

REPORT
of the
ROYAL COMMISSION
on the
**BREN MACHINE GUN
CONTRACT**

Hon. HENRY HAGUE DAVIS
Commissioner



OTTAWA
J. O. PATENAUDE, I.S.O.
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REPORT OF THE COMMISSIONER ON THE BREN MACHINE GUN CONTRACT

To His Excellency the Right Honourable Baron Tweedsmuir of Elsfield, a member of His Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Order of the Companions of Honour, Governor General and Commander-in-Chief of the Dominion of Canada.

MAY IT PLEASE YOUR EXCELLENCY:

A Royal Commission was issued to the undersigned under date of September 7, 1938, pursuant to the authority of the following Order in Council (P.C. 2251) passed on the said 7th day of September, 1938:

The Committee of the Privy Council have had before them a report, dated September 7, 1938, from the Right Honourable W. L. Mackenzie King, the Prime Minister, representing that a certain Canadian periodical publication, dated September 1, 1938, contained a general article under the caption "Canada's Armament Mystery," purporting to have been prepared by Lieut.-Col. George A. Drew.

The Prime Minister observes that the author criticized some of the provisions of a certain contract executed on the 31st day of March, 1938, and tabled in parliament on the 29th day of June, 1938, made between His Majesty the King represented by the Honourable the Minister of National Defence for Canada and John Inglis Co. Limited, whereby the company undertook to furnish to His Majesty a certain supply of Bren machine guns for the use of the defence forces of Canada; numerous allegations relating to the negotiation, the terms of the contract and transactions thereunder were made by the author as a result of which considerable public interest has since been evinced.

The Prime Minister is of opinion that a full and complete inquiry should be set on foot with the least possible delay in order that the public may be fully informed of the circumstances surrounding the making of this contract and the terms thereof.

The Prime Minister, therefore, recommends that the Honourable Mr. Justice Henry Hague Davis, a Judge of the Supreme Court of Canada, be appointed a Commissioner under Part I of the Inquiries Act to inquire fully into the preliminary discussions and negotiations leading up to and the completion of the said contract and into the shareholdings and the transactions, if any, in the shares or securities of the said company and the connection or activities, if any, of any member of the House of Commons in the discussions and negotiations leading up to the said contract or in the affairs of the said company or in the sale of shares or securities of the said company, and generally to inquire fully into all matters relating to the said contract and to the affairs of the said company and to the steps taken to protect the public interest; and to report upon the same.

The Prime Minister further recommends that the Commissioner be authorized to engage the services of such technical advisers or other experts, clerks, reporters and assistants as he may deem necessary or advisable.

The Committee concur in the foregoing recommendations and submit the same for approval.

H. W. LOTHROP,

Assistant Clerk of the Privy Council.

The said Commission required and directed your Commissioner

to report as speedily as possible to Our Governor in Council the result of his investigation together with the evidence taken before him and any opinion he may see fit to express thereon.

YOUR COMMISSIONER HAS THE HONOUR TO REPORT that he has made the inquiry which he was appointed to make and now begs leave to submit to Your Excellency the result of his investigation together with the evidence taken before him.

Your Commissioner has had the assistance of the Honourable J. L. Ralston, K.C., Mr. L. A. Forsyth, K.C., and Mr. Jacques Dumoulin, K.C., appointed by the Government of Canada as Government counsel and to assist the Commission; Mr. Aimé Geoffrion, K.C., and Mr. J. C. McRuer, K.C., who appeared for John Inglis Company, Limited; Mr. I. F. Hellmuth, K.C., who appeared with Colonel Drew, representing both Colonel Drew and The MacLean Publishing Company Limited which published the article in MacLean's magazine which gave rise to this Inquiry; and Mr. H. F. Parkinson, K.C., who appeared for the legal firm of Messrs. Plaxton & Company and for Messrs. Cameron, Pointon & Merritt.

The Commission opened on September 19, 1938, and concluded on Thursday, November 24, 1938. The taking of testimony and the argument of counsel occupied thirty-six days. With the exception of Major-General Caldwell (then Master-General of the Ordnance) of the Department of National Defence, whose illness prevented his being examined at any time during the sittings of the Commission, everyone who it was thought might be able to throw light on the subject of the Inquiry gave testimony voluntarily. It was not necessary to issue a single subpoena to enforce the attendance of any witness. Your Commissioner is satisfied that all available documents in any way relevant and material to the subject matter of the Inquiry were presented to the Commission.

The evidence taken before your Commissioner extended to 4,122 pages of stenographic notes besides the documentary evidence, which was filed in 388 exhibits, and the argument of counsel was extended in the stenographic notes from page 4123 to page 4711 inclusive, all of which is returned herewith.*

106 What is known as the Bren gun is a light machine gun, a weapon invented and patented in Czecho-Slovakia. The information given the Commission was that the weapon which eventually became the Bren gun was demonstrated to the British Government in 1930. It was then known as ZB 26. It was introduced by the Czecho-Slovakian firm and was brought to the attention of the British and was tried out in England. There were several details in the gun which had to be modified to conform to British conditions. Between 1930 and 1935 the gun was modified and changed and eventually became the Bren gun in its present form, and during that period it was subjected to very severe tests in England the result of which was that it was considered satisfactory and suitable for the purposes of light automatics better than anything else available.

The suitability of the said machine gun and the urgency of its purchase or production for the use of the defence forces of Canada was common ground with all parties represented before the Commission.

By letter dated February 27, 1936 (Exhibit 68) the Office of the High Commissioner for Canada in London advised the Secretary of State for External Affairs of the Canadian Government that in connection with the adoption of the Bren light machine gun by the

* The figures in the margin of this Report refer to the pages of the evidence or argument.

British army an agreement, dated May 24, 1935, had been made by the Secretary of State for the War Department with the patentee embodying the terms and conditions under which the gun could be used and manufactured by the Secretary of State for War and a copy of this agreement, together with a copy of a letter from the War Office dated February 26, 1936, were enclosed. Particular attention was drawn, in the High Commissioner's letter, to the statement in the War Office letter that in making the agreement opportunity was taken of including therein provision to enable His Majesty's Governments in the Dominions, in the event of their adoption of the gun, to take advantage of the terms of the agreement should they desire to do so. The agreement covered the patented invention for the machine gun itself as well as a certain tripod from which the gun could be fired and a filling machine for use in connection with the gun. One of the conditions of the said agreement relating to the possible manufacture of the said gun by the Dominions was that

such manufacture shall be in a factory operated by the Government in question.

The agreement contained a clause to permit the patentee to contract with the governments of His Majesty's Dominions on such terms as might be agreed between them for the supply to or manufacture by such government of the guns and tripods and filling machines, the subject matter of the agreement. Government counsel took the responsibility for producing the agreement (Exhibit 68R). 1476

By memorandum dated March 18, 1936, the Director of Mechanization and Artillery in the Canadian Department of National Defence requested the Judge Advocate General to peruse the said agreement and consider its provisions and under date of March 19, 1936, the Judge Advocate General submitted a memorandum in reply (Exhibit 151).

As early at least as June 3, 1936, the actual requirements for Canadian defence were put at approximately 7,000 of these guns. In a memorandum of the Director of Mechanization and Artillery dated June 3, 1936, submitted by the Master-General of the Ordnance in a memorandum of the same day to the Deputy Minister for the information of the Minister (and delivered to the Minister) it was stated (Exhibit 69):

The privilege of so doing (i.e., production in Canada) was vouchsafed to the Canadian Government by the War Office when it acquired the rights of manufacture from the patentee, the only stipulation being that such production must take place in a government-owned factory.

The Minister of National Defence in his evidence said he was definitely notified in July, 1936, that 7,000 guns would be the Canadian requirement. This was when he was shown the memorandum of June 3, 1936. 2213-14

The Bren gun production was our most vital necessity in the Dominion of Canada, 2336
said the Minister.

Lieut. Jolley, of the Royal Canadian Ordnance Corps, presently employed in the branch of the Master-General of Ordnance of the Department of National Defence, who received his technical education at McGill University where he graduated with honours in 65

66 mechanical engineering in 1933, was sent to England in August, 1934, to receive instruction at the Military College of Science at Woolwich to qualify him for the position of Ordnance Mechanical Engineer. He took a year's course at the government instructional centre at Woolwich Arsenal. The course embraced the study of design and practical application of military stores, including artillery equipments, range-finding equipments, and small arms. Small arms include
67 rifles, pistols and light machine guns. He was chiefly concerned at Woolwich with manufacturing, though small arms, he said, are not made at Woolwich Arsenal. He received there, however, instruction in the types of small arms and the general requirements, from the point of view of design and the actual finishing and production of small arms—"the results which must be obtained, the type of components which must be produced for small arms, in order that they may function in a satisfactory manner and meet military requirements." His course at Woolwich gave him, he said, a general working knowledge of military equipments and methods of production and of the machines and tools and other equipment which are necessary in production. During that course he visited commercial production shops in England in which machinery was built which would be installed later in the arsenals for the production of ordnance. Lieut. Jolley passed that course with honours and qualified as an ordnance mechanical engineer.

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From Woolwich he went to the Royal Small Arms factory at Enfield, which is the government factory for the production of small arms in England. Here he was given the opportunity to have a prolonged tour through the various sections of the factory in order to obtain an intimate knowledge of the processes of the production of small arms generally. He spent a portion of the time with the cost accountant's branch and worked with the personnel engaged in obtaining the costs of the various components at that time going through the factory. The period Lieut. Jolley was at Enfield was from September 19, 1935, to July, 1936. At that time the Royal Small Arms factory were engaged in preparing the design of tools and the methods of production which would enable them eventually to produce the Bren gun in relatively large quantities. He says that at Enfield his chief interest was in getting as much information as he could on the basic equipment of machines and tools which are required for small arms production generally. During his study at Enfield, the Bren gun was not actually in the process of production, but plans were being made for its production at that time. "They were working out the design of tools, fixtures, gauges, etc., and were planning the actual system or series of operations on each component which was to be used when the factory went into production on the Bren gun." They had not progressed sufficiently far to give him any indication as to the quantities of machines which they would require or to give him any details of the processes of production. However, he did get the range and types of machines which they were planning to use in the production of Bren guns. He saw the gun complete and studied it in detail "from the point of view of the design characteristics of the gun and the tolerances of the components and the general requirements of the finished gun." He put the date of his study of the Bren gun as June, 1936. He said he was particularly interested in the Bren gun because it was a new weapon that had just been adopted something like a year before (speaking of June, 1936) and everyone was very keen about it in Enfield as well as in other parts of England. He said

he wanted to get as much information as he could, not only of the gun itself, but also of the production methods in case it might be required at some future date. Lieut. Jolley assumed that it was quite likely that the Bren gun would become standard equipment in Canada at some future time. He returned to Canada in August, 1936, with a general working knowledge of what might be expected if the Bren gun were to be produced in Canada. With the possible exception of other officers who had attended courses in England, he was the only Canadian officer who had seen the Bren gun at that time, as far as he knew. Lieut. Jolley has been employed since his return in the office of the Master-General of Ordnance.

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Some three or four weeks after Lieut. Jolley's return to Canada in August, 1936, two Bren machine guns that had been ordered by the Department of National Defence from Czecho-Slovakia arrived in Canada and he was detailed to demonstrate the gun to certain officers of the Department and also to certain members of the permanent and non-permanent militia. He assumed there was no particular secrecy attached to the weapon. So far as his knowledge went, he said, the Bren gun is produced in only two factories—one in Czecho-Slovakia and the other at Enfield. It was his opinion, and he had been informed by men who had a great many years' experience in the production of varied types of small arms, that the Bren gun, or any other comparable gas operated gun, presents one of the most difficult mass production problems.

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Lieut. Jolley prepared drawings, which were dated Sept. 8, 1936, for a proposed small arms factory, for the information of his superiors in connection with any plans which might be made for small arms factories. These drawings are Exhibits 18 and 19, respectively. It was not for the Bren gun that these drawings were particularly prepared; it was from the general point of view, for future reference. Lieut. Jolley said that he considered these drawings could be applied to Bren gun production, subject to revision of minor details.

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The Department of National Defence therefore had, on the return of Lieut. Jolley from England in August, 1936, very considerable knowledge and information available to it for the consideration of the problem of the production in Canada of its actual requirements of Bren guns.

No contract for the purchase or production of the Canadian defence requirements of the Bren machine gun was made however until March 31st, 1938 (Exhibit 38), when a contract was made between the Canadian Government and John Inglis Company Limited of Toronto, a company incorporated and organized by Major J. E. Hahn and associates. This company was incorporated under the Ontario Companies Act, November 23rd, 1936, with the name British Canadian Engineering Limited, which name was changed on June 4th, 1937 to John Inglis Company Limited (Exhibit 325). This contract with a private manufacturer provides for a total production for Canada of 7,000 guns on a cost plus basis and is the contract to which the Inquiry under the Commission is directed. The contract contemplates that deliveries for Canada will be made within the time limits specified in Schedule D thereto, i.e., 583 guns during the year April 1st, 1940 to March 31st, 1941; three times that number during the subsequent year; six times that number during the next subsequent year, and twice that number during the period April 1st, 1943 to July 31st, 1943.

Notwithstanding that the contract involves the expenditure of several millions of dollars by the Canadian Government, no industrial producer (other than Major Hahn) was consulted by the Department of National Defence as to the proposed manufacture of Bren guns for the Canadian Government or invited to give competitive bids or terms of manufacture. Nor did anyone, so far as the evidence shows, ever visit any industrial plant (except Inglis) to consider the possibility of production of Bren guns in Canada. Mr. Hellmuth put certain questions to the Minister in this connection to which, with the answers, I now refer:—

Q. You did not give anybody else a chance?—A. Nobody asked for it.

Q. Mr. Minister, what I want to get you to answer is this: You never did attempt in any method or any way to see what any one of these dozen or more well known companies, with skilled labour, skilled mechanics, who had been working in precision steel—well, let us take the automobile industry which makes the very closest parts and closest tolerances—no effort was made of any kind to see what they could do?—A. The answer is "No." I do not think it was practicable.

There were read into the record extracts from memoranda produced by Government counsel, made by the then Chief of the General Staff, Major-General E. C. Ashton, to the Minister of National Defence (Exhibit 281). From a memorandum of January 27th, 1936, the following:—

Our greatest need is a proper arsenal capable of manufacturing up to 8-inch gun ammunition and large enough to supply our annual expenditure. We have no small arms factory and are therefore unable, as the Australians are, to manufacture rifles or machine guns. It was proposed to erect a small arms factory at Valcartier after the ammunition group had been completed; the majority of the necessary machinery is available from the old Ross rifle factory.

