

MR. PINK, EXAM. COMMISSIONER EVANS

1 MR. SPICER

2 The next witness is Mr. Gordon Gale.

3  
4 GORDON GALE, recalled and previously sworn, testified as  
5 follows:

6  
7 EXAMINATION BY MR. SPICER

8  
9 Q. Mr. Gale, as you know we're here this time, the last time, to  
10 talk about the Billy Joe MacLean case. Before we get into the  
11 specifics of it, you were here for a good part of the testimony  
12 this morning of Mr. Coles and I believe, I wasn't keeping track  
13 but others were, that up until lunch time, Mr. Coles had said  
14 somewhere in the vicinity of 25 or 26 times that this matter,  
15 basically, had been left to you for your review. Do you accept  
16 that general characterization of your responsibility in this  
17 case?

18 A. No, I do not.

19 Q. What would you say your responsibility was generally?

20 A. I had done some research to determine what the regulations  
21 of the Legislature and Internal Economy Board were. I had a  
22 briefing by a member of the Auditor General's staff on the  
23 matter. I wrote an opinion at Mr. Coles' request as to whether  
24 or not there was a charge given certain documents that I was  
25 handed.

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1 Q. So you would take issue with Mr. Coles' characterization of  
2 you being the person who really had the responsibility for  
3 carrying the matter to him.

4 A. Yes.

5 Q. When did you first become aware of the MacLean expense  
6 issue? When was your first knowledge of it?

7 A. On looking back, it appears that it was in late November of  
8 1983 that I was asked to accompany Mr. Coles to a meeting at  
9 the Auditor General's office.

10 Q. Prior to that, had there been any discussion of the MacLean  
11 case in any of your Thursday meetings with the R.C.M.P.?

12 A. No.

13 Q. None at all?

14 A. None at all.

15 Q. Okay, perhaps if you could then turn to page 21. It's an  
16 R.C.M.P. note referring to a meeting on the 22nd of November.  
17 Can you tell us whether or not when you were, when you  
18 arrived at that meeting whether or not the R.C.M.P. were  
19 already there, or did you precede them?

20 A. To the best of my recollection, the R.C.M.P. were already there  
21 when I arrived.

22 Q. Did you arrive with Mr. Coles?

23 A. Yes, I believe we both arrived together.

24 Q. Did Mr. Coles indicate to you before you went to the meeting  
25 what it was about?

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1 A. I had some knowledge that it had something to do with the  
2 expense accounts and that's about all.

3 Q. Did you have any knowledge as to any specific names that  
4 were involved?

5 A. No, I did not.

6 Q. At the time. Were you aware that the R.C.M.P. had been  
7 consulted prior to attending this meeting?

8 A. I think perhaps on the way down, Mr. Coles might have  
9 indicated that the R.C.M.P. were going to be there or had been  
10 consulted. I don't know which.

11 Q. You can't be certain whether or not you were aware that at  
12 some time prior to November 22nd the R.C.M.P. had been  
13 involved.

14 A. I have no recollection of the R.C.M.P. ever telling me nor any  
15 recollection of my knowing that they were involved or being  
16 aware in any way that they were involved before that time.

17 Q. Just have a look at pages 27 and 28; in particular, page 28.  
18 It's a letter from the Auditor General to Mr. Coles of October  
19 28th making reference to involvement of the R.C.M.P. Were  
20 you made aware of that letter and that correspondence prior  
21 to your meeting of November 22nd?

22 A. No, I was not. As I recall, I was asked in the late morning to  
23 accompany Mr. Coles after lunch to this meeting, and that's  
24 the first that I knew about it.

25 Q. Can you tell us what happened at the meeting?

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1 A. As I recall, Mr. Coles took strong exception to the R.C.M.P.  
2 being there and...

3 Q. When you say "took strong exception to the R.C.M.P. being  
4 there," can you characterize the nature of that for us? What  
5 did he say?

6 A. I can't tell you the exact words that he said. He indicated that  
7 he was not prepared to discuss it with the R.C.M.P. there.  
8 That he was prepared to talk to the Auditor General and his  
9 people but he was not prepared to have the R.C.M.P. there. He  
10 expressed annoyance that they were there, quite frankly.

11 Q. Expressed?

12 A. Annoyance that they were there.

13 Q. To whom did he express that annoyance?

14 A. He spoke openly in the room and said that, so it would have  
15 been to all who were present, that he was annoyed that the  
16 R.C.M.P. were there.

17 Q. Did he indicate why he was annoyed?

18 A. It's difficult to remember at this stage. He felt it was a matter  
19 that the Auditor General should first discuss with him and  
20 then the, that he would then make the decision as to whether  
21 or not there is a case in which the R.C.M.P. should be  
22 consulted.

23 Q. Did that annoyance have any effect? Did the R.C.M.P. leave?

24 A. The R.C.M.P. withdrew from the meeting.

25 Q. Withdrew from the meeting?

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1 A. Yes.

2 Q. Did the meeting then proceed?

3 A. Yes, it did.

4 Q. What happened?

5 A. As I recall, there was Mr. Sarty and Mr. Cormier there and  
6 they proceeded to generally indicate that they had some  
7 difficulty with some expense accounts and the way that they  
8 were set up. That the receipts appeared to them to have  
9 come from a particular motel and that there was some  
10 indication that the part of the name, or part of an "S" was still  
11 showing on the top of one receipt where it hadn't been  
12 completely cut off.

13 Q. Did Mr. Coles or yourself respond to that?

14 A. Well, I didn't make any responses. Mr. Coles dealt with the  
15 matter, as I recall. It was one of basically that we, he would  
16 take away some, a copy of some of the material and that it  
17 would be looked into.

18 Q. Did you have any understanding when you left that meeting  
19 that Mr. Coles or yourself was to get back to the R.C.M.P.

20 A. No, I had an understanding from the R.C.M.P. that they were,  
21 that before they had left, that they had indicated they were  
22 there because they had been consulted by the Auditor  
23 General to, for their expertise so he could determine whether  
24 it was a matter that should be referred on.

