accommodation after first clipping off the name of the  
24 motel from the receipt form and submit these receipts in  
25 support of his expenses." Now you know that's not correct.



1 That can't possibly be correct, given the information you  
2 have.

3 A. Well, at that time, no, they were not receipts on the face of  
4 them, no. Of course not.

5 Q. Neither was it... This is telling you, isn't it, Mr. Coles, that as a  
6 regular procedure, Mr. MacLean would go to Halifax. When  
7 he come back, he would give his employee advice, have her  
8 ring through a receipt, and he'd then submit it. That's what  
9 you're being told. Isn't that correct?

10 A. That's what it says, yes.

11 Q. Well, how could you possibly then end up with sequentially  
12 numbered receipts, if you followed that procedure?

13 A. Well, your point is well taken. I don't know and I don't know  
14 when we noticed they were, you know, when they were  
15 examined. They were examined subsequent to this letter by  
16 Mr. Gale.

17 Q. But you said you yourself were aware.

18 A. I was aware, yes. I'm not sure of the exact point in time I  
19 was aware of it.

20 Q. Let me just quickly, we'll come to this in detail, but turn to  
21 page 35. That's your letter to the Attorney General, in the  
22 second paragraph.

23 A. That's my report, yeah.

24 Q. In the second paragraph, the second letter, you say:  
25

MR. COLES, EXAM. BY MR. MACDONALD

1 Mr. MacLean's explanation of the manner in  
2 which he filed his Statement of Travel and  
3 Living Allowances is, in our opinion, a reasonable  
4 explanation.

5 A. Yes.

6 Q. Now I put to you, sir, that it can't be reasonable because it, in  
7 fact, is implausible.

8 A. Well, may we look at Mr. Gale's opinion?

9 Q. Certainly. That's on page 32.

10 A. My... My report there, I think, is based on what Mr. Gale  
11 advised me on the top of page two there. That was based on  
12 the explanation I was referring to.

13 ...supporting receipts, however, these were  
14 simply used as means of accounting for his  
15 expenditures as he stayed at private  
16 accommodations.

17 Q. I'm sorry, where are you looking at?

18 A. I'm sorry, at the top of page 33, the top paragraph.

19 Q. Okay, I understand that that's what Mr. MacLean said, but  
20 I'm...

21 A. Well, you're asking me why I made that statement. It was  
22 based on Mr. Gale's advice and opinion to me, which is what I  
23 relied on.

24 Q. But you also had a letter from the Speaker in which he sets  
25 out what he was told by MacLean. You had no interview with  
MacLean, did you?

A. No.

1 Q. And you know Mr. Gale had no interview with MacLean.

2 A. Not that I'm aware of.

3 Q. So the only interview with MacLean and the only information  
4 that you had was on page... Was of the letter from the  
5 Speaker to you. Yes?

6 A. Yes, and... Yes, that's right. But I was acting on Mr. Gale's  
7 opinion and advice and that's what... That's the genesis of that  
8 item of my comment in my report to the Attorney General.

9 Q. Would you agree with this, Mr. Coles, that the explanation  
10 that Mr. MacLean gave to the Minister, I'm sorry, to the  
11 Speaker, which is found on page 30, in part, is an implausible  
12 explanation and certainly is not reasonable, given what you  
13 knew.

14 A. Well, if that... Yes.

15 Q. Thank you.

16 A. It's not...

17 Q. It's not reasonable. Yes?

18 A. Well, I interpreted it as saying that that was an accounting for  
19 the expenditures he made and his reference to it being a  
20 receipt. It was not a receipt and, to that extent, it was not  
21 reasonable, yes.

22 Q. Well, it's implausible, sir, that, I suggest, that he followed the  
23 procedure which he told the Speaker he did follow, given the  
24 information you had.

25 A. Well, that may be. I mean I don't know the mechanics of how

1 you would have consecutive receipts. He may have had a  
2 special pad that he used for this purpose, I don't know.

3 Q You know they were cash register receipts.

4 A. Yes, I don't know where the marking... I don't recall right now  
5 where the markings were.

6 Q Well, at least wouldn't it put a question in your mind that  
7 maybe this explanation is not plausible. Maybe it's not  
8 reasonable.

9 A. Well, it should have, if it didn't, but I... I left the matter to Mr.  
10 Gale to consider and advise me on it. I didn't specifically look  
11 at it in any particular detail.

12 Q Maybe we should have an investigation. Did that ever enter  
13 your mind?

14 A. Well, I was waiting on Mr. Gale's advice and his advice gave  
15 no basis or reasons for any investigation.

16 Q We'll come to Mr. Gale's advice to you. On page 23 again.  
17 This is the... I'm again referring to the note that Staff  
18 Sergeant Leigh made and it's at the bottom of the page that I  
19 want to refer you to and get your comments.

20  
21 Cormier advised that Donahoe (that's the blank  
22 there, Mr. Coles) that Donahoe is reporting the  
23 results of his investigation directly to the Deputy  
24 A.G., Mr. Coles. Coles is not interested in having  
25 the matter investigated by the police. Mr. Gale is  
not opposed to a police investigation, although he  
will go along with Coles' wishes.

1 Did you ever convey to Mr. Gale that you did not want a  
2 police investigation to be carried out in this case?

3 A. No, not to my recollection. I think at that point in time, we're  
4 talking, noting here, it's the first of... It's January of '84. I  
5 would not have been in a position to agree or disagree to a  
6 police investigation at that point. We hadn't even considered  
7 the matter, to my knowledge. And certainly I wouldn't have  
8 a police investigation unless there's a basis for one, and I  
9 certainly wouldn't oppose one, if I was advised there was a  
10 basis to one.

11 Q. Did you...

12 A. I don't know where that statement originated.

13 Q. Did you and Gale ever discuss this topic whether or not there  
14 should be a police investigation?

15 A. Not that I recall because when I got his advice, there is no  
16 basis for a police investigation and that was it. I don't recall  
17 talking about whether there would or wouldn't be one until  
18 we got his advice on the matter. And there's nothing on that  
19 that suggested to me there should be a police investigation.

20 Q. Nothing in what?

21 A. In Mr. Gale's advice.

22 Q. Again, we'll come to that. The last paragraph on page 24:

23  
24 From the information supplied by Cormier, it  
25 would appear that any chances for a successful  
police investigation are being seriously

hampered by Donahoe's investigation.

1 That's the blank there.

2 A. Well, I don't know what that refers to.

3 Q. Would you not agree that having the Speaker interview Mr.  
4 MacLean, disclose to him all of the concerns that could give  
5 rise to the suggestion that there may be criminal activity, that  
6 that's a bad way to proceed with an investigation?

7 A. Well, I don't know what Mr. Donahoe may have said to Mr.  
8 MacLean. I knew that he was going to... I understood that he  
9 was going to get explanations for the material that was  
10 submitted and he is a person who has a right to have  
11 explanations, it seems to me.

12 Q. In order to get an explanation, wouldn't you have to disclose  
13 to MacLean what it was that was concerning you?

14 A. Well, of course. But if there's an accounting irregularity or  
15 any other kind of irregularity, it seems to me that the person  
16 responsible for approving or passing the accounts has a right  
17 to an explanation. That's all I understood from the meeting  
18 he was going to have.

19 Q. And you would not believe, then, that the Speaker carrying  
20 out an investigation could hamper a subsequent police  
21 investigation on the same matter.

22 A. I wouldn't think so.

23 Q. Thank you. Let me take you back to page 22. That has been  
24 identified yesterday, Mr. Coles, as a memorandum from  
25

1 Inspector Blue to Chief Superintendent MacGibbon given the  
2 day following your meeting with the Auditor General and in  
3 which there is identified various sections of the Criminal Code  
4 which may have been violated. Do you know whether those  
5 various sections in those various potential crimes were  
6 considered by your Department? Were they considered by  
7 you?

8 A. They weren't considered by me. I left the matter to Mr. Gale.

9 Q. And you were content to rely on what Mr. Gale would advise  
10 you in that respect?

11 A. Yes.

12 Q. Thank you. Let me go then to the opinion... Well, first of all,  
13 we'll go back to page one of this booklet. These are notes that  
14 were made by Mr. Cormier. I want to direct your attention to  
15 the bottom of page one where it's... That paragraph that starts  
16 "moreover..." He's talking here about the explanation that was  
17 given to the Speaker by Mr. MacLean.

18 A. Just a moment, Counsellor, I'm not sure I'm in the same...

19 Q. It's on page one.

20 A. the last paragraph? Oh, yes, okay.

21 Q. These were Mr. Cormier's reflections, as I indicated. But he's  
22 talking there about the explanation that was given by Mr.  
23 MacLean to the Speaker. He says:

24 I personally find it extremely difficult to accept  
25

MR. COLES, EXAM. BY MR. MacDONALD

1 the veracity of the explanation and  
2 documentation provided. Again, I will make no  
judgement on the legality of the matter.

3 Then he says:

4 Consider that, first: There were 42 cases of S.M.  
5 (That's Sheiling Motel) vouchers used. Second,  
6 they were in continuity. Third, they included  
7 meal and tax charges as well so they could not  
8 be considered as memos prepared after each  
trip. No explanation why this support...this type  
of support documentation had to be used in lieu  
of proper type of documentation.

9 Would all of those concerns not be in your mind as well  
10 from a review of the documentation and considering the  
11 explanation given by MacLean?

12 10:50 a.m.

13 A. Well, I had left the matter to Mr. Gale. I didn't address the  
14 matter directly and personally on those matters. I left the  
15 matter to Mr. Gale and he gave me his opinion and advice on  
16 that.

17 Q. Did you...

18 A. I don't know as to whether or not...whether he addressed  
19 those.

20 Q. Would you agree that...

21 A. ...particular points or not. This was not...

22 Q. Would you agree that those are points that should have  
23 been considered by your department before advising the  
24 Minister that no charges should be laid?

25 A. Well, they certainly are legitimate concerns, certainly.



1 Q. Thank you. And concerns that should have been looked at  
2 by Mr. Gale.

3 A. Probably.

4 Q. Thank you.

5 A. But I don't know what concerns, other concerns, that he may  
6 have looked at that may have have mitigated against those.