And under date of January 30th, 1936, the following:—

There is no reason why suitable guns should not be manufactured in Canada and Canadian workmen receive the advantage of the expenditures which will be involved. As a first requisite, the completion of the proposed arsenal, with facilities to manufacture a small number yearly, is of the greatest consequence. Once the manufacture has been studied and perfected the personnel trained in the government factory will be in a position to instruct and supervise the operations of civil firms to whom contracts could be let for further supplies.

And from a memorandum of April 22nd, 1936, the following:—

It is likely that we shall be able to obtain only a very few Bren guns from British sources for the next five years; Australia and South Africa are making arrangements to manufacture their own supplies of this weapon. We are studying the question of whether this gun could be made in Canada. It has already been found out that manufacture will be permitted in a government factory only. It is there-

fore recommended that a rifle and machine gun factory should be established. Much of the machinery of the old Ross rifle factory in Quebec is available.

And from a further memorandum of January 1st, 1937, the following:— 2017-18

In April 1936 I drew attention to the inadequacy of existing stocks of machine guns to supply our militia units in accordance with modern requirements. I also pointed out that the light automatic (Lewis gun) brought back to Canada after the war was obsolescent and, in any event, quite inadequate in number for militia needs. I followed these remarks by a recommendation that a government factory capable of producing light automatics of modern design (Bren gun—7,000 required) and machine guns should be established in Canada for which much of the machinery of the old Ross rifle factory would be available.

And from the same memorandum of January 1st, 1937:— 2028

Government factories are suggested for the manufacture of small arm ammunition, artillery ammunition up to 6-inch, small arms machine guns, anti-aircraft and field artillery.

Articles of these natures require special training over a long period of years, and the constant changes in pattern will keep up a steady flow of work. Practically all other types of equipment can be manufactured in civilian factories and it is advisable that contracts should be let for as many types of articles as possible in order that pilot plants may be established and skill acquired. In event of a serious emergency these could be expanded or serve as models for other units.

There was also read into the record a resolution passed on November 13th, 1936, by the Conference of the Defence Associations—a body comprised of senior officers appointed by the different service associations who meet for a conference each year. The infantry association, the cavalry association and the artillery association each appoint four of their senior officers to represent them at what is known as the Conference of Defence Associations, which meets in Ottawa and at which matters pertaining to the militia are discussed. The resolution of November, 1936, read as follows: 2177-78 2240-43

That this Conference of Defence Associations urges the Government of The Dominion of Canada to take immediate steps to create a munitions board or some similar body to control the production within Canada of such munitions as can now be made here satisfactorily and to prepare plans for the effective mobilization of our industrial resources in the event of war, and that a copy of this resolution be sent to the Prime Minister and the Leader of the Opposition. 2178

And the following resolution unanimously passed in February, 1938, by the officers of the Artillery Association (both the permanent and the non-permanent force officers) was read: 2179-80

That steps should be taken by the government to appoint a munitions board under the chairmanship of a skilled manufacturer to provide for the manufacture of all munitions which can be efficiently produced in Canada.

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During the course of the hearing Government counsel submitted that this sort of evidence was not relevant to the Inquiry in that, in his view, the Inquiry "was not a debating society between officers of the Department as to whose views should be accepted; that the Minister made the decision on the recommendation of the Deputy Minister; that the Government had decided it; and it seemed" to him "that was all that had to be considered."

Whether these Bren guns should be produced by the Government in a publicly owned and operated factory or should be obtained through private manufacture is undoubtedly a matter of administrative policy for the Government and Parliament and is a question which is not open to me under the Commission. But if one is to inquire into the preliminary discussions and negotiations leading up to and the completion of the contract in question, it is relevant as part of the narrative to know what were the views of the Chief of the General Staff and of recognized voluntary associations of officers of the land forces in Canada which were made known to the Department.

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Under examination by Mr. Hellmuth, the Minister of National Defence said that he had stated in the House of Commons last year (1937) that he believed in public ownership, personally, through and through in regard to armaments; "and I still say so." Mr. Hellmuth proceeded with some questions to which, and the answers, I now refer:

2390-91

Q. So that there has been no change in the actual policy of the government, or of the Minister of National Defence, that government ownership is the best and that the next is competition?—A. Quite correct, provided you will give us the finances, the money.

Q. Yes; if you do not have money you cannot do anything?—A. Money is everything; when you are running the Department of National Defence you can't run it without money.

Q. I put it before you here, that the best plan is government ownership?—A. I thoroughly agree with you.

Q. So that there will be no inducement for people to make money out of necessities which arise from war?—A. Mr. Hellmuth, as a matter of an ideal objective, I completely agree with you; but you should read carefully the recommendations made by a distinguished committee to us early in 1937, in regard to ways of dealing with practical necessities of the Department of National Defence. You should read that.

2238-9

The Minister said that there were two very definite schools of thought in the Department and that he assumed all responsibility. One school, he said, was headed by the then Chief of General Staff and the other by the Deputy Minister, for both of whom he said he had equally great admiration.

The Minister said that General Ashton (the then Chief of the General Staff) was very insistent upon the development of government arsenals and that the former Chief of General Staff, General McNaughton, evolved a very comprehensive scheme for Valcartier which would include practically all the requirements of the Canadian forces.

That was considered after I went into the department and I found that the cost of it would be something between

\$30,000,000 and \$35,000,000. With my meagre \$25,000,000 or \$30,000,000, what could I do with a scheme like that?

During his testimony the Minister said:

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I may say very definitely that the plan of government ownership as such has never been definitely abandoned; it has just been postponed because of the financial stringency which was particularly embarrassing to the Minister of National Defence.

But the testimony given before the Commission established that only 60,000 square feet of space was necessary for the purpose of production of the 7,000 Bren guns for Canada as well as 5,000 guns for the War Office and that an entire new building (apart from 2832, land) would cost approximately \$120,000. In proposal "B" of Major Hahn (Exhibit 11) of December 29, 1936, the building was shown at an estimated cost of \$104,196.40. 3088-9

Where, as a matter of government policy, there was not to be public ownership in the manufacture of armaments and munitions, there was to be competition with reasonable remuneration in so far at least as it was practicable. The following statement of the Prime Minister in the House of Commons on April 2, 1937 (p. 2697 Hansard) was read into the record:— 2388-9

Mr. MACKENZIE KING: For some months past an interdepartmental committee has been going very carefully into the whole question of the control of profits with respect to munitions of war. That committee has been working in conjunction with members of the government. The line upon which we have been proceeding is to attempt to draw a distinction between war materials produced in times of peace and what may be necessary in times of war. Unquestionably special legislation would be required in times of war. At the present time, in a time of peace, the government is proceeding on the theory of permitting competition with reasonable remuneration, the work to be subject to inspection and audit. Different forms of control have been suggested by the departments. Members of the Interdepartmental Committee are working together with a view to effecting just what my honourable friend has in mind. I can assure him that the whole question is one to which the government is giving careful consideration, and that it will continue to do so. We agree with him in asserting the principle that no profits should be made out of war.

The Minister of National Defence said in his evidence before the Commission that that statement was in agreement with his own view. The Minister said that there had been no change in the actual policy of the Government, or of himself; that government ownership is the best and that the next is competition. His qualification as to public ownership was, "provided you will give us the finances," and his qualification as to the general principle of competition was, "where competition is possible." Mr. Hellmuth directed certain questions to the Minister to which, with the answers, I now refer:— 2389-90

Q. I know, and that is why this contract is so extraordinary,—because there was no competition.—A. It was just exactly the British practice of selecting a contractor. 2389-90

Q. The British practice of selecting a contractor is to make a selection after a most careful investigation of what that

contractor has been doing in the past.—A. Well, they selected Hahn in this case.

Q. Yes, but Hahn came from Canada with a recommendation?—A. That is your viewpoint, but I think too highly of the British to think they would take anybody else's viewpoint but their own; they are pretty canny people over there.

Q. At all events, with respect to the general principle of competition, you have no quarrel with it?—A. I am entirely in favour of it.

2803 Major Hahn was a Toronto man of about 45 years of age. He
2939 had a distinguished war record of which he might well be proud.
After the war he studied law and was called to the bar in Ontario.
Then he took up business as a career. In 1923 he organized in
2804 Toronto the De Forest Radio Corporation Limited and became its
president. From 1923 to 1933 the business expanded into the manu-
facture of electric refrigerators, clocks, washing machines and other
electric domestic appliances. The business became a large concern
and the company was financially successful until the beginning of the
depression in 1930. During the subsequent years 1931, 1932 and
2805-07 1933 the company suffered substantial operating losses, in common,
Major Hahn said, with the entire industry. The Rogers Company
was its main competitor; Major Hahn said both companies were
2809 suffering very heavy losses. Sometime in 1934 the Rogers Company
bought the assets of the De Forest Corporation and Major Hahn
said he assisted very substantially in the financing of this transaction.
2810 The claims of the creditors of his company, around \$140,000, were
compromised, he said, at twenty cents on the dollar.

Major Hahn does not appear to have been engaged in any manu-
facturing business in the month of June, 1936, when Mr. Herbert
1872 Plaxton (a brother of Mr. Hugh Plaxton) interested him in a proposi-
1071 tion to acquire what is known as the Inglis plant in Toronto, which
was then closed down and in the hands of a Receiver for bondholders.
After he had made several inspections and examinations of the plant,
Major Hahn in July or August, 1936, decided to become interested
provided he had the controlling interest. He knew that those who
would be financially associated with him were Cameron, Pointon &
Merritt (Toronto stockbrokers) and Mr. Herbert Plaxton, with a
possibility of Mr. Gordon Plaxton becoming interested.

I now turn to the evidence as to the introduction of Major Hahn
to the Department of National Defence and subsequently to the
War Office.

On October 9, 1936, Mr. Hugh Plaxton, the member of the House
of Commons for Trinity-Toronto (having been elected for that con-
stituency in October, 1935), introduced Major Hahn to the Deputy
Minister of National Defence in the latter's office in Ottawa. The
following questions and answers appear in the evidence of Mr.
Plaxton in this connection:

3168-70 Q. Now, how did you happen to go there with him?—A.
At the moment I am not certain whether I came to Ottawa
with Major Hahn or that I was here in Ottawa and he arranged
to meet me, but I do remember taking him to Col. LaFleche's
office and making the introduction and passing some general
remarks as to who Major Hahn was and then I believe I left
the meeting and joined, as I recall it, Major Hahn some time
later in the day.

Q. Did you before you left say anything about the plant at all?—A. As I recall it, I did. If anyone were to say I did not, I perhaps would have to agree with them, because I am speaking from a very vague memory, but I feel that I certainly would have mentioned the plant and did because of the fact that it was in my riding. Hence my reason for taking Major Hahn to Col. LaFleche's office.

Q. Was there any discussion while you were there about the possibility of getting Canadian business for the plant? I am speaking of the Inglis plant.—A. As I have indicated, I do not think that I was present in Col. LaFleche's office at that time any longer than to explain my interest in the matter and also the general remarks with regard to Major Hahn. As I say, I believe I left the meeting shortly afterwards because, as very often happens, I come to Ottawa early in the morning and try to clean up four or five or six matters and try to get back the same night.

Q. I have to press you on this. I will just repeat it once more. Can you remember, can you say whether at that meeting the getting of Canadian business for this plant was discussed?—A. I cannot say whether there was Canadian business or not discussed. I do not remember.

Q. Can you remember anything in the discussions about going to England at that time?—A. No, I do not remember any discussion in that regard.

Q. Do you remember any discussion about the market being in England?—A. No, I do not remember that.

Q. Did you when you were there notice the Bren gun which was I understand mounted in General Lafleche's office? A. I am not certain whether I did or not.

Q. Do you remember any discussion about it? Was attention called to it at all, I will put it that way?—A. Not that I recall.

Q. You have given us the substance of your recollection as to what took place at that time?—A. Yes, my best memory being I left the office shortly after making the introduction.

And further:

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Q. Mr. Plaxton, when you discussed this matter with Col. LaFleche on October 9, 1936, did you tell him that the group who were interested in this proposal consisted of your brother, Mr. Bert Plaxton, a stock brokerage firm of Cameron, Pointon & Merritt, and Hahn, in this case a company promoter?—A. No, and if I may anticipate further questions along that line, I can say that my best recollection is I did not tell Col. LaFleche who the group was behind Major Hahn or the group headed rather by Major Hahn, nor have I told it to anyone identified with the Government or with any department of the Government.

Q. So that so far as you are concerned they did not know to this day who the group of friends really were?—A. I think everyone is pretty well aware of that fact now.

Q. I say to this date; shall we say up to the middle of August at any rate, that no one connected with the Government, so far as you were concerned, knew who this group were? A. I would assume that was the case.

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And further:

Q. To go back to October 9, 1936, the date on which Major Hahn and you went to Col. Lafleche's office, when he saw this gun for the first time. Have you anything at all to add to what you have already said in regard to the conversation which took place at that time, as to the Bren gun and its possible use and possible manufacture?—A. My recollection of that visit is or was, I believe, completely covered, as my recollection stood, as of yesterday when I was in the box and which to only a slight degree will I now alter on cross-examination. As I remember what I said yesterday, which I say was my best recollection at that time, I attended at Col. Lafleche's office and made representations relative to Major Hahn's capabilities and his reputation in the city of Toronto. It is still my recollection I left the meeting within a matter of a few minutes. In answer to Mr. Ralston I discovered last night that I had said I had not seen the gun. I still do not think I did, although in friendly conversation with Major Hahn it is suggested by him that I did. I have a vague recollection that at some time I did see it, but to that extent only can I alter truthfully my original—my statement of yesterday.

* * *

Q. Now I just want to repeat this, and it is repetition, but I do want to be clear on this. As I understand it, you conveyed the impression and I believe you sought to convey the impression that your only interest in introducing Hahn to LaFleche on October 9 was the concern you felt about unemployment in your riding; is that right?—A. Oh, I would say that there was more than that in it. I do not think I ever made that particular statement. I will say that that was one of my chief and motivating interests, but I am going to confess—I was not, aside from my very profound interest in the welfare of my constituents—I was going to assist Major Hahn, whom I considered to be a man of extreme ability and, secondly, a personal friend. The rest of the group there with him were personal friends, and two were brothers.

Q. You quite naturally were seeking to assist your brothers in getting this contract?—A. Well, I do not think that is putting it fairly. You have got to include them all in the group.

Q. I mean your brothers amongst the others?—A. Yes.

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The Deputy Minister said that his Department became definitely interested in the gun when it ordered two of them in August, 1935. "We had heard about them and we wanted to see them and we ordered them and we got them." Between August, 1935, and October, 1936, the possibility of the acquisition of Bren guns by the Canadian forces occupied the attention of the Deputy Minister and the officers of the Department, "but it did not become a matter of immediate attention."

