George

I N D E X CONT'D

I N D E X CONT'D

September 14, 1988

one of Patsy Harris !!

Michael Harris

Position (St. Petersburg Paper Shuffler)

Author of Book

Issue of Relevance to Commission

(p. 8 Decision
wheaton evidence.)

taping sessions

How many times interview wheaton? 2-3 4 years ago.
notes? tapes?
What told? who present? !!
when did it happen?

one → when? How many times.

Interview (Davis? Edwards? Scott? Christen?) (evidence)

allegation

Why not in Book?

Prepared to make determinations on other points without hearing all sides? (Reference BOOK)

Why is this different??

May 31, 1988

We have been asked by Mr. Ronald Pugsley, Q.C. to subpoena two journalists - Michael Harris and Heather Matheson - to testify before this Inquiry. Mr. Harris is the author of a book concerning Donald Marshall, Jr. entitled "Justice Denied", and Ms. Matheson is a CBC reporter who researched and produced a documentary on the Marshall case for the show "Sunday Morning" which was aired in November, 1983. Mr. Pugsley argues that the evidence of these two individuals will assist the Commission in assessing the credibility of Staff Sergeant Harry Wheaton, and further that the mandate of the Commission should extend to consideration of the appropriate limits, if any, that should be placed on members of a police force regarding disclosure to the media during the course of an investigation.

The Rules of Practice and Procedure adopted by this Commission at the commencement of its activities outline the procedure for calling witnesses. Article 5(5) provides that persons with standing may apply to Commission counsel to call a witness. In the event Commission counsel choose not to call that witness, the party asking that the witness be called may apply to the Commission for directions.

A request to call these witnesses, pursuant to our Rules, was made by Mr. Pugsley to Commission counsel, which was refused by letter of March 10, 1988. The reasons given by Mr. MacDonald in his letter of refusal were that:

> "The only possible reason to have such persons appear would be to test the credibility of Staff Sergeant Wheaton. He has been questioned

> concerning his discussions with these individuals and has provided his answers. It is my recollection that Staff Sergeant Wheaton admitted speaking to each of these individuals, but could not recall the details of the discussion. In our opinion, no useful purpose could be served by having these witnesses, assuming they would, testify concerning the details of the discussion held with Wheaton. The issue is collateral so far as we are concerned and we want to make every effort to limit the evidence to be called before the Commission to issues which are directly relevant to the points under consideration."

Mr. Robert Murrant appeared on behalf of Mr. Harris, Ms. Matheson and their employers (in Mr. Harris' case, his former employer)and argued against Mr. Pugsley's application. He has placed before us affidavits of Mr. Robert Martin and Mr. Claude Vickery, two local journalists. Mr. Murrant's submission is that both Mr. Harris and Ms. Matheson object to giving evidence at this Inquiry as it would

> "constitute an invasion of their confidentiality as journalists (and that of their employers), together with an abuse of their functions were they to be used as instruments of impeachment."

His written submission refers to recent cases on "freedom of the press", including those which consider the protection provided to "freedom of the press" by s.2(b) of our Canadian Charter of Rights and Freedoms. These cases confirm that a balance must be struck between the right of the press to protect their sources and their ability to gather information, and the right of the courts to hear all evidence relevant to its inquiry. See: Democratic National Committee v. McCord [1973] 356 F. Supp. 1394, Pacific Press v. The Queen (1977), 37 C.C.C. (2d) 487 (B.C.S.C.), Descoteaux v. Mierzwinski (1982) 70 C.C.C. (2d) 385 (S.C.C.) and

of justice to be put and answered'. : See A.G. v. Mulholland; A.G. v. Foster, [1963] 2 Q.B. 477 at 489, [1963] 1 All E.R. 767.

It is clear that no absolute privilege exists which would permit journalists to place their professional loyalties above their responsibility to assist the courts where their testimony is relevant and necessary to further the interests of justice. The approach of the courts in dealing with journalistic privilege mirrors the approach taken recently by Madam Chief Justice Glube of the Supreme Court of Nova Scotia, Trial Division, in dealing with the obligation of Cabinet Ministers to testify where their evidence might be relevant to the matter in issue. A balancing must be done, weighing the relative importance of the interest being protected by the privilege, and the interest in the administration of justice. This balance is struck on an individual basis, and with relevance being a key factor.

In the question now before us, it is clear that even where some relative journalistic privilege may exist, it may be waived by the source. This was admitted by Mr. Murrant in his oral argument. It must be noted that Staff Sergeant Wheaton in his evidence before this Inquiry released Mr. Harris and Ms. Matheson from their obligation to protect him as a "source". (See: Volume 44, page 7986) Given that the source himself does not wish to be protected, we cannot accept the suggestion that the two journalists in question have any legal basis on which to make their claim that giving evidence before this Inquiry will interfere with their function as journalists.

Mr. Murrant has noted that requiring Mr. Harris and Ms. Matheson to testify in this case would be improper if the purpose was to impeach the credibility of sources, and also that it may, in effect, put their 'work' on trial, particularly in the case of Mr. Harris. We do not consider it relevant to the issues raised by this Inquiry to deal with the merits of that submission.

In summary, no absolute privilege exists in Canada to protect journalists, and even where a relative privilege does exist, it can be waived by the source. Staff Sergeant Wheaton has released both journalists from any protection that might attach to communications with him, and since such privilege exists to protect the source and not the journalist, Mr. Harris and Ms. Matheson cannot now claim immunity from testifying on that basis.

We have carefully considered whether the evidence of Ms. Matheson and Mr. Harris is relevant to the Commission, or whether such evidence raises collateral issues which should not be pursued. The primary focus of the application by Mr. Pugsley to question these individuals is to attack the credibility of Staff Sergeant Wheaton, since Wheaton's evidence contradicts that of Chief MacIntyre in material ways. It is clear that the conflicts in evidence between Wheaton and MacIntyre must be resolved by the Commission. John MacIntyre and Harry Wheaton are key witnesses in the Inquiry.