7 Q. And he'll, of course, gave us his evidence on those points. I  
8 take it Mr. Gale was asked by you and you expected that he  
9 would review all of the documentation, consider the  
10 explanation given to the Speaker by Mr. MacLean and in the  
11 context, in that context, review the authorities and advise  
12 you whether any wrongdoing had occurred, whether any  
13 investigation should be carried out, whether any charges  
14 should be laid.

15 A. I don't recall giving him specific instructions. I asked him to  
16 consider the matter and advise me.

17 Q. If you had given him specific instructions, is that not the  
18 sort of thing you would have wanted to tell him to do?

19 A. Well, sure, I don't think I would need to tell Mr. Gale those  
20 kind of factors to be considered.

21 Q. Would you be expecting then in getting an opinion from him  
22 that he would have done all of those things, he would have  
23 reviewed the documentation in detail, he would have  
24 considered the explanation given by Mr. MacLean in the  
25 context of the documentation that was available and he

1 would have looked at the authorities and all relevant  
2 sections of the Criminal Code before giving advice to you?

3 A. If I had specifically addressed myself to those issues,  
4 probably so. I thought, and I do have full confidence in Mr.  
5 Gale's ability to advise me on a matter of this kind as, in  
6 fact, he did.

7 Q. All right. Let's go to the opinion that you received from Mr.  
8 Gale. It starts on page 32. Can I...am I accurate, Mr. Coles, in  
9 saying that after the meeting with the Auditor General, you  
10 took a fairly passive role; you were waiting for the advice  
11 from Mr. Gale?

12 A. That is correct.

13 Q. Thank you.

14 A. Well, and I think I was waiting for advice, a reply from Mr.  
15 Donahoe. I think he indicated that he was going to get back  
16 to me or write to me or something.

17 Q. When you got the advice from Mr. Donahoe, what did you do  
18 with it? We've already looked at that letter of January 13th,  
19 1984.

20 A. It would go in the file.

21 Q. Would it go to Gale?

22 A. Well, the file would be either in ...with Gale or myself. It  
23 would...sure, he would have access to it.

24 Q. Would you...

25 A. I don't know at that point whether the file was in my office

1 or in Mr. Gale's office, but he would have access to it.

2 Q. You would have brought it to Mr. Gale's attention.

3 A. Well, but it was there for his attention. I don't recall  
4 specifically bringing it to his attention. There would be no  
5 need for me to. It would be in the file.

6 Q. Is it your understanding that Mr. Gale had a copy of that  
7 letter, that he saw it, that he read it, that he considered it?

8 A. Well, I would expect so. There's no reason why he would  
9 not have had it.

10 Q. Thank you. Let me take you to page 33. I want to get to the  
11 essence of Mr. Gale's legal opinion, and that's the second  
12 paragraph where he says, "The only charge that could be  
13 considered is that of fraud under Section 338 of the Criminal  
14 Code." You accepted that to be the case, did you?

15 A. Yes

16 Q. Did you ask him...did you consider, Mr. Coles, a charge of  
17 forgery?

18 A. No, I didn't.

19 Q. Did you consider a charge of uttering forged documents?

20 A. No.

21 Q. Did you consider a charge of false pretences?

22 A. No. I had no basis to put those questions.

23 Q. But you agree that, at least on the surface, where you are  
24 dealing with a receipt from the Sheiling Motel, you now  
25 know that it's a Sheiling Motel receipt that is being

1 submitted as an...on an expense account, that on the surface  
2 anyway that's a forgery, when it purportedly relates to  
3 expenses incurred in Halifax.

4 A. Well, you know, I'm not in a position to debate the law with  
5 you, but I suppose that if it's intended to be represented,  
6 misrepresented, it could be a misrepresentation. But, you  
7 know, I don't know, I didn't consider to look in to that.

8 Q. Let me go on with his opinion. "However, since it is virtually  
9 impossible to prove the LIEB regulations or that Mr.  
10 MacLean had knowledge of them, a charge could only be  
11 proceeded with if he had not expended the money the  
12 claimed for," I expect that should mean "He claimed for." I  
13 don't understand that. If you obtain money, if you do, by  
14 false pretences or by the use of forged receipts, you could  
15 claim...you could charge for it, couldn't you?

16 A. I think you're making a presumption there that's not stated.  
17 I think what I would understand from that is if the money  
18 is expended and the form of proof of expenditure is  
19 different than...is not in a receipt, that doesn't mean the  
20 money has not been expended. It may disentitle you to  
21 reimbursement because you haven't complied with the rules  
22 unless there is a provision to accept an explanation for non-  
23 compliance. I don't think, I don't...

24 Q. Let me go on.

MR. COLES, EXAM. BY MR. MacDONALD

1 In the material we have, it appears that the  
2 claims are not fraudulent in that he made trips  
3 and expended money although there is no hard  
4 evidence as to how many trips he made or how  
5 much he expended. But on the other hand, there  
6 is no evidence on which to contradict his  
7 assertions. If one wanted evidence to prove or  
8 disprove his assertions then a police  
9 investigation would be necessary.

7 Now you read that and you understood that at the time it  
8 was told to you.

9 A. Yes. Read the next paragraph too, the last sentence in the  
10 next paragraph.

11 Q. Okay. Let's read the whole paragraph.

12 A. All right.

13 Q.

14 In conclusion, it is a matter for the Speaker's  
15 office to determine under the LIEB regulations  
16 which, if any, of the trips are to be considered to  
17 be on constituency business. The remainder of  
18 the trips will have to be paid back by Mr.  
19 MacLean or he will have to be compensated from  
20 other sources. On the information we have,  
21 there is no basis for criminal charges in that  
22 there is no *prima facie* case if one accepts the  
23 explanations given by Mr. MacLean.

20 And that's the basis of the opinion, isn't it?

21 A. Yes.

22 Q. Now isn't that the same as saying, "We have a potential  
23 accused here, but he denies that he committed a crime,  
24 therefore, we can't proceed with the investigation"?

25

MR. COLES, EXAM. BY MR. MacDONALD

1 A. Well, that's not my interpretation.

2 Q. What other interpretation can there possibly be? He says  
3 we can't get any evidence to contradict MacLean unless we  
4 do a police investigation and because we don't have any  
5 evidence to contradict him, we have to accept what he says.

6 A. Well, he...he says...gives no basis or reason why you  
7 shouldn't accept the statements that he accepted.

8 Q. He never interviewed Mr. MacLean, did he?

9 A. Not that I know of. But I...

10 Q. And you agree with me, you did a few moments ago, that  
11 the explanation MacLean gave on the surface anyway is  
12 implausible.

13 A. Yeah, but not necessarily criminal. He may not be entitled  
14 to be reimbursed if he expended the money and the receipts  
15 were not, were not acceptable or the evidence was not  
16 acceptable, but that doesn't necessarily make it wrong,  
17 criminally wrong.

18 Q. What the person has told the Speaker cannot be true.

19 A. It may not be true but it's not necessarily criminal.

20 Q. Well, if an accused tells you a story that cannot be true in  
21 justification for what he did, do you accept that as saying,  
22 fine, we don't have any other evidence to the contrary so we  
23 won't charge you?

24 A. Well, all I know is that it was...this was the basis of this  
25 conclusion that, in my opinion, that was...that was it.

1 Q. But you...

2 A. I accepted it.

3 Q. You accepted it. But, Mr. Coles, isn't that what you're being  
4 told here, that MacLean denies it, we don't have any  
5 evidence to the contrary, so we won't lay charges and we  
6 couldn't get evidence to the contrary unless we did a police  
7 investigation?

8 A. I didn't see or read into this that...the words that you're  
9 suggesting it says. My reading of it at the time was that  
10 there is nothing...there is no evidence to contradict his  
11 assertions but there is no recommendation or suggestion  
12 that there...that it ought to be checked out, that on the face  
13 of it it appeared acceptable and negated any charge of fraud.  
14 That's what I read from this.

15 Q. Do you agree with this, Mr. Coles? The only evidence you  
16 have at that time, the only evidence Mr. Gale had, is Mr.  
17 MacLean's explanation.

18 A. I think you have to ask that of Mr. Gale. I...

19 Q. I'm asking you, sir, because you accepted it.

20 A. I presume that's what he had, but I, you know, I'm not in a  
21 position to say that's all he had.

22 Q. You're not aware of anything else.

23 A. I'm not aware of it, no.

24 Q. And the explanation, you will agree, on the surface of the  
25 procedure that Mr. MacLean says he followed is implausible.

MR. COLES, EXAM. BY MR. MACDONALD

1 A. On the face of that explanation, that's right, I can't think of  
2 any other explanation for it.

3 MR. MacDONALD

4 Do you want to take a break?.

5 BREAK - 11:03 a.m.

6 11:25 a.m.

7 Q. Mr. Coles, we were referring to the opinion that was given to  
8 you by Mr. Gale and I was putting to you my reading of the  
9 advice that you received. But could you tell me what you  
10 understood the opinion that you were being given by Mr.  
11 Gale? What were you being told?

12 A. Well, I suppose it's best expressed by the last sentence of the  
13 third paragraph on page 33 in which Mr. Gale says "On the  
14 information we have, there is no basis for criminal charges  
15 and that there is no prima facie case if one accepts the  
16 explanations given by Mr. MacLean." And there is nothing in  
17 that that made me not accept the explanations and so that's  
18 the basis... That's the bottom line of what I understood, plus  
19 some recommendations as to how the system ought to be  
20 improved.

21 Q. The only information you have, and just so I understand it, is  
22 what was given to you by the Auditor General and the results  
23 of the interview which the Speaker had with Mr. MacLean.

24 A. The only information I had?

25 Q. The only information the Attorney General's Department had.



1 A. To the best of my knowledge. Well, we also had access to the  
2 rules and the acts that were involved, the House of Assembly  
3 Act. You know, we had the statutory documentation.

4 Q. Chief Superintendent MacGibbon testified yesterday that the  
5 information that was given to the R.C.M.P. by the Speaker, by  
6 the Auditor General, the same information we understand  
7 that was given to the Attorney General.