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The memorandum of June 3rd, 1936, from the Master-General of the Ordnance (Exhibit 69) was "the culminating point at that time of everything that had taken place previously." On the 9th of October, 1936, the Deputy Minister said that Major Hahn "was introduced into my office by Mr. Hugh Plaxton, a Member of Parliament for one of the Toronto divisions." He said he had not met

Major Hahn before nor had he had any communication from him with regard to supplying anything for the Department. He said that Mr. Plaxton

"introduced Major Hahn as a man of substantial standing in the city of Toronto, and also as an old C.E.F. officer with a very excellent record. He told me that Major Hahn had a successful business career and had disposed of his interests in the radio manufacturing line, and was not occupied at that time, but with a very few associates wanted to come back into the commercial business. He was acquiring or had acquired the plant of the John Inglis Company Limited . . .

The names of the persons that Major Hahn would have associated with him in the re-opening of the Inglis plant were not mentioned to the Deputy Minister at that time. The Deputy Minister said that he had a visit on or about that time from another gentleman from Toronto (Mr. Cameron) who he did not believe came in with the other two gentlemen. (The Deputy Minister may have had in mind what was a later date, October 19th.) Mr. Plaxton, he said, did not stay long but Major Hahn remained some time, discussing one thing and another. Major Hahn, he said, had come in to see him to ascertain whether there was any business which the Department was giving and in which he might be interested. He mentioned aircraft, the possibility of making aircraft, and making shells or military equipment. The Deputy Minister told him that the Department was not in the market.

Q. Did the Bren gun come up as a topic of discussion on that occasion?—A. Yes, very much. 1075-78

Q. Will you just tell the Commissioner how the discussion came up and what was said?—A. I had had one of the two guns we had mounted in my office. I had wanted to see it myself and it was mounted in my office. Anyone entering for those two or three days could see the gun. On seeing the gun both of them (Mr. Plaxton and Major Hahn) went over to it, looked at it and asked what it was. I told them it was the new Bren gun. I do not believe that either of them had ever seen the gun. . . .

* * *

They were much interested in it, particularly Major Hahn, who understood what it meant. He made inquiries as to whether the gun would be used in the Canadian army, where it was being used, where we would buy them and points related to the possible future use of the gun. I told them we had no funds with which to buy Bren guns. I told him that possibly, as in the other items, England might be interested. I was referring all comers to England as a possible market. I did tell him undoubtedly the gun would be used in the Canadian forces, but when, I did not know. . . .

Major Hahn told the Deputy Minister at the time (i.e. on October 9th, 1936), that he thought he could make the gun and he wanted to inspect it to see whether or not he could make it, and Major Hahn asked for an opportunity of inspecting the gun closely. The gun was then sent by the Department to Toronto, where Major Hahn "and not more than two engineers or mechanics" could inspect it under arrangements to be made by the District Officer Com- 1078-79 1081-82

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manding, Military District No. 2, Toronto. Pursuant to the instructions of the Deputy Minister, Major Hahn was permitted to take snapshots, provided he was cautioned that they were not to be communicated to other persons. The Deputy Minister said that

the purpose of letting him (Major Hahn) inspect the gun was to let him find out whether in his opinion he could make the gun.

2944-46

Major Hahn under examination by Mr. Hellmuth with reference to this interview of October 9th, 1936, when asked

Q. Would you say that you did not contemplate getting any order or contract from the Canadian Government when you went to see him?

answered:

That would always be a possibility, but it was not the purpose of my visit.

And further:

Q. Will you say when you went into his office or into the Department with Mr. Hugh Plaxton you had not any idea of getting any Canadian business?—A. I had the idea of seeing what the possibilities were.

The Canadian situation, he was told, "had not yet crystallized from the standpoint of the matter of policy, as to how they would be made, by whom, or where."

3176-77

Then on October 19th, 1936, Major Hahn, Mr. Cameron (of Cameron, Pointon & Merritt—Toronto stock brokers) and Mr. Hugh Plaxton were in Ottawa and had an interview with the Minister of National Defence in his suite in the Chateau Laurier hotel. Mr. Hugh Plaxton in his evidence said that he arranged the appointment with the Minister and spent a few minutes with him before he (Plaxton) called Major Hahn on the telephone and said "Come on down." Mr. Plaxton believed that on that occasion and at the same time, he introduced Mr. Cameron as well as Major Hahn to the Minister.

As I recall it, I was there alone for a few minutes. I recall I arranged it that way because I wanted to speak to the Minister with regard to my personal knowledge as to Major Hahn, who he was, what he had done, his general capabilities, and so on, and thereby avoid the embarrassment of speaking about a man in the presence of another. . . . I cannot recall exactly what I said about Major Hahn. Anything I said would redound to his credit. . . . As I again recall, one of the purposes of the meeting was, if any specific purpose, to obtain a letter of introduction from the Minister to the Honourable Vincent Massey.

Further in his evidence Mr. Plaxton was asked:—

Q. The letter of introduction was obtained, was it?

To which he answered: A. As I remember it, yes.

The letter of introduction, addressed to the Honourable Vincent Massey, High Commissioner in London, that was given by the Minister to Mr. Plaxton (Exhibit 135) read as follows:—

October 19, 1936.

Dear Mr. Massey:

The bearer of this letter, Major J. E. Hahn, D.S.O., M.C., is in England to investigate the manufacture of all classes of munitions and armaments. I am anxious that he be afforded every facility and access to enable him to ascertain and bring back complete manufacturing data and costs governing manufacture of munitions and armaments.

Mr. Hugh Plaxton said that, as he recalled it, in the latter ³¹⁶²⁻⁶³ part of March or the early part of April, 1936 in conversation with his brother Mr. Herbert Plaxton and Mr. Cameron (of Cameron, Pointon & Merritt) he was advised by either one or both of them in a very general conversation that some interest was being shown by Mr. Cameron "and my brothers" in respect of the John Inglis plant. He said that his only interest in the matter was that the plant was located in his constituency and that to his knowledge there were a great number of the ex-employees of that plant out of work and on relief, which added to the general distressed conditions in that part of the city.

I assured them of my whole-hearted desire to co-operate to the best of my ability in my capacity as a member of parliament. I had nothing to do at any time with regard to the financial or the legal transactions that occurred with respect to this company.

Mr. Plaxton wrote a letter to the Prime Minister (Exhibit ³¹⁶⁶ 336) on August 24th, 1936. This letter was written by Mr. Plaxton while he was in Ottawa, and at the request of his brother, Mr. Herbert Plaxton, who had telephoned him from Toronto. The letter reads as follows:

A group of friends of mine in Toronto are equipped fully to manufacture munitions. Their plant is located in my constituency. They have asked me to ascertain whether or not the Government's policy permits of the obtaining of orders from the British Government. I shall appreciate greatly receiving your advice in this regard.

I am returning home Wednesday of this week and my Toronto address is 320 Bay Street.

With kindest personal regards,

Yours very truly,

To this letter the Prime Minister replied on the 12th of September, 1936 as follows (Exhibit 343):

I have delayed in acknowledging your communication of August the 24th until I had opportunity to discuss its representations confidentially with my colleagues in Council.

I may say, in reply, that we see no reason why a Canadian firm established for the manufacture of munitions should be precluded from obtaining orders from the British Government. It would be necessary, of course, to see that it was distinctly understood that such orders as were obtained, were at the instance of the firm itself and not either directly or indirectly, at the instance of the Government of Canada. Any company doing business will of course be

subject to any regulations or control which the Government may decide to exercise at any time.

With kind personal regards,

Your very sincerely,

On September 15th, 1936, Mr. Plaxton sent a copy of the Prime Minister's letter to the Minister of National Defence with a covering letter (Exhibit 269).

3310-11 Mr. Plaxton was asked during his evidence who were the "group of friends" of his in Toronto who were fully equipped to manufacture munitions at the time he wrote the Prime Minister on August 24th, 1936, and his answer was:

A. I was speaking as of that date of Major Hahn, Cameron, Pointon & Merritt, and Mr. Herbert Plaxton.

Q. And Mr. Gordon Plaxton?—A. No, not at that time.

Q. They were the group of friends who were fully equipped to manufacture munitions?—A. Yes.

Q. Where?—A. At the Inglis plant.

Q. How did you know that?—A. Well, I did not. I assumed as of that date that, speaking from memory, the deal was virtually concluded or had been—I was not definite as to any date.

3314 And further:

Q. Then when you received a reply from the Prime Minister did you indicate its contents or the effect of its contents to Major Hahn?—A. I believe I handed him the letter itself, but I see it now in my file.

Q. You see which, the original?—A. Yes, I have that, I do not know whether I handed it to him, or whether I kept it for some time, but at least it was out of my possession here until a month ago and I inquired about it.

Q. It was out of your possession?—A. Yes. I either gave it to Major Hahn, and it may have been from him; it may have come back to the office. However, they can speak as to that.

And further:

3315 Q. Do you recall seeing it when you were in England? Was it shown to Mr. Massey?—A. I do not recall that. It might have gone over to England with us.

2848 Major Hahn described his interview with the Minister on his second visit to Ottawa on October 19, 1936, as follows:

A. I just met him and said I was going to England, and asked him for this letter, and I was given to understand I would get it, and I left.

Q. You got the letter; we know that?—A. Yes.

The letter is Exhibit 135.

3795-97 Mr. Cameron, when asked what was the discussion with the Minister on October 19, 1936, when he was present with Major Hahn and Mr. Hugh Plaxton, said:

A. We were only there a very few minutes. So far as I was concerned, it was purely a matter of being introduced

to him, and the question of a letter being procured from the Minister to Major Hahn, as I recall it, introducing him to the High Commissioner in London.

* * *

Q. How long were you there?—A. I think a matter of about five minutes—not more than that.

* * *

Q. Now did you yourself, Mr. Cameron, have anything to do with the negotiation of either the contract made with the Canadian Government for the manufacture of Bren guns, or the contract with the War Office, for the manufacture of Bren guns?—A. Absolutely nothing.

And further:

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Q. . . . Who suggested that you should come down to Ottawa on the trip?—A. Major Hahn did.

* * *

Q. Did you know the Minister?—A. I never had met him before.

Mr. Cameron says that he and Major Hahn "were waiting for a call" from another room in the Chateau Laurier to go to the Minister's room for the interview. 3884

Q. How were you introduced to the Minister—who introduced you?—A. Mr. Hugh Plaxton. 3885

Q. Mr. Hugh Plaxton. And do you recall what he said to the Minister?—A. I think he just — —

Q. "Here is Mr. Cameron"—What did he say?—A. I think he just left it at that. Just said "This is Mr. Cameron from Toronto."

Q. "This is Mr. Cameron"—and that is all that was said? A. Yes, that is all that was said.

Q. And do you remember how he introduced Major Hahn to the Minister?—A. My recollection is that it was exactly the same way.

When the Minister was asked in his evidence?

2214-15

Q. When did you first meet Major Hahn?

His answer was:

A. To the best of my recollection I met him first of all in May of this year (1938). But last week I was corrected when I was informed by Major Hahn himself that he was introduced to me in 1936, and I heartily accept his recollection. But, still, my recollection is what it was before, that I did not meet him until May of this year, when I inspected the plant at Toronto.

Q. Did he tell you he was introduced by Mr. Plaxton?—

A. Yes.

Q. He reminded you of that?—A. Yes.

Following upon the interview with the Minister on October 19, 1936, and without waiting for the report of the inspector who had been asked by the Department on October 10 to inspect the Inglis plant in Toronto, there was sent by the Deputy Minister of National 1083

Defence to the Under Secretary of State for External Affairs, on October 20, 1936, the following letter (Exhibit 74) suggesting, in view of Major Hahn's early departure for England, the desirability of communicating with the High Commissioner as soon as possible:—

SIR,—I have the honour to refer to previous correspondence pertaining to the Bren light machine gun, following on which the Department of National Defence has been investigating the question of the manufacture of this gun in Canada. Major J. E. Hahn, D.S.O., M.C., a former Officer of the Canadian Expeditionary Force, and representing a reliable group which controls certain manufacturing plants capable of manufacturing armament and munitions located in a large industrial centre where the labour and material factor is stable and favourable, has been in communication with the Department.

Major Hahn has been afforded the facilities for examining the Bren light machine gun in detail, and has been given all the information in relation thereto which the Department has at its disposal; due regard of course being had to the need for secrecy.

Major Hahn is proceeding to England within the next few days in connection with questions pertaining to the manufacture in Canada of munitions and armament, and in particular the Bren light machine gun. In connection with the above he has been given a personal letter of introduction from the Honourable Ian Mackenzie, Minister of National Defence, to the Honourable Vincent Massey, the High Commissioner, and the Department of National Defence would be pleased if arrangements could be made through the High Commissioner with His Majesty's Government of the United Kingdom for Major Hahn to be given such facilities and information as the latter Government may see its way clear to furnish.

With particular reference to the Bren light machine gun the Department is desirous of considering, as fully as possible the question of commencing its manufacture in Canada at the earliest date, and it would be pleased if the High Commissioner could institute tentative negotiations with the Secretary of State for War in regard thereto, pursuant to the terms of the Agreement of the 24th of May, 1935, between the Secretary of State for War and the Patentee.

In this connection the Department must consider the possibility of the gun being manufactured in a plant or plants other than Government owned, such as for example those controlled by Major Hahn and his associates, and there arises the question as to the restrictive provisions of clause 11 of the Agreement mentioned, especially paragraph (1) thereof.

As stated, such plant or plants would not be Government owned, but the extent to which they would have to be operated by the Government is not particularly clear in the Agreement. An arrangement by which the Government would take over such a plant and operate the same with its own employees as if it were a Government owned plant does not particularly commend itself to the Department. On the other hand, it might, through close supervision of such a plant, exercise such control over manufacture, and in particular output, as would have the same effect as if said plant was in fact being operated by the Government.

In lieu of proceeding under the provisions of clause 11 of the Agreement, as indicated above, an alternative might be to proceed under clause 12 of the Agreement, whereby the Government of Canada would arrange direct with the Patentee for a licence to manufacture the gun in Canada, either in a Government owned plant or in a plant of the character mentioned above, under such terms and conditions with respect to supervision and control as might be mutually agreed upon.

In view of what has been stated, I should be extremely obliged if the questions raised could be referred to the High Commissioner, and that he endeavour to obtain from the War Office its views and advice thereon at the earliest possible date, as the procedure which will be followed in Canada concerning the manufacture of the gun would depend largely on the questions involved.

In view of Major Hahn's early departure for England, I venture to suggest the desirability of communicating with the High Commissioner as soon as possible.

It is to be observed that the letter states that Major Hahn represents a reliable group which controls certain manufacturing plants capable of manufacturing armament and munitions located in a large industrial centre where the labour and material factor is stable and favourable.

And further that

Major Hahn is proceeding to England within the next few days in connection with questions pertaining to the manufacture in Canada of munitions and armament, and in particular the Bren light machine gun.

