

THE MATTER OF ORDER IN COUNCIL P.C. 2008-1092,
MADE PURSUANT TO PART I OF THE *INQUIRIES ACT*:
COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS
RESPECTING BUSINESS AND FINANCIAL DEALINGS
BETWEEN KARLHEINZ SCHREIBER AND THE RIGHT
HONOURABLE BRIAN MULRONEY

FINAL WRITTEN SUBMISSIONS
THE RIGHT HONOURABLE BRIAN MULRONEY, P.C., C.C., LL.D.

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PART I. INTRODUCTION / OVERVIEW

1. As its Terms of Reference and official name make clear, the *raison d'être* for this Commission of Inquiry was to investigate certain allegations that had been made by Karlheinz Schreiber against the Right Honourable Brian Mulroney, P.C., C.C. – and, in particular, the allegations contained in an affidavit he swore on November 7, 2007.

2. Since it was created a year ago, the Commission has received thousands of documentary exhibits and heard testimony from more than two dozen witnesses. In the end, not only have Mr. Schreiber's allegations been proven false, there is no basis in the evidence to suggest Mr. Mulroney engaged in any wrongdoing or did anything illegal, either as Prime Minister or thereafter.

3. These submissions attempt to offer a comprehensive summary of the evidence which has been presented. For ease of reference, it has been structured to cover the main topics in chronological order.

4. These submissions also set out the factual and legal conclusions that are most logically supported by the oral testimony and documentary exhibits accepted into evidence by the Commission. These conclusions are then used to answer the questions contained in the Terms of Reference.

5. It is respectfully submitted that the evidence led at this Commission clearly supports, *inter alia*, the following conclusions:

The Bear Head Project

- Prior to his becoming Prime Minister of Canada, Mr. Mulroney's contact with Mr. Schreiber was extremely limited, consisting of very few social encounters.
- At no time, while Prime Minister of Canada, did Mr. Mulroney pressure or direct anyone in his government to either approve the Bear Head Project or sign the 1988 Understanding in Principle.
- The evidence confirms that Mr. Mulroney did not know about, or benefit from, any success fees paid by Thyssen following the signing of the 1988 Understanding in Principle.
- The Bear Head Project, as initially conceived and proposed, was rejected and/or abandoned by July 1991, within months of Prime Minister Mulroney having said that the project was "dead" – it was never approved in any form by Mr. Mulroney's government.

The Private Commercial Dealings with Mr. Schreiber

- The Karlheinz Schreiber that Mr. Mulroney agreed to meet in the summer of 1993 was, to his knowledge, a legitimate businessman who came highly recommended by two of Mr. Mulroney's closest friends.
- Apart from an informal acknowledgment that they might talk again once Mr. Mulroney had left office, no agreement of any kind was made between Mr. Schreiber and Mr. Mulroney at Harrington Lake.
- The mandate that Mr. Mulroney accepted from Mr. Schreiber at the Mirabel Airport Hotel was related to Mr. Schreiber's international

business interests – which initially were exclusively in respect of the international promotion of peacekeeping vehicles.

- The UN standardization concept which Mr. Mulroney devised was entirely consistent with both emerging trends at NATO and practices being considered by the UN at that time.

Compliance with the 1985 *Ethics Code*

- The payments received from Mr. Schreiber did not relate, in any way, to anything Mr. Mulroney might have done prior to 1993 or while he was Prime Minister of Canada, but to the private and legitimate commercial transaction described above.
- Mr. Mulroney never, either before or after leaving office, agreed to or attempted to lobby the Canadian government on behalf of Mr. Schreiber or Thyssen.
- There is no evidence whatsoever that Mr. Mulroney ever discussed the so-called Bear Head Project or the acquisition of Thyssen military vehicles with any Canadian officials after he left office.
- The mandate accepted by Mr. Mulroney, to assist in the international promotion of Thyssen peacekeeping vehicles, did not violate the post-employment provisions of the 1985 *Ethics Code*.

The Airbus Affair

- The Letter of Request had a devastating impact on Mr. Mulroney and his family, one which significantly affected how they dealt with the media.
- Mr. Mulroney answered the questions put to him by Mr. Sheppard honestly and in a manner fully consistent with his legal rights and obligations.

The Impact of Mr. Schreiber's Arrest in 1999

- Prior to Mr. Schreiber's arrest, Mr. Mulroney had no knowledge of the criminal charges brought against Mr. Schreiber in Germany for fraud, forgery, bribery and income tax evasion.
- Mr. Mulroney's voluntary tax declaration, initiated in 1999 and concluded in 2000, conformed to Revenue Canada's policies and administrative practices in place at that time.
- There is no credible evidence that Mr. Mulroney and/or Mr. Doucet engaged in any attempts to either contrive a mandate or create a history that would cast Mr. Mulroney's financial dealings with Mr. Schreiber in an acceptable light.
- The document prepared by Mr. Doucet, on his own initiative, was essentially consistent with the mandate given to Mr. Mulroney by Mr. Schreiber.

The Inappropriateness of Inadequately Documented Arrangements

- Notwithstanding that the mandate received from Mr. Schreiber was legal and in full compliance with the post-employment provisions of the 1985 *Ethics Code*, it is acknowledged that it is inappropriate for former public office holders to have inadequately documented business arrangements, as they can raise legitimate suspicions in the minds of reasonable Canadians.

PART II. ORIGINS OF THE COMMISSION

6. Before embarking on a detailed examination of the matters that were investigated by the Commission, it is important to consider first the history and origins of the Commission itself – as the story of how the Commission was created is inextricably linked to the events that preceded it.

7. On November 7, 2007, Karlheinz Schreiber swore and filed an Affidavit in connection with a lawsuit which he had commenced against Mr. Mulroney. The lawsuit, the first of two that Mr. Schreiber would file in as many provinces, related to a legitimate and legal commercial relationship he had with the former Prime Minister.

Affidavit of Karlheinz Schreiber, Karlheinz Schreiber (Plaintiff) – and –Brian Mulroney (Defendant), November 7, 2007 Exhibit P-7, Book 3, Tab 21 (“2007 Schreiber Affidavit”)

8. The Affidavit contained serious new allegations against Mr. Mulroney, one that would result in a public outcry both from the media and the opposition parties in the House of Commons. It was this Affidavit, and the allegations it contained, which proved to be the catalyst for the creation of this Commission of Inquiry.

9. One serious new allegation contained in the Affidavit was that on June 23, 1993, and while still Prime Minister, Mr. Mulroney entered into a business arrangement with Mr. Schreiber to lobby the federal government and his successor, the Right Honourable Kim Campbell, in an effort to gain approval for the Bear Head Project in Nova Scotia.

2007 Schreiber Affidavit, at paras. 15-17

10. On November 8, 2007, one day after Mr. Schreiber’s Affidavit was filed, served and released to the press, Prime Minister Harper announced the appointment of “an independent and impartial third party to review what course of action may be appropriate given Mr. Schreiber’s new sworn allegations.” [emphasis added]

Statement of the Right Honourable Stephen Harper, November 9, 2007

11. On November 14, 2007, Professor David Johnston was appointed “to conduct an independent review of those allegations respecting financial dealings between Mr. Schreiber and the Right Honourable Brian Mulroney...[and] make recommendations as to the appropriate mandate for a public inquiry into those allegations.” [emphasis added]

News Release, Office of the Prime Minister: “Prime Minister announces appointment of independent advisor”, November 14, 2007

12. On June 12, 2008, pursuant to Order in Council P.C. 2008-1092, the Governor in Council issued the Terms of Reference which established this Commission of Inquiry to conduct an inquiry into certain allegations respecting business and financial dealings between Mr. Mulroney and Mr. Schreiber.

13. The preamble stated: “Karlheinz Schreiber has made various allegations with respect to his business and financial dealings with [Mr. Mulroney] including those made in an affidavit sworn on November 7, 2007 and those made with respect to an agreement allegedly reached on June 23, 1993.” [emphasis added]

14. To the extent, therefore, that the origins of this Commission are tied to Mr. Schreiber’s November 7, 2007 Affidavit – and the serious allegations contained therein – the veracity of that Affidavit must be at the heart of its investigation and ultimate findings, and is the logical place for it to begin its analysis.

15. It is beyond debate that the Affidavit sworn by Mr. Schreiber on November 7, 2007 is riddled with misleading statements, factual inaccuracies and outright lies. The cumulative effect of these failings exaggerate Mr. Schreiber’s personal relationship with Mr. Mulroney and distort the nature of their business dealings.

16. While many of the major factual omissions and errors in the Affidavit will be discussed in greater detail in subsequent sections, it is important to highlight at the outset some of the Affidavit’s main deficiencies as conceded by Mr. Schreiber in the course of his testimony.

17. At paragraph 3 of the Affidavit, Mr. Schreiber swore that he had “several” meetings with Mr. Mulroney at the Ritz-Carlton before Mr. Mulroney became leader of

the Progressive Conservative Party of Canada. Under cross-examination, however, Mr. Schreiber conceded that there may have only been a single meeting at the Ritz-Carlton.

Transcript, Evidence of Karlheinz Schreiber (hereinafter "Schreiber Evidence"), April 16, pp. 854-855¹

18. At paragraph 6 of the Affidavit, Mr. Schreiber swore that his "first official meeting" with Mr. Mulroney happened in late 1983 when he introduced him to Max Strauss. Yet, under cross-examination, Mr. Schreiber confirmed that it was actually a brief encounter where no business was transacted.

Schreiber Evidence, April 16, pp. 861-862

19. At paragraph 10 of the Affidavit, Mr. Schreiber swore that he had received a letter from Mr. Mulroney on September 18, 1989 which confirmed that they had been "writing letters to one another". Yet, under cross-examination, Mr. Schreiber confirmed that the letter in question makes no reference to any ongoing exchange of correspondence.

Schreiber Evidence, April 16, p. 876

20. At paragraph 16 of the Affidavit, Mr. Schreiber swore that he retained Mr. Mulroney in 1993 to support his efforts to obtain approval for a heavy industrial facility in Nova Scotia. Yet, when challenged, Mr. Schreiber admitted that the statement was "not quite accurate" as the Nova Scotia project was "already gone" by 1993.

Schreiber Evidence, April 14, p. 432

21. At paragraphs 28 and 29 of the Affidavit, Mr. Schreiber swore that his lawyer received a call from Mr. Mulroney's lawyer in 1997 and then, two years later, two calls from Mr. Mulroney himself. Yet, when challenged, Mr. Schreiber acknowledged that this was an error and that the calls had all taken place in 1999.

Schreiber Evidence, April 16, p. 946

¹ All transcript citations refer to the original language transcripts of the proceedings of the Oliphant Commission.

22. At paragraph 33 of the Affidavit, Mr. Schreiber swore that he met Mr. Mulroney at a black tie dinner at the Royal York in May 2000 – what he termed the “Royal York Meeting”. Yet, under cross examination, Mr. Schreiber conceded that the alleged “meeting” was a “chance encounter” in the main dining hall as Mr. Mulroney walked past Mr. Schreiber’s table.

Schreiber Evidence, April 16, pp. 862-866

23. Finally, at paragraphs 38 and 39 of the Affidavit, Mr. Schreiber swore that he wrote a letter to Mr. Mulroney – at Mr. Mulroney’s request – in July 2006 because “he told me” he was going to meet Prime Minister Harper. Yet, under cross examination, Mr. Schreiber admitted that he had not spoken to Mr. Mulroney since May 2000 – some six years earlier.

Schreiber Evidence, April 17, pp. 997-1000

24. Moreover, during his testimony Elmer MacKay indicated that he had no recollection of having been told that Mr. Mulroney was going to be meeting with Prime Minister Harper in the summer of 2006, nor any recollection of having conveyed that information to Mr. Schreiber. Consequently, there is no evidence that Mr. Schreiber was told by anyone that Mr. Mulroney was meeting with the Prime Minister.

Transcript, Evidence of The Hon. Elmer MacKay (hereinafter “MacKay Evidence”), May 4, p. 2832

25. The falsehoods contained in Mr. Schreiber’s November 2007 Affidavit not only cast serious doubt on the central allegations made against Mr. Mulroney concerning their business dealings, they also call into question Mr. Schreiber’s credibility as a witness in these proceedings.

26. It is respectfully submitted that the evidence heard by this Commission supports the conclusion that the serious allegations contained in Mr. Schreiber’s November 2007 Affidavit are false and without foundation. This is of critical importance insofar as the November 2007 Affidavit was the principal reason this Commission was established.

PART III. FIRST ENCOUNTERS (1955-1983)

27. Notwithstanding that Mr. Schreiber's affidavit was filed two years ago, and that the allegations contained therein relate to events which took place some fifteen years earlier, the context in which those allegations must be considered goes back more than fifty years. And, as Mr. Mulroney testified, "in life context is everything."

Transcript, Evidence of the Rt. Hon. Brian Mulroney (hereinafter "Mulroney Evidence"), May 12, p. 3381

28. In the autumn of 1955, Mr. Mulroney went to pursue his studies at St. Francis Xavier University in Antigonish, Nova Scotia. It was there that he met a number of people including Gerry Doucet, Fred Doucet, Pat MacAdam and Lowell Murray.

Mulroney Evidence, May 12, pp. 3390, 3392; May 13, p. 3619; May 14, pp. 3897-3898

Transcript, Evidence of Fred Doucet (hereinafter "Doucet Evidence"), April 27, pp. 2013-2014, 2016-2017

Transcript, Evidence of The Hon. Lowell Murray (hereinafter "Murray Evidence"), May 5, pp. 2944-2945

Transcript, Evidence of Pat MacAdam (hereinafter "MacAdam Evidence"), April 20, p. 1249

29. After four years at St. Francis Xavier, and another year at Dalhousie Law School in Halifax, Mr. Mulroney had developed an affinity and affection for Atlantic Canada and, in particular, Nova Scotia. It was also during this same period of time that Mr. Mulroney became actively involved in the Progressive Conservative Party of Canada.

Mulroney Evidence, May 12, pp. 3390-3391, 3393

Murray Evidence, May 5, p. 2944

(i.) Fred Doucet

30. In the late 1970s, after Mr. Mulroney's initial attempt to secure the leadership of the Progressive Conservative Party and while he was President of the Iron Ore Company, he developed a close friendship with Fred Doucet as they worked together on a fundraising campaign for their *alma mater* St. Francis Xavier University.

Mulroney Evidence, May 12, pp. 3392-3393

31. Mr. Doucet later served as a key organizer in Nova Scotia for Mr. Mulroney's successful leadership campaign in 1983 and, when Mr. Mulroney became Leader of the Opposition later that same year, Mr. Doucet was appointed as his first Chief of Staff – where he worked alongside fellow alumnus Pat MacAdam. Mr. Doucet was subsequently appointed as Ambassador and Chairman of the Organizing Committee for International Summits, a position he held until he left the public service in August 1988.

Mulroney Evidence, May 12, p. 3491, 3493; May 14, p. 3900

Doucet Evidence, April 27, pp. 2011-2013, 2034-2035

MacAdam Evidence, April 20, p. 1243

(ii.) Elmer MacKay

32. Mr. Mulroney was first elected to the House of Commons on August 29, 1983 as the Member of Parliament for the riding of Central Nova in Nova Scotia. The seat had become vacant when the incumbent, Elmer MacKay, voluntarily resigned to allow Mr. Mulroney to stand as a candidate in the resulting by-election.

Mulroney Evidence, May 12, p. 3414

MacKay Evidence, May 4, p. 2806

33. As Mr. Mulroney testified, this gesture was invaluable to him: "I owed everything to Elmer MacKay because of what he had done to get me into the House of Commons and to give me his support. And he was a tremendous friend. But, more than that, politically he had gone to the well for me."

Mulroney Evidence, May 12, p. 3503

(iii.) Karlheinz Schreiber

34. Neither Mr. Mulroney nor Mr. Schreiber could specifically recall the first time they met. The Commission did hear evidence, however, that Mr. Mulroney sent a

telegram to “Karlheinze” (sic) Schreiber, congratulating him on becoming a Canadian citizen on February 23, 1982.

Mulroney Evidence, May 12, p. 3405, 3412

Schreiber Evidence, April 14, p. 258, 263

Telegram, Rt, Hon. Brian Mulroney to Karlheinz Schreiber, February 28, 1982, Exhibit P-7, Book 4, Tab 1

35. With respect to this telegram, Mr. Mulroney testified as follows: “I have no doubt how it came about, someone asked me to do it. Frank Moores or Bob Coates or someone said, ‘Mr. Schreiber is a friend of ours...Mr. Schreiber has become a Canadian citizen...Here is a draft of telegram, would you mind sending it to congratulate him?’”

Mulroney Evidence, May 12, p. 3413

36. Mr. Mulroney further testified that it was not unusual for him to send notes of that kind in those years: “I was frequently mentioned in the speculation across the country as perhaps someone who might run...so apart from whatever I was doing on a more low-key way with the Iron Ore Company, I was constantly in that other political vein.”

Mulroney Evidence, May 14, pp. 3889-3890

37. To the best of his recollection, Mr. Schreiber testified that he was first introduced to Mr. Mulroney at the Ritz-Carlton Hotel in Montreal – possibly by either Frank Moores or Walter Wolf. Mr. Schreiber believed that the introduction took place while Mr. Mulroney was President of the Iron Ore Company, before he entered public life.

Schreiber Evidence, April 14, pp. 263, 266

38. Although Mr. Schreiber’s November 2007 affidavit alleges that he and Mr. Mulroney had met several times at the Ritz-Carlton in that period, Mr. Schreiber testified both in the Eurocopter proceedings as well as before this Inquiry that it perhaps occurred only once, twice or three times.

Schreiber Evidence, April 16, pp. 854-855

39. For his part, Mr. Mulroney testified that he did not remember meeting Mr. Schreiber at the Ritz-Carlton: "I have no recollection of it whatever, although if someone else has testified to having been there with me and introduced me, I will readily acknowledge it." In fact, no witnesses were ever called to confirm any of these alleged encounters.

Mulroney Evidence, May 14, p. 3887

40. Mr. Mulroney did testify, however, that he would sometimes frequent the Ritz-Carlton: "If I hadn't gone, I would be the only person in Montreal who wasn't there in those days...I and many others used [to gather] there sometimes after work and shoot the breeze and talk about anything that was going on in town."

Mulroney Evidence, May 12, p. 3405

41. In any event, it is absolutely clear that any "meetings" between the two men were in the nature of casual encounters, where no personal, professional, commercial or political relationship was established.

(iv.) 1983 Leadership Race

42. After his 1980 election defeat, the Leader of the Progressive Conservative Party of Canada – the Rt. Hon. Joe Clark – faced a mandatory leadership review vote as required by the party's constitution. The vote was ultimately scheduled to take place in January 1983, during the party convention in Winnipeg, Manitoba.

Mulroney Evidence, May 12, pp. 3404, 3407

43. The Commission has heard evidence that Mr. Schreiber, at the urging of both Frank Moores and Walter Wolf, donated as much as \$50,000 toward an effort in support of the leadership review. The money was rumoured to have been used to subsidize the travel costs and delegate fees for party members who would vote in favour of a review.

Schreiber Evidence, April 14, pp. 265-267

Mulroney Evidence, May 14, p. 3906

44. Mr. Mulroney categorically stated that he had no knowledge of Mr. Schreiber's contribution to that effort, and no evidence contradicting that statement was adduced. Mr. Schreiber, for his part, testified that he did not support – either financially or otherwise – Mr. Mulroney's leadership campaign in 1983. The Commission also heard that Mr. Moores did not support Mr. Mulroney, but instead supported John Crosbie.

Mulroney Evidence, May 12, pp. 3406, 3410; May 14, pp. 3903-3906

Schreiber Evidence, April 14, p. 269

(v.) Meeting with Max Strauss

45. Pat MacAdam testified that after Mr. Mulroney was elected Leader of the Opposition and Member of Parliament for Central Nova, he once had a brief courtesy call from Max Strauss, son of the Premier of Bavaria Franz Josef Strauss, which Mr. Schreiber attended. Mr. MacAdam said he was the 'gatekeeper' in the office at that time.

MacAdam Evidence, April 20, pp. 1237, 1239-1240, 1241-1242

46. Mr. Schreiber testified that his only role that day was to introduce Mr. Mulroney to Mr. Strauss, and that he left shortly thereafter. Mr. Schreiber further confirmed that he didn't transact any business with Mr. Mulroney at that meeting, notwithstanding that it was described as his "first official meeting" with Mr. Mulroney in his 2007 Affidavit.

Schreiber Evidence, April 16, pp. 861-862

(vi.) Conclusions

47. With regard to Mr. Mulroney's relationship with Mr. Schreiber before becoming Prime Minister, the evidence led at this Commission supports the following conclusions:

- (a) Prior to his becoming Prime Minister of Canada, Mr. Mulroney's contact with Mr. Schreiber was extremely limited, consisting of perhaps as few as two casual encounters; and

- (b) Mr. Schreiber had no involvement in Mr. Mulroney's leadership campaign in 1983, and only contributed to the leadership review movement organized by Mr. Moores and Mr. Wolf.

PART IV. THE MULRONEY GOVERNMENT (1984-1993)

(i.) The Bear Head Project

48. On September 17, 1984, Brian Mulroney became the eighteenth Prime Minister of Canada after winning the largest number of seats ever won by a single political party in Canadian electoral history. Mr. Mulroney won a second majority government in 1988, and would serve as Prime Minister for almost nine years. He left office on June 25, 1993.

Mulroney Evidence, May 12, p. 3418; May 14, p. 3834

49. Immediately upon taking office, Mr. Mulroney appointed Fred Doucet – his friend of almost thirty years – as a Senior Advisor in the Prime Minister’s Office. He also appointed Elmer MacKay – the man who had stepped down to give him his first seat in the House of Commons – to the federal Cabinet where he would serve until 1993.

Mulroney Evidence, May 12, pp. 3416, 3491

Doucet Evidence, April 27, pp. 2022, 2024

50. Given his personal history in the region, including his time as the Member of Parliament for Central Nova, Mr. Mulroney retained and maintained a great interest in the welfare of Nova Scotia and the severe unemployment in the province. In fact, during the 1983 by-election Mr. Mulroney had campaigned on three policies: “Jobs, jobs, jobs.”

Mulroney Evidence, May 12, pp. 3414-3415; 3424-3425

51. It was in this context that either Mr. MacKay or Bob Coates first told Mr. Mulroney about an initiative that would ultimately become known as the “Bear Head Project”. The name for the concept was originally derived from the Bear Head peninsula in Nova Scotia where the proposed industrial manufacturing facility would be built.

Mulroney Evidence, May 12, p. 3445-3446

52. With respect to the Bear Head Project in its earliest configuration, Mr. Mulroney testified as follows:

[I]t was really presented to me as a concept and I was very favourably disposed to the concept. Let me tell you this. You're the Prime Minister of Canada. You have areas of your country, particularly as it happens areas in central and eastern Nova Scotia where unemployment rates frequently got as high as 50 per cent, and somebody comes in and says I can create 500 – a modern plant with new technology, with export dimension to it – that I can create 500 new jobs or 1,000 new jobs with the multipliers spinoffs. You can bet your bottom dollar that I, and any other Prime Minister of Canada, is interested immediately.

Mulroney Evidence, May 12, p. 3446-3447

53. On June 6, 1987, as part of a broader policy strategy to combat the economic hardships which continued to plague Atlantic Canada, the Mulroney government created the Atlantic Canada Opportunities Agency (“ACOA”). Prime Minister Mulroney would appoint Senator Lowell Murray, his friend of thirty years, as its first Minister.

Mulroney Evidence, May 12, p. 3424-3425; May 14, p. 3911

Murray Evidence, May 5, pp. 2925-2926, 2968

54. On the day that Senator Murray's appointment was announced, he flew with both Prime Minister Mulroney and ACOA President Don McPhail to St. John's, Newfoundland where the formal announcement was being made. During the flight, the group had a general discussion about the new agency and its mandate.

Mulroney Evidence, May 14, p. 3911

Murray Evidence, May 5, p. 2926

55. At some point during that discussion, according to Senator Murray, Prime Minister Mulroney handed Senator Murray a very thin file – possibly containing only a single document. As Senator Murray testified: “he said to us here is something that you may want to look at.” The document related to the Bear Head Project.

Mulroney Evidence, May 14, pp. 3911-3912

Murray Evidence, May 5, pp. 2926-2928

56. When asked whether the Bear Head Project was the first item on his agenda at ACOA, Senator Murray answered: “There was nothing else anywhere on the horizon. There was no other proposal that offered a potential of 500 jobs in Cape Breton, 500 new

jobs, or 200 new jobs or 100 new jobs in Cape Breton. So he asked me to look into it and I did.”

Murray Evidence, May 5, pp. 2928-2929

(ii.) The Understanding in Principle

57. On July 12, 1988, Senator Murray wrote Prime Minister Mulroney to offer his assessment of the Bear Head Project. The letter included a revised description of the concept under discussion, and recommended that Thyssen be provided with some form of “statement of intent”. The letter read, in part, as follows:

Some time ago, you requested me to examine and further develop, as required, the proposal by Thyssen Industries A.G. to establish a heavy-industry manufacturing facility in Cape Breton. I am writing to provide you with my assessment, and to recommend a course of action for the Government to facilitate the realization of the Thyssen project.

I am fully satisfied that given the nature of the company’s development approach to its world-wide operations, Thyssen’s proposal for Cape Breton offers very considerable economic benefits, including substantial employment, and opportunities for technology transfer, to a particularly underdeveloped region of Canada...

...I have directed Don McPhail to negotiate with Thyssen on the basis of a “statement of intent”, which would set out the status of our progress to date. While of a non-binding character a written confirmation of our understandings so far would be quite helpful to Thyssen, not only to shore up its partnership negotiations with General Dynamics, but would also facilitate the authorization from Thyssen’s own Board of Directors, to proceed in Cape Breton.

Such a statement of intent would be restricted to an affirmation of the Government’s policy on economic development programming, and defence site-establishment assistance, for which Thyssen would normally be expected to be eligible. There would be no commitment, implied or otherwise, to source a military contract to Thyssen, on other than competitive grounds in complete accordance with our existing procurement policy.

For its part, Thyssen would “undertake” to proceed with the plant subject to such assistance and once its formal submissions in the form of business plans are submitted – something it cannot do immediately. Thyssen is counselling, and we concur, that to be most helpful, such a written statement be entered into, not only by myself, but also by Mr. de Cotret, in light of his responsibilities for defence industrial programming, and by Mr. Beatty.

Letter, Sen. Lowell Murray to Rt. Hon. Brian Mulroney, July 12, 1988, Exhibit P-38, Tab 12

58. It is respectfully submitted that the letter from Senator Murray, and in particular its detailed description of the proposed "statement of intent", accurately reflects the final Understanding in Principle ("UIP") that was ultimately signed by the ACOA Minister, the Minister of Regional Industrial Expansion and the Minister of National Defence.