8 A. I don't know what was given to...

9 Q. No, I'm telling you what our understanding is. That based on  
10 that information alone, it wasn't difficult to make out a *prima*  
11 *facie* case of forgery. That's what MacGibbon said. Would you  
12 agree with that or did you ever direct your attention to that?

13 A. No, there's no information that came to my attention that put  
14 in issue the genuineness of the...

15 Q. No, I'm sorry, I said based on the documents only, which are  
16 documents from the Sheiling Motel in Port Hawkesbury and  
17 which were advanced as receipts for expenses incurred in  
18 Halifax, based on the documents alone, it's not difficult to  
19 establish a *prima facie* case of forgery.

20 A. Well...

21 Q. Do you accept that?

22 A. I'm not in a position to respond to that. Mr. Gale was not of  
23 that opinion, obviously, or he would have said so. I did not  
24 consider it.

25 Q. I suggest to you that what you're being told here by Gale is

1 that based on the documents we have and what Mr. MacLean  
2 says, Mr. MacLean's explanation, there's no *prima facie* case.  
3 That's all you're being told. Isn't that correct?

4 A. I have no difficulty with what you're saying. I mean, sure.

5 Q. And isn't that the same as saying that the accused has given  
6 us an explanation which, in the absence of investigation, we'll  
7 accept and, therefore, we're not going to press ahead with an  
8 investigation. And we're not going to lay any charge.

9 A. Well, I understood it more than that. That there was nothing  
10 about the explanation that warranted or was a basis or reason  
11 for having an investigation. I didn't read anything in Mr.  
12 Gale's opinion or advice that suggested that there should be a  
13 police investigation.

14 Q. Did you read anything at all? Did you read what the Speaker  
15 said about his interview with MacLean?

16 A. Oh, I think I read it. But, as I say, the matter, I was leaving  
17 the matter for Mr. Gale to advise me on and I don't think I, in  
18 hindsight, one might have treated it differently. But, at the  
19 time, I didn't.

20 Q. "Didn't even justify an investigation."

21 A. Well, I was relying on the opinion and advice of Mr. Gale and  
22 I didn't see that being suggested or recommended.

23 Q. But he also said "If one wanted evidence to either prove or  
24 disprove what MacLean said, a police investigation would be  
25 necessary."

1 A. Yeah, I didn't interpret that as a recommendation or a basis  
2 that he was saying there should be.

3 Q. But he did advise you that in order to either prove or  
4 disprove MacLean, a police investigation would be necessary.

5 A. Well, that's what he says there, but I...

6 Q. And then he says that "If you want to accept what MacLean  
7 says, then no charges are warranted."

8 A. Yes, and he didn't say there was any reason not to accept the  
9 explanation and, in the absence of that, I didn't... I didn't take  
10 that position.

11 Q. Surely you're not suggesting that every accused in Nova  
12 Scotia is given that benefit.

13 A. I don't know. I'm simply saying that this is the advice, the  
14 opinion I acted on, accepted and acted on.

15 Q. Okay. Now you know the advice is, within a year or so is  
16 wrong, that an investigation, in fact, was carried out by the  
17 police and that, in fact, there was evidence to warrant the  
18 laying of charges and, in fact, support a conviction.

19 A. I'm not saying that this opinion and advice at that time was  
20 wrong. Certainly in hindsight, there should have been an  
21 investigation, of course.

22 Q. Well, the advice is wrong, isn't it?

23 A. Well, considering what Mr. Gale looked at. He did not,  
24 obviously, see that that material supported a charge under  
25 338 and all I'm saying is that right or wrong, that was his

1 opinion and that was the opinion I accepted and acted on.

2 Q. Let me just see if I can summarize. You're told by Mr. Gale  
3 that if one wants to prove or disprove what Mr. MacLean  
4 says, his explanations, you must carry out a police  
5 investigation. If you want to accept what MacLean says, then  
6 there is no evidence to justify laying charges.

7 A. Yes, that's what he...

8 Q. That's what you're told.

9 A. That's right.

10 Q. And I put to you then, you must have formed the  
11 independent conclusion that I will not ask for an investigation  
12 to either prove or disprove what MacLean says.

13 A. Well, I keep repeating myself and you keep putting the same  
14 question to me. I did not read into this opinion a basis not to  
15 accept or reject the explanation. And if Mr. Gale had thought  
16 otherwise, I would have expected him to have recommended  
17 a police investigation.

18 Q. Okay. Now we come to your advice to the Attorney General.

19 A. Well, it's more of a report.

20 Q. Yes, you enclose Mr. Gale's report. And then you say, in the  
21 second paragraph:

22  
23 It is Mr. Gale's opinion, with which I concur, that  
24 the irregularities in Mr. MacLean's compliance  
25 with the general regulations made pursuant to  
the House of Assembly Act, are more accounting  
irregularities rather than such as to warrant any

further criminal investigation.

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Now that was based on Mr. Gale's opinion, was it?

A. Yeah, that was my conclusion of what he said, yes.

Q. And I suggest it must have been for you to say you concurred with it, you must have accepted Mr. MacLean's explanation as well.

A. Yes.

Q. But the explanation, I think we've already looked at, is not plausible.

A. Well, as I look at it now, that's right. But at the time, it... My reading of it, I did not, I did not see anything that suggested otherwise to me at the time.

Q. Mr. Cormier testified yesterday on several occasions that the minute he heard the explanation, he knew it was implausible. But you didn't. When you saw the explanation, it didn't register with you.

A. No, no.

Q. Is it the first time you considered it implausible when I suggested it to you today?

A. Yes.

Q. Thank you. You further advised the Minister, and we've already looked at that, that Mr. MacLean's explanation is a reasonable explanation. Do you still consider that it was a reasonable explanation?

A. Well, in hindsight, as I say, in hindsight, I think, obviously,

1 one would have had a police investigation. But, at the time,  
2 that did not seem required or called for.

3 Q. Would you agree with this that had you carefully considered  
4 the documents and what Mr. MacLean had told the Speaker in  
5 1984, January, 1984, that you would have ordered a police  
6 investigation at that time?

7 A. Well, you know, it's easy to say yes, but I mean it's  
8 hypothetical. I don't know. I was relying on the advice that I  
9 got from Mr. Gale.

10 Q. Okay. You also, in this letter to, or report to the Minister in  
11 the fourth paragraph say:

12 We have communicated our opinion in the  
13 matter to the R.C.M.P.

14 How did you do that?

15 A. Well, it's my recollection is, I asked Gordon to tell them that,  
16 not that we not under any obligation to tell them, but I, my  
17 recollection is that I would have asked Gordon to say, "Well,  
18 you'd better tell the R.C.M. Police of our position." I would  
19 never have reported that to the Minister at that time if I  
20 hadn't, and I just presumed that he had. After all, you must  
21 remember the R.C.M. Police are dealing, or Mr. Gale is dealing  
22 with the R.C.M. Police on a daily basis and meeting with the  
23 C.I.B. officer on a weekly basis, on a regular weekly basis and  
24 I presume that he carried out that.

25

1 Q. Chief Superintendent MacGibbon testified yesterday that he  
2 was never advised, that the R.C.M.P. were never advised.

3 A. Well, if he wasn't, I don't know, you know, if he wasn't, I  
4 don't know Mr. Gale's position. My understanding was Mr.  
5 Gale was going to advise them. I would not normally be  
6 advising them and I just presumed that Mr. Gale had done so  
7 because, otherwise, I would not have written that in that  
8 report.

9 Q. In writing it to the Attorney General, it was your  
10 understanding that the R.C.M.P. had been advised and I  
11 think...

12 A. Yes.

13 Q. You said earlier this morning that you had told Mr. Gale to  
14 advise the R.C.M.P.

15 A. Yes.

16 Q. So you just assumed that he did.

17 A. I don't know if I told him. You know, I said, "We'd better tell  
18 the R.C.M. Police and do so."

19 Q. Okay.

20 A. Or words to that effects, I presume.

21 Q. What did you mean when you told the Minister that, in that  
22 same paragraph...

23 A. Before you leave that. You know, I didn't feel any obligation  
24 to the R.C.M. Police. I had no knowledge of their so-called  
25 "waiting for advice from us." That was news to me when I

1 heard it through testimony reported yesterday.

2 Q. Whether you felt an obligation or not, you intended that they  
3 be advised.

4 A. Oh, sure, because I knew that they had been contacted  
5 initially by Mr. Sarty.

6 Q. What did you mean by this comment, in the same paragraph?

7  
8 We have communicated our opinion in the  
9 matter to the R.C.M.P. who, although they were  
10 not formally asked to investigate the matter,  
11 nevertheless were made aware of the concerns  
12 of the Auditor General, since Mr. Arnold Sarty  
13 had spoken to them on an informal basis before  
14 bringing the matter to our attention.

15 What do you mean by the phrases "formal" and "informal"?

16 A. Well, that goes back to what I understood from Mr. Sarty at  
17 the time at our meeting that I understood that he had  
18 discussed it with the R.C.M. Police and got an opinion and the  
19 opinion was that they should refer the matter to the Attorney  
20 General. And my understanding was they had been asked for  
21 an opinion, not asked to conduct an investigation.

22 Q. So a formal request to conduct an investigation is one that,  
23 how was that communicated to the R.C.M.P.? You say that  
24 they were not formally asked.

25 A. Well, my understanding was that they... My information was  
limited to what Mr. Sarty told us at that meeting and if you're  
formally asked, you're asked to investigate and they would go



1 ahead and do their investigation. I had no knowledge that  
2 they were asked to or, in fact, did any investigation. But I  
3 was told that they gave an opinion.

4 Q. And the opinion being?

5 A. That the matter be referred to the Attorney General's  
6 Department.

7 Q. Thank you. And you then drafted a letter for the Minister to  
8 send to the Speaker in his capacity as Chairman of the  
9 Internal Economy Board, is that correct?