The Terms of Reference define the Commission's mandate. The scope of the mandate has been further clarified through various statements from the Commission. We have stated that the 1982 R.C.M.P. reinvestigation is part of our examination into the circumstances surrounding the death of Sandford Seale and the prosecution, conviction and eventual acquittal of Donald Marshall, Jr. The reinvestigation of Staff Sergeant Wheaton and Corporal Carroll has been the subject of intense discussion in this Inquiry. (We note, for example, that Harry Wheaton himself was on the stand for six days, almost two days of which were taken up by Mr. Pugsley's cross-examination.) After hearing many witnesses on this subject, there is still one key matter in issue, namely, an incident in April 1982 in which John MacIntyre allegedly slipped Patricia Harriss' first statement under his desk in an attempt to conceal it from the RCMP investigators. This is a matter which is germane to the issues before the Commission and which bears materially on the credibility of both MacIntyre and Wheaton.

Mr. Pugsley suggested in his written submission that we adopt the test of relevancy as stated by Howland, J.A. for Ontario Court of Appeal in Re Bertolucci et al and Ministry of Housing (1977) 76 D.L.R. (3d) 408, which states that

> "...A full and fair inquiry in the public interest is what is sought in order to elicit all relevant information pertaining to the subject matter of inquiry....In my opinion, any evidence should be admissible before the

> Commission which is reasonably relevant to the subject matter of the Inquiry."

While the test of relevance in Bertolucci is fairly broad, it must be noted that we already have before us the evidence of Staff Sergeant Wheaton, who admitted discussing the Marshall case with journalists before the investigation was concluded. We have also received as evidence Exhibit III, which is the RCMP policy on disclosure of information gathered during an investigation to members of the media. We conclude that we are able to deal with the issue of Staff Sergeant Wheaton's alleged disclosure to the media of information gathered during the RCMP reinvestigation of the Marshall case without hearing further evidence.

The Wheaton/MacIntyre credibility issue is of concern to us, but we do not think that calling Ms. Matheson and Mr. Harris as witnesses would be of assistance to us in making any determination in this area, with one important exception. Ms. Matheson had only one meeting with Harry Wheaton and, to our knowledge, spoke to John MacIntyre only briefly in an unsuccessful attempt to set up an interview with him. She has been examined for discovery in the libel action taken by John MacIntyre against the CBC, and this testimony is before us as Exhibit 106 (Volume 37). Based on these factors, we will not order that a subpoena be issued to compel Ms. Matheson to come before us and will not pursue her testimony in other ways.

Mr. Harris, on the other hand, had several interviews with Staff Sergeant Wheaton who is specifically acknowledged for his

assistance in preparation of "Justice Denied" by Mr. Harris in the preface to the book. It appears that he did not interview John MacIntyre. While Mr. Harris' book is not before us as an exhibit, it has been referred to by counsel on several occasions during the examination and cross-examination of witnesses before this Royal Commission. The conclusions reached by Mr. Harris as to factual matters, while of interest, are not necessarily the same as those that will be reached by this Royal Commission. Mr. Harris' purpose in writing "Justice Denied" may be different from our purpose which is, in short, to hear all relevant evidence, to decide the issues fairly on the material before us, and to make recommendations related to those findings. No relevant purpose can be served by questioning Mr. Harris in detail about the information contained in his book, how he obtained that information, or the basis on which he reached his conclusions.

There is one matter, however, on which we would like information from Mr. Harris. Considering the extensive research which was obviously done in preparing his book and considering the interviews which he had with Staff Sergeant Wheaton and others, Mr. Harris may be able to assist us in considering the allegation by Harry Wheaton that in April 1982, John MacIntyre attempted to conceal the first Patricia Harriss statement, an allegation which John MacIntrye has denied. It is relevant to our Inquiry into these matters to know whether Mr. Harris was told of this alleged incident by Harry Wheaton. If the answer is "no", the questioning of Mr. Harris stops there. If the answer

is "yes", we would like to know the details of this disclosure, noting that it was not included in "Justice Denied".

We would like to follow the same procedure in obtaining the answer to this question (or questions) as was followed with Mr. Alan Story. If Mr. Harris declines to answer, a subpoena will be issued to require him to appear as a witness.

164

STATEMENT OF FACTS WITH RESPECT TO THE
"THORNHILL" CASE

I. Background

1. This case arose out of circumstances surrounding a compromise financial settlement reached by the Honourable Roland Thornhill ("Thornhill") on November 27, 1979 to settle his indebtedness to four Canadian chartered banks.

2. As of January 31, 1978 Thornhill was indebted to the four banks in the aggregate amount of $142,576.83 all of which was unsecured. This debt had been accumulated over a number of years commencing in the early 1970's.

3. Thornhill put forth a proposal, through his accountant, on September 17, 1979 whereby he would pay 25% owing to each of the banks, providing they all accepted and, there was a forgiveness of interest accruing since January 31, 1978. The four banks confirmed their acceptance during the period September 21 to November 5, 1979.

4. Thornhill had been Minister of Development in the Provincial Government since October 5, 1978.

II. Pre-Investigation Stage - January - March, 1980

5. In February, 1980, rumours were circulating publicly regarding the Thornhill case and the RCMP met with the Attorney General, the Deputy Attorney General, et al to brief the Attorney General.

6. On March 7, 1980 the Attorney General advised the Legislature that the RCMP were not conducting an investigation in relation to any government official, the provincial government or any government agency.

7. On March 11, 1980 the Attorney General, the Deputy Attorney General and Mr. Gordon Gale met with Superintendent Christen, OiC, CIB and Inspector Blue, OiC, CCS, to discuss RCMP involvement in the Thornhill matter. Following this meeting, the Deputy Attorney General reviewed and commented upon a draft press release prepared by Supt. Christen who released a modified version stating that the Attorney General was correct in his report to the House of March 7,

pp 3-5

1980 and advising that: "Information had been received by the RCMP concerning such matters and in mid-February inquiries were made into such information, which inquiries did not warrant the commencement of an investigation".

III. RCMP Investigation - April 10, 1980 - August 29, 1980

8. On Thursday, April 10, 1980 Chief Superintendent Feagan and Inspector McInnes met with Gordon Gale, Director Criminal, and advised him that: "we would be proceeding with an investigation to which he agreed".