Understanding in Principle, September 27, 1988, Exhibit P-7, Book 1, Tab 33

59. As Senator Murray's letter indicated, and as he testified before the Commission, the UIP was merely intended to be a summary of the preliminary discussions with Thyssen to that point in time – one that would not bind the Government of Canada in any significant manner with respect to future military procurements.

Murray Evidence, May 5, pp. 2961-2963, 2978-2979, 2980

60. The Commission heard no evidence whatsoever that either Senator Murray or Prime Minister Mulroney knew that the UIP would result in success fees being paid by Thyssen, and they each categorically denied such knowledge. The purpose of the UIP, as explained by Senator Murray, was to help facilitate a decision by the Thyssen A.G. Board of Directors to proceed with the project as discussed.

Mulroney Evidence, May 12, pp. 3484-3485

Murray Evidence, May 5, pp. 2963-2964, 3001-3002

61. When he testified before the Commission, Senator Murray also elaborated on the value of the UIP to the Government of Canada – and to ACOA in particular:

If you look, as I have recently, at the development of the issue over a period of time, going back to June 1987 – from June 1987, for about a year, the discussions seemed to be fairly substantive, at least among the government departments.

As we got closer to the summer, with an election looming – and it was clear to me, and to us, that we were not going to be able to conclude this – the whole strategy on our part came to be to find a way to put the thing on ice for a couple of months; to keep it alive over the election period, so that our government, or some other government, would be able to come back to it when the election was over.

Once dissolution happens, everything is on hold in Ottawa, and it is on hold for the election campaign, and then for the subsequent reorganization of the government, and so on and so forth. It takes some time to get going again.

And we were under some – every so often you had these letters from Thyssen, or messages from Thyssen's representatives, saying: We are going to go to Tennessee. We are going to go here, we are going to there, if we don't get more specificity in Canada, more commitment.

So what we wanted was a glorified letter of comfort that we could all sign and that would put the thing on ice for several months, so that somebody else could take it up at a later date.

I don't think that either Mr. McPhail or I, or anybody else who was closely involved, was under any illusion that we were about to see smokestacks rising at the Strait of Canso as a result of this Undertaking in Principle, not anytime soon.

Murray Evidence, May 5, pp. 2961-2962

62. On July 19, 1988, the Prime Minister received a memo from the Clerk of the Privy Council with respect to the proposed statement of intent. The memo expressed concerns about possible legal commitments that might be made therein, that due process was not being followed, and asked that these points be raised with Senator Murray.

Memorandum, Paul Tellier, Clerk of the Privy Council, to Rt. Hon. Brian Mulroney, July 19, 1988, Exhibit P-43, Tab 21

63. In his testimony, Mr. Mulroney recalled that he did speak to Senator Murray and described the conversation as follows: "So I said to Lowell: I want you to go to [Deputy Minister of Justice Frank Iacobucci], and I want Frank himself to draft the clause in this agreement to ensure that that we are not bound to do anything contractually."

Mulroney Evidence, May 12, p. 3479

64. While Senator Murray did not recall having had any conversations with the Prime Minister on the Bear Head Project in the summer of 1988, the documents received by the Commission confirm that Deputy Minister Iacobucci did personally present the Department of Justice's formal opinion concerning the draft UIP on August 4, 1988.

Murray Evidence, May 5, pp. 2967-2970

Memorandum, Paul Bernier to D. S. McPhail, August 10, 1988, Exhibit 38, Tab 19

Memorandum, D S. McPhail to Sen. Lowell Murray, September 1, 1988, Exhibit 38, Tab 21

65. The Commission ultimately heard from four individuals who were directly involved in the process which resulted in the preparation of the UIP: Senator Lowell Murray, Derek Burney, Paul Tellier and Perrin Beatty. Each testified that they had not received any pressure from the Prime Minister about getting the UIP signed.

Murray Evidence, May 5, pp. 2969-2970

Transcript, Evidence of Derek Burney (hereinafter "Burney Evidence"), March 31, p. 226

Transcript, Evidence of Paul Tellier (hereinafter "Tellier Evidence"), May 5, pp. 3150-3152

Transcript, Evidence of The Hon. Perrin Beatty (hereinafter "Beatty Evidence"), April 29, pp. 2509-2510

66. Perrin Beatty, the only surviving signatory to the 1988 UIP, denied any direction from the Prime Minister: "I don't recall anyone purporting to speak on behalf of the Prime Minister, to say the Prime Minister wants you to give an Understanding in Principle to Thyssen."

Beatty Evidence, April 29, p. 2509

67. Mr. Beatty then added: "One thing I can promise you I would know very well was if my Prime Minister directly or indirectly had instructed me that I was to act on this file. I certainly would have remembered that, because a Minister effectively would have two choices...Do it or quit."

Beatty Evidence, April 29, p. 2510

68. Therefore, considering all of the relevant exhibits and testimony, the evidence presented to the Commission clearly shows that Mr. Mulroney never personally intervened in the process which led to the government's decision to enter into the UIP with Thyssen.

69. To the limited extent that Mr. Mulroney had any involvement in – or even knowledge of – the process which led to the UIP, Mr. Mulroney's efforts were strictly limited to ensuring that due process was followed and that any UIP would not create a binding commitment upon the Government of Canada.

(iii.) Fred Doucet's Settlement with Treasury Board

70. On August 16, 1988, Fred Doucet resigned from the position of Ambassador and Chairman of the Organizing Committee for International Summits. Prior to his resignation, on August 9, 1988, Mr. Doucet received a letter from Jean-Pierre Kingsley which set out the terms of his post-employment arrangements with the Treasury Board.

Doucet Evidence, April 27, pp. 2038, 2052

Letter, Jean-Pierre Kingsley to J. Alfred Doucet, August 9, 1988, Exhibit P-29, Tab 4

Letter, Joseph Stanford to J. Alfred Doucet, August 25, 1988, Exhibit P-29, Tab 4

71. Among its various provisions, Mr. Kingsley's letter to Mr. Doucet contained a clause which stipulated that the one year limitation period on his making any representations for or on behalf of any other person or entity to any department with which he had significant official duties would be waived.

Doucet Evidence, April 27, pp. 2052

Letter, Jean-Pierre Kingsley to J. Alfred Doucet, August 9, 1988, Exhibit P-29, Tab 4

72. In this regard, it is important for the Commission to note that it received evidence from Mr. Kingsley – in the form of an interview summary – that all of the appropriate procedures and ethical considerations were taken into account in Mr. Doucet's case and that there was no involvement by either the Prime Minister or his office.

Summary of Interview of Jean-Pierre Kingsley, April 24, 2009, Exhibit P-55

(iv.) The Frank Moores Allegation

73. The Commission has heard that as a direct result of the UIP, Thyssen paid a \$1.9 million success fee to I.A.L. It also heard that on March 3, 2008, in a letter to the Chair of the Ethics Committee, Mr. Schreiber alleged – for the first time – that in 1988 Frank Moores put \$500,000 of that money into the 'FRANKFURT' account for Mr. Mulroney.

Schreiber Evidence, April 14, pp. 311-312, 467-469; April 15, pp. 521-524

Letter, Karlheinz Schreiber to Hon. Paul Szabo, March 3, 2008, Exhibit P-7, Book 2, Tab 142

74. This allegation was not mentioned in Mr. Schreiber's November 2007 Affidavit, and expressly contradicts elements of that Affidavit as well as the related Statement of Claim filed by Mr. Schreiber in the Province of Ontario. Moreover, the evidence presented to the Commission proves that it is demonstrably false.

2007 Schreiber Affidavit

Amended Statement of Claim Karlheinz Schreiber (Plaintiff) – and –Brian Mulroney (Defendant), Ontario Superior Court of Justice, March 22, 2007 Exhibit P-7, Book 3, Tab 17

75. First, the independent and impartial forensic accountants from Navigant, retained to examine Mr. Schreiber's bank accounts, concluded that the balance of the FRANKFURT account fell to approximately \$10,000 in the early 1990s – which proves that \$500,000 was not kept in the account for Mr. Mulroney from 1988 until 1993.

Transcript, Evidence of Steven Whitla (hereinafter "Whitla Evidence"), May 6, pp. 3203-3204

Navigant Consulting Funds Tracing Report, April 29, 1009, Exhibit P-40

76. Second, it was a matter of public knowledge in Ottawa – confirmed by both Mrs. Beth Moores and Mr. Mulroney in their respective appearances before this Commission – that Mr. Moores and Mr. Mulroney had a falling out in late 1987 and did not even speak to each other again until just before Mr. Moores passed away in 2005.

Transcript, Evidence of Elizabeth Moores (hereinafter "Moores Evidence"), March 31, pp. 165-167

Mulroney Evidence, May 12, pp. 3485-3487

77. Based on the documents and testimony received by the Commission, therefore, there is no credible evidence to support any allegation that Mr. Mulroney received any

money – whether directly or indirectly – from the success fee paid by Thyssen in the months following the signing of the UIP. There is, however, incontestable evidence that Mr. Schreiber personally received substantial sums of money from Thyssen.

(v.) “The Project is Dead”

78. On August 10, 1990, Prime Minister Mulroney received a briefing note from the Clerk of the Privy Council highlighting the status of the Bear Head Project and various issues that had been raised by key government departments. On the cover of the memo, Mr. Tellier wrote a handwritten note asking the Prime Minister for his instructions.

Memorandum for the Prime Minister from Paul Tellier re: Thyssen / Bear Head Industries, August 10, 1990, Exhibit P-39, Tab 25

79. Shortly after the memo was received from Mr. Tellier, Prime Minister Mulroney asked Norman Spector to become his newest Chief of Staff. Given the inconsistent – and at times contradictory – information he had received from the various parties involved, Mr. Mulroney then asked Mr. Spector to examine the Bear Head Project.

Mulroney Evidence, May 12, pp. 3498, 3499; May 14, p. 3976

Transcript, Evidence of Norman Spector (hereinafter “Spector Evidence”), April 30, pp. 2579-2580, 2588-2589

80. In their respective appearances before the Commission, both Mr. Mulroney and Mr. Spector described this assignment in greater detail. For his part, Mr. Mulroney testified as follows:

Mr. Spector was new. He had had no association with the project in any way, because prior thereto he was the Secretary to the Cabinet for Federal-Provincial Relations dealing exclusively with constitutional change. And he was now in a position as Chief of Staff, which is like Clerk of the Council, a highly critical one in Ottawa.

So I thought he would be able to take a careful and thoughtful look at this with a pair of fresh eyes and let me know whether this was good, bad or indifferent, in his judgment, having analyzed the changing nature of the presentation on the one hand, the changing dimensions of costs on the other, and the changed political circumstances. And so he did that for me.

Mulroney Evidence, May 12, p. 3499

81. During his testimony, Mr. Spector offered additional and confirmatory details about the assignment he received from the Prime Minister – an assignment which he described in the following manner:

Well, we were sitting in his office and he asked me, he told me that he wanted me to have a look at this project, that for some reason it was not going ahead. He suggested that it was being blocked by officials at DND. I don't think he mentioned any specific names. He appeared very frustrated. He said that he could not understand why it was not going ahead. It was his understanding that it was at no cost to the taxpayer and he asked me to move it along to fruition...

...I decided that what I was going to do was bring together Mr. MacKay and Mr. McKnight and allow them to invite their respective officials with them and to get them to agree on a common document of what it would take to make this project go ahead.

The reason that I chose that course of action is that it was my perception that the Prime Minister was receiving contrary information, varying information through his private channels, and I wanted to make sure that there was one commonly agreed to document that everyone had to sign onto in order to put an end to the kind of backstabbing and gossip that was apparent on this file.

Spector Evidence, April 30, pp. 2588-2589, 2594

82. In early December 1990, following extensive consultations with ACOA, the Department of National Defence and the Privy Council Office, Mr. Spector was ultimately informed that the total estimated cost for the Bear Head Project would be approximately \$765 million.

Spector Evidence, April 30, pp. 2605-2606

Memorandum, Paul Tellier to Norman Spector, December 10, 1990, Exhibit P-33, Tab 13

83. On this point, Mr. Spector testified as follows: "For me, the significance of that figure was that the Prime Minister was of the view that this project would come at no cost, and his frustration was as a result of that view. And the assignment to unblock this process all came from his understanding...that this was a no-cost project."

Spector Evidence, April 30, p. 2611

84. On December 16, 1990, Mr. Spector informed the Prime Minister of these findings while they were both being driven to a speech that the Prime Minister was

scheduled to give in Buckingham, Quebec. When advised of the cost, Mr. Spector testified that the Prime Minister said: "Well, if that's the case, the project is dead."

Mulroney Evidence, May 12, pp. 3500

Spector Evidence, April 30, pp. 2612-2613

85. Mr. Spector later testified that the next morning, on December 17, 1990, the "first thing" he did upon arriving at the office was contact both Mr. Tellier and Robert Fowler – then Deputy Minister of National Defence – to relate to them the nature of the conversation he had had with the Prime Minister the previous day.

Spector Evidence, April 30, pp. 2617

86. Although Mr. Tellier did not specifically recall the conversation with Mr. Spector, he did confirm that he was the author of a handwritten note which appeared on a memo he had earlier received from Ron Bilodeau. The note read: "*Ronald, Norm me dit que le dossier est maintenant sous contrôle – T. 17/12/90.*"

Tellier Evidence, May 5, p. 3149

Memorandum, Ronald Bilodeau to Paul Tellier, December 12, 1990, Exhibit P-33, Tab 44

87. While Mr. Spector has publicly expressed reservations about whether the project actually died, he testified that his involvement with the project came to an end after his discussion on December 16, 1990. He stated: "As I said to the RCMP in 1995, the conversation in the limo was the last I had ever heard of the project."

Spector Evidence, April 30, p. 2617

88. Any discussion of when and how the Bear Head Project was "cancelled" must recognize the important fact that the project was never approved. Moreover, the Commission received documentary evidence which indicates that Thyssen was told sometime in July 1991 that their current proposal would not proceed.

Memorandum, Harry Swain to Hon. Michael Wilson, December 4, 1992, Exhibit P-21, Tab 9

89. Indeed, Thyssen never built a heavy-industrial production facility in Nova Scotia and the Mulroney government never purchased 250 light-armoured vehicles from Thyssen. When the company resurfaced in 1992, it came forward with an entirely different proposal involving 8 prototype vehicles and a production facility in Montreal.

Transcript of Greg Alford (hereinafter "Alford Evidence"), April 21, pp. 1430-1431

Transcript of Harry Swain (hereinafter "Swain Evidence"), April 22, pp. 1666-1668

Schreiber Evidence, April 14, pp. 367-368, 377

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, May 6, 1992, Exhibit P-7, Book 1, Tab 78

Letter, Karlheinz Schreiber to Hon. Marcel Masse, May 13, 1992, Exhibit P-7, Book 1, Tab 80

Memorandum. Paul Tellier for the Prime Minister, June 24, 1992, Exhibit P-7, Book 1, Tab 82

90. All the available documents from the period clearly show that both Thyssen and Mr. Schreiber shifted their focus away from the initial Nova Scotia project to a very different project in Montreal as of May 1992. Henceforth, all of Mr. Schreiber's efforts were directed to the new Montreal proposal.

91. The fact that Thyssen/BHI and Mr. Schreiber came forward with an entirely new proposal, one that did not involve the creation of an industrial manufacturing facility in Nova Scotia or the purchase of 250 light armoured vehicles by the government of Canada, is clear evidence that the original project did "die" as Mr. Mulroney had decreed.

Alford Evidence, April 21, pp. 1430-1431

Swain Evidence, April 22, pp. 1666-1668

Schreiber Evidence, April 14, pp. 367-368, 377

92. On this last point, it is important to note that Mr. Mulroney expressly denied the allegation that he suggested or encouraged Mr. Schreiber to focus his efforts on the Province of Quebec. The Commission did hear testimony from Marc Lalonde, however, that he remembered personally recommending a move to Quebec.

Transcript, Evidence of The Hon. Marc Lalonde (hereinafter "Lalonde Evidence"), March 30, pp. 85-87

Mulroney Evidence, May 12, p. 3510

93. It is respectfully submitted, as Mr. Mulroney testified, that the Bear Head Project as it existed in December 1990 – the project which was assessed and valued at \$765 million – did not proceed and effectively ‘died’ within six or seven months of Mr. Spector’s discussion with Prime Minister Mulroney on December 16, 1990.

(vi.) Meetings with Karlheinz Schreiber

94. In the course of its proceedings, the Commission heard that Mr. Mulroney met with Mr. Schreiber on an undetermined number of occasions while he was Prime Minister. To be certain, the efforts to confirm the exact number of those ‘meetings’ was complicated by an imperfect evidentiary record.

95. The primary source used by Commission Counsel to ascertain the number of meetings which might have taken place were Mr. Schreiber’s personal diaries. Yet, Mr. Schreiber himself testified that not every appointment listed in his diaries necessarily occurred on that date.

Schreiber Evidence, April 17, p. 1109

96. Mr. Schreiber also offered the following remarks about the term ‘meeting’: “You see, when you speak about meeting or when you speak about seeing Mr. Mulroney, there has very clearly to be a difference between if the meeting has to be set up or you go and see him by chance in the lobby or behind the lobby or out on the street, whatever it is.”

Schreiber Evidence, April 16, p. 860

97. An additional complication was that the descriptions given in Mr. Schreiber’s diaries could sometimes be confusing or misleading. In some cases, Mr. Schreiber would merely write a person’s name without elaborating as to whether the entry related to a ‘meeting’, telephone discussion or some other form of chance encounter.

98. As an example, an entry contained in Mr. Schreiber's diary for December 1, 1991 simply states "Brunch Mulroney". Absent other information, a reader could reasonably conclude that it was a private brunch. Yet, as confirmed by the Prime Minister's official schedule for that date, it was actually a large political fundraising brunch in Montreal.

Selected agenda entries made by Karlheinz Schreiber, December 1, 1991, Exhibit P-45, Tab 7

Daily schedule for the Prime Minister, December 1, 1991, Exhibit P-46, Tab 2

99. Therefore, when Commission Counsel suggested during Mr. Spector's testimony that there were a half dozen, or an "unusually high number" of, meetings in the period between July 1990 and December 1991, that tally would have included at least one large political gathering attended by hundreds, if not thousands, of people.

Spector Evidence, April 30, p. 2659

100. Upon further inspection, the half dozen meetings which were alleged to have taken place between July 1990 and December 1991 might even be reduced to as few as three substantive meetings. In fact, there may only be corroborating evidence to confirm six meetings for the entire period that Prime Minister Mulroney was in office.

101. It is important to note, with the exception of the courtesy call at Harrington Lake on June 23, 1993, Prime Minister Mulroney never had a private meeting alone with Mr. Schreiber. Every other meeting was attended by either Elmer MacKay, Fred Doucet, Paul Tellier or David McLaughlin – and, on some occasions, more than one of them.

Mulroney Evidence, May 12, pp. 3502-3503

Schreiber Evidence, April 16, p. 868

102. As for the level of 'access' Mr. Schreiber had to the Prime Minister, it should be noted that all of the meetings with Mr. Schreiber were arranged at the request of Mr. MacKay and Mr. Doucet. More important, whatever indirect access he had, his level of 'influence' was clearly insufficient to convince the government to approve the project.

Mulronev Evidence, May 12, pp. 3503-3504; May 14, pp. 3906-3907

(vii.) Correspondence with Karlheinz Schreiber

103. The Commission received a total of 44 letters that were allegedly exchanged between Mr. Schreiber and Mr. Mulronev. Of those 44 letters, only 16 were sent while Mr. Mulronev was Prime Minister. Of those 16 letters, only two were from Mr. Mulronev to Mr. Schreiber – neither of which mentioned the Bear Head Project. These were likely drafted by staff, and Mr. Mulronev has no recollection of ever having signed them.

Correspondence between Brian Mulronev and Karlheinz Schreiber, Exhibit P-7, Book 4

104. For his part, Mr. Mulronev testified about his understanding of how letters and other correspondence addressed to the Prime Minister were processed while he was in government. He confirmed, as a general proposition, that not every letter addressed to the Prime Minister is necessarily read – or even received – by the Prime Minister himself.

Mulronev Evidence, May 12, p. 3430

105. When he testified, Mr. Mulronev offered the following synopsis of how the correspondence unit operated while he was in office:

It is probably more sophisticated now, but in my time, which seems like an eternity ago – and it was probably fairly embryonic. What happened was, we had a correspondence unit, and a very good one. As Mr. Tellier, I think has told you, the Prime Minister gets thousands and thousands of communications, memos and letters, and so on.

What happened with us was, they tended to be segregated in various ways. One would be letters that came in dealing with public policy issues, non-political, which would have been referred to the PCO. They would have either answered them directly or prepared drafts for our consideration.

The second was the political, strictly political stuff which would be sent to the PMO. Then the third was much smaller, was family and friends kind of thing. If someone wanted to write to me, there was some kind of a code that they put on it and people knew right away that this is the Prime Minister's Aunt Jenny who is writing him and he is going to want to see it...

Mulronev Evidence, May 12, p. 3430

106. In their appearances before the Commission, both Ms. Campbell and Mr. McKnight also confirmed that even letters sent to Cabinet Ministers are not always personally reviewed by the ministers themselves. Often the letters are diverted to, and dealt with by, ministerial staff or departmental officials then signed by a machine.

Transcript, Evidence of the Rt. Hon. Kim Campbell (hereinafter "Campbell Evidence"), April 29, pp. 2450

Transcript, Evidence of The Hon. William McKnight (hereinafter "McKnight Evidence"), March 30, p. 34

107. When asked if he had received any of the letters which Mr. Schreiber was alleged to have sent him on the Bear Head Project, Mr. Mulroney testified that he did not recall having ever seen them and, moreover, "I don't know of a Prime Minister whose staff would include in any of his correspondence letters from lobbyists."

Mulroney Evidence, May 12, p. 3432; May 15, p. 4020

108. An additional problem with Mr. Schreiber's letters from this period is that the Commission has only received Mr. Schreiber's copies of the same. As a result, the exhibits as filed do not contain any routing stamps or date stamps which would have shown when they were received and by whom.

Correspondence between Brian Mulroney and Karlheinz Schreiber, Exhibit P-7, Book 4, Tabs 2-17

109. It is respectfully submitted, therefore, that the Commission has not received any evidence which confirms that Prime Minister Mulroney – or indeed the Prime Minister's Office – ever received the letters concerning the Bear Head Project which Mr. Schreiber purports to have sent to Mr. Mulroney while he was in office. Moreover, there is no evidence that Mr. Mulroney ever sent correspondence to either Mr. Schreiber or Thyssen in respect of the Bear Head Project while he was Prime Minister.

(viii.) Conclusions

110. With regard to Mr. Mulroney's conduct as Prime Minister as it related to the Bear Head Project, the evidence led at this Commission supports the following conclusions:

- (a) At no time did Prime Minister Mulroney pressure or direct anyone in his government – either his staff, his Cabinet or within the public service – to approve the Bear Head Project;
- (b) At no time did Prime Minister Mulroney pressure or direct anyone in his government, and in particular anyone in his Cabinet, to sign the 1988 Understanding in Principle;
- (c) The evidence confirms that Mr. Mulroney did not know about or benefited from, whether directly or indirectly, any success fees paid by Thyssen following the signing of the 1988 UIP;
- (d) The Bear Head Project, as initially conceived and proposed, was rejected and/or abandoned by July 1991, within months of Prime Minister Mulroney having said that the project was “dead”;
- (e) Mr. Schreiber had only indirect ‘access’ to Prime Minister Mulroney through Elmer MacKay and/or Fred Doucet, and never met alone with the Prime Minister prior to June 23, 1993;
- (f) Any ‘access’ that Mr. Schreiber had to the Prime Minister did not result in the approval of the Bear Head Project – in whatever configuration put forward – or in any other pecuniary benefit being conferred to Thyssen by the Government of Canada; and
- (g) There is no evidence that Prime Minister Mulroney personally received or reviewed any of the letters which Mr. Schreiber claims to have sent him concerning the Bear Head Project.

PART V. THE MANDATE (1993-1995)

(i.) Karlheinz Schreiber

111. In order to understand why Mr. Mulroney would have entered into any kind of business relationship with Mr. Schreiber after he left office, it is critical that the Commission fully appreciate that in 1993 Karlheinz Schreiber was a very different man than the Karlheinz Schreiber the world came to know in 1999.

Mulroney Evidence, May 12, pp. 3381-3383

112. When Mr. Mulroney was first asked whether he would meet Mr. Schreiber at the end of June 1993, at Mr. Schreiber's request, he was told that the meeting would be a form of courtesy call where Mr. Schreiber would extend his farewell best wishes. When the initial approach was made, most likely through Mr. Doucet, there was no discussion of a business offer.

Mulroney Evidence, May 12, pp. 3521-3522; May 15, p. 4056

113. At that time, Mr. Mulroney had already met Mr. Schreiber on a number of occasions – including a recent meeting on June 3, 1993 – but always in the company of either Mr. MacKay or Mr. Doucet. Mr. Mulroney has testified that he knew Mr. Schreiber to be a close friend of Mr. MacKay and a valued client of Mr. Doucet.

Mulroney Evidence, May 12, p. 3503; May 14, pp. 3906-3907; May 15, p. 4054

114. Given Mr. Mulroney's close and longstanding friendship with both Mr. MacKay and Mr. Doucet, their favourable opinion of Mr. Schreiber carried a great deal of weight in terms of Mr. Mulroney's own impression of him. To the extent that they continued to vouch for Mr. Schreiber, Mr. Mulroney trusted their views.

Mulroney Evidence, May 12, pp. 3381-3382; May 14, p. 3942

115. Beyond the opinion of Mr. Mulroney's closest friends, Mr. Schreiber also bore the imprimatur of Thyssen – a large and highly respected multinational company. As

Chairman of a Thyssen affiliate, a company which employed some 3,000 people in Canada, Mr. Schreiber had solid credentials as a legitimate businessman.

Mulroney Evidence, May 12, pp. 3381-3382; May 14, pp. 3941-3942, 3943

See letter, Hon. Benoit Bouchard to Karlheinz Schreiber, Chairman, Thyssen BHI, September 25, 1992, Exhibit P-7, Book 1, Tab 85

116. Moreover, it is important for the Commission to note that both Mr. Schreiber and Thyssen continued to meet with senior government officials in the new Liberal government in the period between 1993 to 1995. These meetings were facilitated, at least in part, by former Liberal Cabinet Minister Marc Lalonde.