25 Q. And did you have any understanding when you left the

1 meeting, though, that the R.C.M.P. were expecting either  
2 yourself or Mr. Coles to get back to them with further  
3 information?

4 A. I don't know what the R.C.M.P. expected. I have the  
5 recollection that the Auditor General expected, that he would  
6 be made aware of, that Mr. Coles or somebody would get back  
7 to him to tell him what action might be taken on the matter.

8 Q. You're not able to say whether or not, to your knowledge, the  
9 R.C.M.P. were made aware that they'd be, that Mr. Coles would  
10 be getting back to them.

11 A. No, I can't remember that, to that detail, the meeting.

12 Q. Are you able to tell us what you thought the nature of your  
13 responsibilities were as a result of that meeting?

14 A. I didn't think I had any particular responsibility as a result of  
15 that meeting until... That the matter was with the Deputy,  
16 who was going to look into it. I anticipated that at some stage  
17 he would ask me for, to do something with it. But leaving the  
18 meeting, no, I didn't have any idea of any particular  
19 responsibilities.

20 Q. So it would be your evidence that at this time in November,  
21 you were not asked by Mr. Coles to provide him with any  
22 advice.

23 A. No, I was not asked at that time to provide him with any  
24 advice.

25 Q. So when he indicated to us, and I think I've written this down

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1           correctly, "I asked Gale to review the matter and give me his  
2           advice," that that certainly didn't occur in November.

3           A. No.

4           Q. When did it occur, if it did at all?

5           A. Sometime prior to the, my memo of April 2nd, he asked me to  
6           review certain matters to determine whether or not they  
7           constituted a criminal charge.

8           Q. Mr. Coles also indicated that as a result of that meeting, we  
9           were going to look at whether documents evidenced any  
10          wrongdoing and then we would ask for an investigation. I  
11          asked Gale to review the matter. That didn't happen in  
12          November?

13          A. No.

14          Q. Did you understand that Mr. Coles was going to do that  
15          himself, that he was going to have a look at the documents  
16          and the material and see what was going on?

17          A. I assumed he was going to look after it, although I know that  
18          subsequently, and I'm not sure whether it was Mr. Coles'  
19          doing or the Auditor General was referred to me, that I did  
20          have a meeting with a member of his staff who ran through  
21          their findings with me so that I could understand a little  
22          better what they were talking about because it was a little  
23          difficult with two or three sheets of paper that had been  
24          taken away to know what...

25          Q. Okay, we'll get to that. Was that then just prior to the time

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1 that you provided your opinion in April?

2 A. No, I think that was probably... It may have been in  
3 December, I might have met... I'm not really sure. I don't  
4 have any record of the date that I met with the member of  
5 his staff and I'm not sure if that was just prior to my opinion  
6 or whether it was earlier to that.

7 Q. There's a note on page 23, another R.C.M.P. note referring to  
8 advice from Cormier. "Cormier advised that Donahoe..." and  
9 this is dated the 11th of January '84.

10  
11 Donahoe is reporting the results of his  
12 investigation directly to the Deputy A.G. Mr.  
13 Coles. Coles is not interested in having the  
14 matter investigated by the police. Mr. Gordon  
15 Gale is not opposed to a police investigation,  
16 although he will go along with Coles' wishes.

17 Did you ever indicate that to Mr. Cormier?

18 A. I have told Mr. Cormier that, I think on more than one  
19 occasion, that I was of the view that there should be a police  
20 investigation, but I could not go counter to the Deputy's  
21 wishes or views on the matter.

22 Q. And might you have expressed that view as early as January?

23 A. It's quite possible.

24 Q. Did you express that view orally to Mr. Coles?

25 A. Yes, I have expressed that view orally to Mr. Coles, but I  
think it was... I know, exactly when or how many times, I



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1 don't know, but I do know it was after the receipt of his, my  
2 memo.

3 Q. You're now talking about the memo of yours which appears  
4 on page 32, is that correct, the April 2nd memo?

5 A. It would be the April 2nd memo, yes.

6 Q. Are you able to tell us whether or not you would have  
7 expressed that view to Mr. Coles prior to April? Said, "Look, I  
8 think there ought to be an investigation here."

9 A. I don't have a particular recollection of it. I have the feeling  
10 that I, was of the view that the only way that it could be  
11 properly dealt with was to turn it over to the police and have  
12 it investigated because I didn't see anyone around our  
13 Department that was capable of doing an investigation on it.

14 Q. And you told Mr. Coles that?

15 A. Well, I had told him, I have the feeling that I, in talking to  
16 him, had indicated that this was a matter that, of a profile  
17 that should be turned over to the police for investigation.

18 Q. Why did you feel that?

19 A. Well, because I didn't have any certainty as to the facts of the  
20 matter. I thought they should be determined by a police  
21 investigation and that any questioning should be done by the  
22 police. I guess because of, without an independent  
23 investigation by the police, this is a matter that would always  
24 raise questions.

25 Q. Did you have some concern that the way it was being dealt

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1 with, it just didn't look proper?

2 A. Yes.

3 Q. Did you express that view to Mr. Coles?

4 A. I don't know in exactly what terms I may have expressed it  
5 to him. Mr. Coles indicated that... I was aware that there was  
6 going to be a meeting or some meetings involving either the  
7 Attorney General or the Speaker and Mr. MacLean.

8 Q. Did Mr. Coles indicate to you his view as to whether or not he  
9 thought there ought to be a police investigation?

10 A. As I recall it, he felt that, first, that Mr. MacLean should be  
11 given an opportunity to have his say as to what any of these  
12 things meant.

13 Q. And once that was done, there was a meeting with Mr.  
14 MacLean, not with yourself. Was he still of that view?

15 A. Well, I don't know what view he was, quite frankly. He came,  
16 I keep having to refer back to the, my memo to Mr. Coles  
17 because that's when he brought in certain material and made  
18 certain statements to me and asked me as to whether or not,  
19 given that, those matters constituted a criminal offence.

