



## **STATEMENT OF THE HONOURABLE JEFFREY J OLIPHANT UPON THE RELEASE OF THE REPORT OF THE OLIPHANT COMMISSION**

Thank you for coming. I wish all of you a very warm welcome.

With the release of my report, today marks the culmination of almost two full years of very hard work...work that has been both interesting and challenging.

The work of the Commission was divided into two phases. The first phase was what we have called the Factual Inquiry. The second phase was the Policy Review.

The genesis of this Inquiry is a relationship between a former prime minister of Canada, the Right Honourable Brian Mulroney, and Karlheinz Schreiber, a German-Canadian businessman. The Factual Inquiry entailed an investigation into certain allegations respecting business and financial dealings that arose out of that relationship between Mr. Schreiber and Mr. Mulroney.

The Terms of Reference for this inquiry directed me to investigate and report upon seventeen questions. I have complied with that mandate in that I have answered each and every part of each and every question set forth in the Terms of Reference.

The theme that resonates throughout this Report is the importance of the integrity of government, and, more particularly, the integrity of those who govern. Canadians live in a democratic society in which the holders of public office attain the privilege of governing by virtue of being elected every four or so years. The electorate reposes its trust and confidence in every person elected to hold public office. In my view, therefore, Canadians are entitled to expect that the holders of public office will be guided in their professional and personal lives by an ethical standard that is higher and more rigorous than the norm.

Those expectations do not expire when the political career of a holder of public office comes to an end. In my view, the higher, more rigorous standard must necessarily endure while such a person makes the transition to the private sector and for a reasonable period of time thereafter. To paraphrase a life lesson that I believe the holders of public office would do well to remember: From those in whom much is entrusted, much is expected.

In the first phase of the Commission's activities, the Factual Inquiry, I scrutinized Mr. Mulroney's activities as he made the transition from public office

to private life. In considering Mr. Mulroney's conduct, I applied the standard that was accepted by him when, in September 1985, he tabled the Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code) in the House of Commons, one year into his mandate as prime minister. The code specified that the conduct of public office holders must be so scrupulous that it can bear the closest public scrutiny.

From the inception of this Inquiry I have been keenly aware of, and sensitive to, the damage that can be done to the reputation of an individual as a result of findings of fact I may make, based on the evidence, in the course of writing my Report. I have taken great care to avoid inflicting that type of damage on anyone. My mandate, for valid reasons, prohibited me from making any finding as to civil or criminal liability on the part of anyone. I have been careful not to use language that would even hint at such a finding. In making these concluding remarks, I have reminded myself, once again, of the fact that Mr. Mulroney, who achieved much while prime minister, understandably places a high value on his reputation.

However, findings of fact cannot be the cause of damage to a person's reputation where the person's conduct itself has damaged his or her reputation. Moreover, I have a duty pursuant to the mandate given to me by the Governor in Council to make findings of fact in the course of answering the questions posed in the Terms of Reference. That is a duty from which I do not shirk.

## **BACKGROUND**

In March 2007 Karlheinz Schreiber filed a lawsuit against the Right Honourable Brian Mulroney. In it, Mr. Schreiber sought repayment of \$300,000 plus interest from Mr. Mulroney because, he alleged, Mr. Mulroney had failed to provide any services for those payments.

On November 7, 2007, Mr. Schreiber swore an affidavit in this lawsuit in which he made specific allegations pertaining to Mr. Mulroney, including allegations that, on each of three separate occasions, he (Mr. Schreiber) had paid \$100,000 cash to Mr. Mulroney.

On November 14, 2007, after learning of the allegations, Prime Minister Stephen Harper appointed Dr. David Johnston, the president and vice-chancellor of the University of Waterloo, as an independent adviser, to review Mr. Schreiber's allegations and provide the government with recommendations for an appropriate mandate for a public inquiry.

Dr. Johnston issued his first report on January 9, 2008. Dr. Johnston submitted a second report to Prime Minister Harper on April 4, 2008.

In his First Report, Dr. Johnston expressed his views when he said that the public interest issue is the integrity of Government and whether there was a breach of constraints; and if not, whether there is a need for further constraints on former high office holders after they leave office.

Dr. Johnston concluded that the integrity concerns to which he referred did not warrant a lengthy inquiry into matters that had been investigated by the RCMP since 1995. He also said there should be no inquiry with respect to facts already known and ground already covered.

## **THE MANDATE**

I was appointed by Order in Council PC 2008-1092 dated June 12, 2008, to conduct an inquiry into certain allegations respecting the business and financial dealings between Mr. Schreiber and Mr. Mulroney.