10 A. That's correct.

11 Q. And that was the end of the matter, as far as you were  
12 concerned until, for that period of time.

13 A. Yes.

14 Q. When did it next raise its head then?

15 A. I think my recollection is as what you have in the book here  
16 is when I received a copy of a letter from Mr. Herschorn, who  
17 was then the Director of Prosecutions, to the Minister asking  
18 to set up a meeting to discuss the question of plea bargaining.  
19 This was later on after charges had been laid and the accused  
20 is represented and counsel for the accused approached the  
21 prosecuting officer and made certain representations.

22 Q. Do you, in your capacity as... Did you in your capacity as  
23 Deputy Attorney General review the report of the Auditor to  
24 the Legislature as a matter of course?

25 A. Did you ask me whether I read it?

1 Q. Yes.

2 A. Oh, sure.

3 Q. Was there anything in the report of the Auditor General, the  
4 1984 report, that would have caused you to reflect on the  
5 decision that was made by you in... When was it? April of  
6 1984?

7 A. I don't recall.

8 Q. Let me take you to some of the contents of that report. On  
9 page 8 of Exhibit 173.

10 A. Yes.

11 Q. The comments on page six. It says: "On April 18, 1984..."  
12 That's down towards the bottom, Mr. Coles.

13 A. Um-hum.

14 Q.  
15 The Attorney General in a letter to the Chairman  
16 of the Board presented his Department's reply to  
17 our request of November, 1983, regarding  
18 certain expense claims. The letter was made  
19 public by the Attorney General at a press  
20 conference on November 1, 1984.

19 What was made public was the letter to the Speaker. The  
20 opinion you had from Mr. Gale was never made public, was it,  
21 or your advice to the Minister?

22 A. Not to my knowledge, but it may have. I don't recall it.  
23  
24  
25

11:40 a.m.

1 Q. And then over on page 9, and I'm referring to the last  
2 paragraph on page 10 of the report, and over to the next  
3 page.

4 A. I'm afraid there's no numbers on my pages.

5 Q. I'm sorry.

6 A. Oh, I'm sorry, unless...is that...

7 Q. They're wrong.

8 A. I'm sorry.

9 Q. I'm sorry. I'm referring to page 63, I guess, of the report.

10 A. Okay.

11 Q. It's page 9 of Exhibit 174. It's the one over in the right-  
12 hand corner.

13 A. Okay.

14 Q. Where it talks about "one member's expenses" and it refers  
15 to Mr. MacLean. And it refers, again, to the April 18 letter  
16 which indicated there was no basis. And the Auditor goes  
17 on to say this,

18  
19 It should be clearly understood that it is not  
20 within the responsibility or the competency of  
21 my office to make judgements with respect to  
22 legal matters which have been referred to the  
Attorney General for his opinion or action.

23 Then on the next page,

24 However, as Auditor General, it is my opinion  
25 that the documentation employed and the

MR. COLES, EXAM, BY MR. MacDONALD

1 explanations provided by the member for  
2 certain expense claims are inappropriate for the  
3 expenses claimed and unacceptable from an  
4 audit standpoint.

5 Would you have seen that at the time it was published?

6 A. Well, it was available to me. I presume I did.

7 Q. If you had directed your attention to that...those particular  
8 paragraphs, would that have caused you to perhaps reassess  
9 the opinion you had given earlier?

10 A. I don't think so. I would interpret that he's talking about  
11 accounting procedures. There's some questions whether  
12 those expenses ought to have been paid because of the form  
13 of the documentation. But that wouldn't necessarily impute  
14 any criminal wrongdoing.

15 Q. Chief Superintendent MacGibbon again yesterday testified  
16 that having read the auditor's report, he considered, or was  
17 contemplating, commencing an investigation on behalf of the  
18 R.C.M.P., but there is nothing in the report that caused you to  
19 assess in any way the earlier opinion you had given?

20 A. No.

21 Q. Thank you. Turn to page...

22 A. I might say, if that was his view, it was certainly never  
23 made known to me.

24 Q. Thank you. Turn to page 46, please, of this booklet. This is  
25 a letter from Mr. MacLean, the Leader of the Opposition, to  
the chief R.C.M.P. officer in Nova Scotia. At this time were

1           you being asked by the Attorney General or the Premier or  
2           anyone else to reconsider this case and determine whether  
3           charges, whether an investigation should be called for?

4       A.    No.

5       Q.    Would you agree with the comments of Mr. MacLean? I  
6           guess he's actually reporting what was said by the Attorney  
7           General in the third paragraph, last sentence, "He," that's the  
8           Attorney General, "has refused to take any action  
9           whatsoever and has merely said the R.C.M.P. is free to  
10          investigate it if it so wishes." Would that be your  
11          understanding of the role of the police, if they want to  
12          investigate any suspected criminal activity, they're free to  
13          do so?

14      A.    Well, they have to have some basis for doing so, but they  
15          have...certainly have the jurisdiction to do so, sure.

16      Q.    Is it your understanding that they need any sort of special  
17          direction or authorization before they can commence an  
18          investigation of alleged criminal activity by a member of the  
19          Legislature?

20      A.    No, no, in the sense that they don't need any special  
21          instructions or authorization.

22      Q.    And so they're free to investigate provided they have some  
23          basis on which to suspect criminal activity is taking place.

24      A.    They have to have some allegations that would justify an  
25          investigation.

1 Q. And in particular, the R.C.M.P. do not require advice or  
2 consent from your office before launching an investigation  
3 in this case?

4 A. No, not unless they request such advice.

5 Q. If they request your advice, and they're advised not to  
6 proceed, do you understand that was the end of it?

7 A. Well, then it opens up another...another situation, because  
8 under the contract that they're...the AG's Department is the  
9 proper source for them to take legal advice from and you  
10 would expect people who seek advice to accept the advice.

11 Q. Now you were aware, were you, that the R.C.M.P. were  
12 carrying out an investigation in 19...in response to the  
13 Leader of the Opposition's request?

14 A. Oh, I think that was general public knowledge.

15 Q. And, in fact, would the R.C.M.P. not have advised your office  
16 through the regular Thursday meetings with Mr. Gale?

17 A. I would expect so. Well, I would expect so, sure.

18 Q. And you also are aware that, I assume, that following that  
19 investigation, the R.C.M.P. turned up sufficient evidence  
20 which in their opinion justified the laying of charges.

21 A. Yes.

22 Q. Are you aware whether in coming to that conclusion the  
23 R.C.M.P. consulted with any prosecutor in the employment of  
24 the Attorney General?

25 A. I have no knowledge.

1 Q. Would you expect that that would have happened?

2 A. Yes.

3 Q. It would have...

4 A. In the normal course, there is no instructions to the  
5 contrary, so...

6 Q. No instructions not to.

7 A. Sure.

8 Q. Okay.

9 A. No instructions that I was aware of.

10 Q. Do you have any reason to doubt that if the R.C.M.P. had  
11 been instructed to commence an investigation in January,  
12 February, April of 1984, they would have come up with the  
13 same information?

14 A. Oh, that's speculative, I don't know.

15 Q. Well, all of the information...you are aware that the charges  
16 laid against Mr. MacLean flow out of the same information  
17 that was available to you or to your department when you  
18 reviewed the matter in 1984?

19 A. Well, I'm not sure. We were looking at a period of several  
20 months in 1982 and I think the...I think the R.C.M. Police  
21 investigation covered a much larger period of time than  
22 that, the subsequent investigation. I'm looking here at page  
23 53, the very first line it says, "That for a period '81 to '86."

24 Q. Yeah, well, look back at page 32. You were looking at the  
25 period from June 25, '82, to November 30, 1982.

MR. COLES, EXAM. BY MR. MacDONALD

1 A. Yes.

2 Q. Now what page did you just refer me to?

3 MR. PINK

4 If my friend looks at the information, it shows the time  
5 range that was covered.

6 MR. MacDONALD

7 Yes, I understand that.

8 MR. COLES

9 A. Well, I just happened to have the page 53 before me at the  
10 time of your question.

11 Q. Look at page 47, it's the actual information. Now  
12 November...I'm sorry, the first charge is the...sort of the  
13 umbrella charge. If you go down to the next charge, it's  
14 between March, 1982, and 30th of June, 1982. Do you see  
15 that?

16 A. Yes.

17 Q. And the next is between August '82 and 30th of September  
18 '83. The next is the first of August '82 and 30th of  
19 September '83.

20 A. I'm sorry, I thought your question related to the  
21 investigation, the subsequent investigation, and my  
22 comments are just taken from the letter I refer you to on  
23 page 53, and the first line of that letter, first sentence, if I  
24 may be permitted to read it.

25 Q. Sure.



1 A. If you want me to.

2 Q. Sure.

3 A. "The R.C.M.P. investigation with regard to Mr. MacLean  
4 covers a period from October 6, '81, and includes up to  
5 February 20, '86." My only point of referring to that was I  
6 thought you suggested that their investigation...subsequent  
7 investigation covered the same period that...of the  
8 documents that were referred to me.

9 Q. Let me put it this way and perhaps it's more precise. That it  
10 would have included the same period of time.

11 A. Well, certainly.

12 Q. That you were looking at.

13 A. Oh, certainly.

14 Q. And you were aware that the R.C.M.P. and your prosecutor  
15 in dealing only... including the period that had been  
16 considered by your officer earlier, were of the opinion that  
17 Mr. MacLean had committed a crime.

18 A. I knew charges were laid. I was not personally aware of  
19 anything beyond that. I did not involve myself.

20 Q. You were involved in the discussions on what plea to accept,  
21 what fine to...

22 A. Yes.

23 Q. So in being involved in those discussions, did you not...

24 A. That was subsequent, that was subsequent to the period  
25 that you're asking the question on.

1 Q. Again my question may have been...may not have been  
2 precise enough and I apologize for that.

3 A. Oh, certainly.

4 Q. What I'm suggesting is that had you asked the R.C.M.P. to  
5 carry out an investigation in the early months of 1984 that  
6 you would...they would have come up with the same  
7 information respecting the months that you had looked at as  
8 they did later.