20 Q. And the memo you're now referring to is your memo, again,  
21 on page 32.

22 A. Yes.

23 Q. Okay, tell us how it was that you came to be asked to prepare  
24 that memo?

25 A. Well, as I recall, Mr. Coles verbally asked me to prepare, to

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1 look at the matter and give him a memo on it. That I believe  
2 there was a letter from the individual to whom Mr. MacLean  
3 had said that he had paid rent. I had the Internal, Legislative  
4 Internal Economy Board regulations. I'm not sure if I had any  
5 documentation at that point in time from the Auditor General.  
6 I may have had a very brief one. I don't ever recall being left  
7 with any amount of documentation from the Auditor General.  
8 I was told by Mr. Coles that Billy Joe had said that the  
9 receipts were not intended to be receipts but were simply his  
10 way of accounting, making up his accounts. That he would  
11 ring these in on the motel, or have them rung in on the motel  
12 cash register, but they weren't intended to be receipts or  
13 anything.

14 Q. Are you able to tell us whether or not, if you could turn to  
15 page 29, whether or not when you were preparing your  
16 memo in April, you had a copy of this memo to Mr. Coles from  
17 Arthur Donahoe, the Speaker, referring to the meeting with  
18 Mr. MacLean?

19 A. No, I don't recall seeing this memo before. I'm quite certain I  
20 didn't have this particular memo, but that's my recollection at  
21 this point in time.

22 Q. Sorry, you say you're quite certain you didn't have it?

23 A. It's my feeling I didn't have this memo at that time. I think  
24 what I was given was an oral version by Mr. Coles of what he  
25 said had been found by, what explanations had been given by

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1 Mr. MacLean at that time.

2 Q. Is it the case then, Mr. Gale, that the factual material  
3 contained in your memo was, for the most part, relayed to  
4 you by Mr. Coles orally?

5 A. Yes, except for perhaps one small copy that I had of a sample  
6 of the type of material that the Auditor General had. And  
7 what I recall from a meeting with them, so I could  
8 understand it better. And I had also, by that time, finally  
9 been able to obtain copies of these L.I.E.B. regulations.

10 Q. Did you have copies of any of the so-called receipts?

11 A. I think there may have been a photocopy of one or, of those  
12 receipts there.

13 Q. Was the meeting that you had with the Auditor General's  
14 people as a result of the request that was made of you to  
15 advise Mr. Coles?

16 A. I can't be certain of that. I think it may have been, because I  
17 certainly needed to know more about some of these matters.  
18 I know there was certainly a great of difficulty in getting the  
19 L.I.E.B. regulations and I think that they were able to supply  
20 me with those. And I needed to have somebody show me or  
21 explain to me what, where they were coming from, where the  
22 Auditor General was coming from in his views.

23 Q. Did you receive that explanation at that meeting?

24 A. Well, I think I was able to take sufficient from it to  
25 understand that he felt that the expenses were not prop...

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1 may not have been properly incurred. That there was a  
2 question about what expenses should go to the Speaker to be  
3 covered under those. About the number of trips, the amounts  
4 expended.

5 Q. What was it that you understood you were being asked to do  
6 when you prepared this memo? What was your job?

7 A. Simply to look at, take the information that was given and  
8 advise whether or not, on that information, there was a  
9 criminal offence.

10 Q. If you look at the first page of that memo, in the last  
11 paragraph, there are a couple of references to the Speaker's  
12 memo, perhaps in the second line, and then again on the  
13 fourth line. Now you indicated to me a minute ago that you  
14 didn't think you had that memo.

15 A. Well, perhaps I...

16 Q. Do you want to reconsider that?

17 A. Well, I guess if I'm saying "the Speaker's memo" here,  
18 perhaps I had the Speaker's memo. When I looked at the  
19 material awhile back, I really didn't recall the Speaker's  
20 memo as such. But perhaps I had the Speaker's memo at that  
21 time. If I referred to it, I guess I must have had it.

22 Q. You made a comment a few minutes ago that you thought that  
23 an independent investigation, really, was the only way to deal  
24 with this. Was that in part because you didn't want to  
25 consider yourself as playing the role of policeman; in other

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1 words, doing an investigation yourself?

2 A. Well, I consider my function as one of a lawyer not an  
3 investigator. I don't have any talents for investigating. No,  
4 and I didn't want to become involved in an investigation.

5 Q. Did you consider that you were being asked to perform any  
6 kind of an investigative function when you were asked to  
7 prepare the memo that you wrote to Mr. Coles?

8 A. No, I didn't think I was being asked to prepare, to do an  
9 investigative function. That it was simply a question of  
10 looking at the material and giving my opinion as to whether  
11 or not I thought that the material that was before me gave  
12 rise to a criminal offence.

13 Q. Were you asked to consider specifically what offence, or were  
14 you just asked, does the material that you have give rise to  
15 any criminal charges?

16 A. I was asked to consider whether it gave rise to a criminal  
17 offence. Reading through the memo, I see that I seemed to  
18 deal with the question of fraud and that's what I thought it  
19 was at the time. And that given the lack of publication and  
20 knowledge of the L.I.E.B regulations, the fact that the  
21 assertions were that Mr. MacLean had, in fact, spent,  
22 expended the money on government business. But whether  
23 or not it was money to be recovered from this particular fund  
24 or another fund, I did not at that time feel that there was a  
25 criminal offence.

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1 Q. And that's premised on, as you indicate in your memo in a  
2 couple of places, accepting the explanation given by Mr.  
3 MacLean.

4 A. Yes, accepting the explanations given by Mr. MacLean.

5 Q. What was your view...

6 A. I did not make any judgement call on whether his  
7 explanations were correct or not. I just said "accepting the  
8 explanations given by him."

9 Q. Did you indicate to Mr. Coles whether you, in fact, did accept  
10 those conclusions... statements rather of Mr. MacLean's?

