

DISCUSSIONMR. CHAIRMAN

1
2 What we propose to do is to proceed now to hear... It's my
3 understanding that there are two witnesses to be called. We will
4 hear the first witness and then during our recess, before we start
5 the second witness, I want to review the submissions of Mr.
6 Wildsmith with my colleagues and then we will let you have our
7 decision. Now are we ready to proceed? It's a good thing we
8 started at nine.

MR. ORSBORN

9
10 The next witness will be Mr. Ron Giffin.

11
12 RONALD GIFFIN, recalled and previously sworn, testified as
13 follows:

EXAMINATION BY MR. ORSBORN

14
15
16 Q. Mr. Giffin, you're still under oath, sir.

17 A. Yes.

18 Q. And if you've been following the proceedings of the last hour,
19 if I could ask you to switch your mental gears and return to
20 the events of 1983 and following. You were Attorney General
21 from November, 1983 through to February, 1987?

22 A. Yes, that's correct.

23 Q. Could you tell the Commission, sir, when you were first made
24 aware of the Auditor General's concerns about the expenses of
25 Billy Joe MacLean?

1 A. I can't put an exact date on it but it would have been, my best
2 recollection is some time in November of 1983.

3 Q. Shortly after you took office.

4 A. Yes, I was sworn in on November 9th.

5 Q. Did you give any instructions to your staff within the
6 Department as to what type of review, if any, your
7 Department should conduct?

8 A. Not at that point. My recollection is that I was first apprised
9 of the concerns of the Auditor General by the Deputy
10 Attorney General, Mr. Coles. We had a general discussion
11 about it. I raised one question at that time that I specifically
12 recall, because it was my understanding that this had
13 developed in the context of a review conducted by the
14 Auditor General of expense claims submitted by all MLA's
15 over a particular period of time and the question that I raised
16 with Mr. Coles at that point was whether or not anybody had
17 met with Mr. MacLean to seek any explanation or answers
18 from him about the questions that had been raised with
19 respect to his claims. I understood that there were several
20 other MLA's whose claims had also been questioned.

21 Q. And did you instruct Mr. Coles to insure that Mr. MacLean
22 was interviewed?

23 A. I don't recall that I instructed him to do that. As I under...
24 But I certainly conveyed to him as clearly as I could by my
25 concern that I felt that any MLA whose expenses were being

1 questioned ought to be given an opportunity to explain the
2 claims or to attempt to answer the questions. But I can't say
3 that I put that in the form of instructions because the matter
4 had been raised by the Auditor General, and the Auditor
5 General is an independent office and certainly the Attorney
6 General's Department would have no authority to issue
7 instructions to the Auditor General or the Speaker's office.

8 Q. Were you made aware that the R.C.M.P. in their initial review
9 had identified possible offences that might require
10 investigation?

11 A. I was simply told that the Auditor General had communicated
12 with the R.C.M.P. I don't recall being told the substance of
13 those communications. But certainly when I realized that the
14 matter involved Mr. MacLean, who was a colleague in the
15 Legislature and the government caucus and I believe... I
16 believe Mr. MacLean entered the Cabinet at that time, I think,
17 in November of 1983, if my memory is correct. So he had
18 also become a Cabinet colleague. So the attitude that I took
19 towards the matter at that point was that I felt that I should
20 leave it in the hands of the Deputy Attorney General and the
21 senior officials in the Department to look at it and to make
22 whatever recommendations they might deem appropriate.

23 Q. Did you indicate that position to Mr. Coles?

24 A. Yes, I'm paraphrasing, but that...

25 Q. Yes.

1 A. Was certainly my attitude and my reasoning at that time was
2 that I did understand that that was the approach that had
3 been taken by my predecessor, Mr. How, as he was then with
4 respect to the Thornhill matter.

5 Q. Yes. Did Mr. Coles indicate to you that he did not wish the
6 R.C.M.P. to investigate the matter? I'm thinking now in the
7 time frame of November/December/January of '83-'84.

8 A. I don't recall his indicating that to me. At that point it
9 seemed to me at least in the discussions that we had that
10 there should be at some point in the process some
11 opportunity for Mr. MacLean to respond to whatever
12 questions had been raised about his expense claims. But I
13 don't recall ever saying to Mr. Coles that he should give any
14 instructions to the R.C.M.P. one way or the other.

15 Q. Did you discuss the concerns of the Auditor General with any
16 one or more of your Cabinet colleagues?

17 A. No.

18 Q. Prior to receiving Mr. Coles' memorandum in April of 1984,
19 did you have any further involvement with the matter?

20 A. Well, I was made aware that a meeting did take place which
21 involved, I believe, the Deputy Auditor General and Mr.
22 MacLean and the Speaker. And, at some point, I saw an
23 exchange of letters involving a number of items in Mr.
24 MacLean's expense claims in which, as I understood it from
25 that exchange of letters, that there had been a review of Mr.

MR. GIFFIN, EXAM. BY MR. ORSBORN

1 MacLean's claims or those particular claims which were
2 questioned, that agreement had been reached at that meeting
3 on amounts that were owing by Mr. MacLean which had to be
4 reimbursed and that that matter had been dealt with at that
5 meeting and that they had reached that agreement. That was
6 my understanding from looking at that correspondence. I
7 can't tell you exactly when I saw that correspondence, but I
8 know I did.

9 Q This would have been the correspondence between Mr.
10 Donahoe and Mr. Coles arising out of a meeting with the
11 Speaker and Mr. MacLean, I think, in January of '84?

12 A. I believe that was an exchange of letters between Mr.
13 Donahoe and Mr. Cormier.

14 Q Mr. Cormier.

MR. CHAIRMAN

15
16 Q Before we proceed, I'd like to get on the record, sometimes I
17 sense confusion. The Auditor General, as I understand it in
18 Nova Scotia, is a servant of the Legislature as opposed to
19 being servant of the Government, is that correct?

20 A. Yes, that's correct, My Lord. The office was established under
21 legislation that was passed, I believe, in the early 1970's.

22 Q And the Speaker of the Legislature is not a member of, or a
23 representative of Government?

24 A. That is correct. That office as well is an office of the House of
25 Assembly.

1 Q. Is the Attorney General of the Province, as the Crown's law
2 officer, responsible for providing legal advice to Mr. Speaker
3 and to the Auditor General?

4 A. No.

5 Q. Where do they turn for legal advice in the event they require
6 it is necessary?

7 A. My practical experience being involved in this system over
8 the years is that the Speaker can turn to the Clerk of the
9 House and also to the Office of the Legislative Council, which
10 is responsible for drafting legislation dealing with private
11 member's bills and so forth. And, indeed, if my recollection is
12 correct, the Office of the Legislative Council would also have
13 been responsible for the drafting of any regulations with
14 respect to MLA's expense claims.

15 Q. So it's the duty of the Legislative Council to provide legal
16 advice to the Speaker?

17 A. Well, I hesitate to respond to that point without thinking
18 about it, My Lord, but the Office of the Legislative Council, as
19 I understand it, is there to serve all members of the House of
20 Assembly and not specifically the Speaker.

21 Q. Oh, I didn't mean that. I understand that. That that's the
22 Office of Legislative Council is to provide legal advice to all
23 members of the Parliament or members of the Legislature,
24 including the Office of the Speaker. Is that it?

25 A. Yes, I think that would be it.

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1 Q. Now to whom does the Auditor General usually turn for legal
2 advice?

3 A. I can't answer that, My Lord. I don't know what practice the
4 Auditor General follows in that regard.

5 Q. In this particular case, it would appear as if he turned to the,
6 at least the Deputy Attorney General for advice.

7 A. I'm not clear because I was not involved in it at this stage.
8 Whether it was the Auditor General who communicated with
9 the Deputy Attorney General or the Attorney General's
10 Department or if there was a communication with the R.C.M.P.,
11 I'm not clear on who brought the Attorney General's
12 Department into the matter.

13 Q. It would appear from the report to the Auditor General and
14 from his testimony that whether he, that whoever made the
15 initial decision to go to the Deputy Attorney General that the
16 Auditor General relied upon the Deputy Attorney General's
17 interpretation of the law as it related to this case.

18 A. I think that's correct, based on what I know of how the
19 matter was dealt with.

MR. ORSBORN

20
21 Q. When you did become aware of the review taking place
22 within your Department, Mr. Giffin, did it give you any cause
23 for concern that your Department was giving a legal opinion
24 on matters arising out of the Speaker's office?

25 A. No, that didn't cause me particular concern. I didn't think

1 about it in that particular context. It was simply that the
2 matter had been brought to the attention of the Department.
3 At that point, I didn't know where it was going to lead or
4 what our involvement would be. As I say, because it
5 involved a colleague, I did not want to personally become
6 involved in it. I was really taking a hands-off approach. I
7 felt that I should rely on the judgement and advice of the
8 Deputy Attorney General and the senior officials in the
9 department.

10 10:10 a.m.

11 Q. If I could ask you to turn to page 35 of the booklet of
12 materials, sir. I understand that to be a memorandum
13 provided by Mr. Coles to yourself on April the 18th, '84.

14 A. Yes, that's correct.

15 Q. And I believe attached to that would be Mr. Gale's report
16 which is found in the preceding three or four pages of the
17 booklet.

18 A. Yes.

19 Q. Do you recall if you read Mr. Gale's accompanying
20 memorandum?

21 A. I believe I did, yes. Yes, I certainly recall receiving the
22 material and going over it.

23 Q. Did you discuss the matter on occasion directly with Mr.
24 Gale?

25 A. I don't believe I ever discussed it with Mr. Gale alone. Most

1 of my discussions on this matter were with Mr. Coles. Now
2 Mr. Gale may have been present on one or more of those
3 discussions, but I wouldn't want to say that under oath,
4 because I don't have a clear recollection of that.

5 Q. And is it fair to say that in Mr. Coles' opinion, as expressed
6 in his memorandum, that there was no criminal wrongdoing
7 and the matter did not warrant further investigation by the
8 police?

9 A. Yes, that was what I understood that memorandum to say.

10 Q. And did you understand that that was also a view shared by
11 Mr. Gale?

12 A. Yes.

13 Q. Did Mr. Coles express that to you?

14 A. Yes, well, in the memorandum, yes.

15 Q. Apart from the memorandum.

16 A. I don't recall what was said in oral conversation. It was
17 certainly...nothing that was inconsistent with what he had
18 put in the memorandum.

19 Q. If one reads Mr. Gale's memorandum and, in particular, the
20 second paragraph on page 33. The last half of that
21 paragraph he says,

22
23 In the material we have, it appears that the
24 claims are not fraudulent in that he made trips,
25 expended money, although there is no hard
evidence as to how many trips he made, how
much he expended. There is no evidence to

1 contradict his assertions. If you want evidence
2 to prove or disprove, then a police investigation
3 will be necessary.

4 He seems to be saying that there are no facts to suggest
5 wrongdoing unless we go out and look. Does that make
6 sense that one would take that position?