And further:

With particular reference to the Bren light machine gun the Department is desirous of considering as fully as possible the question of commencing its manufacture in Canada at the earliest date.

And further:

The Department must consider the possibility of the gun being manufactured in a plant or plants other than Government owned, such as, for example, those controlled by Major Hahn and his associates.

And further:

. . . the procedure which will be followed in Canada concerning the manufacture of the gun would depend largely on the questions involved.

The Deputy Minister was asked:

Q. Do you mean to say now that when you wrote that letter on October 20 you did not know the names of the individuals who made up that group?—A. No, I did not, but I did know that Major Hahn was a leading figure in the whole thing, he had a controlling interest and he had grouped with him worth-while people, which is the natural thing.

Q. How did you know that?—A. I was told it.

Q. By whom?—A. By himself and by Mr. Plaxton.

Q. Anybody else?—A. No.

And further:

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Q. You did not know on October 20th who Major Hahn's associates were? Do you know now who Major Hahn's associates were, in the enterprise?—A. I am not certain that I do know who they are now, no.

Q. You do not?—A. There has been a great deal of comment with statements made, and I take it the purpose of this inquiry is to find out about some matters.

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The Minister saw this letter (Exhibit 74) on October 22nd "the day after it was despatched" but he said he accepted complete responsibility for it. Major Hahn said he did not know of this letter until he heard it read before the Commission.

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The Deputy Minister had asked Major Hahn on his first visit on October 9, 1936, that the Inglis plant be inspected and that was done by the Resident Inspector (Aircraft Inspection Detachment) at Toronto, whose report is dated October 21, 1936 (Exhibit 73). The report said in part that,

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This plant is primarily equipped for the manufacture of boilers, turbines and the working of heavy plate generally. All equipment is in reasonably good condition, considering the length of time it has been in use.

The machinery at present in this factory with few exceptions, is unsuited for the manufacture of aircraft, but it might be used for the manufacture of tanks or shells.

This factory is at present inoperative and has not been in operation since April, 1936. There is no design staff at present employed and the total number of workmen now employed consists of three men as factory maintenance staff.

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A memorandum by the Chief Aeronautical Officer to the Senior Air Officer dated October 23, 1936, said:

This firm is equipped to do heavy engineering work, boilers, etc. The shops would require to be stripped of their equipment to be suitable for aircraft construction. The shops are more suitable for shells, gun carriage, etc., than for aircraft or aircraft engines.

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The Deputy Minister said that an inspection of a plant such as this was a matter of usual routine. "We have now surveyed nearly a thousand plants."

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Major Hahn left for England a few days after the letter of October 20, 1936 (Exhibit 74). In the meantime Mr. Gordon Plaxton had become one of the group—he puts his entry "some days before October 22, 1936," on which date Major Hahn, J. D. Cameron and Herbert Plaxton entered into a written agreement (Exhibit 289) defining their respective interests and those of the persons represented by J. D. Cameron and Herbert Plaxton, in the joint venture. Mr. Hugh Plaxton said he learned from his brother, Herbert, that he (Herbert) "split up part of his deal with my brother Gordon." Mr. Gordon Plaxton said that his arrangement with his brother Herbert was that he would take one-half of Herbert's cash commitment (i.e. for the "subscription" shares). He said he asked Herbert, "How about your vendor's interest? (i.e., the "vendor" shares) . . . I would like to get a fifty-fifty split with you on that." Herbert "took the

position that all he would give me would be a third of his vendor's interest if I assumed half of the (cash) commitment. I agreed to that."

It was October 26, 1936, that Major Hahn, Mr. Gordon Plaxton 2853 and Mr. Hugh Plaxton left for England. A few days before, they arranged to pay Mr. Hugh Plaxton's expenses. On October 22, 1936, Mr. Hugh Plaxton received a cheque for \$750 (Exhibit 331), on account of his expenses, from Cameron, Pointon & Merritt and upon his return he received on December 22, 1936, another cheque (Exhibit 331) from the same firm for \$500; both cheques were charged against the group. The following questions were put to Mr. Hugh Plaxton to which he replied:

Q. Did you know when you went to England there was a possibility that the Canadian Government might place an order for Bren guns with Major Hahn, or with the Inglis plant? 3191-92
—A. I would say there was certainly a definite hope,—but it was just a hope.

Q. It had been discussed had it?—A. Between myself and the Major?

Q. Yes.—A. Oh, we were discussing that, I have no doubt, and a great many things, on board boat and in England, and prior to leaving.

Major Hahn and Mr. Hugh Plaxton called upon Mr. Massey, the High Commissioner, upon their arrival in London and gave to him the Minister's letter of introduction (Exhibit 135). Major Hahn was given to understand, he said, that an appointment would be arranged for him at the War Office and after waiting for something 2856 over a week he says he became "very, very impatient, I am afraid," 3035 and he telephoned the Minister of National Defence in Ottawa from London. Mr. Hugh Plaxton says he was in the room with Major 3201 Hahn when the latter was telephoning to the Minister. Major Hahn 2856 said he had a curt reply from the Minister and that Mr. Hugh Plaxton then sent two cablegrams—one to the Minister and one to the Deputy Minister, both dated November 9 (Exhibits 82 and 204). The next day Major Hahn was made the representative of Canada in this particular; i.e., the Bren gun (Exhibit 99).

The cablegram from Mr. Hugh Plaxton to the Minister of National Defence from London on November 9, 1936 (Exhibit 204) read as follows:

Re conversation with Hahn respectfully suggest question of policy not involved Stop Seems purely matter of High Commissioner requiring instructions from his department confirming Hahns status as per your letter to High Commissioner Stop This urgently required Stop Cabled LaFleche this morning in case you not in Ottawa.

HUGH PLAXTON.

Mr. Plaxton's cablegram to the Deputy Minister on the same day (Exhibit 82) read as follows:

Delayed pending receipt by High Commissioner of proper authority from External Affairs authorizing him to afford immediate and complete co-operation to Hahn. High Commissioner cabling his Department to-day. Will you kindly communicate with External Affairs to expedite this. Regards.

HUGH PLAXTON.

And the reply of the Deputy Minister to Mr. Plaxton on the same day (Exhibit 82) read as follows:

I first wrote External Affairs on 20th October and am inquiring to-day requesting speedy action.

A cablegram from the High Commissioner in London to the Secretary of State for External Affairs of November 9 (Exhibit 98) read as follows:

Secret. 396. Have received to-day following request in a wireless message direct from National Defence, Begins:

Please request Major Hahn now in England to communicate with me through your office in cypher his impression as to possibility of producing Bren gun in Canada. This is urgent and ask him to give details such as time required for delivery and estimated cost. Ends.

In order to obtain information desired, War Office must be requested to give Major Hahn, as representative of the Canadian Government, access to information of a secret nature which normally is not given to other than Government officials.

Major Hahn also informs me that Minister of National Defence has requested him to obtain, if time permits, all available information regarding manufacture of tanks and shells which would also necessitate similar request from the War Office.

Before making any application to War Office, would appreciate instructions. Would be grateful for such instructions by to-morrow if possible.

MASSEY.

This message was transmitted by External Affairs to the Department of National Defence and, in reply, is a cable (Exhibit 99) on November 10, from the Secretary of State for External Affairs to the High Commissioner in London:

Secret. Your cablegram 9th November 396. Have discussed matter with Minister of National Defence. You might request War Office to give Major Hahn, as representing Canadian Government in this particular, any information which they consider desirable and necessary to enable National Defence to reach conclusion on possibility produce Bren gun in Canada. It is not desired to request furnishing of information on any article other than this gun.

On the 5th of November, 1936, the Deputy Minister had sent a memorandum to the Master-General of Ordnance reading as follows: (Exhibit 80)

Secret Naval radio message, No. 823 from the High Commissioner, London, materially changes the situation in some respects. Your remarks regarding the desirability of placing an order through the War Office would be welcomed.

Notwithstanding the above, the department should not lose all interest in Major Hahn, who is now in England for the purpose of obtaining information, which might possibly lead him to propose producing the Bren gun in Canada.

Please say what you think of sending a secret despatch to the High Commissioner, London, in the following terms:

"Please request Major Hahn now in England to communicate to me through your office in cypher his

impressions as to the possibility of producing Bren gun in Canada (stop) This is now very urgent and details such as time deliveries could be made, also close estimate of price are desired."

The only communications Major Hahn said he had up to this time, were the Minister's letter of introduction (Exhibit 135) of October 19, 1936, and Col. Vanier's letter to him of November 11, 1936 (Exhibit 101), while in London, which read as follows:

The High Commissioner has asked me to inform you that the Minister of National Defence has cabled a request that you should communicate to him in cypher through this office your impression as to the possibility of producing the Bren machine gun in Canada. The Minister of National Defence states that this matter is urgent and asks that you give him details such as time required for delivery and estimated cost.

For your information I should like to add that the War Office have been requested to give you any information which they consider desirable and necessary to enable the Department of National Defence to reach a conclusion in the above matter.

About the time that Major Hahn received Col. Vanier's letter of November 11th, 1936 (Exhibit 101) he was informed by the High Commissioner's Office that an appointment had been arranged for him with Sir Thomas Inskip, Minister for the Co-Ordination of Defence. Major Hahn and Mr. Hugh Plaxton then had an interview with Sir Thomas Inskip. Major Hahn said that Sir Thomas Inskip seemed interested and that the General who was with him seemed very interested, and they told him that an appointment would be arranged with Sir Harold Brown, Director General of Munitions Production. Major Hahn then had an interview with Sir Harold Brown and took with him a book of photographs of the Inglis plant (Exhibit 328) and an appraisal of 1929 (Exhibit 297) and large scale blueprints of each building of the plant, showing the machinery and the capacity of each machine. These documents Sir Harold told him to turn over when he was at Enfield to Mr. Whitham, the Director of Industrial Organization which is part of the War Office. Major Hahn was notified, he thought on the following day, and given a letter to the Enfield plant, saying instructions had been issued to Enfield and that an appointment had been arranged. Major Hahn put the date of his interview with Sir Harold Brown as around November 15th, 1936. He went to the Enfield plant and obtained information he wanted "to enable me to estimate and to translate into Canadian costs the cost of production of the gun." He was somewhere from a week to ten days at the plant. He had sufficient information then to make his estimates on his return to Canada. He suggested to the War Office that an order be placed "with us" for 5,000 guns.

Under date of November 19th, 1936 Major Hahn wrote to Sir Harold Brown (Exhibit 103) in which he said in part:

With reference to our conversation, I have had the opportunity of making a complete inspection of your plant processes at Enfield and am convinced that the Bren gun can be produced in Canada. There are three alternatives.

After an outline of these alternatives the letter proceeds:

I am recommending alternative 2 to our Minister of Defence and a set-up based upon a production of 50 guns on single shift or 125 guns per week on double shift and overtime.

Then the letter goes on with the description, and continues:

I would suggest your co-operation as follows:

(1) To place an order of 5,000 or more Bren guns with the plant to enable economical production.

(2) Financial co-operation covering the special tools and machinery previously indicated

Under such an arrangement guns sold to the Canadian Government would carry their proper pro rata preparation cost. There are other obvious details which can be dealt with once the general basis has been found acceptable.

I am sure we can provide you with an effective unit in an intelligently and well conducted plan. As soon as you will indicate your intention, I shall return to Canada and review the matter with our Minister of Defence and carry the matter through to finality as quickly as possible.

Major Hahn said that he sent that letter after discussion with Sir Harold Brown,

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where it was intimated to me and where I had suggested financial co-operation on their part towards the cost of the plant. It was intimated to me that that suggestion was not an unusual one in connection with the schemes that they were contemplating at that time in regard to munitions production. It was obvious to me that there would be a very large capital expenditure involved and I thought the War Office would possibly provide some substantial financial assistance in that manner.

Major Hahn said however that at that time the War Office were thinking entirely of their own secondary sources of supply.

That is what I was trying to do, to divert to Canada, whether or not Canada would place an order.

Q. Did you intimate you hoped to get an order from Canada?—A. That is obvious.

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Major Hahn, accompanied by Mr. Hugh Plaxton, sailed from England for their return to Canada on November 28th, 1936. Mr. Gordon Plaxton remained on in England for a short while.

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Upon Major Hahn's return to Canada he wrote a letter to the Minister of National Defence, December 5th, 1936 (Exhibit 88), and enclosed a voluminous report on his investigation of Bren gun manufacture in England (Exhibit 103).

On December 7th, 1936 Major Hahn was in Ottawa in conference with officers of the Department of National Defence. Major Hahn and Col. Dewar said that Lieut. Jolley's report on the interview (Exhibit 17) was a correct statement.

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Then by letter dated December 29th, 1936 Major Hahn submitted a written proposal to the Department of National Defence "for the manufacture of the Bren gun in Canada." This pro-

posals has been known throughout the Inquiry as proposal "B" (Exhibit 11). A number of schedules were attached to this proposal; one of them, No. 5, was on the basis that the Canadian Government place an order for 5,000 guns and that the British Government supplement the order for a similar number of guns, and estimated the saving to the Canadian Government on that basis. Major Hahn in his letter stated that he had pointed out in the proposal the importance of British orders. The proposal contains this paragraph: 168

My report made to you dated December 10th (i.e., Exhibit 90), indicated that the British War Office were interested in this project and would favourably consider a request for co-operating in the form of "educational orders." Schedule (5) attached indicates the substantial saving that would be effected by an order of 5,000 guns.

Proposal "B" was short-lived and then by letter dated January 11th, 1937, Major Hahn made another written proposal to the Department which has been known throughout the Inquiry as Proposal "A" (Exhibit 12). Proposal "A" also contemplated a contract for 10,000 guns (5,000 for Canada and 5,000 for the War Office) and indicated the saving that would be effected to the Canadian Government in the event of an order of 5,000 guns from the War Office. Major Hahn in his accompanying letter said:

It will be seen from schedule 6 that a British order for 5,000 guns would result in a saving of \$1,377,949.50 less sales tax on the British guns. 209

For the moment I shall not further detail the evidence of the subsequent draft proposals submitted to the Department by Major Hahn during the year 1937, which culminated in the contract with the Canadian Government, the subject matter of the Inquiry, except to state that while the Deputy Minister and Major Hahn were in England in June, 1937, the Deputy Minister set in motion steps with the War Office to obtain permission from the patentee in Czechoslovakia that would enable the Canadian Government, if it should so desire, to place a contract with a private manufacturer. This permission was obtained on June 19th, 1937 (Exhibit 157). What is referred to in the evidence as Proposal "2" was made under date of October 2nd, 1937 (Exhibit 22), and what were known as plan "A," plan "B" and plan "C" were made under date of November 9th, 1937 (Exhibits 27 and 29). Lieut. Jolley's comments, November 10th, 1937, on plans "A," "B" and "C" appear in Exhibit 37. Plan "A" envisaged 12,000 guns, plan "B" 7,000 guns and plan "C" contemplated the majority of the components being farmed out and a central assembly plant. In Exhibit 34 the difference between the estimated cost for the production of 7,000 and 12,000 guns is shown as over \$1,500,000. I shall later revert to these documents and to other facts which occurred subsequent to December 31st, 1936. 1471-72 211, 212 226-237 299-300 262

* * *

Going back now to the interview of Major Hahn, Mr. Hugh Plaxton and Mr. Cameron with the Minister on October 19th, 1936, when the Minister's letter of introduction of Major Hahn to the High Commissioner of October 19th, 1936 (Exhibit 135), was obtained, and to October 20th, 1936, when the letter of the Department of National Defence was sent to External Affairs for transmission of information

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to the High Commissioner (Exhibit 74). The Minister and the Deputy Minister were examined as to their knowledge of the "reliable group which controls certain manufacturing plants." The letter of October 20th, 1936 (Exhibit 74) having been read in full to the Minister, Mr. Hellmuth asked him:

Q. Did you know at that time who Major Hahn's associate's were?—A. No, and I do not know now.

And then:

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Q. Did you know who the reliable group behind Major Hahn were?—A. No, not to my knowledge—no information given me.