9 A. Oh, of course, I would expect them to, sure.

10 Q. And that that information showed that Mr. MacLean's  
11 explanation was wrong.

12 A. Yes.

13 Q. And the crime had been committed, in their view.

14 A. Yes, that warranted laying a charge, yes. That was not the  
15 opinion that I had from Mr. Gale.

16 Q. But you...but Mr. Gale's opinion and which you concurred is  
17 that let's not carry out an investigation.

18 A. Well, I saw nothing in the advice that I was given that  
19 would warrant a basis for carrying out an investigation, that  
20 is correct.

21 Q. Did you ever reprimand Mr. Gale for giving you the advice  
22 he did which appears to have been wrong?

23 A. No.

24 Q. Did you ever discuss it with Mr. Gale subsequently after the  
25 R.C.M.P. laid charges, after Mr. MacLean elected to plea

1 guilty?

2 A. No.

3 Q. So it was just...just forgotten.

4 A. Well, it didn't reoccur. I thought he gave me the best  
5 opinion that he had at the time and I accepted that.

6 Q. And you still think it's a good opinion.

7 A. Oh, of course not.

8 Q. But you've never communicated that to him.

9 A. I don't think he needed any communication from me.  
10 Subsequent events spoke loud and clear.

11 Q. Tell me about your involvement in the plea bargaining, so-  
12 called?

13 A. Well, I attended a meeting at the...that was arranged with  
14 the Attorney General at the time, the Honourable Mr. Giffin,  
15 and by Mr. Herschorn, who is the director of prosecutions  
16 and he summarized the situation, the factual situation that,  
17 advanced the representations on the question of an offer to  
18 plea bargain on the part of the counsel for the accused.  
19 There was a general discussion of those recommendations  
20 and the consensus of the three of us were that it was an  
21 appropriate and proper case to bargain and some...then  
22 discussion was on the various charges, and my recollection is  
23 that the consensus was that if there was to be a bargain plea  
24 that it should be on the first or the umbrella clause, the  
25 fraud clause, but in the alternative that the Crown would be

1 satisfied with a...with a plea of guilty on four of the specific  
2 counts. My recollection, and it's more based on having  
3 reviewed it from this material, that the...the counsel for the  
4 accused was asking for...to plead guilty on two counts.

5 Q. Were the merits of the case considered?

6 A. Oh, I think Mr. Herschorn, as I recall, summarized the, in  
7 fact, there's a letter that we had received from the  
8 prosecuting officer, Mr. Clair.

9 Q. Did you understand that the Crown believed they had a  
10 strong case and they could get a conviction?

11 A. I'm not sure at this point that that was...

12 Q. Was it normal for you to be involved in plea bargaining  
13 discussions?

14 A. Oh, not...we don't have that many plea bargaining  
15 discussions. The decision and our policy is that they be  
16 taken in our office and I'm involved in some of the more  
17 serious ones and others the directors attend on, and I'm  
18 consulted and informed about them. But I...

19 Q. Was this one of the more serious ones?

20 A. Oh, yes.

21 Q. Serious from what point of view, the person involved or the  
22 nature of the crime?

23 A. No, the nature of the crime and the...and certainly the  
24 person involved, the publicity and the public interest in this  
25 matter.

1 Q. Did you consult with the R.C.M.P. or the actual prosecuting  
2 officer to get his advice or their advice?

3 A. No, I was relying on the representations advanced by the  
4 director of prosecutions, Mr. Herschorn.

5 Q. What involvement did the Attorney General have?

6 A. Well, in this particular case he made the decision as to  
7 whether there would be and what...and he agreed. When I  
8 say he made the decision, it was his decision, but he agreed  
9 with the consensus or the views of Mr. Herschorn and  
10 myself.

11 Q. Was there any discussion about the appropriateness of an  
12 Attorney General being involved in that type of discussion  
13 where the accused is a Cabinet colleague?

14 A. No, not that I recall.

15 Q. Do you have any view as to whether that is appropriate?

16 A. Well, I didn't consider it inappropriate. I mean this is a case  
17 that he was...the charges that he was confronting were those  
18 of his own individual personal doing and I saw no conflict  
19 there, no.

20 Q. Was there discussion about the appropriateness of asking  
21 for a period of incarceration?

22 A. That was raised...that was one of the, certainly one of the  
23 considerations, but my recollection is that it was thought  
24 that a substantial fine in a range that was being  
25 recommended that was appropriate in the circumstances.

1 Q. Was there consideration given to the recent Nova Scotia  
2 authorities on that issue when incarceration should be  
3 requested and when it shouldn't be?

4 11:55 a.m.

5 A. I don't recall specifically. Mr. Herschorn may have alluded to  
6 it, but I don't recall specifically.

7 Q. In particular, do you recall if there was discussion about the  
8 September, 1979 decision of the Court of Appeal of Nova  
9 Scotia in the matter of the Queen v. Perry?

10 A. I don't recall specifically, no.

11 Q. But the topic was addressed, whether or not a period of  
12 incarceration should be recommended, and it was decided...

13 A. That the fine was appropriate.

14 Q. Thank you. Was there any differences of opinion between  
15 yourself and Mr. Herschorn on that matter?

16 A. Not that I recall. As I recall, the recommendation was fine,  
17 and there wasn't a big discussion on it. As I recall, the  
18 question came up what about incarceration and the consensus  
19 and agreement was that the fine was appropriate.

20 Q. And that was concurred then by you and the Attorney  
21 General.

22 A. Yes.

23 Q. All right. Now, Mr. Coles, we've spent some time in the last  
24 week or so, you and I discussing the involvement of the  
25 Attorney General's office in a couple of cases that have, at

1 least one common denominator was dealing with Cabinet  
2 Ministers. Have you ever been asked in your position as  
3 Deputy Attorney General to consider or give any advice on  
4 whether there should be a Director of Public Prosecutions in  
5 Nova Scotia?

6 A. Oh, I think I may have been asked in an informal way. I  
7 don't recall being asked to do research or give an opinion on  
8 the matter.

9 Q. As a man who has had your experience as Deputy Attorney  
10 General, what do you say to that proposition, that there  
11 should be or there shouldn't be a Director of Public  
12 Prosecutions in this province?

13 A. Well, I think you have to define what you mean. You know,  
14 we do have a Director of Prosecutions in the province in the  
15 person of Mr. Herschorn, but he is accountable to the  
16 Attorney General and...

17 Q. Well, let's define what we're talking about. What do you  
18 understand the Office of Director of Public Prosecutions to be  
19 in those jurisdictions that have such an office?

20 A. Well, the only jurisdiction that I have any general knowledge  
21 of, and it's not specific, is in England and there, I understand,  
22 there is an office of Director of Public Prosecutions.

23 Q. Who is he responsible to?

24 A. I'm not, I don't know. I don't know how he's accountable or  
25 responsible, or to whom or through him he reports.

1 Q. Let me put this to you then. Do you believe, based on your  
2 experience as Deputy Attorney General and, in particular  
3 these two cases that we've talked about, that there should be  
4 a system in Nova Scotia, a person who is a Director of  
5 Prosecutions who is not accountable to an elected official.

6 A. No, that is not my personal view. My personal view is that I  
7 think the, in this case, the Attorney General or it could be  
8 another designated member of the Executive Council, as a  
9 Minister of Justice. I think it's important in our form of  
10 parliamentary democracy that the person who is responsible  
11 ought to be accountable through the electorate process and I  
12 think that, I think the system serves us well and I think it's a  
13 proper accountable system. That's my personal view.

14 Q. Have you ever thought about an office of a Director of Public  
15 Prosecutions somewhat similar to the role of the Auditor  
16 General, reportable, responsible to the Legislature only?

17 A. No.

18 Q. Do you think that would be the type of system that would be  
19 good in Nova Scotia?

20 A. I have no views on that. I haven't thought about it. I think, I  
21 suppose my main concern with the position that I've just  
22 expressed, which is certainly a personal opinion and not one...

23 Q. That's all I'm asking for, sir.

24 A. And not I've expressed or had endorsed by anyone else. Is  
25 that, you know, there is an area of prosecutorial discretion



1 involved and will always be involved and I think that that's  
2 best exercised by a person who is accountable in the normal  
3 way in our parliamentary process. And I think that that has  
4 been responsibly exercised by the Attorneys General under  
5 who I've served and with those whom I've been acquainted.

6 Q. Have you ever given consideration, and I'd like to have your  
7 views on this suggestion, the use of a system similar to that  
8 employed in the United States in some circumstances where  
9 an independent prosecutor, an independent investigator is  
10 appointed in matters dealing with persons of prominent, or  
11 prominence or politicians?

12 A. No.

13 Q. Do you think that would be something that should be  
14 implemented?

15 A. I haven't considered it.

16 Q. And you don't wish to express any opinion?

17 A. No.

18 MR. MACDONALD

19 That's all my questions, My Lord. Thank you.

20 MR. CHAIRMAN

21 Mr. Ruby?

22 EXAMINATION BY MR. RUBY

23  
24 Q. Mr. Coles, when this matter was originally referred to you for  
25 advice in the first meeting that you've described, was the

MR. COLES, EXAM. BY MR. RUBY

1 MacLean matter referred to you solely or were there other  
2 matters as well referred to you, other persons?

3 A. My recollection is it was just the MacLean matter.

4 Q. I know you've told us through Mr. MacDonald that you didn't  
5 want the R.C.M.P. there at that meeting for the full briefing,  
6 but I don't understand why. Could you assist me?

7 A. Well, I can't add to what I've said. I had no knowledge of the  
8 nature of the meeting, apart from the general reference that  
9 it had to do with the expense account and I didn't know what  
10 was going to be asked of us and it just seemed proper that we  
11 would take our instructions without the presence of the R.C.M.  
12 Police. I had no knowledge of their involvement other than  
13 what was set out in that general letter. It wasn't a matter  
14 particularly of not wanting them. It just didn't seem  
15 appropriate that they be there until we found out what was  
16 being asked of us.

COMMISSIONER EVANS

17  
18 Q. Excuse me, Mr. Ruby, that the letter to... in writing... The  
19 letter inviting you or your representative to the meeting did  
20 not state that the R.C.M.P. was going to be there?