9. On April 18, 1980 the Attorney General, Harry How, is reported in a news article entitled "RCMP Seeking Documentation" as follows:

> "He told reporters later he is convinced Mr. Thornhill did nothing improper in the settlement with the banks and he hopes the Minister will stay in his job for a 'long time to come'.
> He said the matter of the Minister keeping his portfolio during the investigation would be up to the Premier to decide.
> Mr. How said his Department is letting the RCMP conduct the investigation.
> 'We are not going to be seen as exercising any political interference with what they do'."

10. On May 7, 1980 Cpl. House filed an interim report in he concluded:

> "That there is sufficient evidence on hand to establish a prima facie case under Section 110(1)(c)C.C.
>
> Consideration is now being given as to whether or not there is sufficient evidence to substantiate an offence by the banks or its officers. Offences that are being considered are Sec. 110(1)(b)C.C. or Conspiracy, Sec. 423 C.C."

This RCMP report was forwarded to Gordon Gale's attention on May 14, 1980.

11. On June 26, 1980 a further interim RCMP report was submitted and concluded as follows:

> "Further investigation to follow.... upon completion of these inquiries an analysis of information and documentation on hand, the Crown Prosecutor will be contacted and a decision made regarding the laying of charges".

This report was forwarded to Mr. Gale's attention on June 27, 1980.

12. In early July, 1980 David Thomas, Q.C., Chief Prosecuting Officer, instructed Kevin Burke to meet with Cpl. House, Investigating Officer, to determine if charges should be laid, and then to forward his recommendations to the [illegible] and await further instructions.

13. On July 18, 1980 a further interim RCMP report was submitted detailing interviews with senior officers of the various banks involved and advising that:

> "preliminary discussions have been held with Crown Counsel, Mr. Burke, and it is intended to have further discussions with him when he and the investigator return from holidays. A review of all information gathered to-date will be undertaken then and any further course of action decided upon".

14. On July 24, 1980 Gordon Gale contacted the RCMP and advised of his 'extreme displeasure' that the Investigating Officer, Cpl. House had met with Crown Prosecutor, Kevin Burke. The RCMP spokesperson informed Mr. Gale: "that I was not in any position to instruct our members not to see Crown Counsel bearing in mind that it is normal practice when investigations are conducted, whether they be minor or major in nature".

15. Following receipt of the RCMP report referred to in paragraph ~~14~~ 13 herein, which was forwarded on July 23, 1980 Mr. Gale wrote to Chief Supt. Feagan to convey the Attorney General's instructions:

> "that no charges were to be laid nor was any contact to be made with prosecutors concerning this matter until you had finished your investigation and forwarded a report to this Department so that the matter could then be examined and the Attorney General fully apprised of the evidence. Your investigators are to cease to have contact with the prosecutor concerning this investigation and to concentrate on getting the long awaited report in to the Department summarizing the evidence and the charges proposed based on the evidence so that it can be reviewed and then forwarded for prosecution if the evidence supports charges".

16. On September 4, 1980, Mr. Thomas, Chief Prosecuting Officer wrote to Mr. Gale "Re: Roland J. Thornhill" as follows: "As it appears this file is being monitored by yourself, it will be considered concluded here unless we receive instructions from you".

17. On August 29, 1980 a final report was submitted by the investigating officer and subsequently forwarded to Mr. Gale's attention by covering letter dated September 11, 1980. The report concluded with the following two paragraphs:

> "The foregoing, read in conjunction with the attachments, outlines some of the evidence gathered to-date. This matter is a very involved and time-consuming one. On the basis of the information outlined as a result of my investigation, I would like to make the following recommendations: '1) That I have established a prima facie case of sec. 110 (1)(c) C.C. against Mr. Thornhill. Therefore, a prosecutor be appointed to take this matter before the courts; 2) That I have shown some evidence that Mr. Thornhill obtained funds by FALSE PRETENSES and I would like to further discuss this matter with a prosecutor (Sec. 421(1)(c) C.C.) (Attachment #3). 3) That the four chartered banks involved in the settlement have violated the Criminal Code - Sec. 110(1)(c) by virtue of Sec. 21(1)(b) C.C. and consideration should be given to charging them; 4) That there is evidence that the four chartered banks, Mr. Thornhill, ... [et al]... have conspired to have Mr. Thornhill receive a benefit and should be charged with Conspiracy, Sec. 421(1)(d) C.C.'
>
> In view of the fact that this is a delicate matter as well as a very involved one, it is requested that a Crown Prosecutor be appointed in view of Mr. Gale's correspondence of 80-07-25. I would like to discuss this matter with the prosecutor
>
> 1. Get his advice regarding the importance of the evidence available;
> 2. Get his advice regarding the importance of obtaining additional evidence to support the charge(s);
>
> 3. Seek his advice on questions of law; and,
>
> 4. The procedures that will be followed in court. This is per OPS. MAN. III.6.E.4."

At this stage with ~~two~~ three possible exceptions all relevant evidence concerning the handling of the Donald Marshall, Jr. case has been presented. Depending on the decision of the Courts, additional evidence may be required from Cabinet Ministers and members of the Appeal Division of the Supreme Court of Nova Scotia.

We now move to the final phase of evidence to be presented in this Inquiry. Your Lordships have indicated on several occasions your interest in learning how the administration of justice system in this Province operates generally and expressed your concern in making recommendations for change based on the events which occurred in one case. Extensive evidence has been presented concerning the normal or expected way the system operates. There has been suggestion, however, that the system operates differently when dealing with prominent persons.

To enable Your Lordships to test this thesis

we intend to present evidence of the manner in which the Attorney General's Department and the Royal Canadian Mounted Police have dealt with two cases involving prominent persons and institutions. We emphasize that it is not our desire to ask you to make a finding whether such persons or institutions actually committed any illegal acts. Rather, we are concerned only with the manner in which cases involving these persons were treated and handled by the appropriate officials within the administration of justice system.

We will present evidence dealing with the actions of the Attorney General's Department and the R.C.M.P. leading to the ultimate decision not to lay an Information charging Roland Thornhill and four chartered banks with a breach of certain sections of the Criminal Code. We also will present evidence of the manner in which the Attorney General's Department and the R.C.M.P. handled the investigation and charging

and subsequent sentencing of Billy Joe MacLean arising out of his claims for expenses incurred in performance of his duties as a member of the Legislature. We will deal with these cases consecutively and this will necessitate the calling of certain witnesses on more than one occasion. We consider this will be less confusing in the long run although undoubtedly it may cause some inconvenience to the witnesses involved.