Q. What was the information as to the reliable group?—A. The information was that he was a man of financial integrity and ability.

Q. I am asking you if you knew the personnel of the reliable group?—A. No.

Q. You did not know that?—A. No.

Q. Did you know whether Major Hahn at that time had any plant?—A. I knew nothing, except the information conveyed to me.

Q. I would like to have that question answered, with all due deference. I would like to know whether you knew whether Major Hahn had or controlled any plant or plants?—A. Not to my own knowledge—certainly not.

Q. Do you know whether he had any company at that time?—A. Not to my knowledge, no.

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Q. When did you find out that Major Hahn had associates, and who they were?—A. I did not know who they were until the article referred to in this investigation (i.e., in Maclean's magazine).

Q. So that we may say the contract—at the time the contract was signed you had no knowledge of who his associates were?—A. That is quite correct.

Q. Nor had you any knowledge of who the reliable group were?—A. Quite correct. I accepted the reliable supervision of men in whom I had absolute confidence.

Q. I am asking you if you knew of any of these. Did you know what experience Major Hahn had in the manufacture of precision steel?—A. No, not to my own knowledge.

Q. Did you know what his previous industrial experience or activity had been?—A. No, not to my own knowledge.

Q. Had you any information outside of what you have told us, this letter of the Bank of Montreal, as to any knowledge of Major Hahn—I am omitting any knowledge of his war record, with which I have not the slightest quarrel or concern—but had you any knowledge of your own, outside of the Bank of Montreal, from any reliable source, as to what his qualifications were to engage in the manufacture of what certainly would be very clearly precision steel?—A. No, not to my own knowledge—except the information conveyed to me, as I said in my evidence in chief.

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Q. That is, the information conveyed to you by whom—because I do not remember that you gave us any information?—A. I did.

Q. Will you tell me again, please?—A. I was informed by my Deputy Minister that he had previous industrial experience, and I was informed by Mr. Plaxton of the same thing.

Q. Then, Mr. Plaxton, the gentleman who, as you say, was very anxious to obtain a factory in his own riding in Toronto, and your Deputy Minister, were the sole informants on any experience that Major Hahn had had?—A. I knew in the end that the whole situation was being thoroughly reviewed by the subcommittee of the Interdepartmental Committee.

Q. But, Mr. Minister, I am not asking you that. I know it may be a little difficult, because in the House of Commons you can go for a man, and all that; but here, if you will kindly just answer my question I would be very greatly obliged to you. I shall be as polite to you as possible.—A. I certainly appreciate that, Mr. Hellmuth.

Q. Then try, if you can—it may be difficult for you—just try to get the question and answer it. Then, from that date, until after this article appeared in Maclean's magazine you had personally made no inquiries as to either his associates, the group behind him, or his business experience in such manufacturing?—A. No, certainly not.

Q. You did know, I suppose, that there were half a dozen, 2370 at least, firms in Canada who had been actively engaged in the manufacture of precision steel?—A. In a general way, yes.

Q. And firms which had had a long experience, and were employing skilled labour in that respect?—A. Yes.

Q. There was never the slightest effort, was there, to interest or invite any of those firms to tender, or to make an offer to manufacture the Bren gun?—A. No, I do not think there was. May I finish my answer?

Q. Yes, certainly.—A. I do not think any steel company in Canada knew the slightest thing about the production of the Bren gun.

Q. No, I do not suppose they did. But there were firms in Canada who had been doing very delicate steel operations for a great many years, were there not?—A. In my judgment it had nothing whatsoever to do with the question, because for this reason, that any company in Canada could not undertake this particular contract unless there was a greater volume of production to reduce the cost of production—and that was essentially a vital factor in the whole thing.

* * * *

Q. Then I think you did say that you had not made any 2371 inquiry until after this article appeared; have you since ascertained who were— —A. No.

Q. You have not?—A. No.

Q. So that you are still—I do not wish to say this at all offensively—you are still in the dark as to who these associates are and the group behind him?—A. I think we all are.

The Deputy Minister swore that he too did not know who were the "reliable group" which controlled certain manufacturing plants. And Major Hahn and Mr. Hugh Plaxton say they did not tell the Prime Minister, or the Minister, or the Deputy Minister, or the High Commissioner, or Sir Thomas Inskip, or Sir Harold Brown,

who the group were who were in the venture with Major Hahn, i.e., Mr. Plaxton's two brothers and the Toronto stock brokers, Cameron, Pointon & Merritt.

The evidence is abundantly plain that prior to October 9, 1936 (the day Major Hahn first met the Deputy Minister) Cameron, Pointon & Merritt, a firm of stock brokers in Toronto, and Herbert Plaxton (a brother of Mr. Hugh Plaxton) and Major Hahn had become jointly interested in a venture to buy what was known as the John Inglis plant in Toronto, which had been closed down since April of that year and was in the hands of a Receiver and Manager, the Premier Trust Company of Toronto, for the bond holders of the company, and that on September 21, 1936, one Nurse, an employee in the office of Cameron, Pointon & Merritt, had made a written offer (Exhibit 286) to the Toronto General Trusts Corporation (the trustee under the bond mortgage) for submission to a meeting of bondholders, to purchase the mortgaged premises which covered all the assets and undertaking of the company, including the good-will, for the consideration and on the terms and conditions therein mentioned. Nurse was admittedly acting, not in his own interest, but as a nominee of Major Hahn, Herbert Plaxton and Cameron, Pointon & Merritt. The offer was accepted on October 19, 1936 (Exhibit 285). Mr. Gordon Plaxton about that time had become another member of the group. In due course the Nurse agreement was transferred to a new company which the group caused to be incorporated on November 23, 1936, with the name of British Canadian Engineering Limited; the company which, under the corporate name of John Inglis Company Limited which it had subsequently acquired on June 4, 1937, entered into the contract on March 31, 1938, with the Canadian Government, in question in this Inquiry. Although the Nurse agreement had been accepted in October, 1936, and although Major Hahn said that his "main interest in the acquisition of these assets, and of the trade mark and name, was the commercial business. That is what I was vitally interested in," the new company did not start operating its plant until April 1, 1938.

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A large portion of the evidence taken before the Commission was in connection with the facts leading up to and the purchase of the assets of the old John Inglis Company by Major Hahn and his associates, the financial structure of the new company, the share holdings of the new company, the consideration given for the allotment and issue of the shares of the new company, the incorporation and organization of Anglo Engineering Limited and Investment Reserves Limited and the shareholdings of each, and with certain sales to the public of shares of capital stock of the new Inglis Company made subsequent to the date of the contract in question. Your Commissioner approved the suggestion of Government counsel to employ the firm of Messrs. P. S. Ross & Sons, Chartered Accountants, to investigate all these matters. As a result Mr. Guy E. Hoult and Mr. Frank Gates, both partners in the firm of P. S. Ross & Sons, conducted a searching and complete examination. Mr. Hoult gave the evidence (Mr. Gates being present) and produced a large number of documents which, with his oral testimony, gave what appeared to be a very complete and accurate account. No objection was taken by anyone to the accuracy or completeness of this evidence. Mr. Hoult's evi-

dence in the record commences at p. 2473 and continues to p. 2802 and again from p. 3407 to p. 3468. Exhibit 282 sets out the financial history and capital structure of the new Inglis Company to September 15, 1938. Exhibit 353 relates to what are called the "vendor shares." Exhibit 354 relates to what are called the "subscription shares." Exhibits 355 and 356 deal with the disposition of share certificates. A great deal of testimony was also taken, directed to the same matters, by the examination of Mr. Herbert Plaxton, Mr. Gordon Plaxton, Mr. Cameron and Mr. Pointon, and of Mr. Pooler, another broker in Toronto, and of Mr. Kippen, a broker in Montreal. All this testimony was given voluntarily and without objection by counsel. (The information that the Minister and his Deputy were given by Hahn while in London in May, 1937, is set out in Exhibits 137, 138, 139 and 140. Claims filed with the Government for pre-contract expenses are Exhibit 262.) 2417-21

At the conclusion of the long hearing, however, counsel in their arguments (excepting Col. Drew) raised all sorts of objections to your Commissioner commenting upon the evidence or expressing any opinion he might see fit to express thereon (though expressly directed by his Commission to do so) or making any recommendations as the result of the investigation.

Mr. Geoffrion, who appeared with Mr. McRuer for the John Inglis Company, stated that, for purposes of argument, Major Hahn and the John Inglis Company may be identical, because he was the spokesman of the company and the party in control. Mr. Geoffrion, relying upon sec. 13 of The Inquiries Act, R.S.C. 1927, ch. 99, argued that as no charges of misconduct had been laid or been formulated during the Inquiry, no report against any person can be made by your Commissioner. Section 13 reads as follows:—

13. No report shall be made against any person until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel.

Mr. Geoffrion said:

No charges being laid, no report of misconduct or no report can be made against us, because there was no charge of misconduct, and no notice to us. . . . And I say on the record, as it is now made, it is completely ultra vires, and it is of course inconceivable that there should be a report of misconduct, as there has been no charge. 4449-4450

Mr. Geoffrion proceeded in his argument to say:

Under the circumstances, so far as Major Hahn and the John Inglis Company are concerned, I suggest—and I suggest this most emphatically—that there is absolutely no jurisdiction in finding misconduct of any sort on his part. 4451

And further:

Then, Mr. Commissioner, in that respect I might say that what Parliament means is not only that you have to suppress the word "misconduct" but I point out that an implied finding of misconduct is as bad as an express one. It would not be simply avoiding the insertion of any reference to the word "misconduct" by which you could get around the statute. The point is that you cannot do it; no report can be made 4452

against him. This is the first point I wish to make. This is the question of jurisdiction, and as I represent a private party, it is my duty to insist upon it.

And further:

You can report the facts, but if the facts of the report necessarily involve a charge of misconduct, you cannot.

Mr. Geoffrion put the point he was making under sec. 13 thus:

4455 You are limited in your power to find facts, but your inability to find facts against us.

Further, Mr. Geoffrion argued that

4457 The question as to what extent . . . pressure was a factor in getting the British contract is out of your jurisdiction.

* * *

4459 These two contracts are so fearfully interwoven that you cannot touch one without touching the other.

This last statement had reference to the assurance given to the Government of the United Kingdom that the War Office contract would not be criticized by the Commission. Further, Mr. Geoffrion in his argument doubted that your Commissioner was called upon to give opinions and recommendations. He said it may be open under the Commission but he doubted if it is under the Order in Council, though he admitted that there is imposed upon your Commissioner

4464 the painful duty of analysing, scrutinizing or summarizing the evidence and drawing inferences and making a report on the facts.

4519 Mr. McRuer contended that it is the Order in Council (Exhibit 1) that governs and not the wording of the Commission, having regard to the words of the Commission (which are not in the Order in Council) "and any opinion he may see fit to express thereon." Mr. McRuer argued that the words in the Order in Council "to report upon the same" mean that your Commissioner is to report the facts that he has found disclosed in the Inquiry.

4520 . . . it cannot mean any more than to report the facts. Otherwise the Government would be asking you, Mr. Commissioner, to comment on the facts, to express an opinion on the facts. That would be to give judicial weight to the argument that will be presented by one side or the other in the political debate as to what conclusions ought to be drawn from the facts. The Government has not considered asking you, Mr. Commissioner, to do that, and I think very wisely. I think it would be most unwise to ask you, Mr. Commissioner, occupying the high judicial office that you do, to make comments or express opinions that would lend weight to one side or the other in the debates that may follow. That is for the House of Commons. You are asked to report the facts, you are asked to report the evidence, and the opinions to be formed will be for the House of Commons, for the people at large, and for the press.

Mr. McRuer contended further:

4523 Another very usual thing in royal commissions is to ask the commissioner to make recommendations for the future,

recommendations safeguarding the interests of the public in the future. That has not been done here.

In concluding his argument Mr. McRuer said:

So, Mr. Commissioner, I think, subject to the argument I made at the opening, that if you are going to go into the realm of comment and opinion, I believe you ought to tread that field very carefully, having regard to the great damage that can be done, not in a judicial trial but in the political combat that may follow. 4565

Mr. Parkinson, representing the law firm of Plaxton and Company and the stock brokers, Cameron, Pointon & Merritt, adopted the contention of Mr. Geoffrion and Mr. McRuer that there could be no report of misconduct against any person and no opinions or conclusions. Mr. Parkinson put his contention in this regard in these words: 4567

The firms of Plaxton and Company and Cameron, Pointon & Merritt are, as I submit, entire strangers to this inquiry. You, Mr. Commissioner, are forbidden to make a report against us, and by that I apprehend the meaning to be, adversely commenting upon us or upon our conduct. Of course, you may find it necessary, Mr. Commissioner, in reporting the evidence with respect to the contract itself to make some reference to Cameron, Pointon & Merritt or to Plaxton and Company, but your comments, Mr. Commissioner, should not go beyond the barest possible statement of fact. I submit that section 13 means that you must not make any adverse comments. 4580-81

Mr. Parkinson put a second point, which he thought more important from the point of view of his clients, that many of the matters in evidence were beyond the legislative jurisdiction of the Parliament of Canada. He put the acquisition of the Inglis property, the organization of the new company, including the pre-organization agreement which, he said, was in effect the settlement of the relations between the members of the group themselves, the capital set-up of the company, the incorporation of the subsidiary companies and matters of that nature, as within his objection as matters beyond the legislative competence of the Dominion Parliament. Also he put the sales of shares of the company (except in so far as the sale of the shares might come within one of the provisions of the contract itself) and the issue of the capital stock of the new company and the manner in which it was issued, the issue of the informational circular by Cameron, Pointon & Merritt and the bills of costs of Plaxton & Company, within the same objection. Treating these matters as beyond the legislative authority of the Parliament of Canada, Mr. Parkinson argued that your Commissioner cannot report upon them. 4583-86

Mr. Parkinson closed his argument with a reference to the decision in *O'Connor v. Waldron*, 1935 A.C., 76. 4647

During the opening of Mr. Parkinson's argument, just before the adjournment on the afternoon of November 23, 1938 (the 35th day), I asked counsel for the Government to define in due course what attitude they were taking as to the limitations put upon the scope of the Commission by Mr. Geoffrion, Mr. McRuer and Mr. Parkinson. At the noon adjournment the next day Government counsel stated that 4572-73

they were afraid that there was not very much that they could contribute in the way of a concrete suggestion,

4650 because after all it is a very general and very indefinite subject, having regard to the terms of the Order in Council.