Lalonde Evidence, March 30, pp. 89-90

Alford Evidence, April 21, pp. 1431-1432, 1445-1446, 1455, 1457, 1461

Memorandum, Greg Alford to Karlheinz Schreiber, Klaus Sonneck, Marc Lalonde and Jack Vance, June 3, 1994, Exhibit P-7, Book 1, Tab 99

Letter, Karlheinz Schreiber to Hon. Allan J. MacEachen, December 28, 1994, Exhibit P-7, Book 1, Tab 104

Letter, Greg Alford to Karlheinz Schreiber and Marc Lalonde, March 27m 1885, Exhibit P-7, Book 2, Tab 105

117. At the time that Mr. Mulroney agreed to meet with Mr. Schreiber there was not the slightest suggestion that Mr. Schreiber would one day be charged with fraud, bribery, corruption and tax evasion in Germany. Those charges, and his arrest, would not come for another six years. Mr. Mulroney was also completely unaware of the investigation by German authorities into Mr. Schreiber's business affairs in Europe.

Mulroney Evidence, May 12, pp. 3381-3383

118. It was in that context that Mr. Mulroney agreed to meet with Mr. Schreiber at Mr. Doucet's request. Mr. Schreiber was someone whom Mr. Mulroney had met in

connection with the Bear Head Project, and, as Mr. Mulronev has testified, he had not seen any evidence of Mr. Schreiber having acted in an inappropriate manner.

Mulronev Evidence, May 14, pp. 3941-3942, 3997

119. After having met with Mr. Schreiber at Harrington Lake, and after having left office, Mr. Mulronev was contacted about a second meeting with Mr. Schreiber – one that would ultimately take place at the Mirabel Airport Hotel. As will be discussed in greater detail below, it was at this second meeting that a business relationship was forged.

Mulronev Evidence, May 12, p. 3543-3544; May 14, p. 3795

Schreiber Evidence, April 16, pp. 922-923

(ii.) Harrington Lake Meeting

120. The central allegation contained in Mr. Schreiber's November 2007 Affidavit, is that on June 23, 1993 at Harrington Lake Prime Minister Mulronev entered into a commercial agreement with Mr. Schreiber to lobby the government of his successor, Prime Minister Kim Campbell, in support of the Bear Head Project.

121. The Affidavit reads, in part, as follows: "Mr. Mulronev undertook to support my efforts in obtaining approval of the establishment of a production facility for light armoured vehicles...and we discussed that if matters got difficult in the Province of Nova Scotia, then Mr. Mulronev would assist in moving parts of the project to...Quebec."

2007 Schreiber Affidavit, at para. 16

122. At paragraph 17, the Affidavit states: "At the Harrington Lake Meeting, Mr. Mulronev told me that in his opinion The Honorable Kim Campbell, would win a majority government in the next election, which would enable him (Mr. Mulronev) to accomplish much on my behalf."

2007 Schreiber Affidavit, at para. 17

123. It is respectfully submitted that the Commission has heard irrefutable evidence which explicitly contradicts this allegation. In fact, Mr. Schreiber's own testimony was largely inconsistent with its main factual underpinnings. For the following reasons, therefore, the Commission should find this allegation to be without merit.

124. First, the Commission heard no evidence whatsoever that Mr. Mulroney ever attempted to communicate with anyone in Ms. Campbell's government with respect to the Bear Head Project. For her part, Ms. Campbell expressly denied that Mr. Mulroney had ever spoken to her about the project.

Campbell Evidence, April 29, p. 2445

125. Second, the Commission heard evidence that two of the three payments which Mr. Schreiber made occurred after Ms. Campbell's government was defeated on October 25, 1993. It is submitted that the timing of the payments suggests the mandate was not about lobbying the Campbell government, as was asserted and alleged in the Affidavit.

Mulroney Evidence, May 14, p. 3797

126. In fact, in a letter to Senator MacEachern dated December 28, 1994, Mr. Schreiber stated that by the summer of 1993 "the Progressive Conservative Party was expected to lose the coming Federal election". This evidence suggests that all three payments were made after he knew Ms. Campbell would be and/or was defeated.

Letter, Karlheinz Schreiber to Hon. Allan J. MacEachern, December 28, 1994, Exhibit P-7, Book 1, Tab 104

127. Third, while the Affidavit clearly states that Mr. Mulroney's initial assignment would have been to assist in seeking approval for the project in Nova Scotia, all of the evidence – as reviewed in an earlier section – confirms that the proposal for a facility in Nova Scotia had been rejected by the government and abandoned by Thyssen almost two years earlier in July 1991.

See Part IV. The Mulroney Government (1984-1993), section (v): "The Project is Dead"

128. When examined by Commission Counsel on that specific point, Mr. Schreiber conceded that the suggestion in the Affidavit that the mandate would be for work in support of a facility in Nova Scotia was “not quite accurate”. He also agreed with the statement that by June 1993 “Nova Scotia was already gone.”

Schreiber Evidence, April 14, p. 432

129. Fourth, the allegation effectively asks the Commission to accept the implausible premise that Mr. Mulroney convinced Mr. Schreiber that he would have been in a better position to secure federal government approval for the Bear Head Project as a former Prime Minister than he had been as the sitting Prime Minister.

130. Fifth and finally, notwithstanding that the Affidavit alleges detailed discussions at that time between Mr. Mulroney and Mr. Schreiber concerning the nature of the mandate and the work to be completed by Mr. Mulroney, Mr. Schreiber testified before the Commission that no such discussions took place at the Harrington Lake meeting.

Schreiber Evidence, April 14, p. 283

131. When questioned on this point, Mr. Schreiber testified as follows: “When I said that we entered into an agreement, the agreement was that we would work together, with him, when he has left office...and that we would meet again. So it was not agreed at Harrington Lake in details what he would do, or what he would get paid.”

Schreiber Evidence, April 14, p. 283

132. The explanation provided by Mr. Schreiber under oath before the Commission was, in many respects, consistent with the version of events he outlined under oath in the Eurocopter preliminary inquiry, where he indicated that he had retained Mr. Mulroney’s services only after Mr. Mulroney had left office.

Testimony of Karlheinz Schreiber, R. v. MBB Helicopters Canada, November 24, 2004, Exhibit P-46, Tab 19, p. 60-61

133. Even if the Commission were to accept Mr. Schreiber’s account, it would still have to find that there was no “agreement in principle” to work together to develop the

Bear Head Project. At most, there was a mere acknowledgment that they might speak again at some point in the future after Mr. Mulroney had left office.

134. In this sense, Mr. Schreiber's version should be considered in its proper context and in contrast to the version of events set out by Mr. Mulroney in his testimony before the Commission:

When we got up to – he got up to leave, he had asked me what I planned to do and I said, well, I plan to go back to Montreal and practice law and probably do some international directorships or things like that.

He said given – we had just finished talking about German reunification – and he said given your tremendous range of contacts around the world and the very high regard in which you are held by these foreign leaders, perhaps I would like to be in touch with you in this regard later on.

I said well, I don't know exactly where I am going to be but it will be somewhere in Montreal and if you want to get a hold of me, call Fred and Fred will give me a shout.

Mulroney Evidence, May 12, p. 3525

135. Where there was no prior agreement to work together beyond a mere acknowledgment that they might talk again after Mr. Mulroney left office, and where there was no discussions about compensation, Mr. Schreiber was forced to concede that the only agreement with Mr. Mulroney was actually entered into at the Mirabel Airport meeting in August 1993.

Schreiber Evidence, April 16, pp. 922-923

136. The fact that Mr. Schreiber would later suggest that these comments constituted some form of "agreement in principle" is totally consistent with his *modus operandi* of exaggerating his relationship with Mr. Mulroney – as evidenced by his future correspondence and the November 2007 Affidavit.

137. The Commission must recognize that when Mr. Schreiber first decided to sue Mr. Mulroney he chose to do so in Ontario, in order to take advantage of the more favourable limitation periods. The problem, however, was that if the agreement was formed in Quebec, with someone from Quebec, the Ontario Courts would not have jurisdiction.

138. Indeed, in response to the Statement of Claim, Mr. Mulroney's lawyers filed a Motion to strike the action on that very basis. The November 2007 Affidavit was filed in response to that Motion to strike, and was therefore expected to provide a basis to support his claim that the Ontario Courts had jurisdiction.

Mulroney Evidence, May 20, pp. 4495

Schreiber Evidence, April 16, p. 836

2007 Schreiber Affidavit, at para. 51

139. The only possible link to the Province of Ontario which Mr. Schreiber could have sought to assert, albeit a very tenuous link, was that if the agreement had been formed at Harrington Lake while Mr. Mulroney was Prime Minister, his official residence would still have been 24 Sussex – in Ottawa, Ontario.

140. Moreover, the Affidavit contains allegations that have nothing to do with the question of jurisdiction – allegations that were drafted in such a manner as to cause the most public and media outcry. These allegations were obviously included as part of a last-ditch effort by Mr. Schreiber and his lawyers to avoid extradition to Germany.

Schreiber Evidence, April 17, pp. 989-990

(iii.) Mirabel – Meeting with Karlheinz Schreiber

141. On August 27, 1993, Mr. Mulroney met with Mr. Schreiber at the Mirabel Airport Hotel. The meeting had been arranged by Mr. Doucet, who later contacted Mr. Mulroney to confirm the location. The hotel was chosen because Mr. Schreiber was flying home to Europe that evening out of Mirabel, and Mr. Mulroney was staying at a cottage nearby.

Mulroney Evidence, May 12, pp. 3543-3545; May 15, 4089

Schreiber Evidence, April 14, pp. 447, 453-454

Doucet Evidence, April 27, pp. 2136-2137, 2140-2141

142. Mr. Mulronev testified that when Mr. Doucet contacted him, he had indicated that the purpose of the meeting was that Mr. Schreiber wanted to discuss a potential international mandate. Given that Mr. Mulronev was in the process of confirming other international consultancy arrangements, he agreed to the meeting on that basis.

Mulronev Evidence, May 12, pp. 3543-3544

Doucet Evidence, April 27, pp. 2140-2141

143. Although Mr. Mulronev had stepped down as Prime Minister on June 25, 1993, he continued to have some limited RCMP protection. As a result, he was driven to the meeting at the Mirabel Airport and escorted to the room by two plainclothes RCMP officers. At the end of the meeting, the RCMP officers returned with him to the cottage.

Mulronev Evidence, May 12, pp. 3546, 3561, 3562; May 15, pp. 4091, 4093, 4116

144. Mr. Mulronev testified that Mr. Schreiber began the discussion by informing him that he had retained former Ontario Attorney General Ian Scott in contemplation of a potential lawsuit against the Canadian government. Mr. Schreiber then provided Mr. Mulronev with a copy of the draft Statement of Claim.

Mulronev Evidence, May 12, pp. 3546-3547; May 15, p. 4094

Draft Statement of Claim – Bear Head Industries Ltd. and Thyssen Industrie Herschel AG (Plaintiffs) and Her Majesty the Queen in Right of Canada, The Attorney General of Canada, William McKnight and Marcel Masse, August 20, 1993, Exhibit P-47 (D)

145. After discussing the lawsuit, Mr. Mulronev testified that Mr. Schreiber broached the subject of the proposed retainer. He described that discussion as follows:

Then he began to talk about these vehicles – back in action with the vehicles. He told me that he would like me to be on an international peacekeeping track for Thyssen, for these vehicles, and could I assist them internationally in this regard.

The manner in which he spoke, quite frankly, I construed – not that second, but in the fullness of time it was very clear to me that he was describing a watching brief, whereby I would, under fairly general conditions, do my very best to promote the interests of Mr. Schreiber internationally.

Then he handed me some documents that dealt with the vehicles and the roles that they could play, with what appeared to be some merchandising – sales approaches internationally...

...So the conversation that I have described flowed naturally from those documents. I mean, you are getting stuff with the United Nations stamped all over it. This is not a project that you were going to dispose of, you know, in downtown – as I say, in downtown Baie Comeau or something. It doesn't work that way.

Mulroney Evidence, May 12, pp. 3548, 3557

146. Mr. Mulroney provided, and filed as exhibits, the original documents he received from Mr. Schreiber at Mirabel Airport on August 27, 1993.

Mulroney Evidence, May 12, pp. 3549-3554

Sales brochure – light vehicle “Thyssen Henschel, Henschel Defense Technology –TH495 Infantry Combat Vehicle (ICV), Exhibit P-47(A)

Sales brochure – dark vehicle “Thyssen Henschel, Henschel Defense Technology –TH495, Exhibit P-47(B)

Thyssen Project in Canada (August 26, 1993), Exhibit P-47(C)

Document entitled “NATO Unclassified” Chapter 2 – Introduction (3rd party document), June 10, 1993, Exhibit P-47(C)

Article by Wolfgang Schneider (International Defense Review) entitled “Thyssen Henschel’s TH 495 MICV” January 1993, Exhibit P-47(C)

Letter from Andrus Villu (Office of the Under Secretary of Defense in Washington) to General Lehowics from TRADOC (unsigned) (3rd party document) May 5, 1993, Exhibit P-47(C)

Letter from Major-General A.C.P. Stone from the Ministry of Defence (London, UK) to Jürgen Massmann (3rd party document), May 21, 1993, Exhibit P-47(C)

147. While Mr. Mulroney and Mr. Schreiber do not agree on what was discussed at the Mirabel Airport meeting, Mr. Schreiber did confirm under cross-examination that the agreement he had with Mr. Mulroney was made and finalized at Mirabel – after Mr. Mulroney had left office. As Mr. Schreiber himself testified, “I never said anything else.”

Schreiber Evidence, April 16, pp. 922-923

148. The Commission has heard evidence from both Mr. Mulroney and Mr. Schreiber that it was at the Mirabel Airport meeting that Mr. Schreiber gave Mr. Mulroney the first payment.

Mulroney Evidence, May 12, p. 3559; May 14, pp. 3796-3797; May 15, pp. 4082, 4101

Schreiber Evidence, April 14, pp. 283-284, 450

Interview with Karlheinz Schreiber, William Kaplan, March 31, 2004, Exhibit P-25, Tab 14

149. Mr. Schreiber also reaffirmed what he had told William Kaplan – that he had hired Mr. Mulroney after he left office because a former Prime Minister of Canada would be a good representative of Thyssen – “a value added representative to support the sale of peacekeeping and environmental protection equipment out of Canada.” [emphasis added]

Schreiber Evidence, April 16, p. 935

Testimony of *Karlheinz Schreiber R. v. MBB Helicopters Canada*, November 24, 2004, Exhibit P-46, Tab 19, p. 60

150. The Commission heard testimony from several witnesses, including both Mr. Alford and Mr. Lalonde, that the export market for its vehicles was extremely important to Thyssen in 1993 and 1994.

Alford Evidence, April 21, p. 1434-1435

Lalonde Evidence, March 30, pp. 139-141

151. Mr. Schreiber’s testimony was also consistent with the explanation he provided under oath in the context of the 2004 Eurocopter proceedings, where he confirmed that he had hired Mr. Mulroney after he left office because “it would have been a nice thing to have a previous Canadian prime minister on a peacekeeping track for Thyssen.”

152. On this point, it is crucial that the Commission appreciate the distinction between Mr. Schreiber saying that Mr. Mulroney was retained “on a peacekeeping track for

Thyssen” as opposed to “obtain approval” for the Bear Head Project. The former is clearly an international mandate, whereas the latter suggests a domestic component.

153. That the mandate involved an international peacekeeping mandate for Thyssen, was subsequently reaffirmed by Mr. Schreiber during his interviews with William Kaplan. Moreover, he reaffirmed the accuracy of his Eurocopter testimony both in his July 20, 2006 letter to Mr. Mulroney as well as in the Affidavit he filed with the Federal Court in 2007.

Testimony of Karlheinz Schreiber R. v. MBB Helicopters Canada, November 24, 2004, Exhibit P-46, Tab 19, p. 60

Interviews with Karlheinz Schreiber, William Kaplan, March 6, 2004 and March 31, 2004, Exhibit P-25, Tabs 13 and 14

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, July 20, 2006, Exhibit P-7, Book 4, Tab 26

Affidavit of Karlheinz Schreiber, Karlheinz Schreiber (Plaintiff) – and – The Attorney General of Canada, The Solicitor General of Canada and the Commissioner of the RCMP (Defendants), Federal Court of Canada, March 20, 2007, Exhibit P-9, at para. 35-36.

154. Moreover, the Commission must recognize that while Mr. Schreiber had no motive to lie or mislead the Court in the Eurocopter proceedings, he did have a clear motive for giving inaccurate and/or misleading evidence in his November 2007 Affidavit – as was set out in the previous section.

155. It is also important to note that although Mr. Schreiber had met one day earlier with Minister Corbeil and Minister Charest with respect to the establishment of a production facility in Montreal, he did not discuss that meeting with Mr. Mulroney at the Mirabel Airport meeting.

Mulroney Evidence, May 12, p. 3556

Schreiber Evidence, April 14, p. 400

Note regarding BHI (Thyssen); Proposal to locate in Montreal East, September 9, 1993, Exhibit P-7, Book 1, Tab 94

Memorandum, Helmut Zankl to file, September 9, 1993, Exhibit P-7, Book 1, Tab 95

156. It is our respectful submission that had Mr. Schreiber actually retained Mr. Mulroney to lobby the federal government, as he has alleged, it would have been totally illogical and counterproductive for him not to have advised Mr. Mulroney of the meeting he had the day before with two of Mr. Mulroney's former Cabinet colleagues.

157. As previously mentioned, the Mirabel Airport meeting was the point where Mr. Schreiber first gave Mr. Mulroney a cash payment for future services. At the end of the meeting Mr. Schreiber retrieved an envelope from his briefcase and handed it to Mr. Mulroney indicating that it was the first payment on the retainer.

Mulroney Evidence, May 12, p. 3559; May 15, p. 4101

158. Although Mr. Mulroney did not open the envelope at that moment, he has testified that he immediately assumed it contained cash given its relative dimensions. When Mr. Mulroney hesitated, Mr. Schreiber explained that he was an international businessman and that he "only dealt in cash".

Mulroney Evidence, May 12, pp. 3559-3560; May 15, pp. 4101, 4103

159. Mr. Mulroney has repeatedly conceded that it was a significant error of judgment to have accepted a cash payment from Mr. Schreiber. He told the Commission that he should have refused the envelope and instead asked Mr. Schreiber to provide him with payment in the form of a cheque:

I wish I had done that, because had I done it we wouldn't be here today. But I didn't. And that was the reason that I indicated that while nothing was illegal, that this kind of transaction, undocumented to that extent, as it is, could give rise to legitimate suspicions by reasonable people.

Mulroney Evidence, May 12, p. 3560; May 13, p. 3782; May 14, p. 3946; May 15, pp. 4102, 4121

160. Mr. Schreiber, in turn, has testified that prior to the Mirabel Airport meeting he had not discussed the form or amount of payment with Mr. Mulroney. It is therefore submitted that Mr. Mulroney would not have known that Mr. Schreiber intended to pay him in cash when he agreed to the meeting.

Schreiber Evidence, April 14, p. 435; May 7, p. 3288

161. Mr. Mulroney further testified that he did not open the envelope until he had returned to the cottage his family was renting in nearby l'Estérel, Quebec. He simply carried the envelope, along with the other documents he had been given, in his hands for the duration of the short drive back to the cottage in the RCMP vehicle.

Mulroney Evidence, May 15, pp. 4115-4117

162. Once he arrived back at the cottage, Mr. Mulroney opened the envelope and confirmed that it contained \$75,000 in \$1,000 bills. The money was then placed in a portable safe that the family had brought with them. When Mr. Mulroney later moved to Montreal, he transferred the money to the safe located in his new house.

Mulroney Evidence, May 12, p. 3562; May 15, pp. 4116, 4117

(iv.) UN Peacekeeping Initiative / P5 Concept

163. As he has testified, Mr. Mulroney did not receive any explicit instructions from Mr. Schreiber with respect to the mandate apart from the general request and understanding that Mr. Mulroney would assist in identifying international opportunities for the promotion of the Thyssen peacekeeping vehicles.

Mulroney Evidence, May 12, pp. 3550, 3555-3556, 3556-3557; May 13, p. 3591; May 15, pp. 4080-4081, 4095-4096, 4129, 4130-4131

164. Mr. Mulroney interpreted the limited instructions he had received from Mr. Schreiber as meaning the mandate was a form of "watching brief". As both Mr. Mulroney and Mr. Schreiber have testified, Mr. Schreiber did not ask – nor did he expect – Mr. Mulroney to issue regular invoices or receipts for any expenses he incurred.

Mulroney Evidence, May 12, p. 3548; May 15, pp. 4096-4098, 4130-4131

Schreiber Evidence, April 15, p. 623; April 16, p. 823

165. In the weeks following the Mirabel Hotel meeting, Mr. Mulroney turned his mind and attention to how he might best fulfill the mandate he had been given by Mr.

Schreiber. To that end, he began this process by reviewing the various documents which had been given to him by Mr. Schreiber at the meeting:

I was sitting out looking at them and noticing of course – they jump out at you – the UN inscriptions. You know, what can I usefully do to be helpful here? And I thought obviously of the United Nations itself, with which both I and Canada have had a long association.

Mulroney Evidence, May 12, p. 3562-3564; May 13, p. 3591; May 15, pp. 4098-4099

Sales brochure –light vehicle “Thyssen Henschel, Henschel Defense Technology – TH 495 Infantry Combat Vehicle (IVC), Exhibit P-47(A)

166. Drawing on his experiences with the U.N., and the challenges faced by the nations involved in peacekeeping operations, Mr. Mulroney determined that a possible initiative could be to convince the U.N. to adopt a set of common technical standards for vehicles used in peacekeeping missions – ideally using the Thyssen vehicle as the model for those standards.

Mulroney Evidence, May 13, p. 3591; May 15, pp. 4098-4099, 4130-4131

167. Mr. Mulroney described the challenges he had experienced, and the genesis of his idea, in the following manner:

The challenge was that peacekeepers would be thrown together with people and/or equipment from Bangladesh, Canada, you name it, all these countries thrown together, and they would bring their own equipment in some significant measure.

It would break down or parts problems. There was servicing problems. There was chaos. You're in the middle of the Congo and you have all these things going every which way. It is an extraordinary difficult thing for the United Nations to do.

That was a problem, a very significant problem for the United Nations...

...at the same time it is also a concept that was gaining traction in NATO. Every time I went to a NATO Heads of Government meeting, and when they discussed the difficult challenges that they faced on an operating basis – because we had troops in NATO as well, in Germany and elsewhere in Europe. Obviously the absence of standardization was a main challenge in NATO as it was in the United Nations in respect of the procurement and maintenance of equipment.

Mulroney Evidence, May 12, pp. 3571-3572

168. Later in his testimony, Mr. Mulroney outlined the mechanics of his proposal and how he expected to broach it with the U.N. itself:

When a few days after I returned to the cottage and had met with Mr. Schreiber some time before, I was sitting out looking at my schedule for the upcoming weeks and months, such as it was then. I was just starting again.

But one thing that I had very firmly on my agenda was the agenda of a trip to China and elsewhere in Asia, from October 1 to October 11. Here we are probably September 1 or thereabouts.

So when I examined more carefully the documentation that Mr. Schreiber had given me, including the full photographs of the *dépliant publicitaire*, the merchandising documentation with the United Nations splashed all over it, I am taking a look at my proposed agenda for China and thought that I might usefully explore the concept with the leading members of the United Nation, in particular the P5 countries, to begin the lengthy process of finding out where they stood generally on something like this.

So inasmuch as I was going to China, I thought that might be a good place to start. China is a member of the P5 and has always taken a strong interest in the United Nations. So, I figured in the absence of any specific instruction from Mr. Schreiber, this was a good way to start.

Mulroney Evidence, May 13, pp. 3577-3578

Agenda of trip to Asia, The Right Honourable Brian Mulroney, October 1 to 11, 1993, Exhibit P-44, Tab 72

169. Mr. Mulroney testified that the best approach in his view was to informally consult with each of the P5 nations before engaging in formal consultations with the U.N. Secretary General. To that end, Mr. Mulroney explained that the Secretary General is "executive director" for the P5, "in the sense that he executes their mandates."

Mulroney Evidence, May 12, p. 3568; May 13, pp. 3592-3593

170. The Commission also heard evidence on the importance of the so-called P5 nations, namely the five permanent members of the United Nations Security Council: China, Russia, France, the United States and the United Kingdom. Their power is derived from the fact that each nation has a veto which it can use at any time.

Mulroney Evidence, May 12, pp. 3567-3569

171. Once Mr. Mulroney had consulted on an informal basis with all five members of the P5, and assuming they had been sufficiently supportive of the concept not to threaten the use of their respective vetoes, Mr. Mulroney would have then moved to more substantive discussions with the United Nations Secretary General:

The idea would have been, quite simply, that I would have taken it to the Secretary General of the United Nations at that point in time, developed with the client the necessary backup to indicate the advantages that this would cause them to receive, from standardization, from the harmonization of the vehicles and their spare parts, the whole question of the pre-location of these vehicles, under United Nations control, and the efficiency that this might bring to an otherwise very challenging situation...

...my thought was that I would bring this to the Secretary General's attention, with a business plan, with some backup that would persuade him and help him bring it to the attention of the Security Council. The Security Council would consider it. If they found that it was a pretty good idea, they would then refer it back through the Secretary General to the United Nations Peacekeeping Division, and hopefully we would have wound up with some part of that concept accepted...

...[the vision] was being actively discussed, as you know, in NATO at the time. These multilateral organizations experience similar problems, and I just felt that it would be – because Canada was still involved in an important and difficult situation in the former Yugoslavia, with thousands of peacekeepers and lots of equipment – that this might be a good illustration and a good peg for me to operate with.

Mulroney Evidence, May 19, pp. 4327-4328

172. In the course of his testimony, former Ambassador Fred Bild testified that Mr. Mulroney's concept had some merit and even some precedent. Prior to becoming Ambassador to China, Mr. Bild worked at Foreign Affairs where he was responsible for relations with the United Nations, and in particular all peacekeeping operations.

Transcript, Evidence of Fred Bild (hereinafter "Bild Evidence"), May 21, pp. 4775, 4777-4778

173. When asked about whether the United Nations had ever stockpiled equipment for peacekeeping missions, as Mr. Mulroney's concept would have entailed, Mr. Bild testified as follows:

Indeed. In fact, as I mentioned to you, in 1994 the United Nations decided to set up a base in Brindisi, in southern Italy, where they could stock equipment, because even though they weren't at that time buying equipment, they inherited a lot of equipment, going all the way back to the Suez crisis in 1956, after another great Canadian, Mr. Pearson, had invented peacekeeping, and invented the blue helmets, and sent in a mission.

When the mission was over, there was all this equipment left, and over the years things were added to it and they eventually decided that they were going to stock all of this at Brindisi, which you can look up on the web. It's a full-fledged base. I don't know if they have bought equipment there, I am not aware of any, but they do have a place where they can store equipment, and, more importantly, from a peacekeeping angle, they can train peacekeepers from the Third World.

Most Third World countries – many of the poorer Third World countries have no equipment to train their soldiers on. So, there they have equipment that these peacekeepers can be trained on.