The scope of any public inquiry is determined by its Terms of Reference, which are legally binding. In this Inquiry, the Terms of Reference directed me to “investigate and report” on 17 questions relating to the business and financial dealings between Mr. Schreiber and Mr. Mulroney. These questions are identical to those that Dr. Johnston articulated in his First Report. Accordingly, I took his views into consideration in my interpretation of the mandate.

I set out my interpretation of the parameters of the mandate at the first hearing of this Commission on October 2, 2008. At that time I indicated that my mandate was to conduct a focused inquiry, first, into the business and financial dealings of Mr. Mulroney and Mr. Schreiber in relation to the Bear Head Project and, second, the cash payments made by Mr. Schreiber to Mr. Mulroney in 1993 and 1994.

The public hearings of the Factual Inquiry commenced on March 30, 2009, and continued until June 10, 2009, when I heard closing submissions. The Policy Review began on June 15, 2009, and ended on July 28, 2009. Over the course of 39 days of hearings, I heard the testimony of 28 witnesses in the Factual Inquiry and 16 participants in the Policy Review. Approximately sixteen thousand pages of documents were filed as exhibits. I read all of them. In excess of 5000 pages of transcript were analyzed by me. A total of 150,000 pages of documents were submitted to the Commission pursuant to requests made to the government, to the parties and to witnesses.

As a result of the mass of documents provided to me, I sought and received two extensions of time within which to file my report with the government.

I should say here that the Terms of Reference specifically say that I am to perform my duties without expressing any conclusion or recommendation

regarding the civil or criminal liability of any person or organization. Accordingly, nothing in my report should be construed by anyone that I have come to any conclusions or opinions on the subject of the possible civil or criminal liability of any person.

## **THE BUSINESS AND FINANCIAL DEALINGS BETWEEN MR. SCHREIBER AND MR. MULRONEY**

The overarching question of the Inquiry, as reflected by the questions in the Terms of Reference, was to determine what the business and financial dealings were between Mr. Mulroney and Mr. Schreiber.

I considered this question in Chapter 5, where I examined the relationship between Mr. Schreiber and Mr. Mulroney from its inception in the 1980s to its termination in the early 2000s.

Despite what Mr. Schreiber has said, I do not accept that, before Mr. Mulroney became prime minister, their relationship was nearly as close as he would have me believe. While Mr. Schreiber was testifying before me, I was struck by his proclivity for exaggeration as he described the nature of his relationships with people, particularly those in positions of influence and power.

During Mr. Mulroney's tenure as opposition leader, there was some infrequent contact between Mr. Schreiber and him. I am satisfied that whatever relationship existed between them while Mr. Mulroney was the leader of the official opposition, it was not a business relationship.

Mr. Mulroney served as prime minister of Canada from September 17, 1984, until June 24, 1993. The evidence discloses that meetings were held between Mr. Mulroney and Mr. Schreiber during the early years of Mr. Mulroney's tenure as prime minister. Those meetings were held infrequently, not as described by Mr. Schreiber. They always took place in the company of one or more other persons.

However, as time passed and events evolved, Mr. Schreiber gained an increasing amount of access to Mr. Mulroney. As the frequency of the meetings with Mr. Mulroney increased, Mr. Schreiber came to believe that he and Mr. Mulroney had become friends. When he testified before me, Mr. Schreiber portrayed the relationship between them as one of close friendship. My perspective of the relationship is markedly different from that of Mr. Schreiber. To put it bluntly, I hold the view that Mr. Schreiber is deluding himself if he believes that Mr. Mulroney was ever a close friend.

Mr. Schreiber nevertheless succeeded in gaining a remarkable degree of access to Mr. Mulroney during his service as Prime Minister of Canada. He used his relationships with two close friends of Mr. Mulroney – Elmer MacKay, the

Member of Parliament for Central Nova who held various ministerial portfolios throughout Mr. Mulroney's government, and Fred Doucet, a former senior adviser to Mr. Mulroney – to gain that access to the prime minister. I am satisfied that, with the help of these men, Mr. Schreiber could get to see Mr. Mulroney just about whenever he wished to do so.

I have scrutinized the evidence regarding the relationship between Mr. Schreiber and Mr. Mulroney to determine if there was anything untoward about it during Mr. Mulroney's tenure as prime minister of Canada.

Mr. Schreiber was attempting to influence the Government of Canada to accept proposals on behalf of Thyssen of Germany, through Bear Head Industries Limited,, to establish a plant that would manufacture military vehicles in Canada. It is also important to remember that it was Mr. Doucet who, on behalf of Mr. Schreiber, arranged a number of the meetings concerning the Bear Head Project with Mr. Mulroney, and that Mr. Doucet accompanied Mr. Schreiber to at least some of those meetings. For Mr. Schreiber, the financial stakes were high. He stood to gain a considerable commission, estimated by him at \$1.8 billion, if the project came to fruition and Thyssen was able to sell its military vehicles both in Canada and in the international market.