They stated that in their view the words "cause inquiry to be made" in section 2 of chapter 99, the Inquiries Act, include the making of a report and that that view is expressly recognized by the fact that section 13 particularly mentions a report.

Therefore it seems to me that there can be no question but that under the statute itself a report is contemplated arising out of and resulting from the inquiry.

4651-52 As to sections 12 and 13, the position taken was that an adverse report of misconduct against any person was prohibited by the statute. Further,

. . . it seems to me that one must say that the scope of your final action is no more and no less than is connoted in the word "report" in the statute, and that power of reporting is always subject to the provisions of section 13 prohibiting reports in respect of misconduct.

4653 While Government counsel said that there was no desire on their part to whittle down your jurisdiction; nor is there any power or authority to extend it,

their submission was that

4654 this is a factual inquiry and not an inquiry in which opinions are asked or are involved, that is, opinions upon particular subjects.

And that

4654-55 it is a matter which is a public matter, and primarily, if I may suggest, an affair of government; and that therefore after all the body which is to determine if and what remedial action, if any, is called for or is to be taken, is after all the government, and that it is not a case, if I may submit this, where the Commissioner is asked to suggest remedial action, because the Government, having received the report with all that the word "report" connotes, then is the one which determines what line of action shall be taken as a result of it.

That is very little help to you, Mr. Commissioner, but it is all I can suggest in the short time we have had to consider the matter.

4702 Government counsel in reply to Mr. Parkinson's argument regarding the constitutionality of the statute submitted that the Inquiry was within the jurisdiction of the Dominion Parliament and that all the matters which are incidental to that Inquiry are matters which quite properly may be inquired into under the Order in Council.

4703 . . . all these things, to which my friend has referred, are incidental to an examination of a contract made between the contractor and the Dominion Government.

The present Commission was expressly created under the statutory authority of the Inquiries Act, R.S.C. 1927, chap. 99, which reads in part (sec. 2) as follows:

2. The Governor in Council may, whenever he deems it expedient, cause inquiry to be made into and concerning any

matter connected with the good government of Canada or the conduct of any part of the public business thereof.

That a report upon the Inquiry is contemplated by the statute is not open to doubt. But that a finding of misconduct cannot be made against any person, until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel, is expressly enacted by sec. 13 of the statute. No charges of misconduct, however, were formulated against any particular person.

Having fully weighed the objection advanced on this ground, as well as the weighty consideration brought to my attention by counsel that the rights of the individuals interested in the contract might become the subject of legal controversy elsewhere, I have come to the conclusion that it is inexpedient to comment upon the evidence in respect of its bearing on the conduct of the individuals concerned.

The facts are all in evidence; and as said by Government counsel 4303 in opening their argument

So far as the facts are concerned, there are very few which are even in dispute.

I cannot myself recall at the moment any fact to which direct proof was adduced that is in dispute. It will be for those charged with the responsibility of dealing with the facts, i.e., the Government and Parliament, to examine and study them and to take such action, if any, thereon as they may see fit.

Turning now to the contract itself and to the administrative system that dealt with the subject matter, the selection of the manufacturer and the settlement of the terms and conditions of the contract.

As already mentioned, several written proposals to the Department of National Defence were made by Major Hahn, or by the company which he and his group incorporated, during the year 1937, commencing with proposal "B" submitted December 29, 1936. These were analysed and examined mainly by Lieut. Jolley, who worked alone on these different proposals down to the first part of December, 1937. It was essentially a matter for practical business judgment and experience. Lieut. Jolley was twenty-three years old when he graduated at McGill in 1933. I told him during his evidence that I pictured him sitting in his own room, very carefully and meticulously examining these different proposals, and asked him if that was a true picture or was he discussing these matters at all times with some group of men. To this he answered: 250, 310
416-17
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I worked independently in making any comments on these proposals. They were my own, prepared entirely independently of any discussions with other personnel.

Lieut. Jolley impressed me as an earnest and scholarly young man, skilled in his own technical branch. But he was obviously without the business experience and judgment necessary for dealing with a proposed business contract of an intricate nature involving the expenditure of millions of dollars. At the conclusion of his evidence I said to him: 418

Q. . . . there seems to be a good deal of responsibility upon you by way of analysis of all the different proposals which were made in your report. Of course I have not evidence

yet as to whether or not your reports were acted upon, but I am asking you if . . . prior to December, 1936, you really had any experience in dealing with contracts of this kind?

To which Lieut. Jolley very frankly answered:

No, I had not.

431 Col. Dewar in his evidence said that in December, 1937, he
sent for Lieut. Jolley to assist him in carrying out an analysis of
the proposals which the Master-General of the Ordnance had asked
him to make. The evidence shows there were two or three confer-
ences of officers of the Department in December, 1937, and then on
3977 January 5, 1938, a proposed agreement went before what is known
as the "Interdepartmental Committee." According to the evidence
of Col. Orde (Judge Advocate General) of the Department of
National Defence, two contracts had been drafted by him and were
completed as draft documents about November 22, 1937. He said
that Major Hahn had been with him November 19th and 20th
and probably 21st.

3963 Major Hahn's first suggestion was that there be one contract for
the 12,000 guns (the Government of Canada being the contracting
party with the John Inglis Company) and that the Canadian Govern-
ment would sell 5,000 of those guns to the War Office. Col. Orde
3974 said that his instructions from the Deputy Minister were that there
should be two independent contracts and then he proceeded to work
out with Major Hahn in very rough form the mechanics of the
3963 proposition, namely, that there would be a separate contract with
the Canadian Government, and another contract with the War Office,
and that any interlocking arrangement which would have to be made
as between the War Office and the Department would be effected by
mutual arrangement between the two. When the two draft contracts
were prepared by Col. Orde in November, 1937,

3971 Q. You had no draft of the British contract before you?—

A. Not that I can remember. I do not think I had.

These draft contracts, which were contemporaneous, were marked
Exhibits 33 and 33R respectively.

3979 On December 22, 1937 (following upon another conference with
Major Hahn), Col. Orde made revisions of several of the provisions
of the earlier draft. These revisions appear in Exhibit 373 and were
3983-84 amendments to Exhibit 33. The draft of November 22, with the
revisions of December 22, was the document that went to the Inter-
departmental Committee.

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The Interdepartmental Committee was a creature of the Govern-
ment. The Prime Minister, as early at least as the end of 1936,
had taken steps personally to inquire into the existing procedure
for letting armament contracts and for the prevention or control of
undue profits in connection with peace-time contracts under any
defence program which might be authorized. He had his own
department make certain investigations and then, on January 8, 1937,
on his own initiative, he set up a special committee under the chair-
manship of Dr. Skelton to investigate the problem. The members of
this committee (not to be confused with what is called the Inter-
departmental Committee which was set up subsequently and in con-

sequence of this committee's report) were, Dr. Skelton, Mr. Loring Christie and Mr. N. A. Robertson, of the Department of External Affairs; the Deputy Minister, Col. Orde and Mr. Burns of the Department of National Defence; Mr. Fraser Elliott of the Department of National Revenue (Income Tax Division); Dr. W. C. Clark, the Deputy Minister of Finance, and Mr. A. K. Eaton of the Department of Finance. The report of this committee, dated January 21, 1937 (Exhibit 279) was submitted to the Prime Minister. The report (para. 8) said that "the problem appears to be essentially an administrative one." In consequence of the report of this committee, what is known as the Interdepartmental Committee was created by the Government by Order in Council P.C. 439 on March 5, 1937 (Exhibit 46) for the purpose of controlling profits on government armament contracts. It was to consist of one representative from the Departments of Trade and Commerce, Labour, National Revenue (Income Tax), Finance, and the Deputy Minister of National Defence and one official or officer of the Department of National Defence. The Deputy Minister of National Defence was to be Chairman of the said Committee. The appointments to the Committee were filed as Exhibit 280. Mr. Fraser Elliott, Commissioner of Income Tax, who was one of the members of the Committee, gave lengthy evidence as to the deliberations of this committee in connection with the contract in question (pp. 577-989) and it is to his evidence that I will now refer. 2290

The first meeting of this committee which was called by the Deputy Minister to consider and deal with the proposed contract with the John Inglis Company was held on January 5th, 1938, although the series of written proposals that had been submitted to and had been under review by the Department had commenced with proposal "B" (Exhibit 11) submitted on December 29th, 1936. At this meeting of the committee it had before it a memorandum (Exhibit 42) to which was attached a draft agreement submitted by the Department for consideration. Mr. Elliott, in giving his testimony, said that after the chairman (the Deputy Minister) had opened the meeting with a general statement indicating the purposes for which the meeting was called 582-83

the committee began to take an active part in the sense of asking questions, and getting to grips with the problem. In so doing the committee indicated that competitive bids should be one of the main considerations, and one of the first considerations. We pointed out that there was a number of very substantial subsisting companies in Canada that were manufacturing precision tools, and had had experience in what we thought was this line of work. We felt that they should be consulted and given an opportunity to submit competitive tenders. . . . The Committee also thought there would be considerable time required for further consideration of the contract. 587-88

Further, Mr. Elliott said of this meeting: 591-2-3

It early became clear to all members of the committee that there were two phases under consideration. One phase was that there might be competitive bidding, and it was the unanimous and earnest desire of everybody on the committee to secure competitive bids if possible. The second phase was the study of the terms of the contract in itself.

The committee appointed a sub-committee of three, of whom only one was a member of the original committee, for consideration and study and report.

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We recognized that we did not have the time to go into the necessary details to bring out the information in the form that we should have it. Therefore we simply asked this sub-committee to act as a sort of specific informer in connection with the terms of this contract and such other thoughts as might come about in the analysis of the contract for our guidance in considering this matter as a committee.

The two gentlemen who were on the sub-committee who had not been members of the original committee attended the meetings of the committee itself.

600-01

The sub-committee made its report on January 13th, 1938 (Exhibit 50). The report contained in part the following:

606-08

Having in mind the main committee's suggestion that competitive bids be called for, the sub-committee, as an indication only of the names of concerns from whom competitive bids might be asked, mention—

The Steel Company of Canada,
Dominion Bridge,
Canadian Car and Foundry Company, Limited,
Bertram Company,
National Steel Company,

and possibly automobile manufacturers who undoubtedly have suitable plants and precision tools, together with such others as, in the opinion of the main committee, might be asked to tender.

The sub-committee appreciate that time is an essential factor but inasmuch as the duration of the contract is from five to six years, the suggestion of a delay of two to three months to allow intending bidders to gather essential information does not appear to be unwarranted under the circumstances and in view of the amount of money involved in the contract . . .

It is assumed that if tenders are to be called, such tenders will be on a 12,000 order and that the British War Office will have first definitely agreed to join Canada in inviting tenders on an agreed basis and also that Great Britain's share of the cost of producing these guns will have been determined and agreed to before such tenders have been called or final contracts with any contractor are made.

The second meeting of the Interdepartmental Committee on the proposed contract was held on January 24th, 1938.

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Q. What was the main subject of discussion at the second meeting, Mr. Elliott?—A. Competitive bids and why the John Inglis Company should get this contract, the financial status of the company and a number of other things. . . .

622

The committee wanted to get price comparisons from other competent companies. They felt the lack of them in considering this individual contract. They kept urging for some method of competitive bidding and comparative prices being entered upon.

The Deputy Minister as Chairman of the meeting said he felt that while competitive bids are always desirable, in this case there was a record of a substantial saving, a potential saving to the Government, and that, together with the pressure from the War Office for action, to get on with the job, we should enter into consideration of the terms of this contract with the Inglis Company.

Mr. Elliott said that he had in his official capacity some knowledge of the early history of the John Inglis Company which he regarded as of a confidential character and did not pass on to anyone except his assistant, Mr. Sharp, who was also present at the meeting of the committee. But Mr. Elliott said that

in discussing the financial status of the company, the history of the John Inglis Company was adequately disclosed to the chairman, namely, the essential point being that it was known that it had been in receivership.

Mr. Elliott continued:

The Chairman indicated that he had an understanding—exactly how it was acquired I do not know—from England that they would not deal with any other firm.

Pressed as to exactly what was said, Mr. Elliott put it this way:

I said as a statement of fact that the Chairman stated to us that he believed, or he was of the opinion, whichever way you wish to put it—he believed that England would not place the contract with any other company in Canada.

Mr. Elliott said that the suggestion was then made that a cable be sent to England to ascertain definitely England's position in respect of competitive bids.

The Chairman pointed out that to ask such a question at this juncture might endanger the placing of the British order, and endanger thereby the loss which he obviously was anxious to save Canada in the cost of the machinery and equipment. The committee nevertheless did not take such notice of that opinion as to withdraw their desire to have the cable sent. They were willing to risk the danger. The form of the cable was then drafted.

The Deputy Minister (but not without the subsequent approval of the Committee) amended their draft cable before it was sent (Exhibit 188). Moreover, the Deputy Minister sent a very long cable himself at the same time to the War Office (Exhibit 212). Major Hahn was in Ottawa the day of the meeting (January 24) and was anxious to see the Committee, but he said he was not called in. The Deputy Minister told him, he says, that "the suggestion of tendering was to be continued with" and Major Hahn says he "unexpectedly took boat for England"; he "went straight back to Toronto on the 25th and sailed on January 26" from New York for England, arriving there on the evening of February 2. En route he sent a wireless asking for an interview with Sir Harold Brown or with some one at the War Office and was notified on the morning of February 3 that that had been done. After interviews in England with the War Office, Major Hahn was back in Toronto by February 18 (Exhibit 223).

636-712 The next (the third) meeting of the Interdepartmental Committee on this contract was held on February 25, 1938 (pp. 636 to 712). What was referred to as an up-to-date draft revision of the Canadian contract (Exhibit 53) was before the Committee at this meeting. Mr. Elliott said:

685-88 The committee then swung into the repetition of this statement, namely the fact that competitive tendering had not been entered into by three or four companies capable of manufacturing guns and that that was one of the main objections still tentatively retained by members of the committee.