21 A. That is correct.

MR. RUBY

22  
23 Q. I don't understand why it's inappropriate. What would be  
24 harmed if the R.C.M.P. were there? What advantage would  
25 you gain by having them not there?

1 A. Well, I did not know the nature of the discussions. There  
2 could have been privileged discussions. There could have  
3 been all kinds of things said there that might create some  
4 difficulty for the R.C.M. Police to be privy to.

5 Q. For example. I don't understand what it was that you  
6 couldn't let the R.C.M.P. know.

7 A. Well, I...

8 Q. What were you thinking about at the time? What crossed  
9 your mind?

10 A. Well, nothing. I'm talking and answering a hypothetical here.  
11 I had nothing in my mind. I just did not know what the  
12 nature of the matter was to be and it seemed appropriate that  
13 if we're being called in for whatever reason, that we hear  
14 from our, from the Auditor General and there's no particular,  
15 nothing sinister or anything in our keeping them out. It's  
16 simply that it seemed to me that we'd better find out what  
17 this is all about before we open up the meeting to other  
18 people.

19 Q. One possible inference that could be drawn is there was an  
20 attempt by you to keep control of this matter, exclusive  
21 control.

22 A. Oh, of course.

23 Q. And that's what I'm trying to find out if there is some other  
24 explanation. Can you name any advantage to the Attorney  
25 General's Department in proceeding this way or any

1 disadvantage in not doing so?

2 A. No, not as it turned out, but at that time, I had no knowledge  
3 of what was going to be said.

4 Q. No knowledge at all?

5 A. Well, of course, I had the general knowledge. We were there  
6 to discuss some concerns that they had about a Member's  
7 expense account. But beyond that, I had no knowledge.

8 Because the...

9 MR. CHAIRMAN

10 Q. You don't know that, because the letter refers to classes of  
11 persons. I take it you could assume that it had to be someone  
12 in the public service.

13 A. Yes.

14 Q. It could be a Member. It could be a civil servant. It could be  
15 an employee of almost any Crown corporation that's subject to  
16 the Auditor General's review, isn't that right?

17 A. You're correct, My Lord, and I thank you for drawing it to my  
18 attention. I didn't know specifically it was going to be a  
19 Member at that time.

20 MR. RUBY

21 Q. You said that you had no discussions with the Premier about  
22 this matter. Did you have any discussions with the Premier's  
23 office or his staff directly or indirectly about this matter?

24 A. No.

25 Q. My friend examined you on the question of the explanation

1 that had been by Mr. MacLean and your acceptance of it. And  
2 he's covered the question of the serial numbers and I don't  
3 want to go over that ground again. But one of the things that  
4 you knew was part of the explanation was that the  
5 accommodation had been that of a friend. And that he paid  
6 "X" dollars. I don't have the exact receipts before me for the  
7 accommodation. And you also knew that there was a portion  
8 allotted to tax on those receipts. Correct?

9 A. Well, it was there. I don't know that I specifically directed  
10 my attention to it.

11 Q. But you had to know that that couldn't be true. That there  
12 had been no tax collected if, in fact, as he now is saying he  
13 was just giving money to a friend. Isn't that so?

14 A. That's so, but I, as I say, I didn't pay particular attention to  
15 that at the time. I presumed that matter would all be dealt  
16 with in Mr. Gale's examination of the... in consideration of the  
17 matter.

18 Q. But you said later that you accepted this explanation. I'm  
19 suggesting to you that with the knowledge you had, and you  
20 now admit you had, and the material before you about the  
21 taxes, you couldn't possibly have accepted that explanation.

22 MR. PINK

23 My Lord, yesterday I believe the evidence of Mr. Cormier  
24 regarding the tax issue, and we don't have receipts in front of us  
25 and it makes it very difficult. I'm not sure what tax we're talking

MR. COLES, EXAM. BY MR. RUBY

1 about. Whether it were tax on meals, tax on accommodations. My  
2 friend, Mr. Ruby, suggests that taxes were not paid. I'm not sure  
3 of the basis of that. In Mr. Cormier's letter or memo of his  
4 October... his November '84 meeting with the Attorney General, he  
5 raises the issue of taxes as a problem. But we're moving into an  
6 area of specificity where we don't have the evidence before us  
7 and I just think that puts the witness as a disadvantage.

MR. CHAIRMAN

9 There was as I recall it, as I understand the evidence, in the  
10 receipts, there was a charge for tax, presumably tax on meals.  
11 Now there was some question, I think, of the Auditor General as to  
12 whether at that period accommodation was taxable.

MR. RUBY

14 I believe he thought they probably were and that was his  
15 evidence.

MR. CHAIRMAN

17 Probably were, yes.

MR. RUBY

19 He wasn't certain on the matter.

MR. CHAIRMAN

21 But, in any event, whether they were or not, it's highly  
22 unlikely that some lady running a boarding house would be  
23 collecting taxes. But maybe they do.

MR. PINK

25 But there's also no evidence that those taxes were charged

1 for. That's the point. I mean if he paid taxes on meals and  
2 claimed taxes on meals, then that shouldn't be a problem. I guess  
3 the question is, what's the premise for Mr. Ruby's question?

4 MR. CHAIRMAN

5 All right.

6 MR. RUBY

7 The premise, My Lord, is this, that it appears on the  
8 evidence we have now that there was a tax on accommodation. So  
9 I'm looking at that part for the moment. Surely it's possible to get  
10 a look at one of the receipts? I've asked counsel some time ago to  
11 get a look at them. Is there anyone who has got a copy of them?  
12 Do you have them?

13 MR. PINK

14 No, I don't.

15 MR. RUBY

16 Someone has got them.

17 MR. PINK

18 The difficulty, My Lord, we have with this whole area, and I  
19 guess it really goes back to what we dealt with last week. Mr.  
20 MacLean was convicted of four counts of uttering forged  
21 documents and the Crown withdrew other charges. We've used  
22 the language of forgery, of fraud, fairly loosely in these hearings  
23 in suggesting that that was something that he did wrong. I would  
24 urge the Commission not to allow us to go down that path. It's a  
25 problem here and the reason... I'm not sure why my friend needs

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1 the documents. The matter was dealt with by the Court. He plead  
2 guilty to certain charges and other charges were withdrawn. And  
3 in my respectful submission...

4 MR. CHAIRMAN

5 I appreciate that. I thought there was some reference...

6 MR. PINK

7 That should be the end of it.

8 MR. CHAIRMAN

9 Isn't there some reference in one of the memoranda from  
10 the Auditor General with respect to taxes?

11 MR. MACDONALD

12 It's on page one of the booklet, My Lord.

13 MR. CHAIRMAN

14 Okay.

15 MR. MACDONALD

16 The notes down at the bottom where the Auditor General, or  
17 Mr. Cormier is saying, "I couldn't accept it because of certain..."  
18 And he lists it and the fact that they included meal and tax  
19 charges. Now I understood the evidence of Mr. Cormier to be he  
20 understood that that would be charges, tax on the room, although  
21 he's not quite certain whether the tax on rooms was in effect at  
22 that time. But that's all we've had. I think I support Mr. Pink  
23 that you can draw your own inferences from that. The fact that it  
24 alerted the Auditor General, the fact that taxes were being  
25 charged when they shouldn't have been should be sufficient, I



MR. COLES, EXAM. BY MR. RUBY

1 think, for the questioning of the witness. However, I've  
2 considered it sufficient for my questioning and I wouldn't  
3 presume to tell Mr. Ruby what he should be doing.

4 12:11 p.m.

MR. RUBY

5  
6 Let me explain my dilemma. I seek to ask whether or not  
7 this witness, when he looked at the documentation, could possibly  
8 have accepted the explanation later given in the light of the fact  
9 that there were tax charges on this accommodation. Mr Pink says  
10 I can't say that because I haven't proved, and there's no evidence  
11 before us, that there was tax charged for accommodation. So I  
12 then say, all right, let's look at the actual documents and see, and  
13 he says, well, you can't do that because you withdrew the fraud  
14 charged and only proceeded in the forgery and uttering charge.  
15 It's like catch twenty-two. You can't have it both ways. Now  
16 surely we can find out whether or not these chits included tax  
17 charges. It's not a question I'm raising for the first time. I've  
18 raised it before with Commission counsel.

MR. CHAIRMAN

19  
20 Yeah, but whether it's...there is reference by the Auditor  
21 General to the fact there was a charge for taxes. Now whether it  
22 was for meals or for rooms, what difference does it make?

MR. RUBY

23  
24 Well, let's find out if it makes any difference. It obviously  
25 made some to Mr. Pink. Perhaps I can try and explore that.

MR. COLES, EXAM. BY MR. RUBYMR. CHAIRMAN

1  
2 Try, yes.

MR. RUBY

3  
4 Q. Do you remember, first of all, whether they were tax  
5 charges for meals or for rooms?

6 A. No, I do not.

7 Q. Would it have made any difference to you?

8 A. I don't know. I don't recall noticing them specifically. I  
9 don't know if they would have or not. I was...I was leaving  
10 the matter for Mr. Gale to consider and advise me on that. I  
11 don't know what more I can add to that question, answer  
12 rather.

13 Q. You would not have assumed, I take it, tell me if this is true  
14 or not.

15 A. I beg your pardon?

16 Q. Tell me if it's true that you would not have assumed that  
17 whoever he had given the money to for meals or taxes had  
18 collected taxes? When you looked at these documents, did  
19 you think that somebody had actually taken the tax money?

20 A. Well, I...it depends on who...where the meals were had.

21 Q. What was your understanding of that issue?

22 A. I didn't have any particular understanding. I didn't inquire  
23 into that area.

24 Q. How could you accept the explanation, as you said you did,  
25 without asking that question?

MR. COLES, EXAM. BY MR. RUBY

1 A. Well, I accepted it because they were acceptable to the  
2 Speaker, who was ...had the responsibility to determine  
3 whether or not he would approve these accounts and I  
4 accepted them on the basis of my reading of Mr. Gale's  
5 opinion and advice.