Notwithstanding the fact that Mr. Mulroney was aware that Mr. Doucet was working for Mr. Schreiber, lobbying on behalf of the Bear Head Project, the evidence is clear that Mr. Doucet still had the ear of the prime minister and was able to arrange for Mr. Schreiber's access to Mr. Mulroney whenever Mr. Schreiber wanted to meet with him. In the context, that access was not appropriate. I believe that Mr. Mulroney ought to have been far more circumspect in his dealings with Mr. Doucet, knowing that he was actively lobbying on behalf of Mr. Schreiber and the Bear Head Project.

The evidence convinces me that, throughout its lifespan, despite whatever political support existed for the project, those at the most senior levels of the federal bureaucracy and military, for understandable, well-documented reasons set out in Chapter 4 of my Report, were opposed to the Thyssen / Bear Head proposals.

Mr. Schreiber was well aware of the strong opposition he was facing. He had to know that, without political support, especially support from the highest office in the land – that of the prime minister – the various proposals he advanced from time to time were doomed to fail.

Whatever motivated Mr. MacKay and Mr. Doucet, it must be painfully obvious to them now that, as an unintended consequence of their activities in arranging for Mr. Schreiber to have almost unlimited access to Mr. Mulroney while he was prime minister, great harm has been done to Mr. Mulroney and his

reputation, which he obviously values highly. This harm was openly admitted by Mr. Mulroney when he testified before me.

I am unable to conclude, however, that all the blame for that harm can be laid on Mr. MacKay and Mr. Doucet. Mr. Mulroney, an intelligent, sophisticated businessperson, had to recognize that Mr. Schreiber was attempting to manipulate him to use his power and influence as prime minister to move the Bear Head Project forward despite all the advice to the contrary he was receiving from trusted advisers such as Paul Tellier, the clerk of the privy council and secretary to the cabinet from 1985 to 1992.

Even after Mr. Mulroney said he killed the Bear Head Project in 1991, he permitted Mr. Schreiber to have continued access to him. That is why, in my opinion, the Project refused to die and, like Phoenix, kept rising from the ashes.

In my view, Mr. Mulroney was ultimately responsible for permitting Mr. Schreiber to meet with him whenever he (Mr. Schreiber) desired to do so. I respectfully suggest that Mr. Mulroney could simply have said no to Mr. MacKay and Mr. Doucet on those occasions when either or both of them attempted to arrange meetings with him on behalf of Mr. Schreiber.

I must also observe that that Mr. Mulroney's description of his relationship with Mr. Schreiber as "peripheral" is simply not in accord with the evidence I heard. Although the two men were not friends, in my view their relationship was much more than peripheral.

## **THE AGREEMENT**

Question 2 of the Terms of Reference required that I investigate and report upon whether Mr. Mulroney reached an agreement with Mr. Schreiber while he was still a sitting prime minister. Although neither of the two men disputes that an agreement was reached, they did not agree on the date when that occurred.

According to Mr. Mulroney, no agreement was reached at Harrington Lake. He said they reached an agreement on August 27 at Mirabel.

The date on which the agreement was made is of consequence because if made on June 23, 1993, Mr. Mulroney was still a sitting prime minister.

As I observed in Chapter 6 of my report, Mr. Schreiber gave four different versions during the course of testifying before me as to how he arrived at the agreement with Mr. Mulroney. Mr. Mulroney stated consistently that no agreement was reached at Harrington Lake. I accept what Mr. Mulroney had to say as true. Mr. Mulroney did not enter into any agreement with Mr. Schreiber while he was a sitting prime minister.

Questions 4 and 5 of the Terms of Reference direct me to consider whether Mr. Mulroney reached an agreement with Mr. Schreiber while he was a member of parliament or during the limitation periods prescribed by the 1985 Ethics Code.

Although Mr. Mulroney ceased to be the prime minister on June 24, 1993, he remained a member of parliament until September 8, 1993.

I have no difficulty whatsoever in finding that Mr. Mulroney and Mr. Schreiber entered into an agreement while Mr. Mulroney was a member of parliament. That agreement, which was some sort of retainer agreement, was reached at the CP Hotel at Mirabel when the two men met alone in a hotel room there.

Determining the nature of the agreement was fraught with difficulty because of the conflict in the evidence of Messrs Schreiber and Mulroney and because the agreement was not memorialized or documented in any manner whatsoever.