7 A. It seemed...that seems somewhat ambiguous to me. But in
8 any event, I accepted as the final recommendation from the
9 Department to me as Attorney General the memorandum
10 from Mr. Coles and the draft letter which had been
11 prepared.

12 Q. You said "somewhat ambiguous". Can you tell us, sir, if you
13 thought it was ambiguous at the time?

14 A. I would have difficulty recalling that. My concentration on
15 that matter was on the final recommendations that I got
16 from the Deputy Attorney General and as I said, I have to be
17 careful, I'm under oath, and I'm just not...

18 Q. Yeah. Were you aware, sir, of any of the specifics of the
19 problems in the documentation?

20 A. No, I did not at any time look at the documentation myself
21 or review it. I felt that that was something that I should
22 leave in their hands.

23 Q. So you formed no judgement of your own?

24 A. That's correct.

25 Q. Were you yourself familiar with these lead regulations?

1 A. Not in detail, no. I certainly had not reviewed them. I knew
2 in a general way what MLAs were entitled to claim for by
3 way of expenses and, indeed, for a couple of years, I think
4 around 1979 to '81, I had served on the Internal Economy
5 Board. But I was there because I was at that time chairman
6 of the Management Board and, therefore, interested in
7 expenditures. But I was never involved in the drafting of
8 regulations. I believe those regulations were drafted by the
9 Office of the Legislative Council.

10 Q. And you would have occasion from time to time yourself to
11 file expense claims.

12 A. Oh, yes.

13 Q. Are you able to tell us if the regulations covered the manner
14 in which expense accounts should be filed?

15 A. Well, there were forms prescribed which had been revised
16 and changed over the years, but that's...basically it was
17 done, as I recall it, in terms of filling out a form with
18 appropriate amounts and calculation of trips or what have
19 and then the Member signed it and would then send it on to
20 the Speaker's office.

21 Q. The reason I ask is I'm looking at Mr. Coles' memorandum,
22 the second paragraph on page 35, and he says to you, the
23 last half of that paragraph,

24 Mr. MacLean's explanation of the manner in
25

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1 which he filed his statement of travel and living
2 allowances is, in our opinion, a reasonable
3 explanation, particularly in light of the manner
4 in which these regulations are communicated to
5 members of the Legislative Assembly.

6 I'm asking if there was any actual linkage between the
7 communication of the regulations and the manner in which
8 the claims were actually filed?

9 A. Well, I took... Perhaps I can relate my experience with it.
10 Over the years, and I assumed this evolved from the
11 traditions of the House of Assembly, after I was elected in
12 1978 I can recall attending caucus meetings at which the
13 Speaker would come to the caucus meeting each year and
14 would outline orally to whoever happened to be there those
15 items for which Members could claim, the amounts and that
16 sort of thing. The regulations were not circulated in written
17 form to MLAs. So I took that to be part of what Mr. Coles
18 was referring to, was that it was obviously from a legal
19 point of view a highly unsatisfactory arrangement. It was
20 something that had evolved over the years in a traditional
21 way. It has since been changed.

22 Q. Mr. Coles enclosed with his memorandum a draft...

MR. CHAIRMAN

23 Q. You said it had been changed, Mr. Giffin, what's the practise
24 now? For instance, you've just gone through an election. I
25 think we can take judicial note of that. And there are

1 probably some new members in the Legislature.

2 A. Yes.

3 Q. How do they...how are they made aware of the regulations
4 governing their recovery of legitimate expenses incurred?

5 A. It's my understanding that this is all now in printed form
6 and is circulated to the MLAs and that the entire procedure,
7 certainly in the light of the MacLean case and other
8 difficulties which were experienced, the entire procedure
9 has been tightened up and I understand that the procedure
10 as it now exists has the approval of the Auditor General. I
11 think if I were to characterize that system as it was when I
12 first entered the Legislature, it seemed to be very much an
13 honour system, very loose.

14 Q. The Auditor General in his report, if you look on page 10 of
15 the briefing book you have there, would appear to indicate
16 that once the Auditor General made recommendations
17 before, at least at the time of making its report, there had
18 been a change of policy and you see it says, "The speaker
19 has initiated this year the practise of meeting all Members
20 to review regulations and guidelines with them." And then
21 on page 11 of our briefing book, the Auditor General would
22 appear, in a paragraph starting with, "In summation," to
23 confirm that there is now a satisfactory procedure
24 emanating from the Speaker's office. Is that the procedure
25 you're referring to when you say it's changed?

MR. GIFFIN, EXAM. BY CHAIRMAN

1 A. In a general way, yes, My Lord. I believe there have been
2 further changes since then. This was in 1984 and I think
3 there have been further changes in the system since then,
4 but I wouldn't be in a position to be able to review that in
5 detail. But I'm sure that information would be available
6 from the Speaker.

7 Q. The Speaker is always chairman of the Internal Revenue,
8 or...

9 A. The Internal Economy Board.

10 Q. The Internal Economy Board.

11 A. Yes.

MR. ORSBORN

12
13 Q. The memorandum found at pages 37 and following, Mr.
14 Giffin, was, I believe, prepared in draft form for you by Mr.
15 Coles.

16 A. I can't say if it was just Mr. Coles. I don't know if Mr. Gale
17 or others were involved. But it was submitted to me by Mr.
18 Coles.

19 Q. Do you remember if you made any changes in it?

20 A. I don't believe I did. I signed it in the form in which it is
21 there.

22 Q. Yes. It's dated April the 18th, the same date as Mr. Coles'
23 memorandum to you, so...

24 A. Yes, that's correct.

25 Q. It would appear it went out fairly quickly.

MR. GIFFIN, EXAM. BY MR. ORSBORN

1 A. Yes.

2 Q. In substance, I think, your letter... I mean you did, if you
3 signed it, I presume you agreed with it, it has to be taken as
4 your letter.

5 A. Yes, although I think I have to qualify that answer by
6 repeating what I said earlier. That I did not personally
7 review the documentation or the material that the Auditor
8 General had or personally get involved in the explanations
9 put forward by Mr. MacLean. In other words, I was relying
10 upon the advice and information given to be my the Deputy
11 Attorney General, but recognizing, as well, that as the
12 Attorney General that I had the final responsibility in the
13 matter.

14 Q. So when the letter states that "Mr. MacLean's explanation is
15 satisfactory and that these matters are simply accounting
16 irregularities," these are your statements, but is it fair to say
17 that you were relying totally on Mr. Coles?

18 A. Yes, that's right.

19 Q. Once you sent that letter, did you believe that the matter
20 was closed?

21 A. Well, at least as far as the Department was concerned. I was
22 not aware of any further action to be done within the
23 Department. Now as to whether or not the Auditor General
24 or the Speaker or for that matter the RCMP would do
25 anything further, that was not really a question that I

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1 addressed at that point. But after I signed and sent that
2 letter, at that point at least, I regarded the matter as
3 concluded as far as the Department was concerned.

4 Q. Did you have any view on whether the Auditor General was
5 satisfied or not with the explanation that had been
6 provided?

7 A. It was my understanding that he was and I based that on
8 the exchange of letters between Mr. Donahoe and Mr.
9 Cormier.

10 Q. Perhaps if we can turn back to that.

11 A. What page?

12 Q. I would assume, sir, the letter that you're referring to would
13 in large measure be found at page 29.

14 A. Yes.

15 Q. From Mr. Donahoe to Mr. Coles, when he sets out the
16 discussion that Mr. Donahoe and Mr. Cormier had with Mr.
17 MacLean and he does say in the last paragraph on page 31,
18 "That Mr. Cormier has seen the contents of this
19 memorandum and agrees that it accurately sets forth the
20 discussion."

21 A. Yes, and I also recall the exchange of letters, which I assume
22 is in the work here somewhere, between Mr. Donahoe and
23 Mr. Cormier.

24 Q. Yes.

25 A. Which specified the various amounts that were to be

1 reimbursed.

2 Q. Yes. If I could ask you to turn to pages 41 and 42 and 43
3 and 44. These are letters that were not exchanged until
4 January 4th, '85, between Mr. Cormier and Mr. Donahoe and
5 they comment on various matters that were dealt with to
6 the Auditor General's satisfaction, with the exception of the
7 expense claims and the documentation relating to them.

8 A. Yes, I'm sorry. I didn't mean to mislead you. Those letters
9 were exchanged in '85 after the...after the matter had arisen
10 again in the 1984 election. In any event, I was certainly...I
11 was satisfied when I signed the letter in April of 1984 that
12 the Auditor General was satisfied with the disposition of the
13 matter. I'm sorry, I should have stated that I was relying
14 on that memorandum which you just quoted because these
15 letters came later.

16 10:25 a.m.

17 Q. Were you relying only on that memorandum from Mr.
18 Donahoe to Mr. Coles or was there any other advice given to
19 you by your officials as to the position of the Auditor
20 General?

21 A. Certainly Gordon Coles and I had conversations on the matter
22 although I hesitate under oath to say specifically what he
23 said. But in any event, I was satisfied when I signed the
24 letter in April of '84 that the Auditor Generals' office was
25 satisfied with the way the matter had been dealt with.

1 Q. With respect to the decision as to whether the police should
2 investigate or not, this was the Department's really final word
3 on it and you've indicated that you relied on Mr. Coles. If
4 there were a serious difference of opinion between Mr. Coles
5 and Mr. Gale as to whether an investigation should take place,
6 would you have expected to have known about that?

7 A. I would certainly have wanted to have known about any
8 difference of opinion. Mr. Saunders summarized for me last
9 night over the telephone the differences of opinion that I
10 understand were expressed here yesterday by Mr. Coles and
11 Mr. Gale in their testimony on that area. I was certainly not
12 aware of any difference of opinion between Mr. Coles and Mr.
13 Gale.

14 Q. I think it's fair to say that on the evidence that we've heard
15 that Mr. Coles felt there should not be, Mr. Gale was directly
16 the opposite and felt that it should be and said so to Mr. Coles.
17 On an issue such as this involving a Cabinet minister, one of
18 obvious sensitivity, would you have not reasonably expected
19 that Mr. Coles would have said to you, "This is my position,
20 but in fairness, I should tell you that Mr. Gale feels the
21 opposite?"

22 A. Well, that did not happen. I took the memorandum from Mr.
23 Coles as being the Department's final advice to me on the
24 matter. No, that was certainly never communicated to me.

25 Q. Would you have expected that it should have been?

1 A. Yes. Because I think any, certainly to have somebody as
2 senior as Mr. Gale holding that view, I certainly should have
3 been advised of it, yes, no question.

4 Q. Again sir, up to and including the time that you wrote your
5 letter to the Speaker in April, had you discussed the matter
6 with one anyone or more or your Cabinet colleagues?