Bild Evidence, May 21, pp. 4777-4778

174. In the final analysis, therefore, the proposal that Mr. Mulroney envisioned was both practical and entirely consistent with the practices being explored by both the United Nations and NATO. Moreover, the Commission heard from many witnesses that the standardization of equipment would yield clear benefits for multinational organizations.

Mulroney Evidence, May 12, pp. 3571-3572; May 13, pp. 3593-3594

Bild Evidence, May 21, p. 4778

Lalonde Evidence, March 30, pp. 142-143

Burney Evidence, March 31, pp. 236-237

Greg Alford, April 21, pp. 1430, 1469-1470

(v.) *Conflict of Interest and Post Employment Code*

175. In the Ruling on Standards of Conduct, the Commissioner noted that as a former Prime Minister Mr. Mulroney would be subject to the provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders* (“1985 Ethics Code”) which had been introduced by the Mulroney government in 1985.

Ruling on Standards of Conduct, Commissioner Oliphant, February 25, 2009, para. 34

176. Given that the business relationship between Mr. Mulroney and Mr. Schreiber was formed and finalized on August 27, 1993, after Mr. Mulroney left office, that relationship and the related business dealings would only be subject to those provisions of the 1985 *Ethics Code* governing the conduct of former public office holders.

177. As will be shown below, these provisions were obviously intended to prohibit a former public office holder from using his or her influence with the Government of Canada in respect of domestic matters.

178. Section 59 of the 1985 *Ethics Code* provides, in part, as follows: "At no time shall a former public office holder act for or on behalf of any person, commercial entity, association, or union in connection with any specific ongoing proceeding, transaction, negotiation, or case to which the Government is a party."

179. It is respectfully submitted that a commercial mandate to assist in the international promotion of Thyssen peacekeeping vehicles did not violate the prohibition set out in Section 59, as Mr. Mulroney did not act for or on behalf of any entity in connection with a specific ongoing proceeding to which the Government of Canada was a party.

180. Subsection 60(a) provides, in part, that a former public office holder cannot "accept appointment to a board of directors of, or employment with, an entity with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office" within two years of having left office.

181. It is respectfully submitted that a commercial mandate to assist in the international promotion of Thyssen peacekeeping vehicles did not violate the prohibition set out in Subsection 60(a), as Mr. Mulroney never accepted appointment to the Thyssen Board of Directors or, indeed, any form of employment with Thyssen.

182. Subsection 60(b) provides, in part, that a former public office holder cannot "make representations for or on behalf of any other person or entity to any department with which they had significant official dealings" during the period of one year before leaving office within two years of having left office.

183. It is respectfully submitted that a commercial mandate to assist in the international promotion of Thyssen peacekeeping vehicles did not violate the prohibition set out in Subsection 60(b), as Mr. Mulroney never made representations on behalf of Mr. Schreiber to any department of the Government of Canada..

184. Subsection 60(c) provides, in part, that a former public office holder cannot give counsel "for commercial purposes...concerning the programs or policies of the department with which they were employed, or with which they had a direct and substantial relationship" within two years of having left office.

185. It is respectfully submitted that a commercial mandate to assist in the international promotion of Thyssen peacekeeping vehicles would not have violated the prohibition set out in Subsection 60(c), as Mr. Mulroney never counselled Mr. Schreiber on the programs or policies of any department of the Government of Canada.

(vi.) China – Meeting with Zhu Ronji

186. As previously discussed, the first major foreign trip that Mr. Mulroney took after leaving office was to China. Mr. Mulroney had been asked to accompany an important corporate client (not Thyssen), who was engaged in significant business ventures in Asia.

Mulroney Evidence, May 13, p. 3579; May 19, p. 4320

187. While in China, given the unique opportunity that the trip presented, Mr. Mulroney took advantage of some of the meetings and dinners to raise matters relating to other private sector clients. It was in this context that Mr. Mulroney confirmed that he first raised his U.N. procurement concept.

Mulroney Evidence, May 13, pp. 3579, 3586-3588, 3589; May 19, pp. 4321, 4324-4325, 4330-4332

188. To the best of his recollection, Mr. Mulroney testified that the concept was discussed with Vice Premier Zhu Ronji at a private meeting and banquet in his honour on October 5, 1993. Mr. Mulroney further testified that he had previously met Vice Premier Zhu when he came to Canada, and felt he had a good relationship with him.

Mulroney Evidence, May 13, pp. 3584-3588; May 19, pp. 4330-4332

Agenda of trip to Asia, The Right Honourable Brian Mulroney, October 5, 1993, Exhibit P-44, Tab 72, p. 2

189. Mr. Mulroney described the conversation as follows: “I raised with him in a private general fashion the main – the issues involving the main client with whom I was travelling obviously, and I also took the liberty of his invitation to discuss with him the situation of another...major Canadian corporation, plus this matter with the [U.N.]”

Mulroney Evidence, May 13, p. 3586

190. Mr. Mulroney then added: "We went from there to a very lengthy banquet where I sat next to him for four hours that evening and had all kinds of conversations about pretty well everything that was involved in a bilateral relationship with Canada, plus the corporate interests that I was seeking to advance."

Mulroney Evidence, May 13, p. 3587

191. It is important for the Commission to note, that raising the issue with Vice Premier Zhu was not intended or expected to elicit any commitment on the part of the Chinese government. As Mr. Mulroney testified: "I was there simply to begin the process of sounding out the terrain for a more comprehensive approach later."

Mulroney Evidence, May 13, p. 3591

192. In his testimony, former Ambassador Bild indicated that he did not witness – nor was he subsequently informed of – any conversations between Mr. Mulroney and Chinese officials relating to the U.N. standardization concept. With respect, Mr. Bild's testimony must be viewed in its proper context.

Bild Evidence, May 21, pp. 4798, 4800-4801, 4804-4805

193. First, while Mr. Bild noted that Mr. Mulroney had not advised the Canadian Embassy of his efforts, he conceded that had Mr. Mulroney raised the peacekeeping issue with them it would have caused some consternation among embassy officials. For that reason alone, it makes sense that Mr. Mulroney did not involve the Embassy at the very preliminary stage of a private initiative.

Bild Evidence, May 21, pp. 4782-4783, 4792-4793, 4812-4813

194. Indeed, Mr. Mulroney was acting in a private capacity in the very embryonic stages of development for the P-5 concept. Mr. Bild's testimony proves that it would have been totally counterproductive to alert the embassy or Ambassador Bild in those circumstances.

195. Second, Mr. Bild conceded that he did not hear all of the conversations involving Mr. Mulroney or everything that was said by Mr. Mulroney at the banquet that evening.

While Mr. Bild was a guest at the banquet hosted by Vice Premier Zhu, he did not sit immediately beside Mr. Mulroney.

Bild Evidence, May 21, pp. 4800, 4801

196. Third, Mr. Bild also made a point of clarifying that some of the quotes that had been attributed to him in the press (where he expressed his doubts about the discussions), were given when he had been incorrectly advised that the issue raised by Mr. Mulroney was the sale of military vehicles to China – and not U.N. peacekeeping.

Bild Evidence, May 21, pp. 4813-4814

197. Fourth, as to whether the Chinese government would have informed him of every conversation Mr. Mulroney might have had about U.N. peacekeeping, no matter how casual, Mr. Bild said: “This is my guess Commissioner, if I may – I’m just thinking out loud.”

Bild Evidence, May 21, p. 4798

198. Mr. Bild’s testimony can therefore be summarized as follows: he did not hear every conversation that Mr. Mulroney had with Vice Premier Zhu; it was his “guess” that the Chinese would have informed him of a casual conversation about U.N. peacekeeping; and his initial concerns as reported in the press were based on inaccurate information.

(vii.) Montreal – Meeting with Karlheinz Schreiber

199. On December 18, 1993, Mr. Mulroney met with Mr. Schreiber at the Queen Elizabeth Hotel in Montreal. The meeting, like those at Harrington Lake and Mirabel Airport, had been arranged by Fred Doucet. The location was chosen both because it took place on a weekend and because Mr. Schreiber was a guest at the hotel.

Mulroney Evidence, May 13, pp. 3596-3597; May 15, pp. 4124-4125, 4144-4145

Schreiber Evidence, April 15, pp. 547-548, 556-557

200. While there was some confusion as to whether the meeting took place on December 17, 1993 or December 18, 1993, it is respectfully submitted that the evidence

strongly suggests the meeting took place on December 18th. Not only did Mr. Mulroney testify that he recalled everyone being dressed in a casual manner, both he and Mr. Schreiber remember discussing Mr. Schreiber's meeting with Minister Ouellet – which took place the day before.

201. Although Mr. Schreiber did have a room at the hotel, it is important for the Commission to note that the meeting itself did not take place in his hotel room. Both Mr. Schreiber and Mr. Mulroney testified that the meeting took place in another part of the hotel where other people were present.

Mulroney Evidence, May 13, pp. 3596, 3597-3598, May 15, p. 4126

Schreiber Evidence, April 15, pp. 544, 583

202. Mr. Schreiber recalled that the meeting took place in the Gold Key lounge of the hotel, which was used by guests of the hotel staying on the Gold Key floor. Mr. Mulroney, for his part, recalled that the meeting took place in the coffee shop located elsewhere in the hotel. Both agreed, however, that they met in a public place and that many other people were present.

Mulroney Evidence, May 13, pp. 3596, 3597-3598, May 15, p. 4126

Schreiber Evidence, April 15, pp. 544, 583

203. When asked about the meeting, Mr. Schreiber said that he thanked Mr. Mulroney for having sent a picture, told him about his meeting with Foreign Affairs Minister André Ouellet and that: "I was excited, and I was happy with him, and I shared my excitement, how things are now moving with the Liberals, and with the help of Mr. Lalonde."

Schreiber Evidence, April 15, pp. 546, 549, 551

Signed photograph of Rt. Hon. Brian Mulroney, Photographs, Exhibit P-44, Tab 123

204. Mr. Schreiber further testified that he recognized Mr. Mulroney would not have been able to assist him with the federal government, on account of the fact that the Conservatives had been defeated in the election. Moreover, he said "it went so wonderful

with [Foreign Affairs Minister André Ouellet] that there was nothing to do at the moment.”

Schreiber Evidence, April 15, pp. 557-559, 564

205. In this respect, Mr. Schreiber’s testimony was entirely consistent with the testimony delivered by Mr. Mulroney. As Mr. Mulroney would later testify: “[Schreiber] had fallen in love with the Liberals”, adding:

Well, his infatuation with André Ouellet, my old classmate from Laval, was unbounded. He told me that the Liberals were in, and contrary to the Conservatives, he had it figured out about how he was going to get this deal done, now in the east end of Montreal.

Now, I knew Mr. Ouellet well – probably all of my life, since we were students. He is a very effective political operator, a very tough guy, very successful in his business, and he was then, after the election, the Minister of Foreign Affairs and the senior cabinet representative from Montreal. He had a lot of influence.

He had been introduced to him, I think, by Mr. Lalonde, and he was very infatuated, both with him and with the prospects of concluding a deal.

Mulroney Evidence, May 13, pp. 3600-3601

206. Where Mr. Mulroney and Mr. Schreiber disagree is whether Mr. Mulroney debriefed him on his trip to China and his U.N. procurement concept. Indeed, Mr. Mulroney conceded that Mr. Schreiber did not appear to be very interested in his concept and was much more interested in discussing his work with the Liberal government.

Mulroney Evidence, May 13, pp. 3600, 3601; May 15, pp. 4128, 4129, 4142-4143

Schreiber Evidence, April 15, pp. 586-587

207. In his account of the meeting, however, Mr. Mulroney testified that he told Mr. Schreiber about what he had done in China. He said that he was surprised at the time that Mr. Schreiber was not more interested, as he had thought that Mr. Schreiber would have been much more enthusiastic at that meeting about China and the P5.

Mulroney Evidence, May 13, pp. 3600, 3601; May 15, pp. 4128, 4129, 4142-4143

208. Another area of agreement is that Mr. Schreiber did not ask Mr. Mulroney to do any domestic lobbying, whether in connection with either the federal or any provincial government. Both Mr. Schreiber and Mr. Mulroney testified that no such request was made in the course of their conversation.

Mulroney Evidence, May 13, pp. 3601-3602

Schreiber Evidence, April 15, p. 558

209. At some point in the meeting, Mr. Schreiber retrieved an envelope containing the second payment from his bag. Both Mr. Schreiber and Mr. Mulroney acknowledged that Mr. Schreiber indicated that the envelope contained the second payment, and that the envelope was given at the table – in full view of the other patrons.

Mulroney Evidence, May 13, p. 3602; May 15, p. 4147

Schreiber Evidence, April 15, pp. 559-560, 583

210. While Mr. Schreiber testified the envelope contained \$100,000, Mr. Mulroney testified that the envelope only contained \$75,000. At the conclusion of the meeting, Mr. Mulroney returned to his home and put the envelope and its contents in his safe – which already contained the remaining money from the first retainer payment.

Mulroney Evidence, May 13, p. 3603; May 15, pp. 4149-4150

Schreiber Evidence, April 15, p. 560

(viii.) Russia – Meeting with Boris Yeltsin

211. In August of 1994, Mr. Mulroney and his family were invited to visit Russia to spend some time with Russian President Boris Yeltsin. Given that Russia was another permanent member of the United Nations Security Council, Mr. Mulroney took advantage of the opportunity to raise the issue of his U.N. concept during their talks.

Mulroney Evidence, May 13, pp. 3603-3604

Schedule for the Right Honourable Brian Mulroney and family trip to Cyprus and Russia, August 18 to 30, 1994, Exhibit P-44, Tab 74

212. Mr. Mulrone y testified that there was an initial misunderstanding as between himself and President Yeltsin, as the President first thought that Mr. Mulrone y was hoping to persuade Russia to purchase the Thyssen vehicles. Once corrected, however, Mr. Mulrone y stated that President Yeltsin appeared to be supportive of the concept.²

Mulrone y Evidence, May 13, pp. 3604, 3606

(ix.) France – Meeting with Francois Mitterrand

213. In late September 1994, Mr. Mulrone y was scheduled to attend a board meeting for Petrofina being held in Brussels, Belgium. After the meeting, Mr. Mulrone y travelled to Paris, France where he met up with Mrs. Mulrone y before leaving for Hong Kong. While in Paris, Mr. Mulrone y had an unscheduled meeting with President Mitterrand.

Mulrone y Evidence, May 13, pp. 3610, 3611-3612

Fax from Francine Collins, assistant to the Right Honourable Brian Mulrone y to Ambassador Benoit Bouchard and agenda for trip to Brussels and Paris, September 21, 1994, Exhibit P-44, Tab 75

214. Mr. Mulrone y testified that upon arriving in Paris he was contacted at his hotel by the Canadian Embassy and invited to meet with President Mitterrand at Elysée Palace – the official residence of the President of the French Republic. Mr. Mulrone y accepted the invitation, as he had, *inter alia*, worked closely with Mitterrand on the Francophonie Summits.

² In some circles, not least in the press, it has been said that because President Yeltsin has since died, one should assume that this discussion with Mr. Mulrone y never took place. This is suggested notwithstanding that there is no evidence which disputes the fact that Mr. Mulrone y did meet with President Yeltsin in Russia in August 1994. It is true that because President Yeltsin is dead, their conversations cannot be verified. That said, however, it must be noted that a number of other witnesses have passed away in the more than 15 years since the events being investigated by this Commission took place.

While it is true that President Yeltsin died in 2007, it is equally true that former ACOA Minister Gerry Merrithew died in 2004, and that former DRIE Minister Bob de Cotret died in 1999 – both signed the 1988 UIP. It is also an unfortunate reality that President Mitterrand, Secretary Weinberger, Frank Moores and Gary Ouellet are all deceased. Each of these individuals could have been important, even critical, witnesses for the Commission – but it is respectfully submitted that the Commission should not draw an adverse inference about the credibility of Mr. Mulrone y's testimony because of their deaths.

Mulroney Evidence, May 13, pp. 3611-3612

215. In the course of their discussion, Mr. Mulroney indicated that President Mitterrand asked him about what he had been doing since leaving office. As part of his answer, Mr. Mulroney testified that he advised President Mitterrand of his mandate for Thyssen and mentioned the U.N. procurement concept.

Mulroney Evidence, May 13, pp. 3612-3614

216. According to Mr. Mulroney, President Mitterrand indicated that he knew about Thyssen – likely because of the close relationship between France and Germany – and indicated that France was also attempting to enter into that market. Mr. Mulroney stated that President Mitterrand was not opposed to standardization at the U.N.

Mulroney Evidence, May 13, p. 3614; May 19, pp. 4354-4355

217. As with Vice Premier Zhu and President Yeltsin, the conversation with President Mitterrand was informal and unofficial. The discussion of the U.N. concept was not intended to be viewed as a formal entreaty by the Canadian government; rather Mr. Mulroney simply wanted to get initial gut reactions to the concept in its embryonic form.

Mulroney Evidence, May 19, pp. 4354-4355

218. Mr. Mulroney also testified that the last discussion he had with a foreign official prior to the Letter of Request in November 1995, was a final brief talk with Francois Mitterrand at Colorado Springs in October 1995, where they had both been invited to attend a symposium on the end of the Cold War hosted by former President Bush.

Mulroney Evidence, May 13, p. 3615; May 19, p. 4356

219. Mr. Mulroney confirmed that President Mitterrand was no longer in office at the time of their second conversation, but that he had asked him about whether any progress had been made on the initiative since their first discussion. Mr. Mulroney recalled that this casual conversation took place at breakfast one morning.

Mulroney Evidence, May 13, pp. 3615-3616; May 19, pp. 4356-4357

(x.) New York – Meeting with Karlheinz Schreiber and Fred Doucet

220. On December 8, 1994, Mr. Mulroney and Mr. Doucet travelled to New York City to meet with Mr. Schreiber and attend a lunch for Mr. MacKay and his wife. Mr. Doucet arranged all of the logistics for the meeting, at Mr. Schreiber's request, as he had done for the meetings at Harrington Lake, Mirabel Airport and the Queen Elizabeth Hotel.

Mulroney Evidence, May 13, pp. 3619-3620, 3622-3623; May 15, pp. 4008, 4167-4169

Doucet Evidence, April 27, p. 2161

Schreiber Evidence, April 15, pp. 580, 582, 619, 620

Schedule for the Right Honourable Brian Mulroney (re: New York trip), December 8, 1994, Exhibit P-44, Tab 77

221. The meeting ultimately took place in Mr. Schreiber's suite at the Pierre Hotel. The location made sense as neither Mr. Mulroney nor Mr. Schreiber had an office in New York City, and also because the luncheon with Mr. MacKay was slated to take place immediately thereafter in one of the restaurants located in the hotel.

Mulroney Evidence, May 15, p. 4169

Schreiber Evidence, April 15, pp. 582-583

222. The meeting was arranged for New York City because Mr. Schreiber was scheduled to be in New York City for a meeting of the Atlantic-Bridge organization. It was also known that Mr. Mulroney frequently travelled to New York City, where he had a number of commercial interests and where he sat on a number of corporate boards.

Schreiber Evidence, April 15, pp. 596, 620, 621; April 17, p. 1105

223. Prior to the meeting in New York, on December 1, 1994, the Department of National Defence in Ottawa had released a new White Paper on defence issues. The new White Paper outlined the measures being taken in the face of budgetary constraints, including the priority acquisition of armoured personnel carriers.

224. On December 5, 1994, three days before the New York meeting, Mr. Doucet faxed several pages from the White Paper to Mr. Mulroney's office along with a draft letter that had been prepared to the Minister of National Defence from Thyssen. Mr. Doucet asked Mr. Mulroney's secretary to put the documents in a file for the meeting.

Mulroney Evidence, May 15, pp. 4172-4173

Doucet Evidence, April 27, pp. 2167-2168

Fax from Fred Doucet to Francine Collins (with attachments, including extract from the 1994 White Paper), December 5, 1994, Exhibit P-44, Tab 76

225. While Mr. Schreiber and Mr. Mulroney do not agree about everything that was discussed at the New York meeting, they do agree that they talked about the 1994 Defence White Paper. In fact, both men testified that it was Mr. Mulroney who brought the documents to New York and shared them with Mr. Schreiber.

Mulroney Evidence, May 13, p. 3624; May 15, pp. 4172-4173

Schreiber Evidence, April 15, pp. 584, 586

226. After they discussed the 1994 Defence White Paper, Mr. Mulroney testified that he provided Mr. Schreiber with a detailed debriefing on his conversation in Russia with President Yeltsin and his conversation with President Mitterrand in France. He added that when he was done meeting with the P5, he would then meet the U.N. Secretary General.

Mulroney Evidence, May 13, pp. 3524-3625; May 15, pp. 4173-4174

227. While Mr. Schreiber disputes that portion of Mr. Mulroney's version of events, the meeting was also attended by Mr. Doucet – and Mr. Schreiber did not dispute that Mr. Doucet was present for the entire meeting. Mr. Doucet testified, in part, as follows:

What I remember is Mr. Mulroney and Mr. Schreiber sharing documents back and forth and I remember, as well, Mr. Mulroney walking him through his international travels, notably China, Russia and France – I'm not sure if it was in that order or some other order – and reporting on those meetings that he had had in those locations and paying particular importance to those countries because they were members of the P5 Group, which is the Permanent Five Membership of the Security Council of

the UN, and the influence that those countries typically have over the operations of the UN when the P5 supports it...

...In the case of China, I remember him talking about the leadership of China. In the case of Russia, he mentioned President Yeltsin...France...President Mitterrand...

...The conversation was about Mr. Mulroney's report, which I took to be part of his ongoing assignment, and the results of his meetings with those representatives of those countries...

...I remember that the White Paper was discussed, the elements of which I do not particularly remember...

Doucet Evidence, April 27, pp. 2165-2166, 2169

Schreiber Evidence, April 15, pp. 583, 584, 586-587, 588

228. All three witnesses agreed that at the end of the meeting Mr. Schreiber got up and handed an envelope to Mr. Mulroney. The envelope contained the third and final payment. All three witnesses also agreed that Mr. Schreiber indicated that the envelope contained a payment.

Mulroney Evidence, May 13, pp. 3625-3626; May 15, p. 4174

Doucet Evidence, April 27, pp. 2171, 2172

Schreiber Evidence, April 15, p. 592

229. After the meeting, all three witnesses testified that they went down to the restaurant where Mr. MacKay and his wife were already seated.

Mulroney Evidence, May 13, p. 3626

Doucet Evidence, April 27, p. 2177

Schreiber Evidence, April 15, p. 599

230. At the conclusion of lunch, Mr. Mulroney testified that he went to a downtown branch of the Chemical Bank – on whose international board he served as a director at the time. Mr. Mulroney explained that he had previously asked for a safety deposit box to be arranged for him at the branch to store some sensitive papers relating to matters in Latin America.

Mulronev Evidence, May 13, pp. 3529-3632; May 15, pp. 4183-4185

231. Mr. Mulronev completed the paperwork for the safety deposit box, and put the envelope and its contents inside. He did not bring the money back to Canada that evening, and instead kept it in New York. The bank, now JP Morgan Chase, has confirmed the existence of the box.

Mulronev Evidence, May 13, pp. 3629-3632; May 15, pp. 4183-4187, 4188

Fax, Chase Manhattan Bank (Michael Lipsitz, Esq.) to Rt. Hon. Brian Mulronev, January 16, 2008, Exhibit P-44, Tab 119

Letter, Chase Manhattan Bank (Michael Lipsitz) re: "Brian Mulronev", January 28, 2008, Exhibit P-44, Tab 120

232. In the end, most of the details of the New York meeting are not in dispute. All three witnesses confirmed almost all of the basic elements of the meeting, though Mr. Schreiber denies Mr. Mulronev discussed international work. The Commission, however, received clear evidence on that point from two witnesses both testifying under oath.

(xi.) Meetings with Caspar Weinberger and James Baker

233. In the course of his testimony, Mr. Mulronev confirmed that he had also spoken with both former U.S. Secretary of Defence Caspar Weinberger and former U.S. Secretary of State James A. Baker III. Mr. Mulronev stated that he had not discussed his mandate with anyone in the Clinton Administration.

Mulronev Evidence, May 13, pp. 3616-3618, May 19, pp. 4334, 4357-4359

234. Mr. Mulronev indicated that he sought out Secretary Weinberger on the topic because of his expertise in military issues dating back to his time as President Reagan's Secretary of Defence.

Mulronev Evidence, May 13, pp. 3616-3618

235. While he could not specifically recall having raised the issue of U.N. procurement with Secretary Baker, Mr. Mulronev testified that he had several conversations with him

about the U.N., how it operated, and the important role it played in international peacekeeping – something they had both witnessed during the Gulf War in 1990/1991.

Mulroney Evidence, May 19, pp. 4357-4358

(xii.) Conclusions

236. With regard to the mandate which Mr. Mulroney accepted from Mr. Schreiber as well as the work completed in furtherance of that mandate, the evidence led at this Commission supports the following conclusions:

- (a) The Karlheinz Schreiber that Mr. Mulroney knew in the summer of 1993 was a legitimate international businessman, who came highly recommended by two of Mr. Mulroney's closest friends;
- (b) Apart from a mere acknowledgment that they might talk again in the future, after Mr. Mulroney had left office, no contractual agreement of any kind was made between Mr. Schreiber and Mr. Mulroney at Harrington Lake;
- (c) The mandate that Mr. Mulroney accepted from Mr. Schreiber at the Mirabel Airport Hotel was strictly and exclusively related to international services to promote peacekeeping vehicles;
- (d) Mr. Mulroney never, either before or after leaving office, agreed to lobby or attempted to lobby the Canadian government or his successor on behalf of Mr. Schreiber or Thyssen;
- (e) There is no evidence whatsoever that Mr. Mulroney ever discussed the so-called Bear Head Project or the acquisition of Thyssen military vehicles with any Canadian officials after he left office;
- (f) The mandate accepted by Mr. Mulroney, to assist in the international promotion of Thyssen peacekeeping vehicles did not violate the post-employment provisions of the 1985 *Ethics Code*;

- (g) The UN standardization concept which Mr. Mulronev devised was entirely consistent with both emerging trends at NATO and practices being considered by the UN at that time;
- (h) The allegation contained in Mr. Schreiber's November 2007 Affidavit that Mr. Mulronev undertook to lobby Prime Minister Campbell and her government is entirely without foundation; and
- (i) The payments received by Mr. Mulronev were clearly for future services to be rendered after he left office, and had no connection whatsoever to any his activities as Prime Minister of Canada – whether in relation to Thyssen, MBB Helicopters, Airbus or any other project.

PART VI. THE AIRBUS AFFAIR (1995-1998)

(i.) The Letter of Request

237. In November 1995, Mr. Mulroney's life and that of his family were thrown into turmoil when he was informed of the now infamous Letter of Request to the Swiss authorities. Mr. Mulroney's testimony before the Commission, close to fourteen years later, speaks volumes about the devastating impact that this letter had on him and his family.