I reject Mr. Schreiber's evidence that Mr. Mulroney's mandate was domestic in nature. I accept Mr. Mulroney's evidence that the retainer was international in scope.

At Mr. Schreiber's request, Mr. Doucet arranged the meeting held on August 27, Mr. Schreiber told Mr. Doucet the purpose of the meeting was to discuss with Mr. Mulroney the possibility of retaining him to promote the sale of Thyssen vehicles internationally. Mr. Mulroney confirmed the international scope of the retainer in a telephone conversation with Mr. Doucet subsequent to the meeting.

When he retained Mr. Mulroney, Mr. Schreiber had to be painfully aware that despite all of his meetings with him while he was prime minister, no proposal for the construction of a production facility for Thyssen had ever been approved. In my view, then, it defies common sense that a man with the political acumen of Mr. Schreiber would retain Mr. Mulroney after he resigned as prime minister to achieve an objective that had not been achieved during Mr. Mulroney's tenure in office as prime minister.

Mr. Schreiber is a man who is politically astute. There is ample evidence to demonstrate he knows where the power in government lies and how to gain access to the person or people who wield that power. Mr. Schreiber had to realize that Mr. Mulroney's usefulness as a domestic lobbyist ended on October 25, 1993. Mr. Schreiber's political acumen was also demonstrated once again when he retained the services of Marc Lalonde, a well respected, influential

Liberal for the purpose of lobbying the Federal government shortly after the Liberals were elected to govern on October 25, 1993.

Despite the change in government on October 25, 1993, Mr. Schreiber made two further cash payments to Mr. Mulroney, one on December 18, 1993 at the Queen Elizabeth Hotel in Montréal, and the other on December 8, 1994 at the Pierre Hotel in New York City. Those two payments totalled either \$150,000 or \$200,000. In light of those two payments, both made after the change of government on October 25, 1993 when Mr. Mulroney's usefulness as a lobbyist had come to an end, I am unable to accept Mr. Schreiber's evidence that he retained Mr. Mulroney to lobby domestically.

Question 6 of the Terms of Reference directs me to determine what payments were made, when, how and why.

Over a period of something less than one-and-a-half years, Mr. Schreiber paid Mr. Mulroney a significant amount of money. On three separate occasions, Mr. Schreiber gave Mr. Mulroney an envelope containing cash in the form of \$1000 bills in Canadian currency.

The evidence of Messrs. Schreiber and Mulroney diverges on the amount of cash paid by Mr. Schreiber to Mr. Mulroney. Mr. Schreiber says he paid Mr. Mulroney three instalments of \$100,000 each for a total of \$300,000 cash while Mr. Mulroney says the amount was \$225,000 paid in three instalments of \$75,000 each.

There is not a single document where any of the three cash transactions is disclosed or recorded. One of the consequences of failing to create a paper trail when cash changes hands, something that could have been easily done by either Mr. Schreiber or Mr. Mulroney, is there is no record to substantiate the fact that the transaction or transactions have occurred.

Having carefully considered the evidence respecting the amount of cash paid by Mr. Schreiber to Mr. Mulroney, I have decided not to accept the evidence of either of them unless there is independent evidence to support one of the two positions taken. In my view, no such evidence exists. I am therefore left in the position of not being able to say what amount of money Mr. Schreiber paid to Mr. Mulroney.

I find the payments were made pursuant to a retainer agreement entered into by Mr. Schreiber and Mr. Mulroney at the hotel at Mirabel Airport on August 27, 1993. The payments were made in cash as part of a scheme on the part of both Mr. Schreiber and Mr. Mulroney to avoid creating a paper trail, thereby concealing the fact that a business and financial relationship existed between them.

Question 8 of the Terms of Reference directs me to determine what services, if any, were rendered in return for the cash payments made by Mr. Schreiber to Mr. Mulroney.

Mr. Mulroney's position is that he developed a concept for the sale of military vehicles produced by Thyssen to the United Nations. This concept included Mr. Mulroney's approaching the leaders of the countries that occupy a permanent seat on the Security Council of the United Nations. In my report, they are referred to as the P5.

For different reasons, none of the people to whom Mr. Mulroney says he spoke were available to the Commission. Mr. Mitterrand and Mr. Yeltsin are dead, as is Mr. Weinberger. The Chinese leaders are inaccessible. Although Mr. Mulroney asserts he spoke to Mr. Baker, he was unable to remember whether he had addressed procurement issues with him.