7 A. No. No, that was a matter that I regarded as being, having
8 nothing to do with Cabinet.

9 Q. I understand that the matter raised itself during the election
10 campaign of 1984, November 1984.

11 A. Yes.

12 Q. And that...

13 A. I'm not sure if that's the right phrase, but it was raised.

14 Q. It didn't raise itself obviously. And that in your response,
15 yes, right. The phrase we have had earlier in these hearings
16 that things "pop up".

17 A. Yes, I've had that experience.

18 Q. In any event, you thought it necessary, I take it, to release to
19 the press or to the public your letter of April 18th in response
20 to certain allegations that were made in the course of the
21 campaign?

22 A. Yes. That's correct. When the allegations were raised by Mr.
23 Cameron in the last week or so of the provincial election
24 campaign, I felt that I had to respond. Now that letter had
25 not been made public. It was a private communication to the

1 Speaker because we were dealing with the questions that had
2 been raised about an MLA's expenses and at least to my
3 understanding at that point in time, dealt with. So I had not
4 made the letter public. I was of the view that we had to get
5 the permission of Mr. MacLean to make the letter public and
6 that was done. And I then made the letter public and, in fact,
7 communicated that information, in response to the allegations
8 that Mr. Cameron had made.

9 Q. We have filed, My Lord, as Exhibit number 176 a transcript of
10 a press conference held by Mr. Giffin. I'm unable to advise
11 you of the exact date but, other than to say it would be very
12 early in November. The election being on November the 6th.

13 EXHIBIT 176 - PRESS CONFERENCE TRANSCRIPT - HELD BY MR.

14 GIFFIN re MR. MacLEAN

15 A. Yes, it was the, if I may be of assistance on that. It was the
16 Friday afternoon prior to the election.

17 Q. Yes. November the 1st? I'm advised also, My Lord, this is a
18 transcript prepared from a tape taken by a freelance
19 reporter, Miss Patsy, Betsy Chambers. I'm not able myself to
20 vouch for either its accuracy or its completeness but if there
21 is any question raised, I'm advised that there is a tape
22 recording available if anybody does wish to review any
23 particular aspect of it. I only wish to direct one question to
24 you at the moment, Mr. Giffin, on this press conference. And
25 it's on page 6 of the materials. And a question is put to you at

1 the top of the page. "Has that explanation satisfied the
2 Auditor General?" And the preceding questions relate to the
3 explanations that were provided and your answer is, "Yes.
4 Yes, sir." Do I take it that that was your understanding at the
5 time?

6 A. Yes, it was.

7 Q. Did you subsequently, on November 22nd, attend a meeting
8 with the Auditor General, the Speaker and officials from your
9 Department?

10 A. I believe there was a meeting. I wouldn't want to testify to
11 the date. I may just, if I may go back to this transcript for a
12 moment. I notice that it may not be complete. I recall a
13 reference to Premier Hatfield as being the last question in the
14 press conference and I don't see that there so there may be
15 other things missing.

16 Q. There may be, sir.

17 A. So I wouldn't want to say that that is complete.

18 Q. No, I understand that and I cannot advise that it is. I take it,
19 sir, you do recall attending a meeting with the Auditor
20 General following the election at which he basically advised
21 yourself and the Speaker as to his possible inclusions in his
22 report about Mr. MacLean's expenses?

23 A. Yes, I believe there was a meeting. I have some difficult
24 recollecting details of it but that there was a meeting.

25 Q. We have had evidence from Mr. Cormier that at that meeting

1 he pointed out that while he was not commenting on the
2 legality of the issue, he had grave reservations from an audit
3 point of view that he felt that the documentation was highly
4 irregular, perhaps fraudulent and that he did not accept the
5 explanations of Mr. MacLean, and accordingly, was not
6 satisfied that the issue was closed. Do you recall a
7 conversation to that effect?

8 A. No, I have difficulty recalling the conversation at that
9 meeting. Certainly there was a meeting and there was a
10 discussion about the situation with respect to Mr. MacLean.
11 But I would have real difficulty trying to recall specific
12 statements by individuals at the meeting. But I do recall
13 there was a discussion about Mr. MacLean's situation.

14 Q. Did you take from the meeting in total that the Auditor
15 General was not satisfied with the explanations given by Mr.
16 MacLean?

17 A. No, I can't really say that. Again, I have difficulty recollecting
18 the discussions at that meeting. So I, you know, I just better
19 not say, not since I'm under oath.

20 Q. Is it fair to say that you took nothing from the meeting that
21 would give you concern about a public position you had
22 enunciated during the election about the Auditor General
23 being satisfied?

24 A. That's correct. I didn't see anything. I don't recall anything
25 that happened at that or, that meeting that caused me that

1 kind of concern.

2 Q. If, in fact, the Auditor General had made it quite clear that he
3 wasn't satisfied, are you able to tell us what you would have
4 done in light of your public statements?

5 A. I think that probably what I would have done in that
6 circumstance would have been to ask the staff in the
7 Attorney General's Department to take another look at the
8 matter.

9 Q. Did you have any other involvement in the matter prior to
10 the release of the Auditor General's report in April of '85?

11 A. I certainly recall receiving the, or seeing the correspondence
12 from Mr. Donahoe in '85, between Mr. Donahoe and Mr.
13 Cormier dealing with Mr. MacLean's claims.

14 Q. Yes. And they dealt with a number of matters but indicated
15 that the expense account documentation had been otherwise
16 dealt with, I believe.

17 A. Yes.

18 Q. Now the Auditor General tabled his report in April of 1985
19 and it's quite clear from that report, I'm reading from page
20 10. He says,

21
22 However, as Auditor General, it is my opinion
23 that the documentation employed and the
24 explanations provided by the Member are
25 inappropriate for the expenses claimed and
unacceptable from an audit standpoint.

1 CHAIRMAN

2 What date is that?

3 MR. ORSBORN

4 That was tabled very early in April of 1985, My Lord.

5 CHAIRMAN

6 Thank you. Now the page.

7 MR. ORSBORN

8 I was reading from page 10, the top paragraph, left-hand
9 side.

10 Q Were you, Mr. Giffin, aware of that paragraph once the report
11 was released? Did you read it?

12 A. Yes I did.

13 Q Did that give you any concern about your earlier conclusion
14 that the Auditor General was satisfied?

15 A. Which page are we on? Is this page 10?

16 Q It's page 10 or page 64 of the report itself. The top
17 paragraph, sir, on the left-hand side.

18 A. Yes, the right top paragraph.

19 Q And in fairness I should point out to you the preceding
20 paragraph on page 9 where the Auditor General says, "It's
21 quite clear that I'm not making judgements on legal matters."

22 A. Yes, that's right. The concern that I had was that I, at that
23 point, wasn't clear what the position of the Auditor General
24 was. It had been my understanding, going back to when the
25 matter was dealt with in the winter of '84, April of '84, that

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1 the Auditor General was satisfied with the explanations put
2 forward by Mr. MacLean and he was satisfied with the way
3 that those matters had been dealt with. And I also recall,
4 although I cannot put a date on this, but I believe it was, I
5 know it was after the '84 election, but at some point having a
6 conversation with the Speaker of the House, Mr. Donahoe, in
7 the parking lot of the Legislature and saying, "Is there a
8 problem with,...does Mr. Cormier have a problem with this?"
9 And he said, "No," he said, "he's satisfied with what has been
10 done." So I didn't pursue the matter further. But I can't tell
11 you when that conversation took place but it did take place.

12 Q. Once you reviewed the Auditor General's report, did his
13 statements give you any cause for concern?

COMMISSIONER EVANS

14 Can I just, on page 37, the report that you've sent or the
15 letter which you sent to the Attorney General, I'm sorry, to Mr.
16 Donahoe, a copy went to the Deputy Attorney General, Deputy
17 Auditor General...

CHAIRMAN

18 That's Mr. Cormier.

COMMISSIONER EVANS

19 That was Mr. Cormier.

20 A. Yes.

COMMISSIONER EVANS

21 And there was no response in writing from Mr. Cormier to
22
23
24
25

MR. GIFFIN, EXAM, BY MR. ORSBORN

1 that letter.

2 A. No. If I might, My Lord, by way of explanation. I should
3 point out that Mr. Sarty, who had been the Auditor General
4 had retired, and the new Auditor General had not been
5 appointed. There was a period of time when Mr. Cormier, in
6 effect, served as Auditor General although still had the title of
7 Deputy Auditor General.

COMMISSIONER EVANS

8 So that Mr. Cormier did not indicate to you that he was
9 dissatisfied with the contents of that letter.

10 A. That's right.

MR. ORSBORN

11 Q. Did you ask any of your staff to take another look at it once
12 the Auditor General's report was released?

13 A. No, I didn't. I recall being asked in the House of Assembly
14 and I can't put a date on this without going back to *Hansard*
15 but I recall being asked in the House of Assembly by Mr.
16 MacLean about the matter and responding that it was my
17 view that...I think he raised it in the context of a question of
18 whether or not there should be an RCMP investigation and
19 that the response I gave was that it was my view that the
20 RCMP were always free to investigate any matter at any time
21 that they deemed appropriate.
22
23
24
25

1 10:40 a.m.

2 Q. Given your knowledge of the matter and given the Auditor
3 General's concerns, which he was still voicing, did you give
4 any consideration to yourself requesting an investigation?

5 A. No, I did not at that point. I was still satisfied that the
6 advice that I had been given in April of 1984. And I think
7 the concern I had about the position of the Auditor General
8 was that I wasn't quite sure what the position was. He
9 seemed to say one thing on one occasion and something
10 different. So I just wasn't clear on the position of the
11 Auditor General. That was why when I had that particular
12 conversation with Mr. Donahoe I just asked the question and
13 he said that it was his understanding that the Auditor
14 General was satisfied with the way the matter had been
15 dealt with.

16 Q. Well, his report would not indicate that and given your
17 confusion over the Auditor General's position did you take
18 any steps to communicate directly with the Auditor General
19 to say, "Look here, if you've got a problem I'd like to know
20 what the details are?"

21 A. No, I did not. I just took the position that I was relying on
22 the advice that I had had in 1984 and saw no reason to
23 change that.

24 Q. A RCMP investigation was commenced in April of '85
25 following the request by Mr. Vince MacLean. Were you

1 aware, sir, that an investigation had been commenced?

2 A. Well, Mr. MacLean raised questions in the House about the
3 matter, and in response to one of his questions I indicated
4 that if he had concerns that he, as a citizen, had every right
5 to go to the RCMP himself about the matter, and very
6 shortly thereafter that is what he did.

7 Q. Did you receive interim reports from the RCMP as they
8 proceeded?

9 A. Not personally.

10 Q. Were you briefed as to the investigation as it proceeded?

11 A. No, I was not. My view of the RCMP investigation when it
12 was commenced was that since again it involved a colleague
13 that I should take a completely hands-off approach. So I
14 didn't ask for updates on what they were investigating or
15 what results they were achieving or anything else. My view
16 of it was that they should proceed totally on their own,
17 totally independently. They could, of course, communicate
18 with Gordon Gale, who normally would be the person in the
19 Department with whom they would communicate if they felt
20 any need to communicate with the Department. But I
21 stayed completely away from it.