11 A. No, I did not tell him that I accepted them. I did not say I did  
12 not accept them. I thought that... I had put a qualifier in the  
13 opinion by saying that if one wanted to approve or  
14 disapprove the assertions, then a police investigation would  
15 be necessary.

16 Q. When you say in the second paragraph on page 33 in the last  
17 sentence:

18  
19 Then if one wanted evidence to prove or  
20 disprove his assertions, then a police  
21 investigation would be necessary.

22 And again in the last sentence of the following paragraph:

23 On the information we have, there is no basis for  
24 criminal charges and that there is no prima facie  
25 case, if one accepts the explanations given by Mr.  
MacLean.

1 Now Mr. Coles, I think, accepted this morning that certain of  
2 the explanations given were implausible, given by Mr.  
3 MacLean, were implausible. Did you have any view as to  
4 whether or not Mr. MacLean's explanations were plausible or  
5 possible, made sense?

6 A. They were possible. I didn't consider them necessarily  
7 plausible in every case.

8 Q. All right, if you didn't consider them plausible at the time,  
9 why didn't you say so?

10 4:45 p.m.

11 A. Well I thought I had but I say in here that if you want...

12 Q. Where do you say in here that you don't consider that the  
13 explanation provided by Mr. MacLean are plausible? Point  
14 me to where that's indicated.

15 A. Oh, I don't say that specifically, no.

16 Q. You don't, where do you say it inferentially?

17 A. Well I said in the two sentences that have been quoted before  
18 that if you want, I've indicated here, the bottom of the second  
19 paragraph on page 33 that there's no hard evidence as to how  
20 many trips he made or how much he expended. But on the  
21 other hand there's no evidence on which to contradict his  
22 assertions followed by the sentence that if you want to prove  
23 or disapprove[sic] his assertions then a police investigation  
24 would be necessary.

25 Q. But you never insert your own views into this, you never say,



1 "And I don't believe them" or "I don't find them plausible."

2 Why not?

3 A. Well I can't tell you at this point in time why I didn't insert  
4 that particular view in it. I thought that I had at least raised  
5 a flag that I ... that in my view this should be a police  
6 investigation on this matter.

7 Q. But surely, Mr. Gale, that would have been a pretty simple  
8 thing to say, "In my view there should have been a police  
9 investigation." You don't say it anywhere in this memo.

10 A. Well I suppose that all of us, in looking back, would say that  
11 there's a lot of things we should have said and haven't said as  
12 clearly as one would like at the particular time.

13 Q. And I guess I'm suggesting to you that you haven't said it at  
14 all and I'm asking you to indicate to me where you say ...

15 A. Well other than what I've told you, I can't tell, show you  
16 anything more. I know that after I got this memo, sent this  
17 memo to Mr. Coles, he came back and asked me what's this  
18 business about a police investigation. And I said to him at the  
19 time that, "You don't know whether these stories are true or  
20 they're not true. And if you don't have a police investigation  
21 there's always going to be questions about it. You can only  
22 tell by the police investigation." His response to me was,  
23 "Well it would take forever to have a police investigation of  
24 this matter." And I'm afraid my response to him was, "It may  
25 take a long while but I don't really see any safe way of

1 dealing with it without one."

2 Q. What was his response to that?

3 A. Well his response to that, I can't recall, is that he just took the  
4 thing off and went back to his own office.

5 Q. Would this conversation with Mr. Coles, then, have taken  
6 place pretty shortly after the date of your memo?

7 A. Yes

8 Q. Is that fair to say?

9 A. Yeah.

10 Q. Are you able to tell us whether or not it was before Mr. Coles'  
11 memo to Mr. Giffin on April the 18th?

12 A. Well, I would think it was before that one because it seemed  
13 to me that it wasn't very long after I'd written the memo that  
14 that conversation took place.

15 Q. All right. Well, let's just go through what Mr. Coles takes  
16 away from your memo, page 35. His memo to Mr. Giffin. Mr.  
17 Coles says,

18  
19 It is Mr. Gale's opinion, with which I concur, that  
20 the irregularities and Mr MacLean's compliance  
21 with the general regulations made pursuant to  
22 the House of Assembly Act are more accounting  
irregularities rather than such as to warrant any  
further criminal investigation.

23 Was that your opinion?

24 A. No, that was not my opinion.

25 Q. Did you tell Mr. Coles that that was not your opinion?

1 A. I didn't see the memo.

2 Q. No, but did you have discussions with Mr. Coles about what  
3 your views were? You just indicated to me that you thought  
4 a police investigation or something ought to be done.

5 A. Yes, I told him that without a police investigation one  
6 wouldn't be able to tell whether this money was properly  
7 expended or whether the explanations given for it were  
8 proper.

9 Q. Mr. Coles goes on then to say, and again ascribing part of this  
10 to your opinion as well,

11  
12 Mr. MacLean's explanation of the manner in  
13 which he filed his statement of travel and living  
14 allowances is, in our opinion, a reasonable  
15 explanation.

16 Does that accord with your view?

17 A. It was an explanation. I didn't find it, what I would normally  
18 consider to be a reasonable explanation. But it's a possible  
19 explanation.

20 Q. But not a reasonable one, in your view.

21 A. Well I had doubts about it.

22 Q. Yes. In the fourth paragraph Mr. Coles indicates,

23 We have communicated our opinion on the  
24 matter to the RCMP.

25 Were you asked by Mr. Coles to communicate an opinion to  
the RCMP?

- 1 A. I can't recall being asked by him to communicate the opinion  
2 to the RCMP, no.
- 3 Q. He indicated to us today that he thought he would have asked  
4 you to do that. Would your recollection of that, then, be that  
5 he's incorrect in that?
- 6 A. That would be my view that he's incorrect on it but that's not  
7 to say that after some other period of time that I may not  
8 have had said something to the RCMP that...
- 9 Q. But that's not what he's saying. He's saying here on April the  
10 18th, "We have communicated our opinion to the RCMP."
- 11 A. Well, I have no recollection of his asking me to communicate  
12 that opinion to them because I had the view that I was asked  
13 for an opinion and I gave it to him. That he had the case as  
14 far as being a lawyer in the Department having it, that  
15 whatever dealings were going, whatever matters were  
16 happening, were happening at his level or from the Attorney  
17 General's level in communicating.
- 18 Q. Is the long and short of it at this point in time, Mr. Gale, that  
19 you thought there ought to have been a criminal  
20 investigation. You conveyed that view to Mr. Coles. Mr. Coles  
21 didn't agree with you.
- 22 A. Yes, I think that's the long and short of it.
- 23 Q. And that's now in April 1984.
- 24 A. Yes.
- 25 Q. Did you continue to express that view to Mr. Coles or did you

1 give up at that point?