We will proceed with the Roland Thornhill matter first. In recognition of our concern that Mr. Thornhill and the Banks not be prosecuted before this Commission when it was decided eight years ago that no charges were warranted, we wished to limit the disclosure of confidential information wherever we considered the disclosure would not be of assistance to Your Lordships in your deliberations.

The Attorney General's Department and the R.C.M.P. have cooperated fully with Commission Counsel

and have disclosed to us all of the information and documents in their possession and permitted us to interview any representative of the Department who we identified. Following our review of the documents, Commission Counsel prepared a Statement of Facts which we considered were supported by the documents and which would eliminate the necessity of filing publicly a large volume of documents. We have obtained the agreement from counsel for the Attorney General and the R.C.M.P. that the documents do support the facts which are contained in the Statement.

The Statement of Facts G.164 is a summary of the relevant events which occurred to August 29, 1980 when an R.C.M.P. Report was received by the Attorney General's Department. The Statement of Facts has now been marked as Exhibit .

(Review the Statement of Facts generally)

We have also prepared a booklet of documents which has been filed as Exhibit 165 . Some of the documents in the booklet are referred to in the Statement of Facts but in the main deal with events which occurred after the filing of the R.C.M.P. Report on August 29, 1980. Evidence from various witnesses will be presented and all of these documents will be referred to by some or all of the witnesses.

The witnesses to be called in the Thornhill matter are as follows:

(List the witnesses and a brief description of their role)

Mr. Merrick

September 8, 1988

TENTATIVE WITNESS LIST

SEPTEMBER 1988

Monday, September 12, 1988

Michael Harris, Hugh Feagan - Commander "H" Division

Tuesday, September 13, 1988

J. Quintal, Dave Thomas
Regt Comm

Wednesday, September 14, 1988

Martin Herschorn, Gordon Coles
Di Cu

Thursday, September 15, 1988

Judge How, Supt. Simmonds, Gordon Gale

Monday, September 19, 1988

Paul Cormier, RCMP

Tuesday, September 20, 1988

Gordon Coles, Gordon Gale

Wednesday, September 21, 1988

Ron Giffin, Norm Clair

Thursday, September 22, 1988

Martin Herschorn, Joel Pink

all Bright

Blanks to be filled in
19, 20, 23, 24

Blatant ceremonial
certainty

Sergt McGehlen

Career Path?

CIBO

CIBO Sept 1.83 - Aug 85

Relationship c̄ A-G Deptn Gordon Gale

Relationship Auditor General?

who author of MacLeon?

OIC CCS

p. 12 who are Blue - Leigh

beyond to you?

p. 14 Refers to you?

what practice is followed in ordinary circumstances when RCMP conclude matters require investigation?

blatant criminal activity

Knew an investigation
he carried out

p.15 Who is CIBO - McBilton
Why is the meeting req'd?

p.17 Why is Attorney General being involved.

✓ Why is Speaker to be informed?
In ordinary cases are outside persons advised of investigations being contemplated?

p.19 Any concern that Premier being advised. Why?

If investigating suspected fraud by Bank employee, would President of the Bank be advised? Chief of an Indian Band?

(Mowlin did attend at Shelling Motel
Satisfied)

prima facie.

proper investigation

"Communal commitment

p21 Recollection of meeting? what discussed. Were Cole & Gale advised RCMP considered or investigation required ~~recommended~~ (12)

22 another day after. Still of view investigation required? Why holding back? Is this normal? (Fair and what normal)

23 Why would there be a meeting convened by Spreaker? Was MacLeod to suspect at this time? Warning? Fairness to potential accused? Would all potential accused be given Separate Treatment?

Bank Teller? Indian Bond Member?

Get complete details of comments on petition of p. 23

Is it usual to give suspect complete details of alleged criminal activity & ask for affirmation? If so why comment re "honest"?

p25 why emitting letter is the role of police if there is a suspected crime?

prima facie

Should RCMP have done anything different.

supported

p. 25 no admission from Ar 6

26 no admission

(p. 35 – R cons had been admitted)

p. 46 answer of this

agree with two ⇒

(Investigation carried out in normal course? Consultation with Crown? Does 1 year seem long? what done? Had it been carried out in early 1984 some result?)

David Thomas

Experience

Position

Explain how his office works. Particularly assignment of Prosecutors. Any difference when dealing c̄ different types of crime?

Explain relationship btn RCMP and Prosecutors.

What happens if difference of opinion? Who decides

~~who~~
what is relationship with
H.O.

who are criminal law experts
at A-G Dept.

Marshall case:
Was a prosecutor assigned?
when? why? any difference
than normal case?

Go to Statement of Facts para. 12-16
para. 12

Booklet. p. 12 ++ In detail

Booklet p. 18

Refer p. 20

p. 21: Ever anything like this before?

22 In detail

Did he ever see RCMP Report?

When next contact?

Refer p. 58. What concern.

What did he do.

(a) called Hesketh - Coles not going to do anything

(b) Saw Coles & told him file had been in his office + Bruce assigned. Still nothing

(c) Saw Hon. Serie details

Had you made arrangements to see press?

Amended Release

p. 60, 61

Did this satisfy him

Any other circumstances.

Ever see legal opinion from Cole? ✓

Are you aware of any procedure or policy which would enable you to instruct your prosecutors that in cases such as this one they should not discuss with police whether, & what type of, charges should be laid.

1. ~~was~~ Aware of any other case where case has been taken ~~from~~ by you from a prosecutor after it was assigned because of direction from H.O.

2. Any other case where file taken from your office until A-G. had opportunity to decide if charge warranted.

3. Any other case where Deputy A-G. made determination whether charge warranted.

4. What office was consulted by RCMP to decide whether to charge B.J. and to decide what charges.

What effect, if any, ~~does~~ did the procedure followed here have on you? your staff?

Refer 104 for comments

If Burke recommended change to you would you consider it necessary to check with Heston - Gale - Deg. A-G.