22 Q. Were you made aware that charges were being considered
23 before they were laid?

24 A. No. The advice that I received on the laying of the charges
25 was in a telephone call from Mr. Coles to my home in Truro

1 and that would have been, just, I think, perhaps a day
2 before or the day the charges were laid.

3 Q. And what was the substance of that advice?

4 A. Well, he advised me that the result of the RCMP
5 investigation was such that they were recommending the
6 laying of numerous charges against Mr. MacLean and my
7 response to that was, well, if...along the lines, if you need my
8 approval for that, you've got it. I should explain that I was
9 ill at the time. I was in my home in Truro. And so that's
10 why this was done over the telephone.

11 Q. Did it come as a surprise to you that the charges were being
12 laid?

13 A. Well, at the risk of being flippant, I suppose I could say
14 nothing surprises me. But the serious answer to that would
15 be that given the length of time that was involved in the
16 investigation, (it took close to a year), and while I had no
17 reports on the investigation, never looked at the files or
18 anything like that, just the mere passage of time and the
19 fact that the investigation was going on over that period of
20 time, suggested to me that there must be something of
21 substance that the RCMP were looking at. But that was just
22 a personal...

23 Q. Sure.

24 A. ... conclusion that I drew. So that by the time I received the
25 call from Mr. Coles, it did not come as a surprise simply

1 because of the length of time that the matter had gone on.

2 Q. You were advised that numerous charges were
3 contemplated. Did that give you any cause for concern
4 about the earlier advice that you had received from your
5 officials that number one, no investigation was warranted;
6 number two, no criminal wrongdoing was apparent, it was
7 merely an accounting irregularity?

8 A. Oh, yes, it caused me very great concern, and this caused me
9 a very great concern right up to the present time. However,
10 the reality was that the charges were being laid and that
11 was that. That was the just situation that we would have to
12 deal with.

13 Q. Did you have occasion to talk to Mr. Coles and indicate to
14 him your concern about the earlier advice?

15 A. I can't recall the specifics of conversations on that point. It
16 was obvious that the advice that I had received in 1984 was
17 wrong and that I was, therefore, wrong in accepting and
18 following that advice. But I don't recall that we got into any
19 great long discussion on it. My attitude was that it had
20 happened, and you just go on from there.

21 Q. Did you reprimand him?

22 A. No.

23 Q. Did you speak to Mr. Gale about it?

24 A. No, I don't recall that I did, no.

25 Q. I understand that you had, sir, some involvement in the plea

1 bargaining that took place in September of 1986.

2 A. Yes, I did.

3 Q. Did you instruct that you would be involved in that process?

4 A. No, my memory of that is that Mr. Martin Herschorn, who
5 was involved with the matter, asked to meet with myself
6 and I believe Mr. Coles. I'm not sure if Mr. Gale was there
7 or not. Certainly Mr. Herschorn was dealing with the plea
8 bargaining and that that meeting was requested.

9 Q. Had you been previously directly involved in plea
10 bargaining discussions during your term as Attorney
11 General?

12 A. In some situations, yes. Generally cases that were perhaps
13 unusual or that would involve public policy questions or the
14 setting of a new precedent. Not a great many, but there
15 were some.

16 Q. Was there any public policy question involved here?

17 A. I think so. I think with the conviction of a Minister of the
18 Crown, a Member of the Legislature on a serious criminal
19 charge, which had not happened before in the history of the
20 province. There had been people convicted of things like
21 impaired driving, but certainly never anything like this.
22 That, yes, I certainly felt that had public policy implications,
23 yes.

24 Q. Can you indicate to us what these public policy factors were,
25 given that a Cabinet Minister was involved?

1 A. Well...

2 Q. What were the interests that had to be considered?

3 A. Well, I think the interests in one sense, I suppose the
4 interests that have to be considered in any sentencing. But
5 the question of the impact of this on the general public,
6 public perception of the administration of justice, the type of
7 precedent that would be set, whether the fact that an
8 individual holds that type of public office means that any
9 particular sentencing considerations ought to apply, that sort
10 of thing.

11 Q. Those factors that you have indicated, if I've written them
12 down correctly, the impact on the public, the fact that the
13 individual holds an office and the precedent that may be set.
14 Would it be fair to say that these would all be factors that
15 would tend to increase rather than decrease a sentencing
16 position?

17 A. Well, I don't want to get into an argument on the authorities.
18 I understand the courts have not been clear on their view or
19 there have been different decisions over the years about the
20 fact that the individual holds a public office, as to how that
21 ought to impact on sentencing. The...and I don't intend what
22 I gave you to be an exhaustive list of the matters of concern.
23 But they just...when I was requested to take part in that
24 meeting, that discussion, I felt, as Attorney General, that I
25 had a responsibility to do so.

1 Q. Can I ask you, sir, why in the earlier matters involving the
2 investigation and the review of the expenses and the laying
3 of charges, you consciously took a decision that you should
4 maintain a hands-off approach because it was a Cabinet
5 colleague, and now you feel it's your responsibility to be
6 involved in this plea bargaining process?

7 A. Yes. The case for me throughout presented a very serious
8 dilemma and one that I've never been able to resolve. On
9 the one hand if, as Attorney General, you take the hands-off
10 approach, simply hand it over to your staff or the RCMP or
11 what have you, then you run the risk of having happen to
12 you what indeed happened to me. And so then you can be
13 accused of having, in effect, abdicated your responsibility.
14 On the other hand, if the Attorney General takes a direct
15 involvement in a matter such as that, where it involves a
16 colleague, then of course whatever decision is made, you're
17 then subject to the potential criticism that you are, in effect,
18 favouring a colleague. So it's a dilemma and I don't have the
19 answer to it. But that was the problem I was faced with. In
20 any event, given the seriousness of the matter and when the
21 staff in the Department requested a meeting with me to
22 discuss it and given that the hands-off approach, certainly
23 back in '83, '84, had produced results which were highly
24 unsatisfactory, I decided to accede to the request and to
25 take part in the discussion.

1 Q Is it fair then that because of the results that had followed
2 from the earlier advice given to you that you wanted to
3 exercise somewhat more of your own judgement in this case
4 and be somewhat better informed than you had been
5 previously?

6 A. Well, let me put it this way. If... I was quite prepared to
7 leave the plea bargaining in the hands of the staff in the
8 Department. I would have been quite happy to do that. But
9 when they requested the meeting with me and wanted to
10 discuss it with me, then I felt that I should accede to that.
11 But it is a dilemma for any Attorney General in that type of
12 case as to how you deal with it.

13 Q. I believe, sir, on page 57 of the booklet there is a memo to
14 you from Mr. Herschorn when he asks "For this opportunity
15 to discuss it with you," and he encloses in that a copy of the
16 information and a copy of the prosecutor's summary of the
17 counts in question. Did you...and that summary is found at
18 pages 53 through 56 immediately prior to that. Do I
19 understand, sir, that in your own law practise you had had
20 occasion to do a fair amount of criminal law?

21 A. Yes.

22 Q. As defence counsel.

23 A. Both as defence counsel and as a Crown prosecutor.

24 Q. Did you..

25 A. Not simultaneously.

1 Q. Of course. Settle it in your office.

2 A. Yes.

3 Q. Did you read Mr. Clair's summary of the counts?

4 A. Yes, I did.

5 Q. Do you recall prior to meeting with Mr. Herschorn and Mr.
6 Coles whether you formed any view in your own mind as to
7 what an appropriate disposition would be?

8 A. Not really. I felt that was the purpose of the meeting, was
9 so we would sit down and discuss the matter as openly and
10 freely as possible and see if we could come to an agreement
11 on what would be an appropriate response to the plea
12 bargaining proposal.

13 Q. And this was a meeting attended by yourself, Mr. Herschorn
14 and Mr. Coles?

15 10:55 a.m

16 A. Yes, I can't recall if Mr. Gale was there or not. But I, my
17 problem with some, with these meetings is that I never kept
18 notes myself of who was there or what took place in the
19 discussion. I always relied on the staff in the Department to
20 do that.

21 Q. And can you give us to the best of your recollection the
22 substance of that meeting?

23 A. I can only do it in paraphrase or summary. My recollection is
24 that the main issue that was discussed was whether or not
25 the Crown should insist upon requesting a period of

1 incarceration for Mr. MacLean. That was the main issue. At
2 least that's the one that stands out in my memory.

3 Q. And were there views expressed to you by Mr. Herschorn and
4 Mr. Coles?

5 A. Well, it was the, I'm not sure that I would put it that formally.
6 It was just a discussion in which we, as I recall it, explored
7 the various factors and I don't recall that anybody came in
8 there with a fixed agenda and said it should be this, this, this,
9 and this. That we had a back and forth discussion which was
10 very informal.

11 Q. What were the various factors?

12 A. Well, all of the factors that would be taken into account in
13 sentencing. Whether or not the individual was a first
14 offender, family situation, impact on the community,
15 deterrent factor. That's not a complete listing, but I think
16 they were all covered in the submissions that were made to
17 the court. But all of the factors that would ordinarily be taken
18 into consideration in sentencing.

19 Q. Was any legal authority discussed?

20 A. I don't recall any. However, I left any research on law or on
21 authorities to the staff in the Department. I'm sure there must
22 have been reference made to legal authorities, but I can't
23 recall any specifically.

24 Q. Did Mr. Herschorn express any concern that not asking for a
25 period of imprisonment would be contrary to authority?

1 A. I don't recall him saying that. It seemed to me that this was a
2 case that was not totally unprecedented but certainly was the
3 first one of its kind that we had had in Nova Scotia.

4 Q. surely it wouldn't be the first case involving fraud charges
5 and forgery charges.

6 A. Oh, no. No, certainly not.

7 Q. First case insofar as it involved a Cabinet Minister.

8 A. That's right.

9 Q. Why would that affect the sentencing position?

10 A. Well, I think it would come into play in several issues.

11 Certainly on the question of deterrence, for example. The
12 question of the public perception of the administration of
13 justice.

14 Q. Yes. Again, sir, if I may, the matter of deterrence and the
15 matter of public perception, would they be issues that would
16 tend to increase rather than lighten the Crown's position on
17 sentence?

18 A. Well, I think they would probably tend to increase but they
19 were not the only factors to be considered.

20 Q. What were the others?

21 A. Well, other factors that come to my mind would be the fact
22 the individual in question was a first offender. The record of
23 community service that the individual had had. The fact that
24 Mr. MacLean at that time was the breadwinner for quite a
25 large family. I think there were still five or six children at

1 home. The fact of Mr. MacLean's record of community service
2 over the years, which was very substantial. So there were all
3 sorts of factors that obviously had to be taken into
4 consideration. And no two cases are the same.