An important matter then developed, so far as the committee was determined by the chairman indicating that responsibility for the way in which this particular company had been selected necessarily rested with the Department of National Defence.

Mr. Elliott said that the Chairman (the Deputy Minister of National Defence) pointed out that

his department had followed the practice of the British Government where competition is not always obtainable, and they unhesitatingly go into non-competitive contracts in order to secure their requirements. In this particular case the British Government had picked the firm to manufacture its guns.

By the Commissioner:

Q. Just a minute; the British Government had done what?

—A. Picked the firm.

Q. In this case?—A. Yes.

Q. In this case the British Government had done that?—

A. Yes, that in this case the British Government had picked the firm to manufacture guns, and that they had made the best possible deal with that particular firm.

688 In view of the Deputy Minister's statement, Mr. Elliott said that the Committee "practically reorientated itself in respect of the whole matter."

We stated in the meeting at that time that if the department took the responsibility, then there could no longer be any objection. That was a fait accompli, and we had to meet it.

* * *

689 The Chairman further explained that the wording of the particular report to Council on the conclusions of the committee would not be such as to involve the members of the committee in matters of choice . . . of the contractor in connection with the manufacture.

* * *

Mr. Elliott proceeded in his evidence:

691 Now the committee, after hearing this, agreed that if the department is taking the responsibility that this particular firm must have the contract, and the War Office refused to do business with any other firm than this John Inglis Company, then the force and purpose of the committee expended in getting competitive bids necessarily must cease, and we must face the situation of a contract to be analysed in its particular terms, having regard to the financial aspects and the ultimate profit to the contractor.

The Interdepartmental Committee then proceeded along the line of examining the particular terms of the proposed contract and did some valuable and constructive work in the short time available.

But at the time we went into the terms of the contract, 693 you will find that even after this we kept coming back to this possibility. . . . of competitive bids. Because they did, again and again, and it was not that we did not know we had to deal with the contract. It was just that we did not want to let go.

Mr. Elliott said that

The committee gave the opinion that it was difficult to 704 conceive that the War Office was willing to deal only with one Canadian company, and that company in point of fact, as we stated, recently having gone through receivership.

The committee pointed out that there had not been 705 received from England a categorical denial that they would not deal with any other company. We therefore suggested a further wire or cable asking them, "Will you or will you not deal with a selected list of companies?" That was quite a thing to raise, after the several cables that had passed. (The several cables were those of February 1st to February 5th inclusive—Exhibits 188, 212, 217, 213, 215, 190, 189, 225, 216 and 191.) Mr. Elliott said that the Committee's suggestion of a further 705-66 wire gave great concern to the Chairman.

He really felt so strongly about it that it amounted to a suggestion that we must not do it. And the Committee accepted that. Then again, the Committee dealt with the possibility of changing the War Office's determination not to deal with other companies. We stated that if it could not be otherwise, then again we would have to agree to giving the contract to the John Inglis Company.

The system broke down when the Committee failed to report back 693-698 to the body that had created it. Their failure to report was not 2304 a matter of misconduct; it was a failure to recognize the importance of their Committee as part of the administrative system of government. There is not a suggestion that the members of the 2343-44 Government ever heard of these difficulties which confronted the Committee or of the attitude that was taken by members of it to the proposed contract. The Minister of National Defence did say 2343-44 that he was informed in a general way, not in great detail, of the progress of the discussions in the Committee by the Deputy Minister but he never saw the minutes of the meetings of the Committee (Exhibits 60 and 63) until this Inquiry commenced. The reports 2306 he had from his Deputy Minister respecting the Interdepartmental Committee's activities are Exhibits 243-244 of March 21st, 1938, after the Committee had ceased to function on this contract.

At the end of this third meeting on February 25th, 1938, the matter was again referred to the sub-committee. The report of the 717 and 720-21 sub-committee is Exhibit 54.

The fourth and last meeting of the Interdepartmental Committee on this contract took place March 17th, 1938. The meeting commenced shortly before three o'clock in the afternoon and did

722 not finish its deliberations until shortly before three o'clock the next morning. The explanation given by Mr. Elliott was that the Department of National Defence

wanted to get the contract in proper form to present next day at eleven o'clock to Council.

733 Exhibits 57, 58 and 59 were before the meeting as well as
738 other material. The Committee dealt with specific clauses and items which were reflected in a completed document.

2354-55 The Canadian contract was authorized by Order in Council P.C. 561 of March 22nd, 1938 (Exhibit 246); was signed on March 31st, 1938 (Exhibit 38); was announced to the public by the Department of National Defence in a press release on May 5th, 1938; and was tabled in Parliament June 29th, 1938.

The War Office contract, which was complementary to the Canadian contract, was not signed until July 15th, 1938.

470-73 During the last week of August, 1938, an advance copy of
4059-63 Col. Drew's article that was to appear in Maclean's magazine came to the attention of the Deputy Minister and other Department officials. As a result of a conference with Major Hahn in Ottawa at that time a letter was taken subsequently from the Company (Exhibit 43) dated September 3rd, 1938, fixing the amount of the maximum over-riding profit accruing to the Company under the contract; the provision in the contract being thought susceptible of a construction by which the Company might get a larger profit.

3951 No lawyer (excepting Col. Orde who as Judge Advocate General has multifarious duties and would not claim to be a commercial lawyer) passed upon the intricate terms and conditions of the
3962 contract for the Department; apparently the Department of Justice was not consulted.

The Minister said he never went over the proposals of Major Hahn in detail.

2334 I had infinite confidence in my technical advisers and also in the final jurisdiction and supervision of the Interdepartmental Committee which I was largely instrumental in creating myself.

2349 Further, the Minister said that he had no discussion with regard to the various terms of the contract; "that is to say, the changes which were being suggested in the contract."

If we did not have a committee like that (the Interdepartmental Committee) that would be obviously my duty but I considered that I was, and the public more than myself, being amply protected by this body of able and experienced men, such as made up the committee.

235S With reference to Major Hahn, the Minister said:

In the first place, there was my knowledge of his wonderful military record which required qualities of great fidelity, as I said yesterday, and loyalty. Second, there was the fact that the officers in my own department seemed to think that he was very capable and a very competent gentleman in every way.

At the close of his examination by Government counsel, the Minister made the following statement:

I may say, so far as I am concerned, I have the utmost 2360 trust and faith that this is a good contract for the people of Canada, because I am sure that the War Office people and the British people, with their wonderful experience, knowledge and training would not enter into a contract which was not for the public good. I rely very much upon their judgment, as well as upon the integrity of my own officers, and the supervision and jurisdiction of the Interdepartmental Committee.

A good deal of emphasis was given to a certain cablegram (Exhibit 139) that the Manager of the Bank of Montreal in Toronto sent to the Deputy Minister while he and the Minister were in London in May, 1937. Major Hahn, having been asked by the Deputy Minister for a banker's reference, telephoned from London 2321 to Toronto and as a result the following cablegram (Exhibit 139) was sent direct to the Deputy Minister:

May 21, 1937.

To LaFLECHE—London.

In regard to Major Hahn we have had business dealings with him extending over many years and he is held in high regard by us and generally stop Is a man of substantial means, good character, integrity, initiative and possesses good ability of an executive and organizing nature stop Has recently been engaged in efforts for the resumption of activity of the John Inglis Company following death of John Inglis.

H. F. SKEY,
Manager, Bank of Montreal, Toronto.

Col. Orde said that subsequent to the midnight meeting of the Interdepartmental Committee of March 17-18, 1938, he drafted a document which "might or might not become the British contract 4020 ultimately." Then on March 28 or 29 Col. Orde went to Toronto to represent the Department in settling the terms of the British 4021 contract so as to make it uniform, so far as possible, with the Canadian contract. He attended a conference with Major Hahn and the Company's counsel, Mr. J. F. Lash, K.C., in the law offices of Messrs. Blake, Lash, Anglin & Cassels, in Toronto, and there an agreement was drafted of which Col. Orde's working copy which he brought back to Ottawa was filed (Exhibit 378R). On March 31, 4045-46 1938, Col. Orde sent a letter to Major Hahn (Exhibit 383) enclosing twelve copies of the revised draft for the British agreement.

While Col. Orde was in Toronto with Mr. Lash on March 28 4022-23 or 29 the latter drafted a letter to be signed by the John Inglis Company and to be sent to Sir Harold Brown, which was to be a covering letter to accompany two or three copies of the final draft agreement which it was the intention of the Company to execute and to send to the War Office for execution by the War Office. That letter, dated April 2, 1938, was sent by the Company to the War Office and a copy of it was sent to the Deputy Minister by Major Hahn in a letter of April 5, 1938 (Exhibit 379). On May 7, 1938, 4027-28 the Director of Army Contracts of the War Office wrote a letter to the Inglis Company (Exhibit 380) which acknowledged receipt

of Major Hahn's letter of April 2 to Sir Harold Brown and proceeded to ask for an explanation of certain variations in the conditions of the revised agreement as compared with the draft agreement which was agreed between the War Office and Major Hahn. It is to be recalled that Major Hahn had been in England in February. Exhibit 4032 381 contains a letter of May 19, 1938, from Major Hahn to the Deputy Minister enclosing a copy of a draft letter dated May 20 from Major Hahn to the Director of Army Contracts which Col. Orde said Major Hahn had drafted in his (Col. Orde's) office in 4026 Ottawa some time in May, and also a copy of a letter of May 20, 1938, which the Deputy Minister was sending to the Secretary of the Office of the High Commissioner for Canada. These letters are set out in full in the record at pp. 4031-4040. The Deputy Minister in his letter to the High Commissioner's Office on May 20 said in part:—

For the reasons which I have outlined, the Department ventures to suggest that it would be preferable to have the War Office contract conform in detail with the one which the Department has executed, but of course this is a matter for the War Office to determine, and it is understood that the contractor will accept any changes by way of clarification which are desired.

4042 Under date of July 20, 1938, the Director of Army Contracts advised Major Hahn that the British contract had been signed.

At an early stage of the Inquiry, an assurance was given by the Canadian Government to the Government of the United Kingdom (your Commissioner and all counsel concurring) that if any reference were made to the War Office contract in any published report of the Commission, the Canadian Government would secure that this be accompanied by an official statement making it clear that the War Office contract was not within the terms of reference to the Commission and that while certain information was supplied by permission of the Government of the United Kingdom regarding the contract entered into by them, the Commissioner had no authority to offer any comment or criticism on the terms of that contract or the circumstances in which it was entered into (Exhibits 45, 64, 65 and 95).

It has been necessary for me, in view of what occurred during the deliberations of the Interdepartmental Committee as disclosed by the evidence, to refer (without any intention of commenting upon or criticizing the War Office contract) to the dates of the final drafting and settlement and of the signing of the War Office contract in their relation to the Canadian contract.

2310 That the Canadian Department pressed the War Office in the matter up to at least November, 1937, is frankly admitted. The Minister stated the situation generally in these words in his evidence:

... it was a sustained endeavour to press the British authorities for a decision as to whether they would produce in Canada or not. That is the tenor of all the correspondence for nine or ten months in 1937—a sustained endeavour to obtain a decision from the War Office as to whether or not they would place an order for Bren guns in the Dominion of Canada. That was carried on until November of 1937, I think.

2232-35 As early as December 24, 1936, the Minister had revised and approved a letter (Exhibit 107) to External Affairs requesting that a cable be

sent to the Government of the United Kingdom for the attention of Sir Thomas Inskip, containing these words:

Canada is prepared to proceed if War Office can place initial order for not less than five thousand Bren guns.

Prior to April 20, 1937, the Department had asked External Affairs on different occasions to send cables to the High Commissioner in London to press the matter forward upon the War Office (December 28, 1936, Exhibit 205; January 8, 1937, Exhibit 111; January 22, 1937, Exhibit 117; February 5, 1937, Exhibit 119; March 8, 1937, Exhibit 124; and March 23, 1937, Exhibit 126). On April 20, 1937, the Deputy Minister having received a cable (Exhibit 128) from Major Hahn, who was then in London,

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4671-77 }

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Canada House claims cables not received Advise, wrote Dr. Skelton, the Under Secretary of State for External Affairs (Exhibit 132):

On discussing the matter with my Minister this morning, he requested that I explain the great importance and urgency of this problem and to request that immediate action be taken to assist Major Hahn who evidently intends to remain in London for a few more days.

The requested cables had not been sent; and Dr. Skelton replied to the Deputy Minister under date of April 23, 1937 (Exhibit 134) that the Prime Minister (who is the Secretary of State for External Affairs) had informed him after a meeting of Council that it was not thought advisable to request the Government of the United Kingdom to place in Canada munitions orders of this type.

The Deputy Minister left for England April 24th and did not recall receiving Dr. Skelton's letter before he left; he returned to Ottawa about July 1, 1937. All subsequent cables between either the Minister or the Deputy Minister and the High Commissioner's Office or the War Office (excepting Exhibits 215 and 191 of February 2 and 5, 1938, which were in reply to messages (Exhibits 213 and 190) that had come from the High Commissioner's Office through External Affairs) went direct through naval signals and were not sent through External Affairs (these cables run from July 29, 1937, to March 24, 1938, being Exhibits 163, 167, 171, 177, 184, 188, 196, 208, 212, 221, 231, 233, 239, 248, and 249). A good many communications passed directly between the Department and Col. Loggie, who was sent by the Department to London in October, 1937. Col. Loggie is a senior Ordnance Corps Officer and has his office in Canada House, London. This was the first time that the Department had appointed an Ordnance Officer to London. Although communications could be sent by the Department to London through the government naval wireless without any charge, the evidence discloses several transatlantic telephone calls at critical periods from the Department to Col. Loggie costing, for instance, in one case \$77 and in another case \$42 and others at \$28 and \$35 (Exhibits 266 and 267) of which conversations no records were kept by the Department.

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Col. Drew argued that this change of method of communication was designedly to avoid the messages going through External Affairs because the Prime Minister would become aware of the continued pressure upon the War Office. Col. Drew said:

I think Mr. Mackenzie King has shown the greatest possible desire that anyone could show to obtain the facts here

4671-77

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and I am satisfied from the evidence and from his own departmental letters that if he had had the slightest knowledge of the real pressure that was being brought to bear, that this contract would have not been signed. When these matters were brought to his attention, he acted I think with the most commendable promptness one could possibly imagine. He certainly acted with the utmost fairness in assuring a full disclosure of everything connected with this contract. I submit that the evidence here conclusively shows that he was not only unaware of what was taking place, but that he had every reason to believe that his instructions conveyed through Dr. Skelton in April, 1937, were being carried out and that a directly opposite course was not being followed.