2 A. Oh, I think after that I didn't bother making any further  
3 views to him on the matter. A decision had been made, I  
4 became aware of, I don't know whether, exactly what date it  
5 was that I became aware of it, orally at least, that a decision  
6 had been made that there would be no police investigation.

7 Q. Do you remember who conveyed that decision to you? Who  
8 told you that that had happened?

9 A. Well as I, I think that it may have, it must have come from  
10 Gordon Coles because I don't know who else could tell me.

11 Q. Are you able to tell us whether at the time that he indicated  
12 that a decision had been made not to go ahead, whether at  
13 that point you said to him, "Now you will remember that my  
14 view was we ought to have an investigation."

15 A. Oh, I don't know what I may have said to him at that time. I  
16 have no conscious recollection of what I said to him at that  
17 time. It was a matter that I was not particularly pleased with  
18 and I didn't want to really be associated with it any more  
19 than I had to be.

20 Q. Let's just follow that up for a minute. Why was it that you  
21 were not particularly pleased with it?

22 A. Well it just seemed to me that the very origin of the matter  
23 that the simplest thing would have been to tell the RCMP to  
24 go ahead and investigate the matter, that it should be  
25 investigated. They seemed to want some encouragement at

1           that particular point in time.

2       Q. Did you ever have any sense from Mr. Coles as to why he was  
3       resisting that?

4       A. I think Mr. Coles was annoyed because the RCMP had been  
5       called in by the Auditor General. The Auditor General had not  
6       come directly to him about the matter in the first place. I  
7       think Mr. Coles also felt that these sort of things should be  
8       looked at very carefully by the law officers of the Crown to  
9       determine whether or not there was anything to really be  
10      looked into before the RCMP, or any police force, were asked  
11      to investigate.

12      Q. Did he express that view to you?

13      A. He expressed some of that view to me, other parts of it I  
14      guess I take from his type of reaction or, at the time. That  
15      was a way of dealing with the matter.

16      Q. Have you ever been involved in another case where you've  
17      been asked to have a look at, say, a memo setting out the  
18      position of the potential accused and some other information  
19      provided to you by the Deputy Attorney General and asked  
20      for your view as to whether or not there ought to even be an  
21      investigation?

22      A. Oh, I can't remember one offhand. It's not to say that at some  
23      stage I may not have been asked some question as to whether  
24      something constituted an offence. But I, but not one where  
25      there had been a, that I can recall, where there had been a,

1           somebody as reputable as the Auditor General making an  
2           allegation.

3       Q   And not one where the RCMP had already been involved as  
4           well?

5       A.  Not that I can recall.

6       Q   Now I take it from what you said earlier that you don't really  
7           consider it to be part of your job to be picking through  
8           evidence and looking at that kind of information.

9       A.  No, I was simply going on a general view of what was before  
10          me at that particular time, which was not a great deal.  And  
11          on the view that, you know, these were the explanations that  
12          had been offered for what was done.

13      Q   Sorry, the explanations had been offered...

14      A.  And on the view, being told by Mr. Coles, that these were the  
15          explanations offered by Mr. MacLean as to what had been  
16          done.

17      Q   Do you ever remember indicating directly to Mr. Coles, "Look,  
18          I just don't buy this.  I don't accept these explanations."  
19          You've indicated to us that you said you thought there ought  
20          to have been a police investigation.

21      A.  Oh, I didn't...up to this point in time it's hard to tell what may  
22          have transpired orally.  The difficulty I have with this  
23          particular file is that there's very little in the file.  It seems  
24          that a good deal of it was done orally.

25      Q   Subsequently...

1 A. I think Mr. Coles knew that I, was of the view that I wasn't  
2 really making a judgement call on the explanations except  
3 that to the extent that really before you take these  
4 explanations, the only way of checking them is for a police  
5 investigation. I think that was at least clear that I felt that  
6 this is a matter that should be turned over the police and we,  
7 as a Department, should stay out of it until such time as the  
8 police had made their investigation and determined whether  
9 or not there were charges.

10 Q. And I think we agreed that that's not said anywhere in the  
11 written documents.

12 A. No, that's not put down anywhere in writing.

13 Q. But it was a view that you expressed to Mr. Coles.

14 A. Yes, at various times and on various occasions. But over a  
15 period of time, I don't know whether all that view at one  
16 particular time, but I think Mr. Coles knew that I was  
17 uncomfortable with this particular matter, or the way it was  
18 proceeding.

19 Q. Subsequent to the initial decision there would not be an  
20 investigation, did you have any involvement past that point  
21 in in time with this matter?

22 A. The only involvement I know after that was that I was  
23 advised by Superintendent MacGibbon that they had received  
24 a letter from Mr. Vincent MacLean requesting an  
25 investigation and I simply told Superintendent MacGibbon at



1 that time, "Well, you have the letter and a complaint. It  
2 should be treated as any other complaint . If you think  
3 there's basis to investigate, you should investigate."

4 Q And that's in April, now, of '85.

5 A. That would have been in April of '85. But I really didn't want  
6 any reports on it. They should do their investigation and see  
7 the prosecutor as they need it and if they felt that, at some  
8 stage, well certainly when they made any conclusions I would  
9 like to know what those were. But that was it.