5 Q. Looking at the record of community service, is that a factor
6 you would normally take into account in a sentencing
7 position. That because you had been a great fellow in the
8 past, therefore, we won't ask so much now?

9 A. I think that's relevant. I think if you have an individual who
10 has made a...as Mr. MacLean had certainly in that area,
11 particularly in Port Hawkesbury and the surrounding area,
12 had been involved in a large number of volunteer activities
13 and so forth over the years, I think that's the factor because I
14 think that the... Well, without belabouring the point, I do
15 think it's a factor, yes.

16 Q. Did you want Mr. MacLean to go to jail?

17 A. I didn't have a preconceived notion on the matter. My
18 concern was more in terms of process and also the view of the
19 matter held by staff in the Department. As I've said, it was
20 an informal type of meeting. A fairly free-wheeling
21 discussion, as I recall it. But I did not have that preconceived
22 notion that he should go to jail. In my own mind, although I
23 don't see any reference to this in the transcript or the
24 submissions that were made to the court on sentencing, the
25 point that really tipped the scales in my own mind in favour

1 of a more compassionate approach was the state of Mr.
2 MacLean's health. He had suffered a major heart attack, from
3 which I understood he was still recuperating. Mind you, in
4 any decision on sentencing and plea bargaining, all of these
5 factors have to be taken into consideration. But the one that
6 tipped the scales in my own mind was the state of his health,
7 as I understood it to be at that time.

8 Q. You mention the views of your staff. Is it fair to say that it
9 was the view of your staff that there should not be a request
10 for imprisonment?

11 A. Well, I think the discussion was more free-wheeling and
12 informal than that. And the discussion was in the context of
13 whether or not we should accept the plea bargaining proposal
14 and eventually, when the discussion was concluded, we were
15 all in agreement that we were prepared to accept the
16 proposal.

17 Q. Did both Mr. Coles and Mr. Herschorn participate substantially
18 in the discussion?

19 A. Oh, yes.

20 Q. Were you given any assessment of the merits of the Crown's
21 case?

22 A. Yes, it was certainly my understanding that if the case had
23 proceeded to trial that we would have expected to get
24 convictions on probably several of the counts. Now mind you,
25 one can never predict the outcome of a trial, but it was

1 certainly my understanding that the Crown's case was a
2 reasonably strong one.

3 Q. Given that, what benefit is there to the Crown in bargaining at
4 all? Particularly in a case like this. Why would you not have
5 said, and given your concerns about the earlier advice you
6 had received, we think we'll get a conviction. It's a public
7 official. Let's back off and let the court decide what the
8 sentence is.

9 A. Of course, in the final analysis, even with plea bargaining, the
10 court decides the sentence.

11 Q. I appreciate that.

12 A. But there were also questions about the trial itself. Some of
13 the witnesses were people who had been close to Mr.
14 MacLean. It would have been very trying and difficult for
15 them to testify and there was also the point, which I suppose
16 arises whenever plea bargaining arises, that if the matter was
17 concluded, then a long and costly trial would be avoided.

18 Q. There's an indication at the bottom of page 63, Mr. Giffin, a
19 file note prepared by Mr. Herschorn, the bottom paragraph.
20 There's some to-ing and fro-ing between Crown and defence
21 counsel and Mr. Herschorn is requesting right at the bottom
22 here that instructions about a firm representation on a fine of
23 five thousand dollars and he appears to indicate that you
24 agreed that a Crown representation to this effect was
25 satisfactory. Do you recall giving Mr. Herschorn instructions

1 that a firm fixed five thousand dollar fine was agreeable to
2 you?

3 A. My recollection is that the five thousand was to be put
4 forward as a minimum figure. Originally, there was talk
5 about a range of between five thousand and ten thousand.

6 Q. Yes. So insofar as this note indicates, your agreement to a
7 firm representation of five thousand dollars, it's not quite
8 accurate, is that what you're saying?

9 A. Well, I understood that to be a minimum figure.

10 Q. Did you, in the totality of things and given your experience as
11 a defence counsel, have any view on whether or not this was
12 a good deal for Mr. MacLean?

13 A. I didn't really think of it in those terms. I don't know that
14 you could say at that point in time that Mr. MacLean was in a
15 very good situation, anyway. He had lost his position as a
16 Cabinet Minister and he faced the loss of his position in the
17 House of Assembly.

18 Q. His own lawyer viewed it...

19 A. Along with the other things that were associated with being
20 found guilty of a serious criminal offence.

21 Q. His own lawyer yesterday characterized it as a great deal for
22 his client. Would you disagree with that?

23 A. Well, that's Mr. Pink's view of it. I didn't really ever
24 characterize it in my own mind one way or the other.

25 Q. You talked about the importance of this from a precedential

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1 point of view. Do I take that given the position that the
2 Crown took, it was your view that it would be appropriate for
3 the Crown in future cases involving a businessman and fraud
4 or forgery-related cases in the twenty-five thousand dollar
5 range, that a five thousand dollar fine would be an
6 appropriate disposition in future?

7 A. Well, I think you have to look at each case on its merits. Each
8 case is different. And, indeed, there have been cases in which
9 incarceration has been ordered and which that has been
10 criticized as being too harsh. It's the kind of a situation which
11 there's really no easy answer. You just make the judgement
12 on the facts of the particular case and that's all you can do.

13 MR. ORSBORN

14 Thank you, sir.

15 MR. CHAIRMAN

16 Mr. Ruby?

17 EXAMINATION BY MR. RUBY

18 Q. Mr. Giffin, would you look with me at page 37 to 39, which is
19 the letter dated April 18, 1984 which you wrote to the
20 Speaker, Mr. Donahoe? And, particularly, at the bottom of
21 page 38.

22 A. Yes.

23 Q. The last six lines on that page:

24
25 Although some of the other particulars in the

1 supporting statements may raise questions as to
2 the need for the purpose intended, Mr.
3 MacLean's explanation of the nature and purpose
4 of the supporting statements and the letter from
5 the apartment owner acknowledging receipt for
6 payment of accommodation, refutes any
7 otherwise *prima facie* consideration of criminal
8 wrongdoing in the matter.

9 As I understand your evidence, you, in fact, did not direct
10 your mind to the issue of whether the "explanation refuted
11 the otherwise *prima facie* consideration of criminal
12 wrongdoing" because you looked at none of the material. You
13 did not examine the explanation.

14 A. That's correct.

15 Q. I don't understand, then, why you would write the Speaker in
16 language which communicates that, indeed, that was your
17 view and that you had done that.

18 A. Well, as I've said before, I relied on the advice, information
19 that was given to me by the Deputy Attorney General and he
20 prepared the letter for my signature.

21 Q. But why didn't you say to the Speaker that if you want to
22 accurately communicate the situation, Mr. Speaker, I haven't
23 the faintest idea of whether this explanation refutes or not,
24 but my senior law officers have told me it does and I accept
25 their word on the matter. Wouldn't that have been honest
and accurate?

A. It would have been more accurate, yes. There was certainly
no intention to mislead. That was the way the letter was

1 drafted for my signature.

2 Q. You agree that the way it's drafted leaves the impression that
3 you personally have directed your mind to the issues.

4 11:10 a.m.

5 A. Yes, that's correct.

6 Q. If you look at the press conference, and no one's drafting a
7 press conference for you, look at page 1, at the bottom.

8
9 My letter, therefore, marked the end of the
10 matter as far as the Department of the Attorney
11 General was concerned. There were simply no
12 facts to suggest wrong-doing and I told the
13 Speaker and the Auditor General so in writing.

14 Do you not agree that once again that implies that you've
15 addressed your mind to the matter?

16 A. Well I think I should point out to you that in the press
17 conference I did point out that I placed the matter in the
18 hands of these senior non-elected officials in the Department.
19 So I, in fairness, I think you're taking that somewhat out of
20 context.

21 Q. That's in the third paragraph from the bottom but you don't
22 say there that they were the only ones who dealt with the
23 issue. You speak as if you were giving an opinion, your own
24 opinion. Is that not so?

25 A. Well, I'll certainly have to go through the transcript but I
26 certainly recall indicating at the press conference that I had
27 placed the matter in the hands of the senior non-elected

1 officials in the Attorney General's Department.

2 Q. You'll see at page 5, in the third paragraph, what you told the
3 press on that day was,

4
5 The second point I want to make about that is
6 that Mr. Cameron's allegation that we sat on the
7 file of the matter and did nothing. That is totally
8 untrue. My senior officials reviewed this matter.
9 They received information and documentation
10 and reviewed the regulations and the legislation
11 and they came to the opinion, an opinion that I
12 share because I signed the letter, there was no
13 wrong-doing. And there was nothing here that
14 required an RCMP investigation.

15 Are you not communicating there quite clearly that this is
16 your opinion? You share this opinion.

17 A. I stated that. But I also stated quite clearly, I think, that I
18 placed the matter in the hands of the senior non-elected
19 officials of the Attorney General's Department.

20 Q. You were not intending to communicate by that language that
21 you, personally, had that opinion. Is that correct?

22 A. What I was intending to communicate was that I accepted the
23 advice, recommendation given to me by the Deputy Attorney
24 General.

25 Q. And when you say "an opinion that I share," I take it what
you meant then is not that you shared the opinion but that
you accepted it.

A. That's correct.

1 Q. So that's simply the wrong use of language there. That's at
2 page 5, third paragraph. Third last line. The fourth last line.
3 "An opinion that I share." What you really meant to say was,
4 "An opinion that I accepted."

5 A. Well yes, but I think in fairness, too, you have to take all of
6 the discussion that took place at the press conference. I
7 certainly made it abundantly clear that I had placed the
8 matter in the hands of these senior non-elected officials of the
9 Attorney General's Department.

10 Q. And that was the only involvement you had in the matter.

11 A. I'm sorry, I don't quite follow your question.

12 Q. That was the only matter, the only involvement you had in
13 the matter was to say, "Okay fellows, you go ahead and look
14 at it, give me your opinion and I accepted it." That was the
15 intent of your communication.

16 A. Yes. And as I've also indicated earlier, when the matter was
17 first brought to my attention, I did indicate to Mr. Coles my
18 concern that at least at that point in time Mr. MacLean had
19 not been given an opportunity to explain or respond to
20 questions about his expense claims.

21 Q. You say at the bottom of page 5, paragraph 3,

22
23 When those questions were posed to the Speaker
24 and the Deputy Auditor General during the
25 review of the matter, Mr. MacLean then
provided satisfactory explanations on these
matters and those explanations, as far as I'm

concerned, meant the end of the matter.

1 A. That's correct.

2 Q. And when you said as far as you were concerned, did you
3 intend to communicate that they were satisfactory to you?

4 A. Well again, based on the recommendation and advice that I
5 received from the Deputy Attorney General.

6 Q. The Deputy Attorney General told you the Deputy Auditor
7 General accepted these explanations and found them
8 satisfactory, did he?