Mulroney Evidence, May 13, p. 3668

238. The Letter of Request falsely accused Mr. Mulroney of being involved in a criminal conspiracy from the day he took office in September 1984 until the day he stepped down as Prime Minister in June 1993. It asserted unequivocally that during this period, he defrauded Canadians taxpayers out of millions of dollars. It was later revealed that these categorical accusations were based on the unsubstantiated and unsupported musings of a journalist and a convicted felon.

Letter of Request from Minister of Justice and the Attorney General of Canada to the competent legal authority of Switzerland, September 29, 1995, Exhibit P-44, Tab 79 [Exhibit P-7, Book 2, Tab 116] ("Letter of Request")

239. The Letter of Request also stated that the criminal conspiracy involved both Mr. Schreiber and Mr. Frank Moores, and related to various matters including the Bear Head Project. Yet, by far the most serious accusation and main focus of the Letter of Request was clearly in respect of the purchase of Airbus aircraft by the Government of Canada.

240. The Letter of Request also contained, in its last page, the following statement:

This investigation is of serious concern to the Government of Canada as it involves criminal activity on the part of a former Prime Minister. Further investigation cannot be conducted by the RCMP until the information available in Switzerland is received. Any priority which could be placed on this Request would be greatly appreciated. [emphasis added]

Letter of Request, p. 11

(ii.) Offer to Cooperate with the RCMP and Government of Canada

241. Given the unprecedented gravity of the accusations, and mindful of the firestorm they could create, Mr. Mulroney immediately reached out to the RCMP in the hope that he could clear his name, before the matter became public, and save his family from this devastating ordeal.

Mulroney Evidence, May 13, pp. 3645

242. Through his lawyer, Mr. Roger Tassé – a highly respected former Deputy Minister of Justice – Mr. Mulroney offered to meet with the RCMP, in order to answer any questions they might have had for him relating to the allegations.

Mulroney Evidence, May 13, pp. 3650-3653, 3654-3655, 3666-3667

Letter, Roger Massé to Hon. Allan Rock, November 8, 1995, Exhibit P-46, Tab 4

243. Mr. Mulroney never questioned the right of the RCMP to investigate any matter they deemed worthy of investigating. However, knowing how unfounded these accusations were, and how damaging they would be for his family if they ever became public, Mr. Mulroney instructed Mr. Tassé to write the following letter:

We emphasize that Mr. Mulroney's objections do not relate to the fact that the RCMP is conducting an investigation nor that a request be made to the Swiss authorities for assistance. Rather, his objections are directed at what amount to his being characterized as a criminal by the Canadian authorities. This is a manner of proceeding that, in our view, goes beyond basic rules of decency and fairness and constitutes a blatant breach of Mr. Mulroney's fundamental rights.

We have informed your officers, Mary Dawson, who was then Acting Deputy Minister, and Kimberley Prost, as well as the Commissioner of the RCMP, that Mr. Mulroney unequivocally and absolutely denies the allegations contained in the request. We reiterate these denials. Furthermore, the RCMP has been informed that Mr. Mulroney is prepared to cooperate with them in their investigation. Indeed, he is astonished that the RCMP has not even chosen to meet with him before making such grave accusations.

In light of the most improper, unjustified and highly damaging statements contained in the request made to the Swiss authorities, we urge you to personally review the matter and direct your Department to withdraw the request already made and to present, if that is the wish of the RCMP, a new request that is more respectful of basic rules of fairness and decency.

We are prepared to meet with you at your convenience should you wish to discuss the matter. [emphasis added]

Letter, Roger Tassé to Hon. Allan Rock, November 8, 1995, Exhibit P-46, Tab 4

244. On November 14, 1995, Mr. W.H. Corbett responded to Mr. Tassé's letter, on behalf of the Minister of Justice. The position taken by the Government of Canada therein was basically that there was no need to change anything in the Letter of Request and that there was no reason for Mr. Mulroney to be concerned.

Letter, W. H. Corbett to Roger Tassé, November 4, 1995, Exhibit P-46, Tab 5

245. Mr. Mulroney's efforts to avoid the controversy and incredible harm that would follow from the Letter of Request being made public – a virtual certainty considering that it had already been widely disseminated – did not stop there, despite his genuine and good faith approach having been flatly turned down by the Minister of Justice.

Mulroney Evidence, May 13, pp. 3649-3660

246. On November 15, 1995, Mr. Tassé met with Sergeant Fiegenwald and Inspector Bouchard of the RCMP, in an attempt to convince them to at least amend the Letter of Request in order remove the grave accusations of criminal conduct against Mr. Mulroney.

Mulroney Evidence, May 13, pp. 3654-3655

247. On November 16, 1995, Mr. Tassé wrote to Mr. Fiegenwald to suggest the transmission of a brief letter by the RCMP to the Swiss authorities, which would have stated the following:

We wish to emphasize that nothing in our request of September 29, 1995 seeking your assistance in respect of an investigation into allegations of possible breaches of Canadian Criminal Law should be read so as to suggest that the Canadian authorities have reached the conclusion that Mr. xxx has committed any of the alleged criminal wrongdoings. We reiterate that the investigation is in its preliminary stage and that the purpose of our request to you is to determine whether there is any basis for us to proceed with a formal criminal investigation.

Letter, Roger Tassé to Sgt. Fraser Fiegerwald, November 16, 1995, Exhibit P-46, Tab 6

248. It was reasonable to ask that the erroneous language be corrected to reflect that the unfounded accusations were not facts but mere allegations, made at a preliminary stage of the investigation: Why wasn't Mr. Mulroney entitled to the presumption of innocence like any other Canadian citizen?

249. On November 17, 1995, Mr. Feigenwald replied to Mr. Tassé, conveying the official position that they had decided to adopt, following a discussion of Mr. Tassé's request with officials at the Department of Justice (P-46, Tab 7). The conclusion was brutal, the decision final:

For these reasons, I believe that the request has adequately communicated our position to the Swiss and that there is no misunderstanding and therefore, no basis for amending the request.

Letter, Sgt. Fraser Feigenwald to Roger Tassé, November 17, 1995, Exhibit P-46, Tab 7

250. Mr. Feigenwald acknowledged, in the same letter, that there was a risk that the Letter of Request might be leaked to the media – history would later reveal that he himself was responsible for leaking it to journalist / secret informant Stevie Cameron – but he nonetheless did not see any need for a correction or amendment.

Letter, Sgt. Fraser Feigenwald to Roger Tassé, November 17, 1995, Exhibit P-46, Tab 7

251. Mr. Feigenwald even indicated that the RCMP was “sensitive” to Mr. Mulroney's need to protect his reputation, and added that he would be prepared to make a statement in the event that the matter became public. This was naïve in the extreme, as it completely disregarded the repercussions that would be felt by Mr. Mulroney on an international scale.

Mulroney Evidence, May 13, pp. 3657-3659

Letter, Sgt. Fraser Feigenwald to Roger Tassé, November 17, 1995, Exhibit P-46, Tab 7

252. Once again, Mr. Mulroney's attempt to reach a reasonable compromise with the Canadian Government and the RCMP was flatly dismissed. He was essentially told that

the assertions, accusations and false statements found in the Letter of Request did not really mean what they said on their face.

Mulroney Evidence, May 13, pp. 3653-3654, 3655-3658

253. During a press conference which was held on November 18, 1995, Mr. Tassé described his unsuccessful attempts at arriving at a reasonable and acceptable compromise with the Canadian authorities, which would be respectful of every party's rights and obligations:

Monsieur Mulroney m'a téléphoné dans les heures qui ont suivi sa prise de connaissance du document dont il s'agit, c'est-à-dire la requête du gouvernement canadien auprès des autorités suisses. Nous en avons discuté et monsieur Mulroney m'a donné instructions de communiquer avec les autorités du ministère de la Justice, à Ottawa, les autorités de la GRC. Ce que j'ai fait.

J'ai parlé à plusieurs reprises à des fonctionnaires du ministère de la Justice et aux autorités, aux enquêteurs de la GRC. Quel était mon message quand je leur ai parlé? Essentiellement, mon message est assez simple : (1) Monsieur Mulroney n'a aucune objection à ce que la GRC fasse enquête concernant les allégations qui ont été faites relativement à l'achat, par Air Canada, des Airbus.

C'est même la responsabilité de la GRC de décider quand elle doit faire enquête. Monsieur Mulroney, deuxièmement, n'a aucune objection, n'avait aucune objection, n'a encore aucune objection à ce que le ministère de la Justice fasse une demande auprès des autorités suisses, une demande d'assistance pour les fins de l'enquête conduite par la GRC.

J'ai aussi fait part à ceux qui m'ont écouté, ceux que j'ai rencontrés, au ministère de la Justice, et à la GRC des dénégations catégoriques de monsieur Mulroney quant à toutes les allégations de conduite criminelle qui le concernent et qui sont contenues dans la requête faite aux autorités suisses.

J'ai indiqué aussi, quatrième point, indiqué aussi aux autorités, que monsieur Mulroney était prêt à répondre à toutes les questions qu'on voudrait bien lui poser à propos des allégations le concernant. Il était prêt à s'asseoir et à répondre, et à offrir toute sa coopération aux autorités de la GRC.

Là n'était pas le problème. Le problème, c'est l'objection très profonde, de monsieur Mulroney, quant aux déclarations des autorités canadiennes dans la demande qu'elles ont faite aux autorités suisses. Des déclarations qui sont injustes, inappropriées, injustifiées et extrêmement dommageables quant à sa personne, sa réputation et sa famille.

Alors, qu'est-ce que j'ai demandé à la GRC? Je n'ai pas demandé à la GRC de mettre fin à son enquête, je n'ai pas demandé à la GRC ne pas faire de requête auprès des autorités suisses. Je leur ai demandé d'apporter les correctifs nécessaires, d'agir dans le respect des droits de monsieur Mulroney. D'apporter les correctifs nécessaires à la requête qu'ils avaient logé auprès des autorités suisses.

Comment pouvaient-ils le faire? Soit en retirant la demande qui avait été faite et en soumettant une nouvelle, plus respectueuse des droits de monsieur Mulroney, soit en l'amendant, soit en envoyant une lettre aux autorités suisses pour apporter les correctifs qui s'imposaient. Et aussi, en faisant amende honorable auprès de monsieur Mulroney et à sa famille.

La GRC a rejeté, les autorités canadiennes ont rejeté cette demande, que j'ai faite au nom de monsieur Mulroney. La réponse, ça l'a été que la demande doit se lire en son entièreté. On ne devrait pas abstraire un paragraphe ici et là. (P-46, tab 8, pp. 3-4) [emphasis added]

Transcript of Mulroney press conference, November 18, 1995, Exhibit P-36, [Exhibit P-46, Tab 8]

254. On November 17, 1995, Mr. Mulroney realized he was confronting opponents who had falsely labelled him as a criminal and who saw no need to act or to change anything despite the enormous injustice they were perpetrating against a former Prime Minister of Canada. This is the reality that confronted Mr. Mulroney, and which henceforth influenced many of his decisions relevant to this matter.

Mulroney Evidence, May 13, pp. 3653-3654, 3656-3659

(iii.) The Press Conference

255. On November 18, 1995, a press conference was held by Mr. Mulroney's spokesperson, Mr. Luc Lavoie, and the attorneys representing him at the time. The purpose of this conference was to announce that a lawsuit would be instituted by Mr. Mulroney against the Attorney General and the RCMP.

Mulroney Evidence, May 13, pp. 3659-3660

256. The transcript of the press conference confirms that it was the accusations relating to Airbus that were the exclusive focus of all of the persons involved. In the weeks, months and years that followed, this matter would become widely known as the "Airbus Affair".

Transcript of Mulroney press conference, November 18, 1995, Exhibit P-46, Tab 9

257. Contrary to what Mr. Kaplan alleged, no one on behalf of Mr. Mulroney misled – or even attempted to mislead – the public when they asserted that Mr. Mulroney had not

received any compensation from Mr. Schreiber in relation to the Airbus matter as stated in the Letter of Request. That fact was, and remains, rigorously true and indisputable.

Kaplan Evidence, April 23, pp. 1776-1777

258. On November 20, 1995, Mr. Mulroney instituted a lawsuit against the Attorney General of Canada, the RCMP and various individuals. The lawsuit was based upon the Letter of Request, and claimed compensation for the moral damages suffered by Mr. Mulroney due to the above-mentioned defamatory accusations.

Statement of Claim, Rt. Hon. Brian Mulroney (Plaintiff) and Attorney General of Canada, Kimberly Prost, J.P.R. Murray and Fraser Fiegenwald (Defendants), Superior Court of Quebec, November 20, 1995, Exhibit P-26 [Unofficial translation – P-26(A)] (“Statement of Claim”)

(iv.) Examinations Before Plea in Quebec

259. On April 17 and 19, 1996, counsel for the Defendants proceeded to an examination before plea of Mr. Mulroney. Under Quebec’s unique discovery process, the Defendants had the right, under Section 397 of the *Code of Civil Procedure*, to examine Mr. Mulroney before filing their respective pleas.

Transcript, Examination before plea – Rt. Hon. Brian Mulroney, April 17, 1996, document entitled “Interrogatoire avant défense”, le Très Honorable Brian Mulroney – Le 17 avril 1996, Exhibit P-48 (“Examination before Plea, April 17, 1996”)

Transcript, Examination before plea – Rt. Hon. Brian Mulroney, April 19, 1996, document entitled “Interrogatoire avant défense”, le Très Honorable Brian Mulroney – Le 17 avril 1996, Exhibit P-48 (“Examination before Plea, April 17, 1996”)

Code of Civil Procedure, R.S.Q., c. C-25, s. 397

260. Another option available to them, under Section 398 of the *Code of Civil Procedure*, was to file their own defence first and proceed to an examination after plea afterwards. The Defendant’s decision to examine Mr. Mulroney before filing a defence had a significant impact on the legally permissible scope of the examination that they could conduct.

Code of Civil Procedure, R.S.Q., c. C-25, s. 398

261. The difference between an examination before plea and an examination after plea, has long been established and is well understood in Quebec. The important distinction between the two has been recognized in numerous authorities, including the Quebec Court of Appeal decision in *Weinstein v. Swift Canadian Co. Ltd.*, [1976] C.A. 253.

Weinstein v. Swift Canadian Co. Ltd., [1976] C.A. 253

262. An examination before plea can only be in respect of facts relating to, or alleged in, the statement of claim. The scope of an examination after plea is much broader. In fact, the examination after plea can bear upon any facts related to the issues between the parties, as defined by the Statement of Claim and any Statement of Defence.

Weinstein v. Swift Canadian Co. Ltd., [1976] C.A. 253

263. As an example, one could not legally ask questions, during an examination before plea, to verify the existence of facts which could eventually constitute a defence to the claim, if those questions are unrelated to any of the allegations found in the originating Statement of Claim.

(v.) The Purpose of Discovery in Quebec

264. Unlike in Common Law jurisdictions where parties are under an obligation to disclose through affidavits, at an early stage of litigation, the existence of any relevant document which might be in their possession, there is no similar obligation under Quebec Civil Law.

265. Counsel are not entitled to the full disclosure of all relevant documents in the possession of the Plaintiffs before they conduct an examination before plea. Thus, even if there had been a written contract, bank deposit slips or other documentation these would not have been given to Mr. Sheppard before the examination.

266. Consequently, it cannot be alleged that the absence of documentation relating to the business and financial dealings between Mr. Mulronev and Mr. Schreiber frustrated, in any way, Mr. Sheppard's efforts to question Mr. Mulronev during the examination before plea.

267. The only way that Defendants could have found out about the business and financial dealings was by asking the relevant questions – something that Mr. Sheppard failed to do. This is the very reason why examinations on discovery are held, to allow counsel for the parties to ask the questions and ‘discover’ the answers about any issue that is important to them and falls within the scope of permissible lines of inquiry.

268. To that end, it is not difficult to conceive of a question that Mr. Sheppard should have asked. Given that a central allegation in the Letter of Request was that Mr. Mulroney had received money from Mr. Schreiber, one might have presumed that Mr. Sheppard would have asked Mr. Mulroney if he had ever received money from him. For whatever reason, Mr. Sheppard chose not to ask this obvious question.³

269. This very point was made by William Kaplan in his book *The Secret Trial*, where he stated:

Government lawyers had the opportunity to put Mulroney’s relationship with Schreiber under a microscope. But not once in the hundreds of questions they put to the former Prime Minister was he ever asked point-blank whether he had accepted money from Schreiber – even though the central claim made against Mulroney in the 1995 letter to the Swiss was that he’d been paid off...and on that point, why was Mulroney never asked any questions on the record while he was under oath about his relationship with Schreiber?

William Kaplan, A Secret Trial: Brian Mulroney, Stevie Cameron, and the Public Trust (Montreal: McGill – Queen’s University Press 2004), Exhibit P-44, Tab 98, at 20

270. Furthermore, it is common practice for lawyers to advise their clients to answer only those questions expressly put to them and not volunteer additional information that is not specifically sought. This practice, common across every jurisdiction in Canada, is of particular importance in the context of examinations before plea in Quebec.

271. In Mr. Mulroney’s case, the examination before plea dealt with the allegations contained in his statement of claim, which in turn dealt with the defamatory nature of the serious accusations found in the Letter of Request. The main focus, both for Mr.

³ At page 10 of his report, Prof. Johnston also noted that during the April 1996 examination before plea, Mr. Mulroney “was not specifically questioned about his financial dealings with Mr. Schreiber after leaving public office.”

Mulroney and Mr. Sheppard, were the facts relating to the Airbus issue and the period of time while he was Prime Minister.

Mulroney Evidence, May 13, pp. 3674; May 14, pp. 3827-3828

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(vi.) Questions by Mr. Sheppard

272. The review of the examination before plea of Mr. Mulroney reveals that Mr. Sheppard first asked questions about Mr. Schreiber to Mr. Mulroney when the latter testified as to how he had found out about the existence of the Letter of Request, indicating that Mr. Schreiber had called him.

Examination Before Plea, April 17, 1996, pp. 80-82

273. On two occasions, Mr. Sheppard asked Mr. Mulroney to describe his "relationship" with Mr. Schreiber. He did so at question no. 232, where Mr. Mulroney described his "relationship" with Mr. Schreiber prior to 1984. Then, at question no. 235, Mr. Sheppard asked Mr. Mulroney to describe his "relationship" thereafter – which Mr. Mulroney did in respect of his time in office.

Examination Before Plea, April 17, 1996, pp. 81-82

274. Mr. Mulroney testified that he met him occasionally while he was Prime Minister, in relation to the Bear Head Project. Mr. Mulroney explained that the project was pushed hard by Mr. Schreiber, despite being turned down, saying that "He didn't quit. He kept working at it in [1992], [1993] and so on."

Examination Before Plea, April 17, 1996, pp. 82-90

275. Mr. Sheppard then proceeded to ask questions about the period after Mr. Mulroney had stepped down as Prime Minister. The questions asked suggest that Mr. Sheppard was less interested in this period, likely because the Letter of Request only referred to crimes committed during the time Mr. Mulroney was in office.

276. Mr. Sheppard did not ask Mr. Mulroney to describe his “relationship” with Mr. Schreiber after he left office, as he had done for the two previous periods, but he rather only asked him if he had maintained “contact” with Mr. Schreiber after he ceased being Prime Minister.

Examination Before Plea, April 17, 1996, p. 90

277. In response, Mr. Mulroney truthfully acknowledged that he had. The Commission must note that Mr. Sheppard never asked Mr. Mulroney why he had maintained contact, nor did he ask Mr. Mulroney about the nature of his relationship with Mr. Schreiber – as he had previously done for the other two time periods.

Examination Before Plea, April 17, 1996, pp. 90-92

278. Mr. Sheppard could have asked additional questions about the nature of the relationship after Mr. Mulroney left office, but he chose not to do so. None of the Defendant’s lawyers present felt it was necessary to ask follow-up questions. It was their examination before plea, and it was therefore their decision.

279. The limited interest shown by Mr. Sheppard in the time period between 1993 and 1995 was further illustrated later in the questioning when it became clear that Mr. Sheppard had misunderstood Mr. Mulroney’s earlier answers about the meeting at the Queen Elizabeth Hotel in Montreal.

280. Even when Mr. Mulroney himself corrected Mr. Sheppard that the Queen Elizabeth Hotel meeting took place in 1993 (and not 1995 as Mr. Sheppard assumed), Mr. Sheppard immediately went back to a question to verify whether Mr. Mulroney and Mr. Schreiber had had any meetings since November 1995.

Examination Before Plea, April 17, 1996, pp. 172

281. Mr. Sheppard did, however, cover in great detail the conversations that Mr. Mulroney and Mr. Schreiber had after November 2, 1995, the date when Mr. Mulroney found out about the existence of the Letter of Request. That was presumably because Mr.

Sheppard wanted to find out whether Mr. Mulroney leaked the Letter of Request, for that would have afforded a strong, if not complete, defence to the action.

Examination Before Plea, April 17, 1996, p. 113

282. Mr. Sheppard also wanted to know whether Mr. Mulroney had questioned Mr. Schreiber, during any of their conversations which took place after November 1995, about the accusations found in the Letter of Request in relation to the purchase of Airbus aircraft by Air Canada.

283. At question no. 318, Mr. Sheppard asked "Did you, in the course of these conversations in November, discuss with Mr. Schreiber whether or not he had been paid, he or his companies had been paid commissions by Airbus?". It is very important to note that he asked the question specifically about Airbus, not about MBB or Bear Head.

284. Following up on this initial question, Mr. Sheppard wanted to make sure that he obtained a clear answer as to the exchanges that Mr. Schreiber and Mr. Mulroney could have had about Airbus in November 1995, asking the following question:

Q. (324): And the Canadian Government alleges that very substantial sums were paid to Mr. Schreiber by Airbus Industrie, and you didn't discuss with Mr. Schreiber whether it was true or not? [our emphasis]

Examination Before Plea, April 17, 1996, pp. 115-116

285. It was to these very specific questions that Mr. Mulroney gave the following answer:

"Mr. Sheppard, the documents said, among other things, this, "this investigation is of serious concern to the Government of Canada, as it involved criminal activity on the part of the former Prime Minister". This is not an allegation, this is a statement of fact where the Government of Canada is judge, jury and executioner.

And what preoccupied me, inasmuch as I had never heard of the Airbus matter in my life, what preoccupied me were the extraordinary falsehoods and injustices as they involve me. And I wondered with my family and my friends, quite frankly, how in the name of God could this come about? How could this happen in Canada? How can something like this actually take place?

And the fact that Mr. Schreiber may or may not have had any business dealings was not my principal... my principal preoccupation. I had never had any dealings with him. The..." [emphasis added]

Examination Before Plea, April 17, 1996, pp. 116

286. This last answer was, again, clearly true. First of all, the question was asked in relation to Airbus and, logically, as Mr. Mulroney confirmed during his testimony before the Commission, the answer was also in relation to Airbus. He did, in fact, specifically refer to Airbus in his answer.

Mulroney Evidence, May 13, pp. 3709-3710

287. Given that the Letter of Request was at the heart of Mr. Mulroney's claim, it was necessarily at the heart of the examination before plea. Consequently, even if the question had not been limited to Airbus – which it clearly was – the time period covered by the question was still clearly the time period described in the Letter of Request, i.e., while Mr. Mulroney was Prime Minister and not after he had stepped down.

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288. In 2003, The Globe and Mail recognized that such a statement (“*I had never had any dealings with him*”) was not, in any manner, misleading, saying the following in an *erratum*:

In a column in yesterday's Comment pages, former Prime Minister Brian Mulroney was quoted as saying in 1996 that, “I had never any dealings with him”. It was a reference to businessman Karl-Heinz Schreiber from whom Mr. Mulroney received a payment for consultant's work after stepping down as Prime Minister.

The quote should have read, “I had never had any dealings with him”. The oversight in leaving out the second “had” in the sentence changed the context and made it appear that Mr. Mulroney was making a misleading statement.

The full testimony from which the quote was taken made it clear that Mr. Mulroney wasn't trying to deny that after leaving office he had dealings with Mr. Schreiber. The Globe and Mail regrets the error.” (P-46, Tab 14).

Globe and Mail Article : “ Corrections”, November 21, 2003, Exhibit P-46, Tab 15

289. Similarly, in 2007, the *National Post* issued a correction on the same point – it read:

In the column "Don't Ignore this Scandal" by Warren Kinsella (February 1), some of the testimony of former Prime Minister Brian Mulroney in his libel action against the Government of Canada in 1996 was quoted. The column did not set the full context of a quote from the transcript where Mr. Mulroney said he had not had any dealings with Karlheinz Schreiber.

The column did not report that Mr. Mulroney was answering a question about the purchase by the federal government of the Airbus product and stated that he had no dealings with Mr. Schreiber in that context. Elsewhere in the examination, Mr. Mulroney testified about conversations and meetings he had with Schreiber after Mr. Mulroney was out of the Prime Minister's Office.

The *National Post* sincerely regrets any false impression it created about the testimony of Mr. Mulroney and apologizes to him for any embarrassment or concern it has caused.

National Post Article: "Brian Mulroney", March 1, 2007, Exhibit P-46, Tab 23

290. Finally, Mr. Kaplan opined before the Commission that even though Mr. Mulroney had not been asked the proper questions about his commercial relationship with Mr. Schreiber, he should have nonetheless volunteered the information to Mr. Sheppard.

Transcript, Evidence of William Kaplan (hereinafter "Kaplan Evidence"), April 23, p. 1894, 1907-1909, 1941, 1942-1943

291. To justify his position, Mr. Kaplan referred to some form of non-legal obligation that Mr. Mulroney would have had as a former Prime Minister of Canada to be more transparent than any other litigants. On that basis, he believes that Mr. Mulroney should have volunteered the information despite not having been asked the proper questions, and despite any legal obligation to do so.

Kaplan Evidence, April 23, pp. 1894, 1907-1909, 1941, 1942-1943

292. We are unaware of any such principle, either in civil law or common law, that would effectively require that a former Prime Minister be afforded fewer rights and be in a different position than any other litigant, when deciding to launch a private lawsuit against the government or any other entity or person.

293. Moreover, even if we go beyond existing legal principles, the position taken by Mr. Kaplan totally ignores the specific and very real circumstances of this case. Mr. Mulroney was labelled a criminal while he was Prime Minister in a formal and official

letter by the Government of Canada and the RCMP communicated to a foreign government. In that context, it would have been totally unrealistic to expect Mr. Mulroney to volunteer information not sought by the government's lawyers and which fell outside the scope of the litigation.