Do you consider you + your staff would be competent to have received RCMP reports, consult with investigating officer & decide if charges should be laid?

Dave MacLaughlin CHNS

9 to 12

What time on 6 Nov/80 did Martin talk to Coles conveying my concern for clarification
9:30pm

What time did CHNS talk to Coles on 6 Nov/80
after 3 pm. ±

Copy of tape

Kups coming back to fact he told RCMP to report to him

On 6 Nov/80 the Deputy A.G. issued a Press Release to the following effect:

1. He denied an Asst. P.O. had been assigned to the "Thornhill" investigation.

2. He denied the Asst. P.O. had that investigation withdrawn from him.

3. He denied that he (Deputy A.G.) had assigned or designated any Prosecutor to this investigation.

4. He made reference to clearly understood policy & accepted practice between RCMP and AG's Dept. re major investigations particularly commil crime + fraud cases.

5. He made reference to senior lawyers in the department experienced in the Criminal law.

On 6 Nov/80 the Deputy, who was in Victoria BC, issued a press release ~~stating~~ TO the following effect:

1. He denied a P.O. had been assigned to the "Thornhill" investigation

2. He denied the investigation had been withdrawn from the P.O.

Comments re Release of 6 Nov 1980.

Re 1. An Asst. P.O. was assigned to the case by DWT.

Re 2. The matter was withdrawn from the Asst. P.O. by Insp. Blue CCS

Re 3. The Asst. P.O. did not say Mr. Coles had assigned him to the investigation. He didn't say who had assigned him.

Re 4. P.O. not privy to that policy.
Why should Dept. get involved. Are P.O's not competant? Are P.O's to refer "major" matters involving RCMP to Dept. for decisions. If so why not HPD & DPD. P.Os should feel they can do their jobs. If they need advice on matters of policy they can ask for it if they have no specific instructions.

Re 5. Wade, Norton & self are not exactly juniors.

1st paragraph of Press Release dated 6 Nov/80 implies that the Assistant P.O. has made a false statement.

1st paragraph on p-2 of the Press Release states "Mr. Coles did not assign nor designate any prosecutor to this investigation." The Asst. P.O. did not say Mr. Coles had assigned him to the case.

The fact of the matter is that Insp. Blue o/c CCS spoke to me about the file originally and subsequently Cst. Cyril House attended my office and gave me a briefing. ~~and what the Investigation was at that point in time~~. I then assigned Mr. Kevin Burke, the P.O. in question, to look after this matter. This was early in July 1980.

On 28 August Mr. Burke advised me by written memo that on that date Insp. Blue called [redacted] and advised him, Burke, he had instructions to cease having further contact with the Prosecuting office regarding this matter.

Subsequently the file was picked up from Mr. Burke by Cst. House, the Investigator.

Mr. Burke's Memorandum was forwarded by me to Mr. Gordon Gale, Director (Criminal) in the Attorney General's Department on 4 September 1980

The Way it Went.

Insp. Blue originally spoke to me about the file in June or July 1980. Subsequently Cst. House came to see me and I assigned Kevin Burke to the file.

On 28 August 1980 Burke sent me a Memo indicating that on that date he had been informed by Insp. Blue that the RCMP had been instructed to have no further contact with the P.O. Apparently Gordon Gale gave these instructions to Insp. Blue's C.O. [redacted]

I forwarded Burke's memo to Gordon Gale on 4 September 1980

There was no question about it. As far as myself, Burke + Cst. House were concerned, I had assigned the file to Burke. There could be no misunderstanding

And there is no doubt about how the file was removed from the the P.O. — The RCMP picked it up.

Re 7 Nov/80 CTV newscast

1. D.A.G. said file was removed from CPO at request of AG Dept.

2. D.A.G. said nothing unusual about Thornhill file being taken to P.O.

3. DAG said Burke may have misunderstood

Comments on 7 Nov/80 CTV newscast

Re 1. Who requested removal & to whom was request made.

Re 2. The press release of 6 Nov/80 said the Thornhill investigation followed the agreed upon procedure of referring the matter to DAG or other Sr. lawyers to assess the report.

Re 3. How can DAG say this. - Memo forwarded to Gale setting out Burke's position. As far as Burk, House + DWT were concerned this was Burke's file.

Field (Ex Police) OPS

Quantal

Position July 1931

Career Path.

Hierarchy & why & when cases come to his attention DIV ( )

Tom Bonner (When first hear of this one.)

p. 9. Did he see this? any concerns?

p. 11 Refer to this in detail. Was contract being negotiated?

p. 12 ① aware of this? Worried

② This in fact is what was done (B/Ue 20-19)

no Segregation Cst. House could Consult with Cols - Sole (18)

③ Agree

④ Agree - didn't happen

officer being denied the opportunity to consult directly with Crown?
(18 ①)

Would this not be unusual? why would RCMP tolerate?

p. 20 did he see Mr. Corcoran?

p. 31
39
41
refer to notes on pages.

O Hanna Meeting?
Why called?
What info available in advance?
During? ~~Sets~~
Was the full & complete file ever available to him

(p. 48) Who selected people who would attend? Who prepared minutes?

What is procedure for preparing & circulating minutes

Did he keep notes? where are they? (Exhibit) 16 ?

Did he see Drop minutes? make any corrections?

Independent Recollection of Meeting?
Length?
Format?
Input from who?
Conclusion

Ever see minutes? Drop form? (48)

Venner notes + comments?

Agree with minutes? Ever express disagreement? In what form

Opinion of Pratt (53)

Dillahunt (53,4) in detail

Venner + others (55,7)

what further evidence to be obtained? Cases already cited (p. 56)

Answer of Press Relations from Coles?

Agree with his comments (58)

What did he expect to happen?

Did he receive report of meeting Feagan & Coles? Did he see Feagan notes (6.3)

Did he see Report p. 68
(see note)

Did he see Report (77)
(See notes)

Did he see (7a)
when? what action?

p. 81 who wrote?
comments?

p. 82 In detail Korzij agrees.

What took place between
Nov. 25 & mid November?

Any new facts?

Any new legal analysis?

Any ~~new~~ further contacts A-G?