9 A. Yes. That was certainly my understanding.

10 Q. And at page 6, in the fourth paragraph, third line,
11

12 When we completed our review of the matter we
13 were satisfied with the explanation given and
14 there was nothing that had to be turned over to
the RCMP.

15 That was not intended by you to you mean you personally
16 but, rather, you in the sense of the officials of your office.

17 A. That's right. When I'm saying "we" I was talking about the
18 Attorney General's Department.

19 Q. The allegation Mr. Cameron made, continuing on in the
20 reading,

21 ...was that I, as Attorney General, had intervened
22 and stopped an RCMP investigation in progress.
23 That allegation is totally untrue.

24 A. That's right. It was untrue.

25 Q. Are you aware that the RCMP investigation had never gotten

MR. GIFFIN, EXAM. BY MR. RUBY

1 off the ground because the advice from your Department was
2 not forthcoming.

3 A. I wasn't involved myself in any communication with the
4 RCMP about the matter. But, in any event, the allegation that
5 I was responding to was the allegation that there was an
6 investigation underway and that I had stopped it and that
7 allegation was untrue.

8 Q. Did you know that the investigation had commenced with
9 inquiries and that your office had, in fact, stopped it...

MR. SAUNDERS

11 Sorry?

MR. RUBY

12
13 Q. And that your office had, in fact, stopped it by not giving the
14 advice that was sought by the RCMP?

MR. SAUNDERS

15
16 No, I object to that, My Lord. There's not evidence that the
17 RCMP stopped whatever they were doing or didn't proceed with
18 whatever they intended to proceed because the Attorney
19 General's Department did or did not do anything.

MR. RUBY

20
21 That's the evidence of Inspector Feagan, Superintendent
22 Feagan. He says that's what's happened. My friend may not
23 accept...

MR. SAUNDERS

24
25 Superintendent Feagan?

MR. GIFFIN, EXAM. BY MR. RUBY

1 MR. RUBY

2 All the names are going wrong today. The officer in charge.

3 MR. SPICER

4 Chief Superintendent MacGibbon.

5 MR. RUBY

6 Thank you, MacGibbon.

7 CHAIRMAN

8 I think MacGibbon's testimony, his exact words are at a loss,
9 following the meeting with the Auditor General and the Deputy
10 Attorney General and others that it was indicated to him that an
11 opinion or interpretation for further instructions would be
12 forthcoming from the Deputy Attorney General and that none
13 were forthcoming.

14 MR. RUBY

15 And therefore he closed the file.

16 CHAIRMAN

17 Yeah. That's somewhat different from stopping it. It may
18 have the same result but the question seems to indicate an overt
19 act on the part of someone to stop it. I don't think we've had
20 evidence on that. We've had evidence of the interpretation that
21 the RMCP placed on the advice they received or non-advice from
22 the Deputy Attorney General.

23 MR. SAUNDERS

24 That's right.

25 MR. RUBY

1 Q I thought that my question encompassed all this but you tell
2 me if it's wrong, and if it's wrong and I'll try and rephrase.
3 Were you aware that your office, by failing to give the advice,
4 had, in effect, stopped the RCMP from proceeding with an
5 investigation?

6 A. No.

7 Q No one told you anything about what the RMCP was doing? Is
8 that right?

9 A. That's correct. My attitude throughout was that the RCMP
10 were at liberty to conduct whatever investigation they
11 deemed appropriate.

12 Q You were not told by your Deputy that they had asked for
13 advice.

14 A. No, I certainly don't recall that.

15 Q Would you not agree that given the political furor that is
16 arising just prior to an election, it's shocking to think that that
17 kind of information would not have been given to you.

18 A. I'm not quite sure understand your question. When the
19 matter came up during the election campaign the response
20 that I, responses that I made in the letter that I made public
21 were based upon the advice and information that I had
22 received from the Deputy Attorney General.

23 Q You've told me that you knew nothing of what was going on
24 with the RCMP and you merely assumed that they could
25 investigate anything they wanted.

1 A. Yes.

2 Q. We now know that they had come asking for advice from the
3 Deputy Attorney General and were awaiting that advice as
4 you spoke to the press and were doing nothing because they
5 wanted the advice. That's what they say. Do you not think
6 it's shocking that that information, the advice had been
7 sought from the Deputy Attorney General on this very matter,
8 the MacLean case, would not have been given to you in this
9 context, a press conference just prior to an election?

10 A. Well I certainly did not receive any information along those
11 lines. I should point out that the matter arose in the midst of
12 an election campaign and it was very difficult to find the time
13 to even pull together the information that I knew of. That is,
14 the letter to the Speaker and so forth. And I guess one has to
15 have been a candidate to appreciate how bad it is but, you
16 know, we had great difficulty just finding the time to discuss
17 the matter and when I say "we" I'd better clarify that. I'm
18 talking about advisers in the campaign because this had been
19 raised in the political arena and was a political issue. And we
20 had one or two meetings, I think one in Truro and one in
21 Halifax, but it was very difficult to deal with something like
22 this under those time pressures in the closing days of a
23 campaign and so this was certainly put together in great haste
24 and I do not recall having any meetings with people in the
25 Attorney General's Department to go over the matter again.

1 That it was just a case of pulling together what we could get
2 as quickly as we could get it in order to make a response
3 prior to the end of the election campaign.

4 Q. You mean you made a public response without inquiring of
5 the Deputy Attorney General what was going on in this
6 matter?

7 A. Well I was basing the public response on the advice and
8 information that I had received from the Deputy Attorney
9 General earlier in 1984.

10 Q. Months earlier, was it not?

11 A. Yes, but as far as the Department was concerned I wasn't
12 aware of anything else that the Department was doing or had
13 to do in connection with the matter. In other words, I felt
14 when I was going into the press conference that I was dealing
15 with a matter which had been closed.

16 Q. You made no inquiries before making a public statement in
17 the midst of a campaign as to whether or not your
18 information was current or was months out of date?

19 A. No, I simply got the information that I had but I think it's
20 important to keep in mind that at that point in time I
21 regarded the matter as closed. So I wasn't looking for up-to-
22 date information, I was just looking for historical information
23 on how we had dealt with the matter.

24 Q. Do you not think it's shocking, to return to my earlier
25 question, that the Deputy Attorney General, at the time when

1 he was communicating to you that the matter was closed
2 some months earlier, would not advise you that he'd been
3 asked for advice from the Attorney General, from the RCMP
4 and wasn't giving it.

5 A. I was just never advised of that.

6 Q. But you don't find that shocking.

7 A. Well it's difficult for me to speak to something that involved
8 communication or lack of communication between parties
9 other than myself because I don't know what discussions they
10 had or what understandings or misunderstandings may have
11 occurred. So I can't really testify to that.

12 Q. You're assuming then that there's a misunderstanding.

13 A. I'm not making any assumptions, I'm just saying that I don't
14 think I can testify to it.

15 Q. Okay. I want you to assume for the purposes of my question,
16 Mr. Coles in fact was asked for advice from the RCMP.

17 A. Yes.

18 Q. Would you not think it shocking that you were never told
19 that? Apparently at any stage while you were dealing with
20 this matter and disposing of it.

21 A. Well certainly I know that the regulations in question were
22 reviewed by, I assume, Mr. Gale and Mr. Coles.

23 Q. I'm not talking about the regulations, I'm talking about the
24 MacLean case. The question of criminality.

25 A. Well I'm talking about the regulations that were referred to

1 in the letter to the Speaker.

2 Q I'm not talking about that, I'm talking about the question of
3 criminality of Mr. MacLean's activities.

4 A. Well I'm sorry, then, I still don't understand your question.

5 Q You never knew that the RCMP had asked for advice on that
6 issue.

7 A. No.

8 Q Do you not find it shocking...

9 A. Those communications were between Mr. Coles or Mr. Gale
10 and the RCMP and I did not participate in them.

11 Q I take it, then, that the logical inference from the answer
12 you've just given me is that you don't find that shocking at
13 all. You find that normal.

14 A. No, I didn't say that either. I find it difficult...

15 Q Well which is it?

16 A. To use adjectives just to characterize things. I think all that I
17 can really do is relate to you my recollection of the facts.

18 Q I'm trying to find out what your reaction to that lapse. I want
19 to know whether it is the kind of lapse that, the kind of
20 communication that one would expect to get and be very
21 surprised if one didn't get, or that normally in the function of
22 your Department you would not be told this sort of thing,
23 whether you accept that.

24

25

1 11:25 a.m.

2 A. Well, it's difficult to answer when I don't know what the
3 communications were between the parties. I was not a
4 participant in that.

5 Q I'd ask you to assume that the RCMP asked for advice from
6 your department on the question of the criminality or the
7 non-criminality of Mr. MacLean's activity.

8 A. Well, I suppose I could answer it this way by saying that if
9 the RCMP had a concern that they had asked for something
10 and were waiting for something and had not received it, that
11 sooner or later they would bring that to my attention, if
12 they felt that somebody in the Department was not dealing
13 with them in a way that they wished them to deal with
14 them.

15 Q And would you consider it right that you should not be
16 informed of the fact that that inquiry was made while you
17 were disposing of the issue?

18 A. Well, given the circumstances of the press conference and so
19 forth. Let me put it this way, it's easy to do what we're
20 doing now, which is to take items like this and go into them
21 in great depth. The circumstances in which I was operating
22 and trying to deal with this in the closing days of an election
23 campaign, I just didn't have the luxury of getting into that
24 kind of question. I was just taking the information that I
25 had.

MR. GIFFIN, EXAM. BY MR. RUBY

1 Q. But they hadn't told you earlier either when they were
2 dealing with the matter substantively without the hustle
3 and bustle of an election campaign.

4 A. That's right. I certainly have no recollection of that.

5 Q. Do you think it right that they should not have told you or is
6 it wrong?

7 A. Well, again that raises a difficult question, because I was
8 taking a hands-off approach to the matter and I suppose
9 that raises a question as to how much, if you say to your
10 staff, in effect, I want you to deal with this matter, then I
11 suppose that raises a question as to how often they come
12 back to you on the matter or what they communicate to you
13 on the matter.

MR. CHAIRMAN

14 Q. Would it be fair to conclude that not only did Mr. Coles not
15 tell you about the RCMP investigating the matter, if we look
16 at page 35 it would appear that he was indicating to you
17 that they weren't investigating it. And he says, "We have
18 communicated our opinion in the matter to the RCMP who,
19 although they were not formally asked to investigate the
20 matter, nevertheless were made aware of the concerns of
21 the Auditor General."
22

MR. RUBY

23 That's right.

24 A. Yes.
25

MR. CHAIRMAN

1 Q. Do you recall now if when you read that letter you
2 interpreted that as meaning that there was...that the RCMP
3 were not investigating?
4

5 A. Well, it was certainly my understanding that they were not
6 conducting an investigation and I assume that that was the
7 result of what had been communicated to them from the
8 Attorney General's Department.