10 Q Okay. But at that point, in April of 1985, when the  
11 investigation does, in fact, get started, do I take it then that  
12 what you're saying to the RCMP is, "Look, just deal with this  
13 in the normal way. "

14 A. Yes.

15 Q "Take it to a Crown, get your advice in the normal way."

16 A. Yes.

17 Q And as far as you know that was done.

18 A. As far as I know that was done. I had no further  
19 involvement. I think I saw some reports that came in and  
20 perhaps later in '85 and in '86, because there seemed to be a  
21 hiatus for a while and then it got reactivated in '86.

22 Q Anything other than that advice to the RCMP with respect to  
23 the subsequent, to the actual investigation and the charging?

24 A. No. Nothing.

25 Q Okay. Let's just go back for a minute, if we could then, and

1 try and sum this up. Page 35. I started out by asking you  
2 this morning, today whether or not you thought that, as Mr.  
3 Coles had indicated, everything had been left to you and you  
4 said no. And I've taken you through portions of Mr. Coles'  
5 memo to Mr. Giffin. Is it fair to say that in the second  
6 paragraph where Mr. Coles says, "It is Mr. Gale's opinion, with  
7 which I concur that the irregularities [et cetera] are more  
8 accounting irregularities rather than such as to warrant any  
9 further criminal investigation." Insofar as that's a  
10 representation of your opinion, that's a misrepresentation.

11 A. Yes, I think it is. In my opinion I had indicated that there  
12 were problems with the Regulations and how they were made  
13 known and how they were administered and I had made  
14 some suggestions of what might occur in that regard.

15 5:00 p.m.

16 Q. And, indeed, there couldn't be anything that's more opposed  
17 to your opinion at the time as you've expressed it to us, that  
18 is, you wanted, thought there should have been a criminal  
19 investigation.

20 A. Yes, I felt that there should be, should have been a criminal  
21 investigation. I think even more so because it was a Cabinet  
22 minister involved.

23 MR. SPICER

24 Thank you.

1 CHAIRMAN

2 Mr. Gale, did you see the draft letter, or the letter rather, that  
3 was prepared by Mr. Coles and submitted to the Attorney  
4 General for the Attorney General's signature and forwarding  
5 to the Speaker?

6 A. Well certainly not prior to and as my recollection is that it  
7 was a fairly considerable time subsequent to that, if I ever  
8 saw it. In fact, I may not have seen it until such time as the  
9 press release was made.

10 MR. RUBY

11 I won't be long on cross-examination. Before I get to it, I'd  
12 like to ask for production of the actual receipts that were involved  
13 in this case. We've been talking about them. I find it impossible  
14 to adequately assess whether or not the explanation was with  
15 respect to the tax plausible without seeing them. Somebody must  
16 have them. Can they produced overnight so that I can look at  
17 them?

18 CHAIRMAN

19 Does anyone know where they are?

20 MR. SPICER

21 No.

22 CHAIRMAN

23 Pardon?

24 MR. ORSBORN

25 I'm not saying we don't have them. I'm not sure that we

COMMISSION/COUNSEL DISCUSSION

1 don't have them. We've had access to everything that's been, I  
2 know that the RCMP's files and the Attorney General's files,  
3 whether they're among the documents that we've extracted, I  
4 rather doubt. Where they were directly concerned with the  
5 merits and the substance the claim. This was an issue that we, as  
6 we've indicated, attempted to stay away from. And it may be that  
7 getting into an assessment of these factual matters gets into a  
8 review of the merits you might otherwise want to stay away from.  
9 And it may be possible for Mr. Ruby to assess Mr. Gale's opinion  
10 without getting into that kind of documentary detail.

MR. RUBY

11  
12 I find it impossible to argue at the end, leaving aside Mr.  
13 Gale for the moment. I'd like to be able to make a submission  
14 based upon the plausibility of the explanation and know what it  
15 says given the presence or absence of the tax factor. I have to  
16 look at the document to find out about that, that's all.

CHAIRMAN

17  
18 You're not concerned about your cross-examination of Mr.  
19 Gale...

MR. RUBY

20  
21 No.

CHAIRMAN

22  
23 You're more concerned when the time comes for final  
24 summation and...

25

COMMISSION/COUNSEL DISCUSSION

1 MR. RUBY

2 That's right. I could be sticky and say that I want to cross-  
3 examine him but I'm going to, I'll pass that by. But I would like to  
4 see them so I know what my final submission should be.

5 COMMISSIONER EVANS

6 At the time you make submissions.

7 MR. RUBY

8 But if they were in town, or were here in Halifax, we should  
9 be able to produce them overnight.

10 MR. ORSBORN

11 I guess the only other point to make, is we do have evidence  
12 from both Mr. Cormier and I think also, Mr. Gale, who have  
13 indicated that they did not accept Mr. MacLean's explanation, the  
14 explanations were not plausible. If there is to be argument, later  
15 argument based on documentation that's not been the subject of  
16 introduction into evidence and not the subject of examination and  
17 cross-examination, then perhaps counsel might be at a  
18 disadvantage trying to address that argument.

19 MR. RUBY

20 Mr. Coles was examined and cross-examined on this but we  
21 weren't able to get a determinative view on it because he couldn't  
22 remember and wasn't sure what he had seen had the tax on it. So  
23 it is an issue that's squarely raised. It's easily cleared up, it  
24 doesn't involve embarrassing any third party. I still don't know  
25 why we don't just take a look at them.

COMMISSION/COUNSEL DISCUSSIONCOMMISSIONER EVANS

1  
2 The problem is, where are they?