Section 109—*Continued*

The term "the administration of justice" in this section refers to events leading up to the imposition of sentence and does not cover the administrative structure that governs convicts after they have been sentenced: *R. v. SMALBRUGGE* (1984), 19 C.C.C. (3d) 283 (B.C. Co. Ct.).

"Offence" in para. (*a*)(vi) includes the contravention of a valid provincial statute: *R. v. SOMMERVILLE*, [1963] 3 C.C.C. 240, 40 C.R. 384 (Sask. C.A.).

The offence contrary to para. (*b*) is a specific intent offence for which drunkenness is a defence. Further, evidence of good character adduced by the accused may not only serve to support the accused's credibility but must be considered from the standpoint of whether the accused as a person of good character was likely to have committed this offence unless he was so drunk as to lack the capacity to form the requisite intent: *R. v. DEES* (1978), 40 C.C.C. (2d) 58 (Ont. C.A.).

FRAUDS UPON THE GOVERNMENT—Contractor subscribing to election fund—Punishment.

110. (1) Every one commits an offence who

(*a*) directly or indirectly

(i) gives, offers, or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or

(ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(*b*) having dealings of any kind with the government, pays a commission or reward to or confers an advantage or benefit of any kind upon an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies upon him;

(*c*) being an official or employee of the government, demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies upon him;

APRIL 14/80

16. On 80-02-12, a source advised that he had learned that [redacted] Mr. THORNHILL, had paid off the 25% of the loans for Mr. THORNHILL. Another source advised that he had talked with [redacted] who confirmed that debts of $150,000.00 had been written off to $37,500.00. On 80-03-16, source advised he had more recent information that indicated the debt was closer to $450,000.00. The $150,000.00 figure was apparently a separate loan written off by the Bank of Nova Scotia.

17. On 80-03-13, this matter was again raised in the House. The Premier was questioned "as to whether or not the Minister of Development had had his debts written off before or after he became a Minister of the Crown". (Pg. 430, House of Assembly Debates & Proceedings). Copy attached. This was not directly answered by the Premier Mr. THORNHILL had previously stated to the House that he had had debts and settled them in a normal business fashion (Pg. 419, House of Assembly, Debates & Proceedings). Copy attached.

18. On 80-03-28, The Premier, Mr. John BUCHANAN, was interviewed on ATV News by newsman, Blaine HENSHAW. The Premier stated that the debts that were settled by Mr. THORNHILL were settled after he became a member of the Exec. Council, although negotiations had been started before he became a Minister. This was the first confirmation we had that the settlement was made while Mr. THORNHILL was a Minister of the Crown.

19. On 80-04-10, C/Supt. FEAGAN and Insp. McINNIS met with Mr. Gordon GALE, Director, Criminal Operations, Dept. of the Attorney General. Mr. GALE introduced the topic of Mr. THORNHILL and a possible contravention of the Criminal Code. He felt the matter should be cleared up one way or the other since there was considerable discussion in the House of Assembly and on the street. It was mentioned that the Premier had stated outside the Legislature that Mr. THORNHILL had accepted financial benefits while holding office as a Minister (as per previous paragraph). C/Supt. FEAGAN informed Mr. GALE we would be proceeding with an investigation, to which he agreed.

20. On 80-04-11, I spoke with [redacted] He confirmed that a settlement had been made by Mr. Harry STEELE on Mr. THORNHILL's behalf. The final settlement was made on 79-11-09. He said he had spoken with the following people during his enquiries:

1) [redacted]
Head Office, Montreal

2) [redacted]
Montreal

3) [redacted]
Toronto Dominion Bank

.../4

TO
A

Commissioner, Ottawa

Attention: D.C.I.

FROM
DE

Asst. Officer i/c C.I.B.
"H" Division

SECURITY · CLASSIFICATION · DE SÉCURITÉ
SECRET
OUR FILE/NOTRE RÉFÉRENCE
80H-314
YOUR FILE/VOTRE RÉFÉRENCE
DATE
80-04-15

SUBJECT
OBJET

Roland J. THORNHILL (B: 34-09-01)
Receiving Benefit, Sec. 110(c) C.C.
Halifax, Nova Scotia

Attached is initial report from our Commercial Crime Section with attachments as identified therein, being further to our telephone conversation of 80-04-11.

It will be noted throughout in the excerpts obtained from the Assembly Debates that there is some vague innuendo that the police conducted an investigation and that there was no evidence uncovered that would cause an investigation to be continued. While not highlighted in this report, I would like to mention that on April 9th the Attorney General and Deputy Attorney General had conversation with Insp. Blue and I am informed that some attempt was being made to use Supt. Christen's Press Release in such a manner to suggest that our investigation established no indication of any wrongdoing. This conversation was a prelude to the Attorney General meeting with the media later that date. Of course, both were advised that such was not the case as no complete or thorough investigation had been conducted. Our initial inquiries in February failed to establish when Mr. Thornhill settled his loans, and accordingly, we did not pursue the issue further other than to gather and evaluate information. When the Premier on 80-03-28 (see para. 18) related to the media that Mr. Thornhill's loans were settled after he had been appointed to the Executive Council, we felt there was basis to the continuing controversy and that there was requirement on our part to conduct an investigation in view of Section 110(c) of the Criminal Code, hence the meeting with Mr. Gordon Gale on April 10th as per para. 19.

Further reports will be submitted as they come to hand.

M. J. McInnis, Insp.
Asst. Officer i/c C.I.B.

Encl.

PA CCB 5
80.04.17
JWP.

p. 93

early draft p. 84, 88

who drafted original? why?

what info. other than available to board Nov. 5 Meeting?

Deal with 93 in detail!!

This is his letter & he accepts everything contained in it? ✓

(see 92 for file returned) ✓

Was accepted by Reagan? ✓

House? ✓

Was asked Blong?

Kujic?

Did Commissioner agree?

Did he see 98 at the time

Refer p. 100, 101 Identify players

Refer 102

aware of 104? Get his comments

Refer 109
Identify authors. Comment on highlighted portions

Refer 110
Agree with Feagen

Refer 111
Is this correct statement of the policy??

Refer 112
who drafted. Did he review? edit?