6 Q. The speaker ultimately didn't accept these, did he?

7 A. I don't know.

8 Q. Well, you said, "I accepted them on the basis they were  
9 acceptable to the Speaker." That's what you told me.

10 A. Well, my recollection, counsel, and the letter he gave, that  
11 suggested to me that the explanations were satisfactory to  
12 him. I...according to his letter.

13 Q. I thought he made him pay it all back.

14 A. I don't...

15 MR. PINK

16 Page 29.

17 MR. RUBY

18 Q. Where does he say that he accepted this explanation?

19 A. Well, I have difficulty finding it. My recollection is that was  
20 my understanding that there had been...that he indicated  
21 that he accepted the explanation. Maybe it was from Mr.  
22 Gale's memorandum to me. It was either that letter or Mr.  
23 Gale's, was the only source I had.

24 Q. At the bottom of 30 he indicates that that's what caused  
25 the..."Created the situation which gave rise to the current

MR. COLES, EXAM. BY MR. RUBY

1 cause for concern." Is he doing anything more than what he  
2 indicates in the last paragraph? "I should add Mr. Cormier  
3 has seen the contents of this memorandum and agrees that  
4 it accurately sets forth the discussion which took place at  
5 our meeting with Mr. MacLean."

6 A. Perhaps not. I'm recalling my recollection and I thought  
7 that...that was my recollection, but I can't refer you to the  
8 specific part of the letter.

9 Q. I take it it never occurred to you then that, as you look at  
10 these documents, that tax receipts, that they had to be  
11 fraudulent because there were notations that indicated that  
12 tax had been collected when, on the explanation given, no  
13 tax was being collected?

14 A. That's right. Because I, as I've said repeatedly, I relied on  
15 the opinion and advice that I had been given and I didn't  
16 personally concern myself with the review in the sense that  
17 you're suggesting.

18 Q. You say that Mr. Gale's letter is what you relied upon,  
19 correct?

20 A. And it coincided with my general appreciation of what I had  
21 seen.

22 Q. And you said a number of times, "I was relying on the  
23 advice I got from Mr. Gale."

24 A. Yes.

25 Q. Just as you've just said it now.

MR. COLES, EXAM. BY MR. RUBY

1 A. Yes.

2 Q. Where did Mr. Gale deal with the issue of whether the  
3 explanation is a plausible one and say that it's plausible,  
4 pages 35 and 36 are his letter?

5 A. Well, I interpreted his opinion and advice that he had  
6 looked at the material and came to the conclusion on the  
7 information we have. There is no basis of criminal charges.

8 Q. Wrong page.

9 A. Page 33.

10 Q. 33.

11 A. Bottom of the third paragraph.

12 Q. If one accepts the explanations, you'll agree with me he  
13 never says, "I accept the explanation"?

14 A. No, but he didn't give me any basis for thinking that they  
15 were unacceptable.

16 Q. Did you ask him whether or not he accepted the  
17 explanations?

18 A. Not that I recall.

19 Q. So that you didn't know whether he did or did not accept  
20 the explanations, correct?

21 A. That's correct. I assumed that he had or he would have said  
22 so.

23 Q. In the paragraph you referred to before on page 33, the  
24 third complete paragraph, last sentence, let me draw your  
25 attention to it again. "If one wanted evidence to prove or

MR. COLES, EXAM, BY MR. RUBY

1 disprove his assertions, then a police investigation would be  
2 necessary." Did you not want evidence to prove or disprove  
3 MacLean's assertions?

4 A. I accepted and took the advice from Mr. Gale that there is no  
5 evidence and I didn't concern myself about proving or  
6 disproving them. There was nothing in his opinion or advice  
7 that suggested to me that there was a basis for a police  
8 investigation. Obviously that statement that you want to  
9 prove or disprove you would have a police investigation, I  
10 suppose that's self evident. But there has to be a basis and  
11 reason for having a police investigation and I didn't see any  
12 in his advice to me.

13 Q. Well, isn't, in the ordinary course of things, as a member of  
14 the Department of the Attorney General, it quite common for  
15 someone to come and say, "Here's *prima facie* evidence of an  
16 offence. The man gives an explanation and if you want to  
17 prove or disprove it, we'll have to have a police  
18 investigation"? Isn't that normal and common?

19 A. Well, that is not the case that was represented here in this  
20 opinion.

21 Q. No. Is that not a common situation? You reach a stage in  
22 the investigation where there is some evidence of a crime,  
23 there's an explanation which you accepted is exculpatory  
24 and you need a police investigation to determine which is  
25 the case.

MR. COLES, EXAM. BY MR. RUBY

1 A. If there is any basis for accepting the allegations, if there is,  
2 you know. People make allegations but some of them on the  
3 face of them are not a basis for a police investigation.

4 Q. But Mr. Gale here is saying, "Look, there's an allegation here  
5 all right, but the only reason I'm not proceeding with it at  
6 this point in time is because there's an explanation, and  
7 you've got to examine it." Weren't you at a stage where as a  
8 responsible officer you had to order an investigation to find  
9 out, as Mr. Gale put it to you in clear English, whether or not  
10 the assertions were true or not?

11 A. Well, I didn't interpret his opinion as saying there's an  
12 explanation, you have to examine it.

13 Q. If one wanted evidence to prove or disprove his assertions,  
14 that's all that's standing between a valid *prima facie* case  
15 and no case, isn't it, the assertions?

16 A. Yes. Well, the weight I gave to his opinion, I interpreted  
17 that, that if there was a basis for doing so, he would have  
18 said so. And I didn't see that he had...he raised any basis or  
19 reason for a police investigation that would warrant having  
20 one, and that was the view I took of his opinion and advice  
21 at the time. Now in hindsight obviously, in hindsight there  
22 should have been an investigation, but I didn't have the  
23 benefit of that at the time and I didn't address...direct  
24 myself to that. I assume that Mr. Gale had had considered  
25 the material and the information we had and his opinion

MR. COLES, EXAM. BY MR. RUBY

1 was there is no basis for criminal charges, and I accepted  
2 that and reported that to the Attorney General.

3 Q. Do you agree with me that if we follow this procedure,  
4 building a case, going to the accused, prospective accused,  
5 and asking for an explanation, and then not having any  
6 police investigation to determine whether it was true or  
7 untrue, in normal cases there would be very few cases tried  
8 in these courts?

9 A. Well, I don't know if I agree with your premises. There is a  
10 question of whether or not...whether or not the statement of  
11 monies expended would be acceptable to the authority he  
12 had to approve of it, and that was the purpose, as I  
13 understood, of inquiring of Mr. MacLean what was intended  
14 by this particular documentation.

15 Q. I thought the issue rather was whether or not he was lying  
16 or whether he was telling the truth.

17 A. Well, I don't know. That was my understanding of what Mr.  
18 Donahoe was meeting for. I don't know whether he also had  
19 those issues, intended to raise those issues.

20 Q. That was not what you understood by Mr. Gale's language at  
21 page 33, that the only issue left outstanding was whether or  
22 not Mr. MacLean was lying or telling the truth when he  
23 made that explanation.

24 A. Well, not in those terms, no.

25 Q. You missed that point.



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- 1 A. Probably, obviously. If that, in fact, was the intent of what  
2 he expresses here.
- 3 Q. You agree it seems quite clear now, doesn't it, with  
4 hindsight?
- 5 A. Certainly with hindsight.
- 6 Q. And you'll agree with me if we follow the procedure of not  
7 investigating such explanations, there would be very few  
8 charges tried in the criminal courts if that was the general  
9 approach?
- 10 A. Well, we don't investigate every explanation that's given in  
11 the course of...of allegations.
- 12 Q. Can you think of any other case where a *prima facie* case of  
13 a serious crime has been made out subject to an explanation  
14 which may or may not be true and you've nothing about it?
- 15 A. But there...but Mr. Gale was of the opinion no *prima facie*  
16 case had been made out.
- 17 Q. If one accepts the explanations given by Mr. MacLean. You  
18 understand what we're talking about, don't you?
- 19 A. Yes, uh-hum.
- 20 Q. So I put it to you again, are there any other cases where  
21 there's been a *prima facie* case of serious crime but an  
22 explanation has been given and no investigation has taken  
23 place to determine the truth or adequacy of that invest...of  
24 that explanation?
- 25 A. Well, now, I'm not in a position to answer that. I don't

1 know.

2 Q. Do you know of any?

3 A. I know of none but that doesn't rule out that there may be.

4 Q. Yes. Just...you have a wide experience and I suspect that  
5 there would be none other.

6 A. Well, a lot of these matters are dealt with before they come  
7 to my attention.

8 12:25 p.m.

9 Q. Yes. You've never heard of such a case, have you.

10 A. I can't recall at the moment.

11 Q. This is unique, is it not? In your experience.

12 A. Well, I answered your question. I can't recall any in my  
13 personal experience but that's all I can say.

14 Q. You said in your evidence that Mr. Gale accepted Mr.  
15 MacLean's explanation.

16 A. Well that was an assumption I made from my reading of his  
17 opinion.

18 Q. That was wrong, too, wasn't it?

19 A. Well, I saw nothing in his opinion that suggested to me that  
20 he did not accept the explanation and I assumed that that  
21 being so, that he accepted it.

22 Q. And that was wrong, too, was it not?

23 A. As it turned out, yes.

24 Q. That's not a, looking at this letter, a reasonable interpretation  
25 of the language which he used, is it?

1 A. Well that's my interpretation of it.

2 Q. It was a reasonable interpretation. You still think so.

3 A. Yes. At the time, yes.

4 Q. And do you think though, now, that's my question. Looking at  
5 this letter do you think that this letter is an acceptance by Mr.  
6 Gale of MacLean's explanation?

7 A. Well, to me it meant that he saw nothing that gave rise to, or  
8 nothing to indicate that there should be a police investigation.  
9 I did not get any, that he had concluded there should be an  
10 RCM Police investigation.

11 Q. That's not my question.

12 A. Well that's...

13 Q. Let me put it again. Looking at this letter now, with all the  
14 benefits of hindsight I concede, do you still think that Mr.  
15 Gale, to use the language you've used in your evidence,  
16 accepted Mr. MacLean's explanation?