MR. RUBY

3  
4 Well surely between the RCMP and the Government of Nova  
5 Scotia and the Commission counsel somebody can find them. No  
6 one's thrown them away, I wouldn't think

MR. ORSBORN

7  
8 I have no doubt that they can be found between those three  
9 august bodies that my friend mentioned. But I still have some  
10 difficulty as to the propriety of digging that deep into the merits  
11 and really getting into the merits of an opinion that one, or  
12 officers of the Crown, may have held. And in general we've tried  
13 to steer away from this. I think one possible exception was that  
14 Mr. MacDonald challenged Mr. Coles on his opinion on intent. And  
15 the reason to get into that was to assess whether or not that  
16 opinion was so far removed from the law that there were  
17 unspoken factors influencing the opinion. But as to the  
18 plausibility, or otherwise, of this matter involving receipts, we do  
19 have evidence from at least two individuals who have said that  
20 the...

CHAIRMAN

21  
22 The Auditor General was pretty definite, wasn't he, that  
23 the...

MR. RUBY

24  
25 He wasn't sure whether there was a tax on meals. He

COMMISSION/COUNSEL DISCUSSION

1 thought there was but was not sure there was a tax on  
2 accommodation.

CHAIRMAN

3  
4 Well whatever, he was pretty definite that the  
5 documentation submitted to him was, in his view, totally  
6 unsatisfactory.

MR. RUBY

7  
8 Right. The issue for me, for example, in arguing in this. Did  
9 Mr. Coles tell him the truth when he swears under oath that it  
10 never occurred to him there's anything implausible with his  
11 explanations. On the one hand you've got the part about the  
12 sequential numbers, that's one argument. The second question is  
13 the question of tax. I want to be able to argue about that. And I  
14 can't do it without a factual base.

COMMISSIONER EVANS

15  
16 Well on page one it says the, they included meal and tax  
17 charges as well. Now what difference does it make whether it's  
18 for accommodation or whether it's for meals.

MR. RUBY

19  
20 Counsel for the Attorney General argued just about an hour  
21 or so ago that it made a great difference. That in fact there was  
22 no evidence that there was tax on accommodation anyway. That  
23 it might well have been a perfectly proper expenditure for  
24 someone to make.

25

COMMISSION/COUNSEL DISCUSSIONCOMMISSIONER EVANS

1  
2 As I understood the Attorney General's argument on it, on  
3 behalf of the Attorney General, that there may not have been a  
4 room tax levied at that time. Was that your...

MR. SAUNDERS

5  
6 Well, that's right, My Lord, and as I heard my friend, Mr.  
7 Pink, speak to it, he found it difficult for my friend, Mr. Ruby, to  
8 put that kind of question to the witness and ask the witness to  
9 look back in his memory as to what kind of paper he had before  
10 him when he came to the conclusion he did. But I really don't see  
11 how it advances anything before this Commission. We've had two  
12 witnesses say that they did not accept the explanation given.  
13 We've had one witness say that he considered it implausible in  
14 hindsight and unreasonable in hindsight. I think it stops there.  
15 And one can make whatever argument in November on that. And  
16 whether the review was reasonable under those circumstances.  
17 We don't need to get back into the papers and find out whether  
18 the implausibility was verified given whatever it said in the  
19 statement.

COMMISSIONER EVANS

20  
21 I don't think, Mr. Ruby, that you have enough to base an  
22 argument on. Mr. Cormier says they include meal and tax charges  
23 as well. Now what difference does it make whether the tax  
24 charges are for food or accommodation? What difference does it  
25 make?



COMMISSIONER/COUNSEL DISCUSSION

1 MR. RUBY

2 Well, the accommodation was to a friend. The meals may  
3 well have been for third parties. We don't know about that.

4 COMMISSIONER EVANS

5 Well, I didn't understand that the, to the friend, that there  
6 was any tax on that.

7 MR. RUBY

8 I understood that there may well have been a, or probably  
9 was in Mr. Cormier's view. See, we're arguing about a factual  
10 basis which can be cleared up so simply with no inconvenience to  
11 anyone and this is taking a look at the darn document.

12 CHAIRMAN

13 That will lead us into the merits of the case, won't it, which  
14 we...

15 MR. RUBY

16 No, My Lord.

17 CHAIRMAN

18 Which we have to assiduously avoid.

19 MR. RUBY

20 I don't want to look at the merits, I just want to find out  
21 whether or not when this man says, through no inference from  
22 looking at these documents, that they're the kind of documents  
23 you can honestly draw an inference from. It's a credibility  
24 question. It's question of the plausibility of the explanation he's  
25 given. If it was going to be a big deal, or uncover something to

COMMISSION/COUNSEL DISCUSSION

1 | embarrass someone, but it's just a piece of paper that's...

2 | CHAIRMAN

3 | I realize that but I, as far as I'm concerned we have enough  
4 | evidence before us now to reach the conclusions, credible or, and  
5 | also decide on the credibility of any witness that's giving evidence  
6 | on this, this week and last week. I have no difficulty with that.  
7 | And I would be reluctant to see it go any further. Now I don't  
8 | need these invoices myself to ...

9 | MR. RUBY

10 | We've been asking witnesses about them. They keep saying,  
11 | "I don't remember." So I'm ham-strung and that's why I'm asking  
12 | that is the tribunal. If the witness can say yes, it is or yes, it  
13 | wasn't, we could be fine. But the questions have been allowed, no  
14 | one's objected to the questions now, as long as the answer is "I  
15 | don't remember."

16 | CHAIRMAN

17 | But we don't know what this witness is going to say, do we?

18 | MR. RUBY

19 | No, we don't.

20 | CHAIRMAN

21 | Let's find out.

22 | MR. RUBY

23 | Do you remember the receipts that you saw, sir?

24 | MR. GALE

25 | Well I remember seeing receipts. I remember that they

COMMISSION/COUNSEL DISCUSSION

1 | looked like the type of receipt one would get upon paying their  
2 | bill at a hotel or motel. I don't recall whether tax was listed or  
3 | wasn't listed on each one of them, quite frankly. It's a long while  
4 | since I've seen them. I don't know.

5 | MR. RUBY

6 | I'd be surprised if you had.

7 | My Lord, I must ask for the production. I think I need them.

8 | CHAIRMAN

9 | Well now, before we rule on one thing, we're going to finish  
10 | tomorrow.