114
115 is the final version
Dramatic changes!
Why

Refer 116 -
117

Refer 119

What is current policy of RCMP

If another case where

(a) Investigating officer not given access to Crown Prosecutor for normal purpose

(b) Investigating officer & Commander both believe charges are warranted

(c) A-G gives press release saying no charges to be laid

what would RCMP do?

COMMENTS ON THE "THORNHILL BOOKLET"

Page No.	Comment
1	Who prepared this document? It appears to be a briefing paper for "you" who answered a series of questions by David Muise on March 13, 1980 (get copy of Hansard for that day and determine who was responding to Muise).
3	This is a Memo from Gordon Gale to Doug Christen. The following two pages contain the amended Press Release and the original Press Release prepared by Coles. WHEN QUESTIONING COLES AND CHRISTIAN FIND OUT WHAT INQUIRIES WERE MADE IN MID-FEBRUARY, 1980 AND WHY THEY DID NOT WARRANT THE COMMENCEMENT OF AN INVESTIGATION.
6	Whose note is this? Why could the R.C.M.P. not conduct an investigation in the city without having received a request from the City Police.
7	Was Gale requesting that an investigation be carried out or merely expressing his view that the Attorney General should request one. In any event Feagan did indicate an investigation would be undertaken and Gale agreed.
8	Note the reference to a meeting on April 9 between the Attorney General, the Deputy Attorney General and Inspector Blue. There is the statement of an attempt to use Christen's Press Release to suggest there was no indication of any wrongdoing following an investigation. The Attorney General and Deputy were both advised that such was not the case since no complete or thorough investigation had been conducted. DEAL WITH THIS MEETING WHEN DISCUSSING THE MATTER WITH COLES AND HOW. (Do we need to include the initial report from the C.C.S. If not, do we need to refer to paragraph 18 and paragraph 19
9	Ascertain who wrote this page. Who took part in the phone conversation.
10	This is a letter from Christen to Gale of May 21, 1980. Here again Christen notes that it was not intended in his Press Release to suggest there was no need for further investigation. WHAT WAS THE INTENTION OF THE PRESS RELEASE.
11	Who is involved in this conversation? This is an important Memo and will have to be reviewed with witnesses from the R.C.M.P. and the Attorney General. What gave rise to this particular Memo.

"THORNHILL BOOKLET"

Page No.	Comment
12	Find out who made this note to file and review the contents of the memo in detail with the senior members of the R.C.M.P. and the Attorney General's Department to see if they agree with the statements of principle contained therein. (The memo from Gale to Coles found on page 17 would indicate the discussion was with Inspector McInnis. Gale indicates McInnis acquiesced in his requests).
17	Do we need a copy of the forwarding Minutes signed by Inspector Blue to be included in the booklet?
18	Determine when the "instructions" of Coles were relayed by Gale to Christen, Feagan and McInnis.
19	Find out how something becomes classified as "secret".
20	What determines whether something goes to the Commissioner. Note the comment by Christen that he had no recollection of ever being advised that Crown Counsel were not to be contacted. DISCUSS THIS LETTER IN DETAIL WITH CHRISTEN AND GALE.
22	Note Burke's conclusion that one, if not more, charges could be laid in this matter in his opinion following an examination of materials compiled by Constable House. Why didn't Gale contact Thomas and Burke directly and pull them off the investigation?
25	REMEMBER TO HAVE THIS MEMO EDITED BY DELETING THE HIGHLIGHTED PORTIONS. REMEMBER ALSO THAT ADDITIONAL STATEMENTS FROM THE DOCUMENTS OBTAINED FROM THE CHARTERED BANKS ARE TO BE INCLUDED. WHY DID HERSCHORN SELECT THE PORTIONS HE DID.
31	NOTE THAT THE HIGHLIGHTED PORTIONS ARE TO BE DELETED FROM THE FINAL EDITED VERSION. What is meant by the statement that the report had been "fully considered" contained in paragraph 2. When questioning Coles refer him to the various statements in the bank documents which have not been included in Herschorn's Memorandum or in Coles' report to the Attorney General. In fact the quotations taken from Bank Memorandum on page 3 conspicuously avoid any mention of the political considerations which the Banks had looked at.

"THORNHILL BOOKLET"

Page No.	Comment
31 (Cont'd)	Why did Coles not obtain an opinion from someone with expertise in criminal law before providing his advice to the Attorney General.
39	In the attached Press Release reference is made to the fact that Coles and other senior law officers had fully considered the R.C.M.P. report and attachments. Who are the other senior law officers? Did they consider the various statements in the Banks' documents referring to the political considera tions.
42	Determine who Sgt. Pratt is and why he is being asked to perform that function.
45	REVIEW THIS DOCUMENT IN DETAIL WITH THOSE PRESENT.
48	Whose comments are these and were they incorporated in the final draft of the Minutes. What is the "leak" referred to in these comments.
49	Interview the author of these notes and confirm that the merits of the case were examined at the highest possible level within the Force.
50	Was there cases in other Divisions where the R.C.M.P. backed off at the request of a Provincial Attorney General. Deal in detail with the hand-written comments at the bottom of this memo which I assume were put there by Sgt. Dillabough. In particular refer to the comments on the right of the policeman to lay a charge and the reason the right exists.
52	Was everyone given an opportunity to make whatever changes were considered necessary to the draft Minutes. Was the Commissioner provided with a copy of these Minutes. Note the addition of two paragraphs on the top of page 3 of these Minutes. Would those present at the meeting have had the opportunity to discuss the conclusions with the Commissioner.
55	The contents of this Press Release are completely at odds with the evidence which has been given to date at the Inquiry. Get reference to the evidence for the purposes of questioning Mr. Coles. Also ask the various R.C.M.P. Officers whether there is any such policy and accepted practice.