2315-16

The explanation given, as I understood it, for the change of the method of communication was that while the Minister was in London in May, 1937, at the time of the Imperial Conference, the Canadian policy with regard to co-operation between the United Kingdom and Canada regarding ammunition supplies had been definitely laid down. The Minister said that the Government

would not by ourselves or as agents for any other government enter into the manufacture of arms for any other government. But we would welcome and appreciate any order given to a Canadian industry or by any other government, and would be willing indeed to give them all the information at our disposal with reference to their suitability and financial status—but that neither by us, with us, or through us, would any contract be entered into by another government.

2317

That was the policy, the Minister said, which was referred to in the telegram of February 5, 1938 (Exhibit 191), which was sent to the High Commissioner as follows:

Your cablegram 3rd February. National Defence state position of Canadian Government was made very clear at the Imperial Conference in that Government while welcoming complementary orders for supplies from British Government would prefer British Government to deal direct with Canadian contractors. This would not tend in any way to prejudice relationship between the two governments. At the same time co-operation of British Government in regard to complementary orders would be greatly appreciated.

That was in reply to a cable from the High Commissioner's Office of February 3, 1938, which read as follows (Ex. 190):

At meeting held this morning Sir Harold Brown asked representative this Office why Canadian Government considers it essential for United Kingdom Government to negotiate a separate contract for Bren guns. Brown mentioned he had raised this question on several occasions and has received no answer. Would appreciate cabled reply to-day if possible as second meeting is to be held to-morrow afternoon (4th).

It was on November 9, 1937 (Exhibit 182), that the War Office had informed the Department by cable that the British Government was then "ready to negotiate" for the purchase of 5,000 Bren guns to be manufactured by the John Inglis Company subject to some substantial reduction in cost. The Deputy Minister said "it (i.e.,

the cable) made of the John Inglis the sole source of supply for 1554 departmental guns." The exact language of the cable was this:

British Government has approved negotiations as to second source supply of Bren guns in Canada. Present proposed expenditure involved to British Government is not regarded favourably but War Office is now ready to negotiate for purchase of 5,000 Bren guns manufactured by John Inglis subject to some substantial reduction in cost. Will you arrange for representative to proceed early to this country for negotiations or do you prefer we discuss with Canadian High Commissioner in first instance.

A letter from Sir Harold Brown, dated January 21, 1938 (Exhibit 211), not specifically referable to the manufacture in Canada of Bren guns, enunciates a general principle of the War Office respecting orders for manufacture in Canada.

I am very anxious, as you know, that we should, as a matter of principle, use the firms with which you yourselves are placing orders, . . .

The letter closes with a specific reference to the Bren guns, as follows:

I am also very anxious to get a move on with the Bren gun proposition, if possible, the difficulty being, of course, that the longer the matter is delayed the less favourable the proposition appears vis-a-vis Enfield production.

On February 2, 1938, the High Commissioner through External Affairs reported to the Department (Exhibit 213) that Sir Harold Brown apparently did not wish to discuss Bren gun contract unless through some Government official.

Confidential No. 27. Sir Harold Brown, Director General of Munitions Production, states that in reply to message from Hahn, who presumably is arriving in London to-day, interview has been arranged between Brown and Hahn to-morrow, February 3, 12 o'clock. Brown repeating attitude already taken up asks that representative of High Commissioner's office be present, implication being that Brown does not wish to discuss Bren gun contract unless through Government official. In the absence of any instructions regarding Hahn's visit, would appreciate cabled reply to-day stating if official representative is to accompany Hahn and if so in what capacity.

And on February 9, 1938, Sir Harold Brown cabled (Exhibit 218) that

draft of Bren contract with John Inglis Company now agreed in detail by War Office.

On March 28, 1938, the following message was received by the Deputy Minister from Sir Harold Brown (Exhibit 251):

Your two telegrams received. We are ready to sign and despatch Inglis contract as soon as amendments are received. Trust that work will proceed and order for plant will be placed immediately.

As appears from the communications quoted above, the War Office as late as February 3, 1938 (Exhibit 190), was still adhering

2315-16

to its desire to deal with the Canadian Government and not with a Canadian manufacturer direct. It had, however, as appears from the Minister's testimony, become the settled policy of the Canadian Government not to act as agents for the War Office in dealing with Canadian manufacturers. Nevertheless from the earliest stage of the discussions and negotiations between Hahn and the Department of National Defence for the manufacture in Canada of the Canadian requirements of Bren guns, the plan the Department was aiming to put into execution involved and required a complementary order from the War Office so that a larger production would reduce the ultimate cost of each gun. This was well understood by Hahn. It was also recognized that an order from the Canadian Government and an order from the War Office must hang together in this sense: that the War Office order would not be given to a Canadian manufacturer until the War Office was assured that a Canadian Government order would also be placed with the same manufacturer. The War Office was concerned, no doubt, with the reduction of cost that would result from the larger production; but it is plain that the policy of the War Office was to give any orders that were to be given for manufacture in Canada to firms with which the Canadian Government were themselves placing orders.

1553-54

It clearly results from the evidence that the Department having introduced and sponsored Hahn to the War Office and the War Office having in November, 1937 (after a full year of pressure by the Department upon it) expressed its readiness to negotiate with the Inglis Company for the production of 5,000 guns, and the negotiations having proceeded to the point where on February 9, 1938 (Exhibit 218) a draft contract with the John Inglis Company had been agreed in detail by the War Office, the matter had been brought into such a posture that the Department felt it was really not in a position to propose to the War Office the consideration of another contractor. This appears to be the effect of the statements made by the Deputy Minister when the proposed contract was before the Interdepartmental Committee as well as of his testimony relating to the effect of the War Office cable of November 9, 1937 (Exhibit 182).

1553-54

Much stress was laid during the evidence and on argument upon what was termed the "pressure" from either the War Office upon Canada or from Canada upon the War Office, subsequent to the War Office cable to Canada of November 9, 1937 (Exhibit 182). That pressure from Canada upon the War Office during the period was continuous is in my view the proper inference from the facts directly proved in evidence. A single document may be taken here or there and, read by itself without the surrounding facts and circumstances, might leave a different conclusion, but the evidence and the surrounding facts must be taken as a whole if a fair and proper inference is to be drawn. In view of what has already been said, it is not necessary to dwell upon this controversy as to "pressure" subsequent to November 9, 1937. It is more important to recall that, as the Deputy Minister in effect testified, the matter of the choice of a contractor for "departmental guns" was from his point of view virtually concluded by the War Office cable of November 9, 1937 (Exhibit 182). The proposed production of Bren guns in Canada having been before the War Office almost continuously from Major Hahn's first visit in November, 1936, down to the end of January, 1938, the War Office then very naturally expressed its anxiety that progress should be made and suggested that delay might be prejudicial (Exhibit 211).

The contract is not for a fixed sum; it is on a cost plus basis. It is admitted that we do not know how much the guns are going to cost. There are, of course, adequate powers of inspection, supervision and control vested in the Department under the contract and with the estimates from Enfield of what the guns there are costing it should be possible to keep actual cost here well within bounds. 4366

No substantial objection can be taken in my view to the provisions of the Canadian contract, though in the absence of any competitive bids or terms of manufacture I am unable to pass upon the substance as distinct from the form of the contract. It is important, of course, that the contract be a good and businesslike contract; but what is more important after all is whether the procedure adopted in making the contract was that best calculated to protect the public interest and to secure the confidence of the people of Canada that there would be no improper profiteering in the private manufacture of war armaments for the defence of the country.

That is a question upon which the Government and Parliament, in the light of the evidence brought before the Commission, must pass.

Much emphasis was laid throughout the Inquiry by the Department officials and counsel upon what was said to be a saving of something like \$1,300,000 to the Canadian Government due to the participation of the War Office. Mr. Fraser Elliott in his evidence estimated that Canada made a capital saving of \$551,000, being one-third of the total amount which it is estimated will be paid for the machinery. All the machinery used in the manufacture is at the expiration of the contract to become the property of the Canadian Government, although the War Office has agreed to bear one-third of its cost. It was at first suggested that the War Office should contribute five-twelfths of this cost but this proportion was reduced finally to one-third. Then there is an estimated saving of about \$800,000 in production costs due to the fact that Canada's 7,000 guns are being made as part of a total production of 12,000 instead of being made under a single order. 943-45

During the argument Government counsel said this: 4368-69

THE COMMISSIONER:

Q. Of course that would apply to any Canadian manufacturer who had been selected.

MR. RALSTON:

Quite right.

THE COMMISSIONER:

It is nothing personal to Hahn.

MR. RALSTON:

Quite right, Mr. Commissioner, but at the same time I think it is certainly an important thing from the point of view of the public. They say, "Hahn or anybody else; we want to know what kind of contract we have."

* * *

On the question whether tenders should have been called for, Government counsel argued that there was ample evidence on which it could be found that a specialty of this kind (i.e., the Bren gun), a new art in Canada, is not a subject for the calling of tenders from manufacturers; that it has to be dealt with on a cost plus basis, at least in the initial stages. 4366

3120-2 It was contended by Government counsel that the very nature of the article to be manufactured made it impracticable to call for tenders as you would for a can-opener or a cork-screw and that calling for tenders of firm prices would result in a very difficult situation for any firm. At a late stage in the hearings (30th day)

3816 Government counsel indicated their intention to call representatives of American and Canadian armament manufacturers on the question of the practicability of making a tender on the gun. Your Commissioner took the position that

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It is at least a plausible view that the question whether tenders should be called for in such a case is a matter of administrative policy, upon which competent opinion is, or may well be, divided, and one therefore peculiarly for the Government and Parliament.

* * *

The more I think of it, the more I can see the almost endless scope of such a line of evidence—one manufacturer saying one thing, and another manufacturer saying something else, one manufacturer actuated by one set of considerations and another manufacturer actuated by different considerations. Where am I going to stop? This may land me in a hopeless and endless controversy.

3900 Subsequently, Government counsel stated that they had considered the matter during adjournment and in view of what your Commissioner had said—and in which they stated they could see there was considerable force—had decided not to press the matter further.

4706-7 What is obvious, of course, is this: that if the Government has an article to be manufactured for which by its very nature it is not practicable to call for tenders and the policy of private manufacture is to be adopted, then at once the heaviest sort of responsibility falls upon those charged with the duty of selecting the individual, firm or corporation to manufacture the article. The question is: Were proper and sufficient steps taken in this case to discharge that responsibility? Upon the whole evidence, that is a question for the Government and Parliament to pass upon.

* * *

3252 Mr. Hugh Plaxton retired from the law firm of Plaxton & Company on the 12th day of October, 1935 (Exhibit 335) but continued to occupy a separate room in the firm's suite of offices under an arrangement with the continuing partners regarding office space and clerical staff. He testified that since his retirement he had derived no financial benefit from the said law firm and that he had no interest, direct or indirect, in the accounts of Plaxton & Company (Exhibit 334)

3240-45 with either the group or the John Inglis Company. He testified further that he had no agreement, verbal or otherwise, with any one directly or indirectly identified with the John Inglis Company or the contract; that he had no claim against the John Inglis Company at the time the contract was signed and no claim in the meantime against any of the gentlemen associated with the John Inglis Company; and had no interest, direct or indirect, present or prospective, in the contract or in the shares or property of the John Inglis Company or in the shares which his brothers, Gordon and Herbert Plaxton, own or may be entitled to in the John Inglis Company.

* * *

There is no evidence that any member of the Senate or of the House of Commons of Canada was admitted to any share or part of the contract, or to any benefits to arise therefrom, or had been promised or given any suggestion that he was to have any share or part of the contract or was to be admitted to any share or part of the contract, or to any benefit to arise from the contract.

The evidence relating to the activities of Mr. Hugh Plaxton prior to the making of the contract has already been set out or referred to in this Report, and with that exception (and excepting of course the Minister presiding over the Department of National Defence) there is no evidence that any member of the Senate or of the House of Commons of Canada had any connection with or took any part in the discussions or negotiations leading up to the contract.

There is no evidence that any senator or member had any connection with or took any part in the affairs of the Company or in the sale of shares or securities of the Company.

I think it right to say that there is no evidence (nor is there in the evidence any ground for suspicion) that the Minister or the Deputy Minister or any officer or official of the Department of National Defence was guilty of any act of corruption or anything in the nature of corruption.

* * *

The history of the ancient institution of the Royal commission as one among several methods of public inquiry and its legal position in the British system of government are well known. Two American scholars have recently done a very valuable piece of research in a study of Royal commissions under the British system (Royal Commissions of Inquiry, by Clòkie and Robinson, 1937. Reviewed by Professor W. Ivor Jennings, of the University of London, in the Law Quarterly Review, October, 1938, Vol. 54 at p. 589.)

One of the essential objects, if not the primary object, of a Royal commission has always been the recommendations that might be made by the Commissioners as in a report of a departmental committee.

What is plain to me at the end of this long inquiry is this: that if the policy of private manufacture of war munitions and armaments is to be continued in this country (a question of administrative policy for the Government and Parliament to determine), once the requirements are determined by the Department of National Defence the negotiations leading up to and the making of contracts between the Government and private manufacturers either for the purchase or production of such munitions or armaments should be put into the hands of an expert advisory group of competent business men—a capable and experienced manufacturer, a commercial lawyer who has had a wide practice in dealing with large commercial contracts, a representative of labour, and say a chartered accountant who has had experience in the examination of substantial business transactions. These persons should constitute a board (which might be known as the "Defence Purchasing Board") and be made directly accountable to the Prime Minister or to the Minister of Finance. It is no reflection upon the technical skill and knowledge of the military officers and officials of the Department of National Defence to say this for it is a matter requiring quite a different training and knowledge and quite a different experience from military training and experience. Nor is it any reflection upon the members of the



Interdepartmental Committee that was set up by the Government. At the time of the creation of that committee it was thought to be, I am fully satisfied, an adequate safeguard. But they are very busy men in their own departments and the evidence satisfies me that they have neither the time nor the precise kind of knowledge and experience necessary for selecting the manufacturers and settling the provisions of such contracts.

4707 All the sittings of the Commission were public and your Commissioner was pleased to hear counsel characterize the Inquiry, at its close, as "a most searching and thorough inquiry." In concluding this Report your Commissioner craves leave to repeat what he said publicly at the conclusion of the hearings of the Commission (November 24, 1938):

4710-11 Well, gentlemen, we are now coming to the close of a long inquiry, and even though three months have not yet elapsed since the creation of the commission none the less it is difficult to place ourselves back under the conditions which existed in this country at the time of my appointment to conduct this inquiry. The then European situation was singularly critical and dark. It was because of those extraordinary circumstances that I was excused by the Chief Justice of Canada from my regular duties and made available to undertake this special commission at the request of the Government of Canada.

Whatever misgiving there may be on my part or on the part of anyone else in my having undertaken this very important work, the fact remains that it was only undertaken under those very unusual circumstances.

HENRY HAGUE DAVIS.

OTTAWA,

December 29, 1938.