11 | MR. RUBY

12 | Yes.

13 | CHAIRMAN

14 | And I'm getting a little bit apprehensive over every day  
15 | there's something new coming up in the sense of new requests  
16 | and, which will keep this Commission going until, in perpetuity.  
17 | And that may be good for the legal profession of Nova Scotia, but  
18 | it's certainly playing havoc with in my work *inter alia*.

19 | MR. RUBY

20 | It may be good for Air Canada in my case, but it's not good  
21 | for my family so let me undertake to you that I'll ask for no  
22 | further witnesses as a basis upon this. All I want is to look at a  
23 | piece of paper.

24 | CHAIRMAN

25 | I can see no reason why you can't have it and, be shown the

COMMISSION/COUNSEL DISCUSSION

1 paper if it's in the hands of Commission counsel, but I don't want  
2 this witness' cross-examination to be held up.

3 MR. RUBY

4 I quite agree.

5 CHAIRMAN

6 If you want to have a look at it for the purpose of preparing  
7 your submission, fine.

8 MR. RUBY

9 Thank you, sir.

EXAMINATION BY MR. RUBY

10  
11 Q. There's only one area that I want to ask you about, Mr. Gale.  
12 I'm sorry to keep you waiting through that colloquy with the  
13 Bench. As I understand it, you felt uncomfortable, and I  
14 think that's your language, or displeased, with the decision as  
15 it turned out.

16 A. Yes.

17 Q. And would I be correct in suggesting to you that one of the  
18 reasons, in fact, the principal reason you were uncomfortable,  
19 was because you didn't like the way it looked.

20 A. No, I did not like the way it looked.

21 Q. And the problem was that the principal factual basis for an  
22 opinion one way or the other required a police investigation  
23 that was not going to happen.

24 A. That's correct.

25 Q. So the net result was that it smacked of a cover-up. Is that

MR. GALE, EXAM. BY MR. RUBY

1 fair? That was the problem perception that you were worried  
2 about?

3 A. That was one of the perceptions that I could see being taken  
4 on the matter.

5 Q. Did you have a premonition then that it was going to come  
6 back to haunt you? Haunt not you, personally, but haunt the  
7 Department in a generic sense?

8 A. I had told Mr. Coles at the time that if they were without a  
9 police investigation then there would never be any way of  
10 proving or disproving the thing and that, accordingly, it would  
11 be very difficult to satisfy people that the proper  
12 considerations had been given to the matter.

13 Q. And you agree with me that given that the person involved  
14 was a highly-placed person in politics in this province, that  
15 was a matter of the utmost importance. To be able to satisfy  
16 anyone who wanted to look at it that the right thing had been  
17 done.

18 A. In my view it was necessary because of his position. It took  
19 on a high profile with the media and that one should be able  
20 to cleanly satisfy anyone that asked the proper investigation  
21 had taken place and if he wanted to say, "Here's the page and  
22 you can look at this page and this chapter and that."

MR. RUBY

24 Thank you very much, sir.

25

EXAMINATION BY CHAIRMAN

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- Q. Plus the fact, Mr. Gale, I, even with a decision not to investigate this, I presume you were aware and knew that the Auditor General would, in the discharge of his duties, do some sort of investigating.
- A. I was aware that it was a normal practice of the Auditor General in his annual report to report these matters and his views on them.
- Q. And I presume under the Auditor General's Act or the practice that he follows he is obligated to report to the Legislature, by way of his annual report which is a public document, any discrepancies that, in his view, are not satisfactorily explained.
- A. That is my understanding. I have not researched his Act, but that's my understanding of his position.
- Q. Was that a cause for concern on your part knowing that something would be made public and there had not been any, by the Auditor General, but there had not been any police investigation?
- A. Well, I knew that the case, the matter was attracting a great deal of attention. It was my view that the media, an Opposition party, the Auditor General, somebody, would start asking more questions and that without the police investigation, I didn't know how one would answer those questions.

1 CHAIRMAN

2 Mister?

3 MR. PRINGLE

4 No, we have no questions, My Lord.

5 MR. SAUNDERS

6 I have no questions for Mr. Gale.

7 RE-EXAMINATON BY MR. SPICER

8 Q. Mr. Gale, I take it from what you've told us that you were  
9 upset at the way this thing was being handled. Did you ever  
10 consider speaking to the Attorney General, Mr. Giffin, about it  
11 directly?

12 A. No, I had not spoken to Giffin about it directly. I thought  
13 that Mr. Coles was aware that I had concerns about the  
14 matter. I really did not know what was taking place between  
15 he and Mr. Giffin or the Speaker.

16 Q. And that's notwithstanding the fact that you, I think have  
17 told us that you thought the matter was being handled  
18 improperly, is a fair characterization.

19 A. I thought poor judgement was being used in the way it was  
20 being handled.

21 Q. And hence it was being handled improperly, would you  
22 agree?

23 A. I suppose that's one view to put on it that it was improper. I  
24 don't know if I was more concerned with the judgement on it,  
25 the overall, the propriety of it, and the appearance of it were

15751 MR. GALE, EXAM, BY CHAIRMAN

1 matters of concern to me.

2 MR. SPICER

3 Thank you.

4 CHAIRMAN

5 Thank you, Mr. Gale.

6 WITNESS WITHDREW

7 CHAIRMAN

8 I'm just wondering if there's, we have two witnesses left.  
9 And I realize that some people that go west have earlier flights  
10 than others, live in a different time zone like myself, if there  
11 would be any merit in starting a bit earlier tomorrow.

12 MR. ORSBORN

13 I don't believe that either of the witnesses will be terribly  
14 lengthy. If we were to start, for example, at 9, I would think that  
15 we should be out no later than 12. I would think


16 ADJOURNED TO 21 SEPTEMBER 1988 - 9 a.m.

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## REPORTER'S CERTIFICATE

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

  
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Margaret E. Graham

DATED THIS 20 day of September 1988 at Dartmouth, Nova Scotia