17 A. My assumption is that he had. Otherwise he would have had  
18 said I cannot accept the explanation and there is a *prima facie*  
19 case.

20 Q. And the language, in the third paragraph, fourth paragraph  
21 end, if one accepts the explanation as given by MacLean, is  
22 there anything that goes higher than that in terms of an  
23 assessment of the explanation in this letter?

24 A. No.

25 Q. Well, how can you reasonably conclude that Gale accepted the

1 explanations?

2 A. Because if he hadn't I would have expected him to advise me  
3 differently.

4 Q. He didn't know whether the explanations were true or not.

5 A. Well, then I would have ...

6 Q. Right?

7 A. Then the opinion he gave, I would have expected him to say  
8 and I recommend or advise that the police, there be a police  
9 investigation. The failure, or the, I shouldn't say the failure,  
10 that not being so I assumed that the explanations were  
11 satisfactory.

12 Q. And you now think that to be a reasonable explanation for  
13 this letter, reasonable assumption to make based on this  
14 letter.

15 A. Well, I'm not, you know, I'm not in a position of saying  
16 otherwise. That's what I thought at the time and going back  
17 to that, all I can say is that's what I thought at the time. And  
18 I thought it was reasonable for me to think that at the time,  
19 or conclude that at the time.

20 Q. You now accept this was not, looking at it with the benefit of  
21 hindsight...

22 A. Certainly.

23 Q. A correct interpretation of this letter.

24 A. Well as events revealed, unfolded, that is correct.

25 Q. But you never say to him, what were these explanations that

1       you accepted?

2       A. No.

3       Q. How could you make up your mind on the issue without  
4       getting full details from him?

5       A. Well it may not be an acceptable answer to you but it's a very  
6       busy office and you have to rely on other people who are  
7       doing things, you have to rely on the advice and opinion you  
8       get. You don't have the opportunity or the time to do  
9       everything yourself. Mr. Gale's a very experienced,  
10      competent counsel and I relied on that.

11      Q. You never found the time to say to him casually in the course  
12      of office conversation, "Look, do you really accept those  
13      explanations?" That wouldn't be very time-consuming,  
14      would it.

15      A. No, but I didn't see a basis for doing so.

16      Q. If you turn to page 35, your letter to Mr. Giffin, in the second  
17      paragraph you say, "It is Mr. Gale's opinion with which I  
18      concur that the irregularities of Mr. MacLean's compliance  
19      with the general regulations made pursuant to the House of  
20      Assembly Act are more accounting irregularities rather than  
21      such as to warrant any further criminal investigation." He  
22      never says that, does he.

23      A. That was my conclusion of the advice of his opinion.

24      Q. You're pushing it, aren't you? You're deliberately making the  
25      opinion to Mr. Giffin much more broader and much more

- 1           general than that which Mr. Gale gave to you.
- 2       A.   Well that was my reading of his opinion at the time.
- 3       Q.   Had Mr. Gale ever discussed the question of whether or not
- 4           this is a mere accounting irregularity? Was it ever
- 5           discussed?
- 6       A.   Discussed, no, not that I recall. That was my conclusions from
- 7           his opinion.
- 8       Q.   And then you say, three lines farther, "It's our opinion that
- 9           it's a reasonable explanation." That was your opinion, too,
- 10           then.
- 11      A.   Well I, yes, I concurred in his opinion.
- 12      Q.   But you didn't tell the Attorney General that you had never
- 13           examined the question of whether the explanation was
- 14           reasonable. You've just told us you never did.
- 15      A.   No.
- 16      Q.   But you tell him the opposite. You say it's "our opinion".
- 17      A.   When I concurred in Mr. Gale's opinion, that's what I,
- 18           obviously, was referring to.
- 19      Q.   Isn't he reasonably entitled when he reads this to think that
- 20           you, his Deputy, has put his mind to the issue? Aren't you
- 21           misleading him?
- 22      A.   No, I don't think so. I concluded from Mr. Gale's opinion that
- 23           that was his position and I accept- and I concurred in it. So I
- 24           spoke in the plural.
- 25      Q.   "It is, in our opinion, a reasonable explanation." What you

1 meant to say and all you could honestly say was in Mr. Gale's  
2 opinion because you'd never advanced your mind to it at all.  
3 Isn't that so?

4 A. Well, I concurred in his opinion.

5 Q. You didn't convey to the Attorney General that your  
6 concurrence was limited to examining the conclusion without  
7 looking at the explanation and its adequacy at all.

8 A. No.

9 Q. Don't you think that was misleading to fail to communicate  
10 that?

11 A. Well, I'm not in a position to say whether it was misleading or  
12 not. That's for Mr. Giffin to address. There was no intention  
13 to mislead. He had Mr. Gale's opinion as well as I. He could  
14 see exactly what I was referring to.

15 Q. Did you ever inquire to find out if Mr. Cormier did or did not  
16 accept the explanation Mr. MacLean had given?

17 A. No.

18 Q. When it came time to discuss the plea bargaining in this  
19 matter, what recommendation, if any, did Mr. Clair give, the  
20 prosecutor?

21 A. I recall Mr. Herschorn made the representations and my  
22 recollection is it was based on his discussions with Mr. Clair.

23 Q. Were you ever informed of any position taken by Mr. Clair?

24 A. Not apart from that meeting we had. And my understanding  
25 was that Mr. Herschorn was representing the position that

1 was advanced or agreed to or understood by Mr. Clair.

2 Beyond that I assume that Mr. Herschorn had but to answer  
3 your question the answer is no.

4 Q. Were you ever told, or did you have any fear that the case  
5 was falling apart?

6 A. No.

7 Q. Did you do any research on sentencing law and what the  
8 appropriate sentence should be in this case?

9 A. No, I depended on the representations that were made by Mr.  
10 Herschorn.

11 Q. Were you aware that persons in situations akin to breach of  
12 trust where substantial amounts are involved generally go to  
13 jail in this province?

14 A. I was aware that that was an option of the court that was  
15 often imposed, yes.

16 Q. Well, were you aware that usually, in circumstances where  
17 there's a large amount of money, a substantial amount of  
18 money, and a breach of trust, barring exceptional  
19 circumstances is the usual way of framing the world, people  
20 go to jail for a substantial period of time. Did you know that?

21 A. Sure, I had a general knowledge of the sentencing practices.

22 Q. What was it in your mind that took this case out of that rule?

23 A. I think the representations, as I recall, were that, you know,  
24 there was a substantial amount of money involved that had to  
25 repaid and would be repaid and obviously in any plea



1 bargaining situation you have to consider the representations  
2 that would favour or as those opposed, and the plea  
3 bargaining, a whole part of the plea bargain, I don't think you  
4 could look at one as opposed to the other. They're both  
5 components of what charges would be acceptable and what  
6 the consequences of a guilty plea would be and it seemed  
7 from the representations that were made, I don't recall them  
8 specifically at this time, it seemed that a substantial fine was  
9 appropriate to, for the objectives of the prosecution which are  
10 namely, in simple forms, for punishment and deterrent. It  
11 seemed appropriate in this case where Mr. MacLean had not  
12 been involved with any previous convictions. As I recall that  
13 was one of the points that were made.

14 Q. I'm not going to question you about the taking of some  
15 charges rather than others because I think that, frankly, is a  
16 rather routine bit of prosecutorial discretion. But I'm  
17 concerned about the question I'd asked you before which is  
18 what factors impelled you to come to the conclusion that this  
19 case would not be governed by the general rule that a  
20 substantial period of imprisonment was imposed. And you've  
21 given me two factors so far if I understand it. One, there was  
22 a substantial amount of repayment to be made and; two, he  
23 had no previous criminal record. Were there any other  
24 factors that impelled you to that conclusion?

25 A. I don't recall. It seemed to me that Mr. Herschorn's

1 presentation seemed to suggest to me that a fine, a  
2 substantial fine was appropriate in regard to this particular  
3 set of circumstances.

4 Q. I know. But you also knew, you told me, the rule, the general  
5 rule for cases like this ordinarily there's a substantial period  
6 of imprisonment. So surely there must have been some factor  
7 which impelled you to conclude that Herschorn was right and  
8 that a fine was appropriate this time. What were those  
9 factors?

10 A. Well I don't recall there are any factors other than what I've  
11 mentioned. The representation that was made, my  
12 understanding, was on a recommendation of the Crown and I  
13 found it acceptable to me.

14 Q. All right. You knew that one of the factors that was  
15 important in this case, I suggest, was that since this man was  
16 a high-profile powerful figure he had to be seen to be  
17 receiving equal justice. You knew that.

18 A. Yes.

19 Q. And that would have been an important value for you to  
20 consider in weighing the appropriate sentence that you were  
21 going to recommend to the court. Yes?

22 A. Yes. In the context of the plea bargaining, yes. There was an  
23 advantage, it was recommended, represented. There's an  
24 advantage to the Crown to consider a plea bargain and the  
25 sentence was a component of that.

1 Q. Did you think that an ordinary non-MLA who committed a  
2 series of forgings and utterings that resulted in a \$21,000  
3 advantage to him, a first offender, say, a doctor defrauding a  
4 medical insurance scheme by means of forged disbursement  
5 receipts and work chits or a lawyer doing the same on the  
6 legal aid scheme, did you think that a \$5000 fine would be  
7 appropriate for them, too, in those circumstances? Would  
8 that be equal?

9 A. I'm not sure that \$5000 was the fine but, yeah, you have to  
10 look at each case and the circumstances. In this particular  
11 case I was persuaded by the representation that it was  
12 appropriate.

13 Q. And the only two factors you can think of that persuaded you  
14 at this point were the repayment and the lack of a previous  
15 criminal record.

16 A. And plus the, it was a process of a plea bargaining and, you  
17 know, the offer to, made to plead guilty had the component of  
18 the charges that the plea would be entered into and the fine.  
19 Or no, not the fine, and the sentence that would be a  
20 consequence of that guilty plea.

21 Q. You're aware of the principle that when fines are imposed  
22 that the amount is generally geared to meet the amount of  
23 the loss involved?

24 A. I'm not sure I was aware of that.