MR. RUBY

9 Q. What did you understand that they were doing?
10

11 A. Pardon?

12 Q. You said that you understood they were not conducting an
13 investigation. What was it that you understood that they
14 were doing?

15 A. At that point in time, as far as I know, they simply weren't
16 doing anything.

17 Q. Let's take a look together at page 35, if you would. You
18 were given this document together with Mr. Gale's opinion
19 in writing.

20 A. Yes, that's correct.

21 Q. Did you read them both?

22 A. Yes.

23 Q. In the second paragraph Mr. Coles said,
24

25 It is Mr. Gale's opinion, with which I concur, that

MR. GIFFIN, EXAM. BY MR. RUBY

1 the irregularities in Mr. MacLean's compliance
2 with the general regulations made pursuant to
3 the House of Assembly Act are more accounting
irregularities rather than such as to warrant any
further criminal investigation.

4 Did you see that anywhere in Mr. Gale's opinion?

5 A. I don't recall seeing it in the memorandum from Mr. Gale.

6 Q. If you turn to page 33, Mr. Gale's memorandum which you
7 had before you at page 2, third paragraph, second
8 paragraph, the last line, and if we outline the facts or the
9 explanation.

10 If one wanted evidence to prove or disprove his
11 assertions, then a police investigation would be
12 necessary.

13 What did you take from that when you read it?

14 A. Well, I took the memorandum from the Deputy Attorney
15 General as being the final advice to me from the Department
16 on the matter. And so that's...that was what I acted on.

17 Q. If you read the next line, at page 35 of the Coles'
18 memorandum, which you considered the Department advice.
19 "Mr. MacLean's explanation of the manner in which he filed
20 his statements of travel and living allowances is, in our
21 opinion, a reasonable explanation." Now that paragraph
22 starts off by saying it's Mr. Gale's opinion and so forth. So
23 clearly "our" there means he and Gale, you'll agree?

24 A. That was certainly my understanding, yes.
25

MR. GIFFIN, EXAM. BY MR. RUBY

1 Q. Gale, in the passage I just read to you, at page 33 seems to
2 be saying nothing like that at all. He's saying you can't tell
3 whether it's a reasonable explanation unless there's a police
4 investigation, isn't that so?

5 A. Yes.

6 Q. Well, what did you take from that when you read it?

7 A. Well, I didn't know what conversations had taken place
8 between Mr. Gale and Mr. Coles, but I took the
9 memorandum from Mr. Coles as being the final word from
10 the senior staff in the department on the matter.

11 Q. You'll agree with me that in the result by taking that
12 position either Mr. Coles has allowed you to be seriously
13 misled or you have seriously misread the letter, one or the
14 other, because the two cannot stand together, the Gale
15 memorandum and the Coles' memorandum.

16 A. Well, except that I did not know and did not inquire into
17 what conversations took place between Mr. Gale and Mr.
18 Coles apart from what was on paper. I simply took Mr. Coles
19 memorandum as the final result of whatever discussions or
20 deliberations had taken place within the Department on the
21 matter.

COMMISSIONER EVANS

22
23 I noticed that the report of Mr. Gale is on April the 2nd and
24 the report of Mr. Giffin or Mr. Coles, rather, is on April the 18th,
25 and he refers there, "Enclosed is Gordon Gale's summary report on

MR. GIFFIN, EXAM. BY MR. RUBY

1 the matter." He doesn't expand on it. Then he goes on and he
2 said, "It is Mr. Gale's opinion." Now that doesn't necessarily mean
3 that his opinion, final opinion, or if there had been some
4 discussions between April the 2nd and April the 18th, that his
5 opinion might not have been different or improve or whichever
6 way you want to look at it, since writing the summary report on
7 April the 2nd.

MR. RUBY

8
9 Q Mr. Giffin, is that exactly what happened? Did you
10 misconstrue or did you take the word "opinion" in the
11 second paragraph to mean not the written opinion that you
12 were being given but rather a verbal opinion contrary to it
13 of which you have been told nothing?

14 A. I did not inquire into that. I simply took Mr. Coles'
15 memorandum at face value.

16 Q Isn't it more likely that...

17 A. That was the final word.

18 Q So you were aware that Gale's memorandum and Coles' were
19 contradictory in these important aspects. You knew that
20 then.

21 A. Well, that the...that Mr. Gale had included the paragraph
22 about Mr. MacLean's explanations. However, I accepted the
23 final memorandum, the one dated April 18th.

24 Q Did you know, did you notice when you got these two
25 documents and read them that the two documents were

1 inconsistent? For example, one saying "It is our opinion it is
2 a reasonable explanation," that's the Coles' memorandum.
3 And the Gale memorandum saying, essentially and I
4 paraphrase, you can't tell unless you have a police
5 investigation. Did you notice that at the time?

6 A. Oh, yes, I believe I did. But I certainly, as a Minister over
7 the years, had the experience numerous times of receiving
8 recommendations from staff which involved memoranda
9 and so forth from different people going up the chain of
10 command and that the final result might not...the final result
11 or the final recommendation of the Minister might not
12 reflect what staff people...what some staff people had said at
13 some earlier stage in the deliberations.

14 Q. Okay. We're no longer here, we're not yet here in the hurly
15 burly of an election campaign, correct?

16 A. Yes. Right.

17 Q. You're not really busy beyond the duties of your office
18 ordinarily.

19 A. Busy enough.

20 Q. Yes. But this is what you're busy with.

21 A. Yes.

22 Q. Ordinary work, right?

23 A. Sure.

24 Q. And you're telling me you didn't have the time or didn't
25 have the interest to say to Coles, "By the way, did Gordon

1 Gale change his view?"

2 A. No, I don't recall raising that question. I just accepted Mr.
3 Coles' memorandum as it was written.

4 Q. The last line of the third paragraph on page 33 in the Gale
5 memoranda. "On the information we have there is no basis
6 for criminal charges in that there is no *prima facie* case, if
7 one accepts the explanation given by Mr. MacLean." Did
8 you take the time to ask Mr. Coles why he accepted the
9 explanation or what it was that made it believable and
10 credible?

11 A. No, I didn't. I relied on his advice to me.

12 Q. Does it not seem to you now, looking at it with me in
13 hindsight, that you were overly eager to accept that position,
14 that a prudent Attorney General would have asked the
15 questions I'm suggesting should have been asked?

16 A. I think an Attorney General is entitled to rely upon
17 information communicated to him by the Deputy Attorney
18 General. Now certainly with the advantage of hindsight one
19 can always question that. But I see nothing wrong with an
20 Attorney General relying upon information and advice given
21 to him by the Deputy Attorney General.

22 Q. And doing so without asking questions, correct?

23 A. Well, I won't say you never ask questions, but I was
24 certainly prepared to accept after I read his memorandum
25 and the draft letter, I was prepared to accept that as the

1 Department's advice to me on the matter.

2 Q. Let me turn with you to the plea bargaining issue if I may.
3 I want to know if when you got into this discussion about
4 whether or not imprisonment was appropriate, whether or
5 not you understood that the ordinary rule for first offenders
6 with good backgrounds who commit substantial frauds,
7 frauds in substantial amounts, such as the ones here,
8 whether the ordinary rule is that these people go to jail for
9 substantial periods of time. Did you know that or not?

10 A. No, it was my understanding that it varies with individual
11 cases as to whether or not a jail term is appropriate.

12 Q. And you thought *inter alia* it varied with the personal
13 circumstances and the background of the accused.

14 A. I think that should be taken into consideration, yes.

15 Q. And one of the circumstances you took into account here
16 was the fact that this man had a record of community
17 service.

18 A. Yes.

19 Q. You've practised criminal law for a long time.

20 A. Well, I practised a general practise for twelve years which
21 included criminal law.

22 Q. Have you ever heard the Court say, and I paraphrase, the
23 offender's good background in cases of fraud matters not
24 one whit because were it not for that good background, he
25 would never have been in a position where he could have

1 committed the fraud successfully? Have you heard that?

2 A. I'm not sure I've heard a court put it in that fashion.

3 Q. I'm not sure I have either, but that general thrust of idea.

4 A. Yes, I'm reaching back a number of years. But my
5 understanding of that in terms of sentencing is that the
6 record of community service of an individual can be taken
7 into consideration and, indeed, ought to be taken in to
8 consideration in determining whether or not that individual
9 is one who should be sentenced to a period of incarceration.

10 Q. And that was the advice you got from your law officers, that
11 despite the amount involved here that this was quite open
12 and would determine...be determined by his background.

13 A. No, not simply by that. We had a very, as I recall it,
14 informal discussion of the entire matter in terms of whether
15 or not the plea bargaining proposal put forward by Mr. Pink
16 was acceptable. Now one point that I think I should make
17 clear is that if the staff in the Department had said to me
18 that the proposal was unacceptable, then I would have
19 taken that advice.

20 Q. I'm just trying to understand the context in which you were
21 evaluating the proposal, just to make it clear.

22 A. All right. I certainly wasn't doing this on the basis of a
23 personal analysis of the case law or anything like that. But
24 it was on the basis of a discussion among ourselves on the
25 proposal which Mr. Pink had put forward and whether or

1 not the Crown should insist upon incarceration in this
2 particular case.

3 11:40 a.m.

4 Q. And no one told you that being a first offender, having a good
5 record of community service, being the breadwinner for a
6 large family, were factors which in a fraud case would not
7 mitigate to the extent of avoiding imprisonment. No one told
8 you that.

9 A. No, I cer...

10 MR. SAUNDERS

11 My Lord, I'm not even sure that's the law. I know it's my
12 friend's cross-examination but he cites these far-ranging
13 principles and then asks the witness, who hasn't researched the
14 law, whether he accepts them or rejects them or may halfway
15 agree to them. And, frankly, if we're going to get into an
16 argument over what the case law stands for and what first
17 principles are in fraud cases, then maybe Sydney in November is
18 the time for that. But I really think it places this witness at a
19 disadvantage, who admits that he did not apply any independent
20 research to the case law. For my friend to put these propositions
21 to him as standing for the law at the time. I just don't accept it.
22 And it's clear from the transcript of the sentence imposed by the
23 trial judge in the MacLean case that he didn't accept it either.
24 And these mitigating circumstances that my friend poses as not
25 being important were made by his own counsel and made by the

MR. GIFFIN, EXAM. BY MR. RUBY

1 Crown and, obviously, found some persuasion as far as the trial
2 judge was concerned.

MR. RUBY

3
4 My friend misconceives what I'm doing. What I'm asking
5 the witness is not whether he accepts that as a view of the law
6 but whether or not he was told that. I will argue later what the
7 view of the law is and whether he was accurately informed of it.

MR. CHAIRMAN

8
9 I have great difficulty as a trial judge, I listen as a trial
10 judge to all these comments going on between counsel in the last
11 couple of days. I'm trying to recollect ever having been involved
12 in a case where counsel for the accused didn't place great
13 emphasis on the community effort.