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(vii.) Settlement of the lawsuit

294. On January 5, 1997, close to the date scheduled for the commencement of trial, the Government of Canada sought a settlement of the litigation after becoming aware that one of their lead investigators, Mr. Fiegenwald, had improperly provided information to a journalist. Mr. Mulroney testified that he had only agreed to this settlement because the Government of Canada and the RCMP formally acknowledged that they never had any evidence to support the claims made in the Letter of Request. Such an acknowledgment was provided in the Settlement Agreement between the parties, which reads at section 4:

Based on the evidence received to date, the RCMP acknowledges that any conclusions of wrongdoing by the former Prime Minister were – and are – unjustified

Mulroney Evidence, May 13, pp. 3715-3716; May 20, p. 4534

Settlement Agreement, January 5, 1997, Exhibit P-44, Tab 81, s. 4

295. As was his wish, Mr. Mulroney did not accept any compensation for damages from Canadian taxpayers, but rather was only reimbursed his legitimate legal fees, expert fees and other disbursements related to the lawsuit. The sum of \$2,100,000 was derived by way of an arbitration agreement rendered on October 6, 1997 by the Honourable Alan B. Gold – the former Chief Justice of the Quebec Superior Court – who affirmed the following:

I begin with the firm conviction that the intent and purpose of the Settlement was to right the grievous wrong that Claimant had suffered through no fault of his own. Simple justice and fair dealing required no less.

Mulroney Evidence, May 20, p. 4533

Arbitration award in the matter of the Rt. Hon. Brian Mulroney, October 6, 1997, Exhibit P-46, Tab 11, p. 4

(viii.) Savoy Hotel Meeting

296. Once the Letter of Request had become public, Mr. Mulroneys commercial relationship with Mr. Schreiber was held in abeyance. He was then fighting for his life and reputation, and the circumstances created by the Letter of Request meant that his watching brief for Mr. Schreiber's interests was of comparatively little importance for both of them. Indeed, it would have been, in the circumstances, impossible for Mr. Mulroneys to promote a project internationally on behalf of Mr. Schreiber – his co-accused in a criminal conspiracy.

Mulroneys Evidence, May 19, pp. 4441, 4447, 4450

Schreiber Evidence, April 15, pp. 614-615

297. As Mr. Mulroneys explained before the Commission, he and Mr. Schreiber had become "objective allies" in this battle against the Government of Canada. In effect, they both implicitly recognized that the Airbus Affair had the effect of suspending, *de facto*, their legitimate commercial relationship until the matter had been resolved toward the end of 1997.

Mulroneys Evidence, May 19, pp. 4369-4370, 4441, 4447, 4450

Schreiber Evidence, April 15, pp. 614-615

298. In early February 1998, having been retained by the World Gold Council, Mr. Mulroneys had to travel to Switzerland. As a matter of courtesy after all they had been through, Mr. Mulroneys extended an invitation to Mr. Schreiber to meet him for lunch in Zurich – near where Mr. Mulroneys was informed Mr. Schreiber was living at the time.

Mulroneys Evidence, May 13, p. 3722-3723, 3727-3728, May 19, p. 4362

Transcript, Evidence of Paul Terrien (hereinafter "Terrien Evidence"), April 23, p. 1967-1968

299. Mr. Mulroneys has unequivocally stated that he did not know that the reason that Mr. Schreiber was then in Switzerland was that an arrest warrant had been issued by the German authorities pertaining to charges of bribery, fraud and tax evasion. Mr. Schreiber

acknowledged that he never informed Mr. Mulroney of his difficulties with German authorities.

Mulroney Evidence, May 13, pp. 3727-3728, 3733-3734

Schreiber Evidence, April 17, p. 978

300. Mr. Mulroney's itinerary for that trip indicates that he returned to Zurich from Klosters on February 2, 1998, where he was met by Mr. Paul Terrien. Mr. Schreiber arrived shortly thereafter, and Mr. Terrien took him upstairs to meet Mr. Mulroney in their suite.

Mulroney Evidence, May 13, pp. 3724, 3725-3726 May 19, p. 4364

Terrien Evidence, April 23, p. 1980

Schedule for the Rt. Hon. Brian Mulroney's trip to Zurich, February 2, 1998, Exhibit P-44, Tab 81 [Exhibit P-28, Tab 1]

301. Mr. Mulroney has testified that the meeting took place in his suite so as to allow him the opportunity to tend to a painful medical condition commonly known as "frozen shoulder". This is supported by the testimony of Mr. Terrien whose principal role on the trip was to assist Mr. Mulroney and to carry his luggage.

Mulroney Evidence, May 13, p. 3726; May 19, p. 4366

Terrien Evidence, April 23, p. 1966

302. In his discredited November 2007 affidavit, Mr. Schreiber alleged that during this meeting Mr. Mulroney asked him if there was any evidence of the payments he had received from him. Mr. Mulroney specifically denied that any such discussion took place.

Mulroney Evidence, May 19, p. 4368

2007 Schreiber Affidavit, para. 27

303. Rather, Mr. Mulroney testified that he and Mr. Schreiber began the meeting by discussing the fallout from the Letter of Request as the two were meeting in person for

the first time since those calamitous events. Mr. Mulrone y also recalled that Mr. Schreiber was also excited about a new business venture involving anti-obesity pasta:

...But the thing that sticks with me about that meeting was that he had – his principal preoccupation was that he had come up with a new idea and he discussed that with me at great length....The idea was this new product for the anti-obesity pasta machines and products that he was going to get into big time.

Mulrone y Evidence, May 13, p. 3727

304. While Mr. Schreiber disputes Mr. Mulrone y’s version of events, he did agree that they discussed the pasta machine and Mr. Mulrone y’s potential support of Spaghet tissimo North America Inc. (“Spaghet tissimo”), which had only been incorporated in 1997, by way of his contacts within Archer Daniels Midland.

Schreiber Evidence, April 15, pp. 645-646

2007 Schreiber Affidavit, para. 28

305. While Mr. Schreiber has also described Mr. Mulrone y as being “nervous” during the meeting, Mr. Terrien has testified that the two left the meeting “in high spirits” and that Mr. Schreiber said to him: “He’s a good man, take care of him”.

Mulrone y Evidence, May 19, p. 4368

Terrien Evidence, April 23, pp. 1984, 1985

Schreiber Evidence, April 15, pp. 642-643

306. Moreover, in his letter to Mr. Mulrone y dated January 29, 2007, Mr. Schreiber wrote: “When we met in Zuerich, Switzerland on February 2, 1998 at the Hotel Savoy, I left with the impression that you were in good shape.”

(ix.) The Anti-Obesity Pasta Machine

307. Following the meeting at the Savoy Hotel, Mr. Mulrone y testified that he toured one of the sites in Toronto where the pasta machines were located with Mr. Schreiber’s associate, Mr. Greg Alford, and later sampled the product at one of the Spaghet tissimo locations in Toronto.

Mulroney Evidence, May 13, pp. 3729-3731

308. At the behest of Mr. Elmer MacKay, an investor in the project, Mr. Mulroney attempted to arrange a meeting between the representatives of Spaghetissimo and McDonald's so that they might propose a new venture to serve pasta at their restaurants. Mr. Mulroney cannot specifically recall to whom he communicated this request.

Mulroney Evidence, May 13, p. 3731

(x.) Conclusions

309. With regard to the impact of the Letter of Request and Mr. Mulroney's answers to the questions asked of him during the examination before plea, the evidence led at this Commission supports the following conclusions:

- (a) The Letter of Request had a devastating impact on Mr. Mulroney and his family, one which dramatically affected how they subsequently dealt with the media;
- (b) An examination before plea in the Province of Quebec is substantially different from an examination for discovery in common law jurisdictions;
- (c) Mr. Mulroney accurately answered the questions put to him by Mr. Sheppard;
- (d) Mr. Sheppard never asked Mr. Mulroney to describe the nature of his relationship with Mr. Schreiber after he left office, nor whether Mr. Mulroney ever received payment from Mr. Schreiber; and
- (e) Mr. Mulroney had no duty to volunteer information not sought by the Defendant's lawyers, and which fell outside the scope of the litigation.

PART VII. MR. SCHREIBER'S ARREST AND ITS AFTERMATH

(i.) Mr. Schreiber is arrested

310. On August 31, 1999, Mr. Schreiber was arrested in Toronto on a warrant seeking his extradition to Germany to face charges of bribery, fraud, forgery and tax evasion. Mr. Mulroney testified that he was stunned to learn of this turn of events by way of media reports and that he had received no prior information or advance warning about the same.

Schreiber Evidence, April 17, p. 1005

Mulroney Evidence, May 13, pp. 3733-3734

(ii.) October 20, 1999 Fifth Estate Program

311. Following Mr. Schreiber's arrest, the CBC's *Fifth Estate* began working on a program which, amongst other allegations, would apparently link one of Mr. Schreiber's Swiss bank accounts to Mr. Mulroney. By letter dated October 8, 1999, Mr. Harvey Cashore informed Mr. Mulroney of this upcoming program and sought to obtain his position on unspecified allegations.

Letter, Harvey Cashore to Rt. Hon. Brian Mulroney, October 8, 1998, Exhibit P-46, Tab 14

312. In the days before the expected *Fifth Estate* program, Mr. Mulroney and his representatives attempted to prevent dissemination of any further false allegations in this regard. These efforts included discussions between Luc Lavoie and the *Fifth Estate* as well as discussions with Mr. Schreiber's lawyer, Mr. Robert Hladun.

Mulroney Evidence, May 13, pp. 3736, 3738

313. It is respectfully submitted that any and all such efforts were entirely justified given that the substance of the *Fifth Estate* program was to suggest, if not state explicitly, that there was some link between the "BRITAN" account and Mr. Mulroney in the context of allegations related to the Airbus matter.

Transcript, *The Fifth Estate*, "The Mysterious Deal-Maker" (CBC), October 20, 1999, Exhibit P-44, Tab 87

314. A letter written by Mr. Hladun to Mr. Edward Greenspan, both of whom were lawyers for Mr. Schreiber, summarizes a telephone conversation in which Mr. Mulroney called Mr. Hladun requesting a letter of comfort from Mr. Schreiber that “*at no time did Brian Mulroney solicit or receive compensation of any kind from Schreiber*”.

Letter, Robert W. Hladun, Q.C. to Edward L. Greenspan, Q.C., January 26, 2000, Exhibit P-44, Tab 92

315. Mr. Hladun has confirmed before the Commission that he understood Mr. Mulroney’s request to be specifically with regard to any unlawful “compensation” as set out in the allegations contained in the Letter of Request regarding Airbus. Mr. Mulroney also testified that his request pertained to the Airbus allegations only.

Transcript, Evidence of Robert Hladun, April 22, pp. 1748-1749

Mulroney Evidence, May 13, pp. 3738-3740

316. In a letter dated October 20, 1999, Mr. Greenspan, writing on behalf of Mr. Schreiber, wrote to the CBC and threatened litigation should the program make any inference that the “Britan” account was somehow related to any relationship between Mr. Schreiber and Mr. Mulroney.

Letter, Edward L. Greenspan, Q.C. to Daniel J. Harvey, CBC, October 20, 1999, Exhibit P-44, Tab 88

317. After the broadcast, Mr. Schreiber commenced a defamation action in the Province of Ontario against the *Fifth Estate*. One of the specific claims contained therein was that the allegation that “BRITAN” meant ‘Brian Mulroney’ was not only false – it was libellous.

Amended Statement of Claim of Karlheinz Schreiber, Karlheinz Schreiber (Plaintiff) and Canadian Broadcasting Corporation, Harvey Cashore and Linden MacIntyre (Defendants), July 5, 2000, Exhibit P-7, Book 3, Tab 6(a), at para. 10

318. The Commission heard evidence from the forensic accountants from Navigant to the effect that there is no evidence linking Mr. Mulroney to the “BRITAN” account apart from Mr. Schreiber’s testimony. It is respectfully submitted that Mr. Schreiber’s testimony on this point contradicts both his lawyer’s letter and his own lawsuit.

Whitla Evidence, May 6, pp. 3190-3192, 3220-3321, 3223, 3224-3225, 3226

Navigant Consulting – Funds Tracing Report, April 29, 2009, Exhibit P-40

319. Moreover, both Mr. Schreiber and Mr. Hladun wrote to the CBC in March 2005 to confirm that Mr. Schreiber had never been asked to provide any form of false or inaccurate affidavit or other written assurance that Mr. Mulroney had not received the payments. The only request was related to denying Airbus payments. Mr. Mulroney's conduct in this regard was therefore entirely justified and appropriate.

Email, Karlheinz Schreiber to Harvey Cashore, CBC, March 10, 2005, Exhibit P-7, Book 3, Tab 15

Letter, Robert Hladun, Q.C. to Daniel J. Henry, CBC, March 17, 2005, Exhibit P-23

(iv.) Voluntary Disclosure

320. Mr. Mulroney testified that he received three equal payments of \$75,000 from Mr. Schreiber – two in 1993 and one in 1994. He also testified that he did not pay himself for the services rendered before the taxes had been paid on these amounts, following a voluntary tax disclosure which was completed in early February 2000 (P-46, Tab 26).

Mulroney Evidence, May 13, pp. 3751-3752; May 14, pp. 3796-3798

Letter, Wilfred Lefebvre to Jean-Louis Lussier, January 10, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

Letter, Wilfred Lefebvre to Jean-Louis Lussier, January 27, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

Letter, Wilfred Lefebvre to Jean-Louis Lussier, February 2, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

321. Mr. Mulroney's uncontradicted testimony is that he treated the money received as a retainer, and that he did not use such money for his own purposes until it became "his" – except for certain reimbursements for expenses incurred during the trips he made in pursuance of the mandate.

Mulroney Evidence, May 13, p. 3750, May 19, p. 4201-4202

322. Mr. Mulroney testified that the mandate given to him by Mr. Schreiber was akin to a watching brief to promote Mr. Schreiber's interests internationally. It was "open-

ended” and Mr. Mulroneu explained that he came up with a plan to help promote the Thyssen vehicles internationally, by approaching the permanent members of the Security Council of the United Nations.

Mulroneu Evidence, May 12, p. 3548, 3555-3556, May 13, p. 3578, 3591, 3592-3593, 3593-3594; May 15, p. 4097, 4098-4099, 4130-4131

323. Mr. Mulroneu testified that he did not consider the watching brief to have concluded at the time the Letter of Request surfaced, as he had not yet, *inter alia*, spoken with officials in the United States, nor had he explored his plan with officials in the United Kingdom. The retainer was, in his mind, suspended until 1998.

Mulroneu Evidence, May 19, pp. 4441, 4447, 4450

324. On February 2, 1998, as previously noted, Mr. Mulroneu met with Mr. Schreiber at the Savoy Hotel, in Zurich. At the time, as Mr. Mulroneu testified before the Commission, his retainer was still ongoing even though the Thyssen peacekeeping vehicles were not specifically discussed at that time.

Mulroneu Evidence, May 13, p. 3758; May 19, p. 4446

325. However, Mr. Mulroneu realized during the Zurich meeting, that Mr. Schreiber’s attention, focus and energy were now devoted to his new pasta business, which Mr. Mulroneu eventually endeavoured to look into to determine whether he could be of any assistance. Mr. Schreiber did not advise him that his relationship with Thyssen had ended in 1995.

Mulroneu Evidence, May 13, p. 3727

326. As Mr. Mulroneu testified before the Commission, the status of his watching brief for Mr. Schreiber’s international interests was the following, prior to August 31, 1999 (the date of Mr. Schreiber's arrest):

The watching brief was for Mr. Schreiber’s corporate interests. He spoke to me — He didn’t terminate anything, nor did I, in Switzerland. I was clearly trying to function to help him with his new pasta products. I just thought it was ongoing and that one day it would either succeed formally or fail formally and that

would be the end of it. We had not reached that time, but I felt it was in keeping with my understanding of the retainer provisions of the statutes and I treated it that way. And when it became exigible, I paid the taxes on it.

Mulrone Evidence, May 13, p. 3758

327. Mr. Mulrone did in fact testify before the Commission that he had considered the payments received, from an income tax point of view, as a retainer. He explained that he interpreted this notion as meaning that *"the amounts were not declarable as income until they were taken into one's income stream as their own money"*.

Mulrone Evidence, May 13, p. 3750

328. Mr. Mulrone further explained that his understanding of the notion of retainer in 1993 and 1994 was not based upon an opinion or advice received from a tax advisor at the time but rather stemmed from his own past experience as a lawyer and as a businessman, and his own interpretation of the tax laws:

Oh, no, no [to the question as to whether he had consulted a tax advisor in 1993 or 1994 as to his view on retainers]. I had practised law for thirteen years and I had been in business. I wasn't a tax lawyer, but my understanding of the tax law was exactly what I have given you; that a retainer is not declarable as income until it is used that way, and therefore I treated it in that manner.

Mulrone Evidence, May 13, p. 3751

329. Mr. Mulrone explained during his testimony before the Commission that two major events led him to bring his mandate with Mr. Schreiber to an end, events which in turn also influenced his tax treatment of the payments he had received from Mr. Schreiber.

330. First, when Mr. Mulrone learned about the Mr. Schreiber's arrest on August 31, 1999, following the issuance of an Interpol warrant, he realized that he was not dealing with the person he thought he had been dealing with.

Mulrone Evidence, May 19, pp. 4376-4378

331. Secondly, Mr. Mulrone also testified before the Commission that he had been apprised by Mr. MacKay of the following situation:

I heard from Elmer MacKay that he, Elmer, had picked up that Mr. Schreiber was musing that perhaps I had an income tax problem. I had no — I had no income tax problem, but I got the impression that Mr. Schreiber was going to try and see if he couldn't — couldn't create one for me. (May 13, 2009, p. 3743)

Mulroney Evidence, May 13, p. 3743

332. It is in these circumstances, having determined that the mandate was at an end, that Mr. Mulroney referred the matter to a tax lawyer, explaining to the Commission that: “I simply said this matter ought to be resolved in a fair and expeditious manner”.

No. I simply said this matter ought to be resolved in a fair and expeditious manner. Quebec is the only place in Canada where there are two such revenue departments, because Quebec collects its own such taxes. So it has to be done to the satisfaction of both pursuant to the customs and traditions and the law of the area. And I said just resolve it. Any doubt, resolve in favour of the Government and let me know what the cost is and I will send you a cheque.

Mulroney Evidence, May 13, p. 3755

333. Mr. Mulroney testified that he was not involved in the mechanics of the negotiation or resolution of the tax issue, his main concern being that it be settled expeditiously. As to his understanding of the voluntary tax disclosure, i.e. the mechanism chosen by his tax lawyer to settle the issue, Mr. Mulroney gave the following account:

Eh bien, la divulgation volontaire, c'est un instrument, une espèce de véhicule, disponible à tout citoyen canadien pour une foule de raisons, de régler ou de mettre un terme à une question qui implique le fisc. Alors, j'ai demandé, de façon spéciale, pour m'assurer, et on me dit : Mais il n'y a aucune implication de responsabilité négative qui en découle. Il y a toute sorte de raisons qui peuvent être utilisées, et dans votre cas, c'est...c'est ça. Il n'y avait pas de ...Je pense que la phrase était : No culpability whatever attaches to any Canadian citizen by using a vehicle made available for the Tax Department, quelque chose comme ça.

Mulroney Evidence, May 13, pp. 3753-3755; May 19, p. 4437

334. Mr. Mulroney has further acknowledged that the lack of documentation relating to his business relationship with Mr. Schreiber was inappropriate, insofar as it could raise legitimate concerns in the minds of reasonable Canadians.

Mulroney Evidence, May 12, pp. 3383-3384; May 15, pp. 4162-4163

335. Mr. Mulroney wanted a rapid and appropriate resolution of the issue, knowing that Mr. Schreiber was apparently going around telling people that he had a tax problem in relation to the payments he had received from Mr. Schreiber. A false statement, to be sure, but why not shut the door to any possibility of having to argue about it or to defend oneself in the future?

336. Mr. Mulroney explained why he was under the impression that he did not have to declare the payments received prior to 1999-2000, because of his own interpretation of the notion of retainer. Mr. Wayne Adams, of the Canada Revenue Agency (CRA), testified about the interpretation and application of Sections 12(1) a) and 20 (1) m) of the *Income Tax Act*.

Mulroney Evidence, May 13, pp. 3750-3751

Transcript, Evidence of Wayne Adams (hereinafter "Adams Evidence"), May 20

***Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), ss. 12(1)(a) and 20(1)(m)**

337. He essentially explained that the CRA's understanding of these two combined provisions meant that any advances received during a specific year had to be declared on one's income tax return the same year, even if the services for which the payment was made were not rendered during that year; and, further, that same person would have to avail himself of the reserve under Section 20(1) m) of the *Income Tax Act* and no tax would then be payable that year for the advance received, if no services were rendered.

Adams Evidence, May 20, pp. 4664-4665

338. In other words, the mere receipt of cash in a particular year does not *ipso facto* count as "income" upon which tax must be paid in the year of receipt. Moreover, as Mr. Adams acknowledged, there is no explicit line on the standard income tax return form dealing with the taking of reserves, nor is there any corresponding impact on tax liability.

Adams Evidence, May 20, pp. 4664

339. Mr. Adams testified that this was the general rule, but he also acknowledged that the specific circumstances of each case had to be taken into account before determining

whether an advance received would fall within the ambit of Section 12(1) a) of the *Income Tax Act*.

Adams Evidence, May 20, pp. 4686

340. Mr. Adams also acknowledged that the CRA had taken the view, in a technical interpretation published in 1998, that a deposit given subject to a condition precedent was not considered income under Section 12(1) a) of the *Income Tax Act*, “for it lacks the essential quality of income, namely that the recipient should have an absolute right to it and be under no restriction, contractual or otherwise, as to its disposition, use or enjoyment.”

Adams Evidence, May 20, pp. 4679

Canada Revenue Agency, Income Tax Interpretation Bulletin No. IT-129R – Lawyers’ trust accounts and disbursements, November 7, 1986, Exhibit P-52, Tab 5

341. This last position taken by the CRA in a 1998 Interpretation Bulletin was based upon the *ratio* of the well-known *Robertson* decision rendered by the Exchequer Court in 1944, where the “quality of income” test was developed. It also clearly echoed the understanding that Mr. Mulroney had of retainers.

***Robertson Ltd. v. Minister of National Revenue*, [1944] Ex. C.R. 170, 3 D.L.R. 239**

342. Mr. Adams also recognized that some tax authors, when discussing the interpretation and application of Sections 12(1) a) and 20(1) m) of the *Income Tax Act*, expressed the view, either in 2002 (Frankovic) or in 2005 (McCarthy Tétrault, P-53), that “receipts which are within the general contemplation of *Robertson Ltd. v. Minister of National Revenue* and which can be said to have been more or less formally received in trust, will not be brought into charge by this provision” (Section 12 (1) a) of the *Income Tax Act*).

Adams Evidence, May 20, p. 4710

Analysis / Commentary – Canada Tax Service – McCarthy Tétrault Analysis, 12(1), 9(a), (b), November 30, 2005, Exhibit P-53, p. 1

343. Mr. Adams expressed the view that he did not agree with this position but he did nonetheless acknowledge that there were reputable authors in tax law who felt that the interpretation and application of Sections 12(1) a) and 20(1) m) of the *Income Tax Act* to retainers were not clearly settled, especially with respect to the quality of income test developed in the *Robertson* case.

Adams Evidence, May 20, pp. 4702, 4703, 4709-4710

344. It follows that there could well be circumstances – at least in the view of certain experts – where monies received need not be declared as income in the years received or when services were rendered, e.g. if it was agreed that compensation would be owed pursuant to another condition.

345. Furthermore, as already mentioned, when testifying about the origin or basis for his understanding of the notion of “retainer” in 1993 and 1994, Mr. Mulroney referred, *inter alia*, to his thirteen years of practice as a lawyer, at that time.

Mulroney Evidence, May 13, p. 3751

346. Mr. Mulroney readily acknowledged before the Commission that he did not act as a lawyer when he rendered services to Mr. Schreiber, but that it was rather part of his business as an international consultant. However, as he also indicated before the Commission, his understanding of the notion of “retainer” was based, in part, upon his experience as a lawyer which he obviously extended to his activities as a consultant.

Mulroney Evidence, May 13, p. 3751; May 15, pp. 4089-4090; May 19, 4428-4429, May 20, p. 4612

347. Section 34 a) of the *Income Tax Act* provides that a lawyer can elect, when computing his income for a taxation year, not to include any amounts received in respect of work in progress.

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), s. 34(a), Exhibit P-52, Tab 6

348. An Income Tax Interpretation Bulletin was published in 1988 by the CRA, pertaining to Section 34 of the *Income Tax Act* (P-52, Tab 7). The CRA provided therein

that taxpayers carrying on a designated professional business could also avail themselves of the possibility of reporting in a subsequent year their work in progress for income deriving from sources other than the rendering of professional services, if the income was either accessory, incidental or auxiliary to the main source of income.

Canada Revenue Agency, Income Tax Interpretation Bulletin No. IT-457R – Election by Professionals to Work in Progress from Income, Exhibit P-52, Tab 7, p. 2, para. 3

349. It must also be underlined that according to the CRA, except when there are specific agreements to the contrary, advances received by lawyers are not considered “income” under Section 12 (1) a) of the *Income Tax Act*:

2. With the exception of advances which the lawyer is entitled to treat as his or her funds by specific agreement with the client and retainers which the lawyer is entitled to keep whether or not services are rendered or disbursements are made, advances received from a client for services to be rendered or disbursements to be made are considered to be trust funds and are not income at the time of receipt. The first day when such advances can be legally withdrawn from the trust account for the use and benefit of the lawyer is regarded as the earliest day upon which an account could have been rendered for the purposes of subparagraph 12 (1) b) ii) and paragraph 12 (1) (a).

(Income Tax Interpretation Bulletin, November 7, 1986, P-52,
Tab 5)

Canada Revenue Agency, Income Tax Interpretation Bulletin No. IT-129R – Lawyers’ trust accounts and disbursements, November 7, 1986, Exhibit P-52, Tab 5

350. The brief review of the law concerning the interpretation of Section 12 (1) a) of the *Income Tax Act* reveals that Mr. Mulroney’s understanding of a retainer was supported by a certain school of thought, perhaps not the dominant one, but that it certainly had some merit and foundation. Furthermore, his interpretation of a retainer is also in keeping with the CRA’s position regarding advances held in trust by lawyers. It would only be natural that his understanding of the notion of retainer be influenced by his prior experience as a lawyer.

351. As recognized by the Commissioner, this Commission is not mandated to assess compliance with the *Income Tax Act* – nor would it be within its jurisdiction to do so. Moreover, it was acknowledged that the CRA witnesses were not offering an opinion as

to whether Mr. Mulroney's decision not to report the payments as income upon receipt complied with the *Income Tax Act*. It follows that there is no basis for concluding that Mr. Mulroney was not in compliance with the *Income Tax Act*.