"THORNHILL BOOKLET"

Page No.	Comment
57	What concerns were expressed by Mr. Thomas.
58	Compare this with the earlier Relesae and once again obtain the evidence from the Inquiry to show the difference which exists.
59	DO WE NEED TO HAVE THIS MEMO AND THE TELEX INCLUDED IN THE DOCUMENTS. WHAT IS THE RELEVANCE OF THESE DOCUMENTS.
64	What is being sought here?
65	These notes must be reviewed in detail with Faegan and Coles. Other members of the Force and the Attorney General's office should be questioned.
70	This report was prepared after Feagan's meeting with Coles. It is a memo from Blue to Christen. Get agreement from all R.C.M.P. personnel and the Attorney General officials to the principle laid out on the bottom of page 70. (Did Blue ever obtain any additional information which would lead him to change his opinion that there were reasonable and probable grounds to charge Mr. Thornhill). Ask all of the R.C.M.P. members if they agree with the comments in the final two paragraphs of this memo.
72-77	Ask Coles, Herschorn and Gale to review this memo in order to be in a position to answer questions concerning it at the Inquiry. Ask R.C.M.P. Officers to comment on the final sentence on page 76.

When aware of this

Receipts from Sherling for accommodation expense incurred during trips to Halifax June 25-Nov. 30/82

Mr Lea

1. Stopped at Agt. of Friend. Charged when he returned to Ont. collected & paid the Friend

(Constituency Rent?)

Claim

pp 68 ff

req'd to pay back everything. No suggestion of having paid anything to anybody (p. 74, 78)

~ 21,000 obtained by use of forged documents?

Turned up by an investigation lasting ~~[illegible]~~ approx. 1 year. Thorough.

Why not done before

Jean Paul Sheibang
Sequestrilley member
taxes + meals

fraudulent aspects:

<u>action</u>: (a) Investigation
(b) any wrong doing

basis for investigation

Gordon Cole

First knowledge of this matter
what told - by whom

Refer 27 & 28
aware RCMP considered matter
should be taken further. who
understood this to mean?

aware RCMP considered material
available suggested criminal
activity?

aware of investigation re Shelburne
Motel receipts?

What info made available?
Removed? why?

Charlottetown Rural Economy Board

!! Phoned Speaker - copies of Rules in force

Meeting c̄ Mr McLeon - Could Premier

who gave Rule explanation

what understood being asked?

Suspected crime?

What did information show?

Refer 19. aware of Bennett involvement?
concern?

Why was RCMP at meeting?
Intend to inform Dem of result of your review?

Refer 22. Give consideration to
these various potential crimes?

Refer 23 Coleman says your Dept aware of Spencer investigation

Wrong?

Comment on battery in detail

Refer 24 in detail

Refer 29 – See notes

30 Remember f.l

Refer 32 See notes

Refer 35 See notes

angle

Independent Investigator

difference of opinion

Sec 37 – See notes

Refer 46 – See ⇒

47

auction General Legal – concern?

who involved in investigation?

Decision to charge?

Serious!!

[Merits of the case
Class
A-G involvement]

Plea bargaining? (normal for you to be involved)

Sentencing Ex. 175

(DCP etc.)

Nature
time period
people involved

Coles

when first hear of this matter.

(p. 1 Booklet.
this notes? when made?
Purpose)

p. 3 normal to assist in
keeping press release
for RCMP?

p. 7 Gale initiated the investigation

(p. 8) Some disagreement on this
point)

p. 9

left

media cell

(2)

p. 9 any knowledge of
Concern. Admin
pos RCMP?

Aware of conversations Gale +
RCMP re contact Rosenstein.
(refer notes of Thomas re
assignment)
Why the concern?
Competence?

Confidence – Trust

These are the people with ✓
day to day expertise

pp. 12-13 (2) agree
aware of "obstruction" concern

p. 18 Certainly not on circulation
to consultant & anyone in
A-G Office.
Why !!

p. 20 In detail we advise
to Premier.

p. 22 aware Burke assessed.
aware of his preliminary view?
full discuss with him.

p. 24 RCMP asking for legal
review
(Refer para 17 Statement of Facts)
What done when legal
received?
Who involved. to what
extent?
Any further investigation considered
necessary?

Who was to do legal review?
Was legal research carried
out by Gale? Heslop?
Consulted? Agree?

p. 103
Carefully considered Luddock
& Williams in reaching decision
(Clomp 70, 74)

Under counsel in both cases.
was he convicted? why?

(Refer to Williams
& Ruddock cases
where noted)

no S.C.C. interpretation of (c)

Also Cooper which involved
charge under 5.110(1)(b)
Intent for possible charge
against Banks?

what about the False Pretences?

Conspiracy?

any reason?
consideration

Received memo from Hesselman on Facts

What was he asked to do?

p. 25

Why ask for his review on these two points

Did Cole carefully review the RCMP Report including attachments?

Dates on p. 27 are incorrect?

Interested to know whether Mr. Bourhill's position in Gov't was, or could have been, a factor in leading to the Bonds' decision?

p. 29 reference to "politically unpalatable"

(also array of factors referred to on pp 40 ff)

Was report made available to A-G.

p. 31 ① Intend to suggest that Gale & Herzbrun considered whether an offence was committed.

Ex. 169

p. 33 ② Is this taken from information on p. 29. why delete reference to "politically unpalatable"

34 ③ Is this his understanding of authorities for both (b) & (c)

p. 35 Langer refers only to (b) & returns only to the Banks.

(4) How could he possibly conclude this given the Reddrose & Williams case. Knew A-G wanted reliance on his opinion. Intended that he wanted.

Get expressed or actual intent req'd & that his advice is incorrect.

p. 36 (5) Consider 40 ft?

any factors other than ~~other~~ his view of law

Back to Statement of Facts + requests from RCMP.

p. 39 Is this responsible? Put Dan in a bad spot

p. 43 See notes

Next contact from RCMP

answer of Ottawa Meeting

Never given copy of minutes?

Refer 58
See notes

Thomas evidence
61
why amend. ordered by A-G?

Meeting c̄ Feagan.
p. 63 ff.

Any notes of his own
See 2018

Did he ever review the authorities
again given were expressly by RCMP

p. 70 - never see this

p. 74 ① } obstruction
also p. 13

p. 77 ①
If had been suggested by RCMP
that you get an outside opinion
what would you have done?

p. 78

① Is this accurate. In detail

p. 98 - Refer to notes

Hesitation Sarg never read any cases of his in the Staff meetings, this is inconceivable

p. 103 Refer to notes? when case reviewed

p. 104 See notes

p. 106 ff see notes

~~Bases recognized~~

~~In case of conflict~~
In this case what cases RCMP have done realistically