MR. RUBY

14
15 No one suggested that they don't. All I've suggested is...

MR. CHAIRMAN

16
17 I remember in a more serious case than this one time not
18 taking it into account and being overruled for not doing it. But I
19 know what you're saying. That there are decisions in the Province
20 of Nova Scotia, in particular, and I think there was a suggestion
21 that the Supreme Court of Canada seems to assiduously avoid
22 sentencing problems and had not dealt with it. But the trend in
23 Nova Scotia would appear to be incarceration where there is
24 fraud, presumably uttering as well. But, in any event, the
25 question simply put to Mr. Giffin is whether or not he was advised

MR. GIFFIN, EXAM. BY MR. RUBY

1 of this by his, to his...

2 MR. RUBY

3 That's right. I'm not asking for his view of the law on fraud.

4 MR. CHAIRMAN

5 No.

6 MR. RUBY

7 I want to know, though, whether or not Mr. Giffin...

8 MR. CHAIRMAN

9 There's nothing wrong with that question. We are not
10 asking Mr. Giffin to give an analysis of the law, Mr. Saunders.

11 MR. GIFFIN

12 A. It wouldn't be very good. May I answer in this way, Mr.
13 Ruby, that I'm sure that I was advised by the solicitors
14 involved that there were cases, fraud cases in which
15 individuals had been incarcerated. But I didn't do any
16 research myself, obviously.

17 Q. I take it then that you were not told that first offenders,
18 substantial... where the amounts are substantial, in cases of
19 fraud even with good backgrounds, unless there are
20 exceptional circumstances, go to jail. That was not your
21 understanding of the law when you applied your mind to this
22 plea bargaining proposal.

23 A. No, it was my understanding that it was more, what would be
24 the right word, more flexible than that. That certainly there
25 were cases in which people had been incarcerated but that

MR. GIFFIN, EXAM. BY MR. RUBY

1 that was not a uniform rule and that you had to look at these
2 circumstances of each individual case.

3 Q. If you had known, I know you did not, that Mr. Pink thought
4 that twelve to eighteen months was the appropriate sentence
5 for this, would you have agreed to a five thousand dollar
6 fine?

7 A. Well, I certainly wasn't aware of Mr. Pink's opinion on that.
8 We were simply discussing the matter in the context of the
9 plea bargaining proposal that Mr. Pink had put forward.

MR. SAUNDERS

10 My Lord, and as I recall, the answer given by Mr. Pink to
11 that, that his expectation of that kind of incarceration imposed
12 was following a trial where his client who have gone to trial and
13 been convicted on several of those counts in the information.

MR. RUBY

14 Let's put it that way then. I thought it assumed all that.

MR. CHAIRMAN

15 Well, I guess it's up to us to decide on how much weight to
16 give to the opinion of Mr. Pink or anyone else on these cases.

MR. RUBY

17 I'll argue eventually that that's a well-supported opinion.
18 For the moment, I want to know whether or not the advice which
19 he got from his department influenced as to what the law is,
20 influenced the decision he came to as to the propriety of this
21 agreement.
22
23
24
25

MR. GIFFIN, EXAM. BY MR. RUBY

1 Q. So I'm asking whether or not, if you had known what Mr.
2 Pink's view was, that given a trial and given conviction on a
3 substantial number of these charges, that the amount would
4 be substantial, that twelve to eighteen months would be the
5 appropriate sentence. If you had known that, if your law
6 officers had told you that, would you have agreed to plea
7 bargain with five thousand dollars?

8 A. Well, when you put the question in that form, the obvious
9 answer is no. But we were simply dealing with the plea
10 bargaining proposal put forward by Mr. Pink and the opinion
11 and the advice that I was relying upon was the opinion and
12 advice that I was getting from my own staff.

MR. RUBY

13 Thank you very much, sir.

EXAMINATION BY MR. PRINGLE

14
15
16 Q. A couple of questions, Mr. Giffin. With respect to the press
17 conference of November, 1984, Exhibit 176, were you briefed,
18 sir, prior to that conference by anyone in the Department?

19 A. No, I was not.

EXHIBIT 176 - PRESS CONFERENCE OF NOVEMBER, 1984.

20
21 Q. Had you been briefed on the matter prior to that since April
22 18th, 1984?

23 A. No, I had not been.

24 Q. I refer you to the second last paragraph in Exhibit 176, and
25 you apparently responded to a question as follows. Exhibit

1 176, the second last paragraph, your response apparently
2 was:

3 The R.C.M.P. never at any time started an
4 investigation as they are free to do at any time
5 and never at any time requested that one be
6 started. Further, at no time since my letters has
7 the Auditor General or the R.C.M.P. questioned
me or any of my officials on any aspect of my
letter.

8 Now, sir, your letter, which is the one of April 18th, 1984,
9 which is found on page 37 of that other exhibit booklet, page,
10 exhibit 173, that letter was never sent to the R.C.M. Police,
11 was it?

12 A. That's correct. That letter was sent to the Speaker.

13 Q. Yes, so how could the R.C.M. Police comment on that letter,
14 when they were never privy to it, had no knowledge of it?

15 A. That's perfectly correct, yes.

16 Q. Why did you make that statement at that time, or do you
17 recall? What was the basis for making that statement, that
18 the R.C.M. Police hadn't responded to that letter?

19 A. Well, what I was stating was that as far as I was concerned,
20 after that letter had gone, I just had not heard anything more
21 about the matter from anybody.

22 Q. With respect to the meeting of November 22nd, 1984, your
23 briefing on that meeting, at whatever time you received a
24 briefing, would have come from Mr. Coles, I assume, as to
25

1 what took place.

2 A: I assume that, yes, but I can't state that as a fact, but I
3 assume it.

4 Q. Did you talk to Mr. Gale about what took place at that
5 meeting?

6 A. I just don't recall.

7 Q. Okay. On Exhibit 176, at page one again, with respect to that
8 meeting, you answer to question as follows, and this is about
9 the middle of the page, and your answer apparently was:

10
11 Subsequently, a meeting took place among the
12 Auditor General, the Deputy Auditor General,
13 and senior officials of the Auditor General's
14 Department. Senior officers of the R.C.M.P. joined
15 the meeting at its conclusion and were advised
16 that the matter was to be referred to the
17 Attorney General's Department for their
18 consideration and advice.

16 And the basis for that, sir, would be what? Was Mr. Coles, Mr.
17 Gale, or someone else in the Department telling you that?

18 A. Yes, Mr. Coles. I think I should explain that in the third line
19 there, I think that should read "senior officials of the
20 Attorney General's Department".

21 Q. The third line, "Senior officials..."

22 A. Where it says: "Subsequently, a meeting took place among
23 the Auditor General..."

24 Q. Yes.

25 A. I believe that should read "senior officials of the Attorney

1 General's Department."

2 Q. Yes, that would make sense.

3 A. But, yes, that was based on the information given to me by
4 Mr. Coles.

5 Q. And on page six of Exhibit 176, the transcript of the press
6 conference. Paragraph 3. You answer to question as follows:

7
8 The decision which we had to make in the
9 Attorney General's Department was whether or
10 not this matter ought to be referred to the
11 R.C.M.P. for an investigation.

12 Again, sir, the basis for that answer would be what?

13 A. That would be based upon the memorandum from Mr. Coles
14 in April of '84.

15 MR. PRINGLE

16 Thank you, Mr. Giffin.

17 MR. SAUNDERS

18 I have no questions for Mr. Giffin, My Lord.

19 MR. CHAIRMAN

20 Thank you very much, Mr. Giffin.

21 THE WITNESS WITHDREW.

22 BREAK.

1 12:08 p.m.

2 CHAIRMAN

3 We're supposed to deal with the application made on behalf
4 of the Union of Nova Scotia Indians. We've been asked by counsel
5 for the Union of Nova Scotia Indians to inquire into issues relating
6 to the Micmac moose harvest. This issue has arisen as a result of
7 the fact that nine Micmac hunters have been charged with
8 violations of the Wildlife Act, an action which, in their eyes, flies
9 in the face of the Supreme Court of Canada decision in the Simon
10 case. This case deals with hunting rights in the context of the
11 Treaty of 1752 between the Crown and the Micmac people.

12 Treaty rights are germane in that, together with legislation
13 and case law, they prescribe the legal situation of native people in
14 Nova Scotia today. Our research will explore the historical and
15 constitutional context of native people and to that extent the
16 Simon case and others are of relevance to us.

17 However, the matter of the nine Micmac hunters is now
18 before the courts and it would be inappropriate for us to interfere
19 in such a process.

20 We also accept the view of Commission counsel that this
21 inquiry is not a proper forum for engaging in political argument.
22 We believe that it is beyond a reasonable interpretation of our
23 mandate to undertake a detailed exploration of this issue except
24 to the extent that I have described above and this application is
25 denied.

1 Mr. Ruby?

2 MR. RUBY

3 Thank you, My Lord. In connection with the earlier
4 application which I made and which you refused, I want to make
5 a further application consequent upon it. I want to call
6 Superintendent Roy...

7 COMMISSIONER EVANS

8 Superintendent who?

9 MR. RUBY

10 Roy. He's the officer who made that phone call. Mr. Venner,
11 who's the officer who was involved in the decision-making
12 process on the evidence but who has not been called. He's the
13 glaring gap in that narrative, and I want to call the officer in
14 charge of an issue that I'm forbidden to mention or discuss and
15 whose name I do not know but I'm certain can be ascertained.

16 The application might not be any more intelligible than the
17 last one but that's the application I make.

18 MR. ORSBORN

19 Well given that in Mr. Ruby's own words the application is
20 no more intelligible than the last one, it's difficult to respond
21 intelligently.

22 MR. RUBY

23 I can make it intelligible very easily.

24 MR. ORSBORN

25 I think everything that I would wish to say as Commission

1 counsel in respect of that application has already been said
2 concerning the earlier application. I can indicate that in the
3 course of our inquiries, Commission counsel have interviewed
4 both Superintendent Roy and Mr. Venner and it was our view that
5 they would not add appreciably to the evidence before Your
6 Lordships and as I re-iterate our earlier view on the particular
7 issue that Mr. Ruby raised earlier, it is our view that such
8 evidence as could be called on that issue would be speculative.

9 COMMISSIONER POITRAS

10 Mr. Ruby has indicated you want to question someone else
11 as well, a third person? This Venner, Roy and?

12 MR. RUBY

13 The subject matter of the note in Mr. House's book.

14 COMMISSIONER POITRAS

15 House.

16 MR. RUBY

17 Mentions the subject matter. There's an officer in charge of
18 that subject matter, I want to call him.

19 CHAIRMAN

20 Mr., any other counsel wish to be heard?

21 MR. PRINGLE

22 I think our position is stated by Mr. Orsborn very
23 adequately.

24 CHAIRMAN

25 Mr. Saunders?