Adams Evidence, May 20, pp. 4661

Transcript, Evidence of Christiane Sauvé (hereinafter "Sauvé Evidence"), May 21, p. 4743

Ruling on Application by The Right Honourable Brian Mulroney for Clarification of Ruling on Standards of Conduct, Oliphant Commission, April 1, 2009, paras. 19, 20

352. These brief references to the position taken by the CRA are only made to demonstrate that the understanding of the tax laws which guided Mr. Mulroney's tax treatment of the payments he received as a retainer from Mr. Schreiber rests upon a defensible legal foundation.

Letter, Wilfred Lefebvre to Jean-Louis Lussier, January 10, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

Letter, Wilfred Lefebvre to Jean-Louis Lussier, January 27, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

Letter, Wilfred Lefebvre to Jean-Louis Lussier, February 2, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

353. However, faced with the specific circumstances of this matter, the voluntary tax disclosure was clearly the most appropriate vehicle for Mr. Mulroney, for the following reasons:

- (a) Instead of having any lingering doubt as to whether Mr. Mulroney's interpretation of the notion of retainer was valid under the circumstances, the voluntary tax disclosure mechanism constituted a binding agreement which foreclosed any potential debate with the tax authorities – thereby achieving both tax certainty and finality;
- (b) Considering the lack of documentation supporting Mr. Mulroney's interpretation of the notion of retainer, a voluntary tax disclosure ensured that this contention would not be disputed; and

- (c) The voluntary tax disclosure enabled both Mr. Mulroney and the authorities to deal specifically and explicitly with the payments he had received.

354. The evidence filed before the Commission, including Ms. Sauvé's testimony, confirms that a situation where there is uncertainty as to the interpretation of certain provisions of the tax laws, an honest error in the application of such laws or an erroneous interpretation based upon advice received from a tax consultant, are all situations that could give rise to a voluntary tax disclosure (P-60, *Présentation sur les divulgations volontaires*, Yvon Tétreault, pp. 5-6).

Sauvé Evidence, May 21, pp. 4758, 4765-4766

***Présentation sur les divulgations volontaires*, Yvon Tétreault, Chef de service, Service d'enquête sur les fraudes « A », Revenu Québec, 19 septembre 2000, Exhibit P-60, pp. 5-6**

355. As to the terms of the final settlement between Mr. Mulroney and the tax authorities, while outside the Commission's mandate, we note that Ms. Sauvé's testimony to the effect that, in 2000, there was a practice followed in Quebec whereby fifty percent of the amounts declared in a voluntary tax disclosure were, in certain circumstances, taxed.

Sauvé Evidence, May 21, pp. 4758-4760

356. The discussions with the tax authorities were conducted on an anonymous basis. Mr. Mulroney was not identified as the taxpayer until after an agreement had already been reached. This was entirely consistent with the applicable practice at the time in the event that the situation could not be reconciled.

Sauvé Evidence, May 21, pp. 4753

Letter, Wilfred Lefebvre to Jean-Louis Lussier, January 10, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

Letter, Wilfred Lefebvre to Jean-Louis Lussier, January 27, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

Letter, Wilfred Lefebvre to Jean-Louis Lussier, February 2, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

357. Taxes were ultimately paid on half of the amounts declared because, as explained in Mr. Daniel Bousquet's text on voluntary tax disclosures (P-58, p. 4), the practice was that for any taxation years beyond the three year-limitation period in a situation where tax returns were filed, the amounts would be treated in the following fashion:

If there is an unexplained balance at the beginning of the period, 50% of the amount will be divided equally between the years that will be assessed.

358. In the present matter, as it was decided to take the voluntary tax disclosure route, it meant that the three payments had been made during "prescribed" years (1993-1994), the above-mentioned practice meant that taxes would be paid on 50% of such amounts and that it would be divided for the three non-prescribed years (1996, 1997 and 1998).

Letter, Wilfred Lefebvre to Jean-Louis Lussier, February 2, 2000, Exhibit P-46, Tab 26 [Official Commission Translation, Exhibit P-44, Tab 125]

Notice of Assessment and amended income tax returns, for the Rt. Hon. Brian Mulroney for the years '96, '97 and '98, documents entitled "Avis de nouvelle cotisation et Déclaration de revenus des particuliers", Exhibit P-49

359. The legitimacy of the voluntary tax disclosure performed on behalf of Mr. Mulroney was never questioned by anyone, and rightly so. In particular, there is no basis whatsoever for any claim or suggestion that Mr. Mulroney was afforded any preferential treatment. The opposite is true. The evidence heard and filed before the Commission confirms that Mr. Mulroney received the same treatment that any person placed in the same set of circumstances would have received from the tax authorities.

(v.) Meetings between Mr. Doucet and Mr. Schreiber (Winter 1999/2000)

360. The Commission heard evidence that following the *Fifth Estate* program in October 1999, Mr. Doucet became suspicious of Mr. Schreiber's motives and intentions. He even considered the possibility that Mr. Schreiber had cooperated with the program. It was at this point that Mr. Doucet began to make notes to himself about his discussions with Mr. Schreiber.

Doucet Evidence, April 27, pp. 2100, 2210-2213

361. On December 26, 1999, having invited Mr. Schreiber to his home, Mr. Doucet of his own motion initiated a discussion of the commercial relationship between Mr. Schreiber and Mr. Mulroney and subsequently made notes thereof.

Doucet Evidence, April 28, p. 2233, 2235-2236, 2243

Typed and handwritten notes from Fred Doucet, December 26, 1999, Exhibit P-29, Tab 44 [Exhibit P-7, Book 2, Tab 125]

362. Mr. Doucet testified that he related the contents of this discussion to Mr. Mulroney at Mr. Schreiber's request⁴. Mr. Mulroney has no specific recollection of this discussion but acknowledges that it was likely reported to him, and that, after hearing that Mr. Schreiber was confused about his testimony during the discovery, he provided Mr. Doucet with an extract of the transcript. Mr. Mulroney explained his actions as follows:

And what I remember about it is when Mr. Doucet called me and he said that Mr. Schreiber raised this. So now I have Mr. Schreiber, my apparent friend and ally in this fight against the government, all of a sudden he is worried about the wording in the document that we examined earlier.

Mulroney Evidence, May 13, pp. 3762-3765

Doucet Evidence, April 28, p. 2267

363. On January 11, 2000, again on his own initiative, Mr. Doucet met Mr. Schreiber at the Royal York Hotel in Toronto. Mr. Doucet sought to continue his discussion with Mr. Schreiber. Mr. Doucet and Mr. Schreiber reviewed Mr. Mulroney's discovery transcript, and once having the context explained to him, Mr. Schreiber apparently declared himself to be satisfied.

Doucet Evidence, April 28, pp. 2264, 2278-2279

Typed and handwritten notes from Fred Doucet, January 11, 2000, Exhibit P-29, Tab 45 [Exhibit P-7, Book 2, Tab 126]

364. Mr. Doucet then brought up the mandate given by Mr. Schreiber to Mr. Mulroney in order to understand how Mr. Schreiber intended to describe it should he be examined

⁴ While Mr. Doucet's notes from the December 26, 1999 meeting do not reflect a discussion about Mr. Mulroney's 1996 transcript, it is obvious from the note that Mr. Doucet made after the January 11, 2000 meeting that the transcript was, in fact, discussed that day.

in conjunction with his ongoing litigation in Alberta. Mr. Doucet's uncontradicted testimony on this issue is that such queries derived from his own initiative.

Doucet Evidence, April 28, pp. 2281-2285, 2287

Typed and handwritten notes from Fred Doucet, January 11, 2000, Exhibit P-29, Tab 45 [Exhibit P-7, Book 2, Tab 126]

365. Mr. Doucet explained that he felt trouble was brewing after the Fifth Estate program and he felt he should protect both his friend (Mr. Mulroney) and former client (Mr. Schreiber). Mr. Doucet's notes of the meeting indicate that he referred to his own understanding and recollection of the mandate as a "watching brief worldwide over a three year horizon".

Doucet Evidence, April 28, pp. 2265-2266

Typed and handwritten notes from Fred Doucet, January 11, 2000, Exhibit P-29, Tab 45 [Exhibit P-7, Book 2, Tab 126]

366. Given their friendship, the fact that Mr. Doucet essentially owed his public service career to Mr. Mulroney, and also the fact that he was effectively responsible for recommending Mr. Schreiber to Mr. Mulroney, it is perfectly understandable that Mr. Doucet would have attempted to assist Mr. Mulroney by memorializing the commercial transactions he had initiated.

367. Mr. Doucet also noted that Mr. Schreiber described his commercial relationship with Mr. Mulroney as "in the context of [peace] keeping programs".

Typed and handwritten notes from Fred Doucet, January 11, 2000, Exhibit P-29, Tab 45 [Exhibit P-7, Book 2, Tab 126]

368. On February 4, 2000, again on his own initiative, Mr. Doucet met with Mr. Schreiber and presented him with a document he had drafted entitled "Mandate" which sought to describe the commercial relationship between Mr. Mulroney and Mr. Schreiber in the following terms:

To provide a watching brief to develop economic opportunities
for our companies:

(...)

including travelling abroad to meet with government and private sector leaders to assist in opening new markets for our products and to report regularly to us in this regard. In this context, priority should be given to opportunities relating to Canadian based manufacturing of peace keeping and/ or peace making military equipment in view of Canada's prominence in this area.

The mandate will be for a period of three years. The fee to cover services and expenses is set at _____ for the period _____.

Doucet Evidence, April 28, p. 2308

Mandate, February 4, 2000, 5 versions, Exhibit P-29, Tab 46 [Exhibit P-7, Book 2, Tab 128] ("Mandate document")

369. Mr. Doucet testified that once Mr. Schreiber agreed that this was an accurate description of the mandate, and on information he received from Mr. Schreiber, he inscribed the sum of \$250,000 as the fee and the period covered as "93/94", "94/95", and "95/96".

Doucet Evidence, April 28, 2009, pp. 2334-2335, 2339

Mandate document

370. This document was not signed, nor does it appear to have been intended to be signed as there is no signature line indicated.

Doucet Evidence, April 28, p. 2330

Mandate document

371. However, it is indicative that Mr. Schreiber did not directly contest the document but rather saw fit to inscribe in his own hand the names of three of his companies, Bayerishce Bitucan Chemie, Kaufering and Bitucan Calgary for which the mandate would be performed.

Mandate document

Canada Border Services Agency – Handwriting Analysis Report – Letter, May 5, 2009 and Curriculum Vitae of Samiah Ibrahim – Forensic Documents Examiner, Exhibit P-57

372. While Mr. Schreiber has proclaimed it was a "miracle" that his handwriting appears on the document, a report from forensic handwriting experts with the Canada

Border Services Agency unequivocally concluded that there was no evidence that the document was tampered with in any way.

Schreiber Evidence, April 16, p. 754

373. We note as well that Mr. Schreiber never wrote a letter to contest the contents of the mandate note, notwithstanding his proclivity for writing letters whenever he feels aggrieved.

374. Mr. Doucet testified that he reported the contents of this document to Mr. Mulroneu before the February 4, 2000 meeting, as well as reporting to him the results of this conversation afterwards. However, he did not forward a copy of same to Mr. Mulroneu.

Doucet Evidence, April 28, pp. 2309, 2334, 2336, 2343-2345

375. Mr. Mulroneu testified that Mr. Doucet did in fact read the document to him and that he gave his general assent to its terms but that, having only heard its contents orally, he could not be expected to have fully accepted it as a concrete and complete description of his mandate.

Mulroneu Evidence, May 19, pp. 4405-4406

376. Mr. Mulroneu acknowledged having discussed these efforts with Mr. Doucet but specifically denied instructing Mr. Doucet to discuss any such thing. Mr. Doucet has corroborated this by testifying under oath that he acted of his own accord.

Mulroneu Evidence, May 19, p. 4417

Doucet Evidence, April 28, 2308-2311

377. It is revealing that Mr. Mulroneu never signed a copy of the mandate, nor for that matter, did he request a copy. In so doing, it is evident that Mr. Mulroneu had no direct and active involvement in the conception of the mandate. He was merely aware of its existence and was told about its content.

378. In any event, in its essential elements, the draft mandate document confirms the nature of the mandate Mr. Schreiber gave Mr. Mulroney and is in no way an attempt to contrive a mandate or create a history that would cast their financial and business dealings in a more acceptable light.

Mulroney Evidence, May 19, pp. 4417-4418

379. The evidence is therefore clear that Mr. Mulroney neither initiated nor engaged in any effort to induce Mr. Schreiber to modify or change his story.

(vi.) Conclusions

380. With regard to Mr. Mulroney's reaction to Mr. Schreiber's arrest in August 1999 and his subsequent decision to file a voluntary tax declaration, the evidence led at this Commission supports the following conclusions:

- (a) Prior to Mr. Schreiber's arrest, Mr. Mulroney had no knowledge of the criminal charges brought against Mr. Schreiber in Germany for fraud, forgery, bribery and income tax evasion;
- (b) Mr. Mulroney's efforts to convince the *Fifth Estate* that there was no connection between himself and Mr. Schreiber's 'BRITAIN' account were both justified and legitimate;
- (c) Mr. Mulroney's voluntary tax declaration in 2000 conformed to Revenue Canada's policies and administrative practices in place at that time; and
- (d) Mr. Mulroney's reasons for not having declared the payments as income in 1993 and 1994 were based on a genuine belief and understanding of his legal obligations.

PART VIII. PUBLIC DISCLOSURE (2001-2003)

381. In the course of its hearings, the Commission also heard evidence about Mr. Mulronev's dealings with the media and, in particular, author William Kaplan. In the end, however, no evidence was ever presented to show that Mr. Mulronev had any obligation to disclose the details of his private commercial business relationships to the press.

382. The Commission did hear evidence, in the form of sworn testimony from Mr. Mulronev, that he now believes that it could have been beneficial for him to have publicly disclosed these business and financial dealings earlier and on his own terms. As Commission Counsel noted, and Mr. Mulronev agreed, "hindsight has perfect vision."

Mulronev Evidence, May 19, pp. 4246, 4473-4474

383. It is far from clear, however, that "going public" – in the sense of advising the media of his business dealings with Mr. Schreiber – would have satisfied those in the press who continue to pursue this story.

(i.) RCMP Concludes its Investigation

384. The media treatment of the Airbus Affair made Mr. Mulronev very wary of making any public "revelations" that could conceivably be used to link him to that matter. Further, the public announcement by the RCMP that it had concluded its investigation in 2003 must be recognized as an important factor in establishing Mr. Mulronev's state of mind in terms of his dealings with the press.

Mulronev Evidence, May 19, p. 4474

385. It was a strong desire not to revive a story, as opposed to a desire to suppress a story, that motivated him in the months that followed.

Mulronev Evidence, May 19, pp. 4248-4249, 4474

386. On April 17, 2003, Commissioner Zaccardelli wrote a letter to Mr. Mulronev advising him, in part, as follows:

As you are aware, the RCMP has been conducting an investigation into allegations described in a September 29, 1995, Request for Assistance from Switzerland. This Request for Assistance concerned allegations of wrongdoing involving MBB Helicopters, Thyssen and Airbus, and named you amongst other individuals...

On April 22, 1993, the RCMP will announce that after an exhaustive investigation in Canada and abroad, the remaining investigation into the 1995 allegations of wrongdoing involving MBB Helicopters, Thyssen and Airbus has concluded that the outstanding allegations cannot be substantiated, and that no charges will be laid...

Letter, G. Zaccardelli to Rt. Hon. Brian Mulroney, Exhibit P-44, Tab 99

387. Moreover, in his first report Professor Johnston noted that the RCMP concluded its investigation of Mr. Mulroney in 2003 "with knowledge of the cash payments and Mr. Schreiber's assertion that he made an agreement with Mr. Mulroney just before the latter left the prime minister's office."

Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Mr. Karlheinz Schreiber and the Right Honorable Brian Mulroney, David Johnston, January 9, 2008, p. 18 ("Johnston Report")

388. He added that, "[t]he information set out in Mr. Schreiber's November 7, 2007 affidavit caused the RCMP to review its file to determine whether there was any new evidence. After careful review, the RCMP concluded that there was nothing new. As there was no significant new information in [the] affidavit, its file...remains closed."

Johnston Report, p. 18

389. Back in 2003, what mattered most to Mr. Mulroney was that the RCMP had concluded an exhaustive eight year investigation into various allegations and ultimately concluded that there was no evidence to substantiate any charges. The letter vindicated Mr. Mulroney, and brought a measure of closure for him and his family.

390. It is respectfully submitted that, in this context, it is perfectly understandable that someone who had suffered through years of false accusations and innuendo would have had no appetite for engaging in another battle with the press over details that, while not public, had been fully vetted by the RCMP.

(iii.) The Globe & Mail Story

391. In both his book *A Secret Trial*, as well as his testimony before this Commission, Mr. Kaplan indicated that he first became aware of the business dealings between Mr. Mulroney and Mr. Schreiber from another journalist – Philip Mathias.

Kaplan Evidence, April 23, pp. 1769-1772

William Kaplan, *A Secret Trial: Brian Mulroney, Stevie Cameron, and the Public Trust* (Montreal: McGill – Queen’s University Press 2004), Exhibit P-44, Tab 98, pp. 12-13

392. Mr. Mathias had, evidently, first learned of the payments sometime in the year 2000. According to Mr. Kaplan’s notes, redacted copies of which were entered as exhibits, Mr. Mathias informed him of the story in March 2001.

William Kaplan, *Conversation with Phillip Mathias, March 15, 2001, Exhibit P-25, Tab 17*

393. At some time after his conversations with Mr. Mathias, Mr. Kaplan contacted Mr. Mulroney to determine whether the story was true. Mr. Kaplan testified that Mr. Mulroney never denied having received the payments, though he disputed that the amount of the payments was \$300,000 as had been reported by Mr. Mathias.⁵

Kaplan Evidence, April 23, p. 1823

394. Mr. Kaplan also testified that he felt misled because Mr. Mulroney had initially told him in 1997 that he knew Mr. Schreiber “in a peripheral way.” Yet, his notes suggest that Mr. Mulroney continued to use the term “peripheral” to describe his relationship with Mr. Schreiber even after Mr. Kaplan knew about their business dealings.

Kaplan Evidence, April 23, pp. 1917-1918

Interview with the Rt. Hon. Brian Mulroney, William Kaplan, December 2, 1997, Exhibit P-25, Tab 2

Interview with the Rt. Hon. Brian Mulroney, William Kaplan, January 9, 2002, Exhibit P-25, Tab 2

⁵ In his November 2003 *Globe & Mail* story, Mr. Kaplan wrote: “What is also very surprising about it all – and arguably telling of their legitimacy and Mulroney’s innocence – is that Mulroney did not just deny the payments. Doing so, presumably, would have been the easiest course, as there were, by all accounts, no witnesses to the exchanges. Mulroney did admit them because the payments were above board.”

395. For his part, Mr. Mulroney did not deny having described his relationship as being peripheral – in response to a question from the Commissioner on this subject he maintained that it was an accurate description, and offered the following explanation:

...to put it in context, I had and have an intimate relationship with my family, my wife and my children. I have a very close relationship with friends from Baie Comeau and St. FX and Ottawa and elsewhere. And my advisors, like Derek Burney and Bernard Roy, I had a very close relationship with them. I had a close relationship with my caucus and Cabinet and many others.

And I had what as, of necessity, essentially a peripheral relationship with many, many others. It is not a term of derision. It is not a term of...it is not a pejorative reference. It is a simple statement of fact: that with regard to Mr. Schreiber, and many others, my relationship with him was essentially peripheral.

Mulroney Evidence, May 19, p. 4292-4293

396. What is not in dispute, as evidenced by Mr. Kaplan's notes, is that he had discussed the issue of the mandate and resulting payments with Mr. Mulroney as early as January 9, 2002. Again, as Mr. Kaplan testified, Mr. Mulroney never denied having a business relationship with Mr. Schreiber or having received payments as a result.

Kaplan Evidence, April 23, p. 1823

Interview with the Rt. Hon. Brian Mulroney, William Kaplan, January 9, 2002, Exhibit P-25, Tab 2

397. In late 2003, Mr. Kaplan made clear that he intended to write about the payments as part of a series of stories to be published in the *Globe & Mail*. For the reasons set out above, and as he testified, Mr. Mulroney made efforts to convince Mr. Kaplan and the *Globe & Mail* not to run the story for the sake of his family. He was unsuccessful.

Mulroney Evidence, May 19, pp. 4219-4220, 4245

Interview with the Rt. Hon. Brian Mulroney, William Kaplan, October 5, 2003, Exhibit P-25, Tab 5

Interview with the Rt. Hon. Brian Mulroney, William Kaplan, October 12, 2003, Exhibit P-25, Tab 6

398. The Kaplan story about the payments ran on the front page of the *Globe & Mail* on November 10, 2003. The story confirmed, in part, that Mr. Mulroney had received the

payments in cash, the mandate included work in respect of Mr. Schreiber's international interests, and Mr. Mulroney had declared and paid taxes on the amounts received.

Globe and Mail Article: "Schreiber hired Mulroney", November 10, 2003, Exhibit P-25

(iv.) Conclusions

399. With regard to Mr. Mulroney's decision not to publicly disclose to the press the payments he received from Mr. Schreiber, the evidence led at this Commission supports the following conclusions:

- (a) Mr. Mulroney had no obligation to disclose the details of his private business affairs to the press;
- (b) When asked if he had business dealings with Mr. Schreiber, Mr. Mulroney did not deny the nature of their relationship; and
- (c) Mr. Mulroney's efforts to convince the *Globe & Mail* not to print the story were motivated by a desire to protect his family.

PART IX. EXTRADITION AND EXTORTION (2004-2007)

400. In the decade since his arrest on August 31, 1999, Mr. Schreiber has waged a fierce and increasingly desperate campaign to avoid extradition to Germany, where he faces criminal charges for tax evasion, fraud, forgery and bribery. This campaign shapes the lens through which the events of the last decade must be considered.

401. Pursuant to this campaign to avoid extradition, waged on legal, political and personal fronts and through manipulation of the media and the public, Mr. Schreiber made every effort to convince the Canadian government to call a public inquiry to temporarily suspend Mr. Schreiber's extradition.

402. To achieve this temporary relief, Mr. Schreiber was forced to play the sometimes contradictory roles of political tease and self-proclaimed saviour – releasing tantalizing details of the alleged “political justice scandal” one tidbit at a time, piece by piece, as a blatant ploy for *quid pro quo*.

(i.) The Legal Campaign

403. Following his arrest in 1999, Mr. Schreiber pursued a string of, ultimately unsuccessful, legal challenges to his extradition. The Ontario Court of Appeal recounted Mr. Schreiber's initial legal proceedings as follows:

The appellant brought a series of preliminary motions, all of which were rejected. Hamilton J. rejected the submission that the proceedings were time barred: *Germany v. Schreiber*, [1999] O.J. No. 5297 (Sup. Ct.). Watt J., the extradition judge, dismissed a motion for disclosure: *Germany v. Schreiber*, [2000] O.J. No. 2618 (Sup. Ct.) The extradition judge also dismissed a motion for commission evidence: *Germany v. Schreiber*, [2000] O.J. No. 5813 (Sup. Ct.); a declaration that the proceedings violated the appellant's Charter rights: *Germany v. Schreiber*, [2002] O.J. No. 3170 (Sup. Ct.); and a motion that certain evidence should be excluded on the basis that it is unreliable: *Germany v. Schreiber*, [2002] O.J. No. 5845 (Sup. Ct.).

***Germany (Federal Republic) v. Schreiber* (2006), 207 O.A.C. 306 at para. 5 (C.A.), Exhibit P-9, Tab 39**

404. On May 27, 2004, five years after Mr. Schreiber's initial arrest, the Ontario Superior Court of Justice issued an order for committal against Mr. Schreiber for all but one of the criminal charges promulgated by the German authorities. On October 31, 2004, the federal Minister of Justice, ordered Mr. Schreiber's surrender to Germany.

Germany (Federal Republic) v. Schreiber (2006), 207 O.A.C. 306 (C.A.), Exhibit P-9, Tab 39

405. In the years that followed, Mr. Schreiber continued to wage an aggressive campaign to avoid extradition. Yet, Mr. Schreiber repeatedly confirmed that, to date, each and every one of the legal challenges he has brought in opposition to his extradition have failed. Indeed, Mr. Schreiber is slated to be extradited to Germany at the conclusion of this Commission.

Schreiber Evidence, April 17, pp. 1010, 1017-1019

Schreiber (Attorney General) v. Schreiber, 2007 ONCA 791

Canada (Attorney General) v. Schreiber, 2008 ONCA 575

Canada (Minister of Justice) v. Schreiber, 2008 Carswell Ont. 7559 (S.C.C.)

(ii.) The Personal Campaign

406. In July 2004, after not having spoken or written to him for four years, Mr. Schreiber sought to ingratiate himself with Mr. Mulroney. In a letter dated July 2004, Mr. Schreiber applauded Mr. Mulroney's business acumen and deemed him worthy of international acclaim. The letter read, in part, as follows:

"Now he's got power". Is Brian Mulroney Canada's greatest deal broker? Ever? I say: Yes! I saw it already coming when I met you at Harrington Lake.

Since the Reagan funeral, in my opinion, your personal power increased even more and so do your personal obligations to the world.

Fate plays an important role in the life of human beings. We know this. Nobody can escape fate. Fate has put you in my opinion in a position, where you are able to help the human beings, especially the children of North America and around the world, in a dramatic way and your skill may put you in a special historical place and win a Nobel Prize.

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, July 2004, Exhibit P-7, Book 4, Tab 22

407. Shortly thereafter, in a letter dated July 22, 2004, Mr. Schreiber further extolled Mr. Mulroney's virtues in what Mr. Schreiber himself described as a "very flattering letter". It stated:

Friends from around the world called and told me, that they never understood better than now, why I like the man Brian Mulroney even more than the Prime Minister Brian Mulroney.

It is the quality of the human being which counts most in life.

Your performance at president Ronald Reagans funeral "I say 'au revoir' today to a gifted leader, historic president and gracious human being" has put you to the top of respect and admiration around the world.

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, July 22, 2004, Exhibit P-7, Book 4, Tab 23

408. Mr. Mulroney did not respond to Mr. Schreiber's ingratiating correspondence or, indeed, make any effort to renew their business relationship – whether directly or indirectly. By that time, Mr. Mulroney knew that Mr. Schreiber was an alleged criminal and fugitive from international justice.

(iii.) The Media Campaign

409. By early 2006, as the noose of extradition began to tighten, Mr. Schreiber decided to cooperate with the producers of the *Fifth Estate* program, and appeared on the February 8, 2006 episode to discuss a misleading and inaccurate versions of the business transaction between himself and Mr. Mulroney.

Schreiber Evidence, April 16, pp. 780-781

Transcript, The Fifth Estate, February 8, 2006, CBC-Television, Exhibit P-7, Book 3, Tab 16

410. The broadcast was tendentious and self-serving, presented with the gloss of a nationally-televised "news" report. During The Fifth Estate broadcast, host Linden

MacIntyre noted that Mr. Schreiber's attempts to have an inquiry called and stay his extradition had been ignored to date. Mr. Schreiber was characteristically elusive:

LINDEN MACINTYRE (HOST): The story is now history for almost everyone. Everyone, that is, but Karlheinz Schreiber. Germany is pressing hard to extradite him to face assorted criminal charges....He's offered to make a deal with the authorities, to tell all of his years of wheeling and dealing in the corridors of power. The government of Canada, at least till now, doesn't seem to want to listen to him or to hear his secrets about big business and *Schmiergelder* and politics.

KARLHEINZ SCHREIBER: What they try is to get me out of the country. Or put me in jail. Or whatever. To shut me up.

LINDEN MACINTYRE (HOST): So what you're saying is that the...this entire controversy at which you are in the centre exposes something about our political culture...

KARLHEINZ SCHREIBER: Absolutely.

LINDEN MACINTYRE (HOST): ...that people in that culture do not want to talk about.

KARLHEINZ SCHREIBER: Absolutely. But I know one thing, too. Sooner or later, the truth shows up, whether you like it or not. You have just to wait.

Transcript, The Fifth Estate, February 8, 2006, CBC-Television, Exhibit P-7, Book 3, Tab 16

411. Despite Mr. Schreiber's "disclosures" to the *Fifth Estate*, and as Mr. Schreiber testified, by 2006, his legal situation *vis-à-vis* extradition was "not looking so hot" and was, in fact, "getting worse and worse".

Schreiber Evidence, April 17, 2009, p. 1012

(iv.) The Political Campaign

412. In 2006, in concert with his legal challenges to extradition, Mr. Schreiber began to lobby powerful politicians – including Prime Minister Harper and the Minister of Justice – urging them to reconsider the pending extradition orders and calling for a public inquiry into the "political justice scandal" perpetrated by the previous Liberal government.

413. On June 16, 2006, Mr. Schreiber wrote directly to Prime Minister Harper, invoking partisan politics and the national interest to urge intervention in Mr. Schreiber's extradition. Mr. Schreiber wrote:

Will the Attorney General in your government continue with the delay tactics of the Liberal Attorneys General in my Alberta court action who hope that I lose my extradition case at the Supreme Court of Canada and be extradited to Germany? This would prevent me from pushing forward the legal case and bury the "Airbus Affair" and the "Political Justice Scandal" at the same time. Would this be in the interest of Canada? I think not.

Letter, Mr. Schreiber to Prime Minister Harper, June 16, 2006, Exhibit P-7, Book 5, Tab 1

414. The record shows that between June 2006 and June 2008, Mr. Schreiber wrote 23 letters to Prime Minister Harper, often copying Mr. Mulroney, with no response from the Prime Minister, the PMO or Mr. Mulroney. The Commission has heard evidence of how the letters were treated by the various correspondence units.

Transcript, Evidence of Donald Smith, Executive Correspondence, Privy Council Office, April 20

Transcript, Evidence of Sheila Powell, Executive Correspondence, Privy Council Office, April 20

Transcript, Evidence of Salpie Stepanian, Prime Minister's Correspondence Unit, Prime Minister's Office, May 21

Letters, Mr. Schreiber to Prime Minister Harper, June 16, 2006, July 13, 2006, August 4, 2006, August 23, 2006, August 30, 2006, September 26, 2006, October 27, 2006, November 30, 2006, December 13, 2006, January 16, 2007, January 24, 2007, March 29, 2007, April 8, 2007, April 10, 2007, May 3, 2007, September 26, 2007, November 19, 2007, November 20, 2007, November 22, 2007, November 25, 2007, January 10, 2008, February 7, 2008, February 21, 2008, Exhibit P-7, Book 5, Tabs 1-23

Report of the P.C.O. on the Executive Correspondence Procedures and the handling of letters from K. Schreiber to P.M. Stephen Harper from June 2006 to September 2007, Exhibit P-15

Report of the P.M.O. on the Prime Minister's correspondence with procedures and the handling of the letters from K. Schreiber to S. Harper from June 1006 to September 2007, Exhibit P-16

(v.) The 2006 Apology Letter

415. On July 20, 2006, in parallel to his lobbying efforts and legal challenges, Mr. Schreiber wrote another ingratiating letter to Mr. Mulroney – this one apologizing for the “misleading, erroneous and unfair Characterization (sic)” of their business relationship on The Fifth Estate and “correcting” the record as to their relationship. It read, in part:

May I state for the record, that my testimony under oath in prior legal proceedings is the only correct description of our business arrangement. You, after returning to private life, at my request, agreed to advise and consult me in certain business affairs.

I still believe that my statements in the book “The Secret Trial”, together with my testimony under oath at the Eurocopter trial and my statements to Bob Fife, have made it crystal clear what my position is.

There is no “Airbus Affair” involving Brian Mulroney and furthermore there is nothing to hide.

The discussion and financial arrangements between you and me about future industrial projects have been correct, private and nobody’s business. You were the best advocate I could have retained.

...Too many people talk too much. I have not changed. I have always been your friend, even though I was irritated for some time, which I regret. For the sake of objectivity and fairness, I ask you to accept my apology (Exhibit P7, Book 4, Tab 26).

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, July 20, 2006, Exhibit P-7, Book 4, Tab 26

416. The Commission heard uncontradicted testimony that Mr. Mulroney did not ask Mr. Schreiber to prepare or transmit the 2006 apology letter. Mr. Mulroney testified, and Mr. MacKay confirmed, that Mr. Mulroney was not involved, either directly or indirectly, in the procuring or initiating of this letter.

Schreiber Evidence, April 16, p. 787; April 17, pp. 997-1000

Mulroney Evidence, May 13, p. 3776

MacKay Evidence, May 4, p. 2826

417. Further, under cross-examination, Mr. Schreiber himself admitted that the allegation in the November 7, 2007 affidavit to the effect that Mr. Schreiber had written

the July 20, 2006 letter at Mr. Mulroney's request and because Mr. Mulroney had told him he was going to meet with Prime Minister Harper was totally false.

Schreiber Evidence, April 17, p. 997-1000

418. The record suggests that it was Mr. Schreiber who initiated the drafting of the July 20, 2006 letter at Mr. MacKay's urging. As Mr. MacKay testified, "Mr. Schreiber asked me what sort of letter he might write, or what sort of communication he might put forward to Mr. Mulroney to try to repair their relations".

MacKay Evidence, May 4, p. 2826

Email, Elmer Mackay to Karlheinz Schreiber, June 25, 2006, Exhibit P-7, Book 4, Tab 24

419. While Mr. MacKay provided some language for a possible draft letter, it is important for the Commission to note that Mr. MacKay's draft text – which must be presumed to be truthful, as Mr. Schreiber described Mr. MacKay in laudatory terms and as a close friend – was entirely based on information he had received from Mr. Schreiber, and, moreover, that Mr. Schreiber's letter contains additional language that was not included in Mr. MacKay's initial draft.

MacKay Evidence, May 4, pp. 2827-2828

Schreiber Evidence, April 14, pp. 339-340; April 16, pp. 789-790, 792

Email, Mr. MacKay to Mr. Schreiber, June 25, 2006, Exhibit P-7, Book 4, Tab 24

420. Moreover, during his testimony Elmer MacKay indicated that he had no recollection of having been told that Mr. Mulroney was going to be meeting with Prime Minister Harper in the summer of 2006, nor any recollection of having conveyed that information to Mr. Schreiber. Consequently, there is no evidence that Mr. Schreiber was told by anyone that Mr. Mulroney was meeting with the Prime Minister.

MacKay Evidence, May 4, p. 2832.

421. As he had done in 2004, Mr. Mulroney did not respond to Mr. Schreiber's letter of July 20, 2006. From Mr. Mulroney's perspective, keeping his distance from Mr. Schreiber was the safest course, as he knew the volatility of Mr. Schreiber's desperation:

I was the guy that was the most prominent of the crowd, and he was apparently bound and determined that he was going to do and say anything that he could about me if that gave him an advantage in remaining in Canada. He said, if I may say, I think he said it in another forum I will do and say anything and I will sign anything that will help me stay in Canada.

Mulroney Evidence, May 13, p. 3770

(vi.) The Extortion Campaign

422. By 2007, Mr. Schreiber's attempts to avoid extradition had been rejected on all fronts. Neither the courts nor the government supported Mr. Schreiber's fight to remain in Canada. His calls for an inquiry had gone unheeded and his avenues of recourse were virtually exhausted.

423. Accordingly, Mr. Schreiber pursued a completely new strategy premised on threats, insults and blackmail attempts of former Prime Minister Brian Mulroney. On January 29, 2007, Mr. Schreiber wrote to Mr. Mulroney, pleading for help with his extradition case and supporting a public inquiry.

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, January 29, 2007, Exhibit P-7, Book 4, Tab 37

424. In the concluding paragraph of the January 2007 letter, Mr. Schreiber issued an ominous warning: "I think it is in your and my best interests that you show up and help me now and bring this insanity to an end. If I am forced to leave Canada this will not end the matter".

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, January 29, 2007, Exhibit P-7, Book 4, Tab 37, p. 5

425. On February 20, 2007, Mr. Schreiber wrote to Mr. Mulroney threatening legal action unless Mr. Mulroney paid him \$485,000. The Commission heard evidence that this was the first time that Mr. Schreiber had ever sought return of the payments to Mr. Mulroney in the fourteen years since they were given in 1993 and 1994.

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, February 20, 2007, Exhibit P-7, Book 4, Tab 38

Schreiber Evidence, April 16, p. 823

426. It is respectfully submitted that Mr. Schreiber's demand for the return of the payments was part of Mr. Schreiber's strategy to avoid extradition. Mr. Mulroney explained his understanding of the situation in his testimony before this Commission:

...in 2007, as the noose begins to tighten around his neck in respect of extradition, the mood changes and the letters change...You would have had to have been pretty naïve not to understand the evolution of what Mr. Schreiber was doing. His entire efforts were concentrated on avoiding extradition, which, as you know, sir, we have already talked – this is what gave rise a few months later to the false affidavit of November 7th.

Mulroney Evidence, May 20, pp. 4576-4577

427. One month later, on March 29, 2007, Mr. Schreiber wrote to Mr. Mulroney "strongly" recommending that he request a public inquiry into the Airbus Affair, the alleged "political vendetta" and the "political justice scandal" relating to Mr. Mulroney, Frank Moores, Garry Ouellet and Mr. Schreiber before April 2, 2007.

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, March 29, 2007, Exhibit P-7, Book 4, Tab 39

428. Mr. Mulroney again interpreted this as a threat from Mr. Schreiber, who was now increasingly agitated by Mr. Mulroney's steadfast refusal to respond to his letters. Although the threat was not explicit, the letter implies that Mr. Mulroney should comply with Mr. Schreiber's "strong recommendation" "or else".

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, March 29, 2007, Exhibit P-7, Book 4, Tab 39

429. On April 15, 2007, in stark contrast to his letters of 2004 and 2006, Mr. Schreiber wrote to Mr. Mulroney, "There was a time I was embarrassed when people or the media called you: "Lying Brian." Times have changed. Today I believe, if the lie itself would look for a proper label, it would choose your name and your face!".

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, March 29, 2007, Exhibit P-7, Book 4, Tab 42

430. On May 8, 2007, Mr. Schreiber wrote a letter to Mr. Mulroney containing an explicit threat: "this is my last warning." Mr. Schreiber set out a series of false "disclosures" that he was prepared to make, but that could be avoided only if Mr. Mulroney joined Mr. Schreiber's fight to avoid extradition. The letter read:

The conspiracy and cover-up action of Prime Minister Stephen Harper, Brian Mulroney, Robert Douglas Nicholson, the Attorney General of Canada and the IAG of the Department of Justice are responsible for the Proceedings at the Ontario Court of Appeal concerning my extradition case.

[...]

The time has come that you bring the whole battle with me to a peaceful and satisfying end. This is my last warning.

I am prepared to disclose:

that you received payments from GCI, Frank Moores, Fred Doucet, Gary Ouellet, that I was asked by Fred Doucet to transfer funds to your Lawyer in Geneva (Airbus) what the reason was for your trip to Zuerich (sic) in 1998, that you asked me through my lawyers to commit perjury to protect you, that you supported fraud related to the Thyssen project and more.

It is in your hands what is going to happen. My patience comes to an end.

Letter, Karlheinz Schreiber to Rt. Hon. Brian Mulroney, May 8, 2007, Exhibit P-7, Book 4, Tab 43

431. Mr. Schreiber admitted, under cross-examination, that he was threatening and attempting to blackmail Mr. Mulroney. Mr. Schreiber testified that, at that time, Mr. Mulroney was his last chance of avoiding extradition – and, moreover, that he was upset and angered by Mr. Mulroney's refusal to assist him circumvent extradition:

Mr. Pratte: And when he didn't do what you wanted him to do, you threatened him. That letter is a blackmail letter is it not?

Mr. Schreiber: Yes. Well, but you can take it whatever way you want.

Mr. Pratte: It's a threat. It's a threat.

Mr. Schreiber: I threatened him because this was my last warning, when you look at all this...

Mr. Pratte: It was your last chance when you look at all the legal correspondence...

Mr. Schreiber: Yes.

Mr. Pratte: Right?

Mr. Schreiber: Yes.

Mr. Pratte: That's why you threatened him.

Mr. Schreiber: Yes.

Schreiber Evidence, April 17, 2009, pp. 1023-1024

432. Despite being keenly aware of the devastation false accusations can cause, Mr. Mulroney did not succumb to Mr. Schreiber's threats. He recognized the letter for what it was – a blackmail attempt by a desperate fugitive running out of options to avoid German justice. As he testified, Mr. Mulroney neither responded nor retaliated:

This is the letter of a blackmailer, and what he was threatening me with was this litany of crimes, that he alleged, that would be exposed if I did not intervene with Prime Minister Harper or Attorney General Rob Nicholson to halt or affect his extradition case.

It was a clear case of extortion and blackmail, and it was very clear what he was going to do -- what he was going to do with the false statements that brought us here today.

And I knew, when I read that letter, that this was clearly what he was up to. I knew that my family and I would pay a price. I took the letter and sent it to my lawyer, but I was ready to pay that price and much more, rather than succumb to the demands of a blackmailer.

He was asking me to do something – not [just] improper – absolutely illegal, in interfering with the judicial system to stop his extradition to Germany. He said publicly that he would do anything to avoid going back to Germany, where he was going to jail. He said that, and this proved it.

So I set it aside, gave it to my lawyer, and I knew full well -- I didn't know how or when, but it was coming, how he was going to put this together to fulfil his desire for blackmail and extortion.

Rather than ever submit to that, I ignored it totally.

Mulroney Evidence, May 13, pp. 3780-3781

433. In his testimony before this Commission, Mr. Schreiber confirmed that he would have done everything to get a public inquiry; an inquiry which, he hoped, would postpone

or suspend his extradition. Mr. Schreiber testified: “Yes, I would have done everything, finally, to achieve that an inquiry goes into this...”

Schreiber Evidence, April 17, p. 993

(vii.) The November 2007 Affidavit

434. In March 2007, Mr. Schreiber commenced a lawsuit against Mr. Mulroney in Ontario Superior Court seeking recovery of the “advance for services to be rendered” paid to Mr. Mulroney in 1993 and 1994. The Statement of Claim alleged that Mr. Mulroney defaulted on the delivery of services and refused to return the advance.

Amended Statement of Claim, Karlheinz Schreiber (Plaintiff) and Brian Mulroney (Defendant), March 22, 2007, Exhibit P-7, Book 3, tab 17

435. On September 17, 2007, counsel for Mr. Mulroney issued a Notice of Motion seeking, *inter alia*, an order dismissing or staying the proceedings on the grounds that the Ontario Superior Court lacked jurisdiction. This argument was ultimately successful and the action was dismissed.

Schreiber Evidence, April 17, p. 1033

***Schreiber v. Mulroney*, (2007), 288 D.L.R. (4th) 661**

436. Prior to dismissal of the action, however, Mr. Schreiber swore an affidavit, dated November 7, 2007, in support of his position on the motion. By this time, Mr. Schreiber had reached the pinnacle of his desperation. He was incarcerated in the Toronto Detention Centre, and had fended off at least one extradition attempt that fall.

Schreiber Evidence, April 16, p. 876

2007 Schreiber Affidavit

Schreiber Affidavit

437. It is respectfully submitted that Mr. Schreiber swore the affidavit of November 7, 2007 for an improper purpose, contrary to what is set out in paragraph 51. The Affidavit

was not an attempt to defeat the motion to strike, it was his last and most desperate attempt to avoid extradition.

Schreiber Affidavit

438. The evidence presented to this Commission clearly establishes that the November 7, 2007 affidavit is not only riddled with falsehoods, errors and exaggerations – it is replete with information that is totally irrelevant to the issue of jurisdiction and unrelated to matters raised in the original Statement of Claim.

439. If it further submitted that Mr. Schreiber used the media in order to generate publicity and maximum exposure of the allegations contained in the affidavit. The record shows that prior to the affidavit's release, Mr. Schreiber was in close contact with both the *Globe & Mail* and producers from the *Fifth Estate*.

Schreiber Evidence, April 17, pp. 986-987, 988-990, 1024-1025, 1027-1028, 1030, 1031

(viii.) The Quebec Action

440. Following the dismissal of his Ontario action, on June 11, 2008 - the day before this Commission was created – Mr. Schreiber commenced a second lawsuit against Mr. Mulroney in the Province of Quebec. The lawsuit, again, sought the recovery of the monies paid to Mr. Mulroney in 1993 and 1994.

Schreiber Evidence, April 17, pp. 1033-1034

Motion to Institute Proceedings, Karlheinz Schreiber (Plaintiff) and Brian Mulroney (Defendant), June 11, 2008, Exhibit P-9, Tab 44

441. Once the Commission was established, as had been widely rumoured in the press, Mr. Schreiber sought to delay his action. When counsel for Mr. Mulroney sought to examine Mr. Schreiber before filing a statement of defence, as expressly permitted under the rules, Mr. Schreiber refused to submit to the examination.

Schreiber Evidence, April 17, pp. 1035-1036

442. Following a legal challenge to Mr. Schreiber's refusal, the Quebec Court of Appeal rejected Mr. Schreiber's submission that the examination before plea would prejudice this Commission. Accordingly, the Quebec Court of Appeal ordered Mr. Schreiber to appear for examination.

Schreiber Evidence, April 17, pp. 1036-1037

Mulroney c. Schreiber, Procès-verbal d'audience, 2009 QCCA 116, Exhibit P-9, Tab 45

443. On February 24, 2009, two days prior to the scheduled examination before plea, Mr. Schreiber discontinued his action against Mr. Mulroney in Quebec. He disingenuously contended, contrary to the Quebec Court of Appeal's decision, that he did so because the examination would undermine this Commission. To the contrary, it further undermined his credibility.

Schreiber Evidence, April 17, 2009, pp. 1038-1040

Letter, Jean Faullem, Noel & Associates LLP, to Francois Grondin, Borden Ladner Gervais LLP, February 24, 2009, Exhibit P-9, Tab 47

(ix.) Conclusions

444. With regard to Mr. Schreiber's efforts to avoid extradition, the evidence led at this Commission supports the following conclusions:

- (a) In the years following his arrest in August 1999, Mr. Schreiber engaged in an aggressive and multi-faceted campaign to avoid extradition to Germany where he faced multiple criminal charges;
- (b) When his efforts before the courts became frustrated, Mr. Schreiber attempted to renew his relationship with Mr. Mulroney in an effort to seek his assistance;
- (c) When Mr. Mulroney did not respond to his various overtures, Mr. Schreiber used the media in order to generate public interest in a potential public inquiry;

- (d) When his efforts with the media did not garner further results, Mr. Schreiber sought to lobby Prime Minister Harper and the federal Minister of Justice;
- (e) When Prime Minister Harper and the Minister of Justice did not respond to Mr. Schreiber's request for assistance, Mr. Schreiber again sought to bring Mr. Mulroney over to his cause; and
- (f) When Mr. Mulroney refused to cooperate with him, an angry and rejected Mr. Schreiber began to threaten Mr. Mulroney with a lawsuit and, ultimately, the public disclosure of false allegations.

PART X. THE QUESTIONS

445. The Commission's Terms of Reference direct the Commissioner to investigate and report on various questions relating to the business and financial dealings between Mr. Mulroney and Mr. Schreiber. On the evidence presented, it is respectfully submitted that the questions should be answered as follows:

Question No. 1 – What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?

Mr. Mulroney accepted a perfectly legal and entirely legitimate commercial retainer from Mr. Schreiber to assist with the international promotion of Thyssen peacekeeping vehicles. For his services, Mr. Mulroney received three retainer payments in the amount of \$75,000 each.

Question No. 2 – Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?

No agreement was reached between Mr. Schreiber and Mr. Mulroney while Mr. Mulroney was still Prime Minister of Canada. At most, they agreed to possibly discuss future cooperation after Mr. Mulroney had left office.

Question No. 3 – If so, what was that agreement, when and where was it made?

Not applicable in view of the previous answer.

Question No. 4 – Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 Ethics Code?

Yes, but nothing which violated any of the provisions set out in the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

Question No. 5 – If so, what was that agreement, when and where was it made?

On August 27, 1993, at the Mirabel Airport Hotel, Mr. Mulroney accepted a mandate from Mr. Schreiber pursuant to which he would assist in the identification and development of opportunities for the international promotion of Thyssen peacekeeping vehicles.

Question No. 6 – What payments were made, when and how and why?

Mr. Mulroney received three cash payments of \$75,000, or \$225,000 in total, for fees and expenses relating to the legitimate and legal commercial retainer which he had accepted from Mr. Schreiber. The payments were made on August 27, 1993, December 18, 1993 and December 8, 1994.

Question No. 7 – What was the source of the funds for the payments?

Mr. Mulroney had no knowledge of the source of payments other than that they had come from Mr. Schreiber. Mr. Schreiber testified that the payments came from the Swiss bank account named 'BRITAN', even though he and his lawyers had denied this both in a letter to the CBC sent in 1999 as well as in the lawsuit they filed in early 2000.

The forensic accountants retained by the Commission indicated that while an inference could be drawn that the payments came from the BRITAN account, there was no evidence that Mr. Mulroney knew that they had. They also confirmed that the payments could not have come from the success fees paid by Thyssen in 1988.

Question No. 8 – What services, if any, were rendered in return for the payments?

In furtherance of the mandate that he received from Mr. Schreiber, Mr. Mulroney conceived of a plan whereby the Permanent Members of the

United Nations Security Council would be persuaded to consider a policy of standardization with respect to the procurement of peacekeeping vehicles.

To that end, Mr. Mulroney discussed the concept and related issues with Vice Premier Zhu Ronji of China, President Boris Yeltsin of Russia, President Francois Mitterrand of France, former U.S. Secretary of Defence Caspar Weinberger and former U.S. Secretary of State James A. Baker III.

In 1998, after the Airbus Affair had largely subsided, Mr. Schreiber approached Mr. Mulroney with the possibility of assisting him with the promotion of a new anti-obesity pasta operation. Mr. Mulroney stopped working for Mr. Schreiber after his arrest in August 1999.

Question No. 9 – Why were the payments made and accepted in cash?

Mr. Schreiber testified that he frequently dealt in cash, and that the account from which he drew the payments for Mr. Mulroney did not provide for the issuance of cheques. Mr. Schreiber therefore provided the payments to Mr. Mulroney in cash.

Mr. Mulroney testified that it was a significant error of judgment on his part to accept the payments in cash, that he should not have done so, and that he regretted that he had not asked Mr. Schreiber to provide payment in the form of a cheque.

Question No. 10 – What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?

Mr. Mulroney testified that when he received the payments from Mr. Schreiber, he deposited them in either a personal safe or a safety deposit box in New York City. Apart from drawing on the amounts for expenses, the money remained in those locations until the year 2000.

After the year 2000, once the money had been declared as income and taxes had been paid, Mr. Mulroney used the money to assist and support members of his immediate and extended family. The money received in New York, was used to assist his children attending school in the U.S.

Question No. 11 – Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?

Mr. Mulroney testified that it was an error of judgment to accept cash payments from Mr. Schreiber, and further conceded that it is, and was, inappropriate for a former public office holders to engage in inadequately documented arrangements because this could give rise to legitimate suspicions on the part on the part of reasonable Canadians.

Whatever suspicions may have reasonably arisen, the Commission did not hear any credible evidence that the mandate for the international promotion of Thyssen peacekeeping vehicles was in any way illegal, illegitimate or involved any wrongdoing on the part of Mr. Mulroney.

To be clear, the international promotion of Thyssen peacekeeping vehicles would neither violate nor contravene any of the post-employment provisions contained in the 1985 *Conflict of Interest and Post-Employment Code for Public Office Holders* introduced by the Mulroney government.

Question No. 12 - Was there appropriate disclosure and reporting of the dealings and payments?

Mr. Mulroney testified that he had attempted to disclose the full extent of his relationship to the RCMP in October 1995, prior to the publication of the Letter of Request, but that his efforts in this respect were rejected.

Mr. Mulroney also testified that had he been asked whether he had received money from Mr. Schreiber, or had a business relationship with

Mr. Schreiber, he would have answered truthfully during his Examination Before Plea in 1996.

Mr. Kaplan testified that when he asked Mr. Mulroney about the payments in 2003, while researching his second book and preparing for a story in the *Globe & Mail*, Mr. Mulroney confirmed that he had received payments from Mr. Schreiber – but disputed the payments totalled \$300,000.

While some have suggested that this question relates to the disclosure of the payments for income tax purposes, this interpretation should be rejected on the basis that any effort to determine compliance with the *Income Tax Act* is outside the jurisdiction of a public inquiry.

That said, however, the Commission did hear uncontradicted evidence, under objection, that Mr. Mulroney made a voluntary tax declaration in 2000 which conformed to Revenue Canada's policies and administrative practices in place at that time.

Also, as previously noted, Mr. Mulroney testified that it was an error of judgment to engage in inadequately documented arrangements because this could give rise to legitimate suspicions on the part of reasonable Canadians.

Question No. 13 – Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?

As part of the Ruling on Standards, the Commissioner concluded that the 1985 *Conflict of Interest and Post Employment Code for Public Office Holders* was in place at the time that Mr. Mulroney entered into the commercial relationship with Mr. Schreiber.

Given that the business dealings took place after Mr. Mulroney left office, only those provisions of the 1985 *Ethics Code* relating to post-

employment and former public office holders are relevant. Mr. Mulroney did not violate any of those provisions.

The Commission has heard no evidence to the effect that Mr. Mulroney took improper advantage of the office he once held, nor that a retainer to assist in the international promotion of peacekeeping vehicles would violate any of the post-employment provisions of the 1985 *Ethics Code*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5th DAY OF
JUNE 2009.



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