I must view with scepticism Mr. Mulroney's claim to have spoken to the leaders referred to in the preceding paragraphs. The evidence of Mr. Bild, a former Canadian ambassador to China, caused me to seriously question the credibility of Mr. Mulroney's evidence respecting his meeting with and talking to the Chinese leaders on Mr. Schreiber's behalf. I am therefore unable to conclude that Mr. Mulroney spoke to the Chinese leaders, as asserted by him.

On the issue of what services Mr. Mulroney provided in return for the payments from Mr. Schreiber, I have grave concerns about the total absence of any independent evidence, whether documentary or otherwise, that might tend to support Mr. Mulroney's testimony.

Given this vacuum, I am not able to find that any services were ever provided by Mr. Mulroney for the monies paid to him by Mr. Schreiber pursuant to the retainer.

## **THE SOURCE OF THE FUNDS AND WHAT HAPPENED TO THE CASH**

The Terms of Reference direct me in Questions 7 through 10, inclusive to investigate and report upon the source of the funds paid to Mr. Mulroney, why the payments were made and accepted in cash and what happened to the cash, particularly the cash Mr. Mulroney received in the United States.

The relevant evidence regarding the source of the funds paid by Mr. Schreiber to Mr. Mulroney came from two sources, Mr. Schreiber and Navigant Consulting (Navigant), a firm of forensic accountants.

Let me say right now that I accept without reservation Mr. Mulroney's evidence that he had no knowledge as to the source of the funds he received.

I am prepared to accept that the money Mr. Schreiber paid to Mr. Mulroney came from a bank account in Switzerland known as the Britan account. Mr. Schreiber's evidence on the point was not successfully challenged by anyone during the course of his testifying. Moreover, there is confirmation in the expert evidence to support what I view as the correct conclusion, namely, that the money paid to Mr. Mulroney came from the Britan account.

Similarly, I have little difficulty in accepting the conclusion of the experts that the funds that made up the Britan account can be traced back to commission payments made to International Aircraft Leasing Limited (IAL), a company incorporated in Vaduz, Liechtenstein, by Airbus Industries in connection with sales of Airbus aircraft to Air Canada.

Mr. Schreiber's evidence on this issue leads me to conclude that he dealt both in cash and by cheque when transacting business. The method of payment Mr. Schreiber used depended on whether the party or parties with whom he was dealing wanted to have a transaction that was documented. I found Mr. Mulroney's evidence on this issue to be troubling at best.

The basic reason proffered by Mr. Mulroney for accepting and maintaining the monies he received from Mr. Schreiber in cash is that he made a significant error in judgment. I confess to having a considerable problem with that explanation. Mr. Mulroney says he hesitated before accepting the first instalment in cash. Nonetheless, he accepted the cash. If it was a significant error in judgment that caused him to accept cash in the context in which that occurred, the judgmental error could easily have been rectified by Mr. Mulroney. In my view, the fact that Mr. Mulroney did nothing of the sort detracts from his credibility on that point.

Even if I were to believe that Mr. Mulroney accepted and maintained the money he received in the first instalment in cash as a result of a significant error in judgment, I am unable to comprehend why, after thinking about what had occurred, he would have accepted any further cash, or why he would not have dealt differently with the cash he received in the second and third instalments.

Mr. Mulroney, while emphasizing that nothing about the transaction was illegal, acknowledged that an undocumented transaction could give rise to legitimate suspicions by reasonable people, or that reasonable people could conclude, as do I, that something was amiss.

It seems to me that, given Mr. Mulroney's education, background, experience, and business acumen, his every instinct would have been, and should have been, to document the transaction in some manner.

On none of the three occasions when he received cash from Mr. Schreiber, did Mr. Mulroney deposit the cash to a bank or other financial institution. By placing the cash in a safe at his home and a safety deposit box in New York, Mr. Mulroney avoided the creation of a document or record.

In my view, an error in judgment cannot excuse conduct that can reasonably be described as questionable if that conduct, as is the case here, occurred on three distinct occasions. I therefore conclude that the reason Mr. Schreiber made the payments in cash and Mr. Mulroney accepted them in cash was that they both wanted to conceal the fact that the transactions had occurred between them.

Question 10 of the Terms of Reference requires me to determine what happened to the cash.

Notwithstanding the absence of documentary support, I am prepared to accept that Mr. Mulroney spent all the cash he received from Mr. Schreiber on himself or family members. Further, I have no reason to believe that he brought any of the cash that was paid to him in New York into Canada. Therefore, I accept that he spent or used this portion of the cash received from Mr. Schreiber in the United States.

## **APPROPRIATENESS OF CONDUCT**

I come now to a central issue in this Inquiry: the appropriateness of Mr. Mulroney's conduct.

Before I commenced to hear evidence, I made a decision that in assessing whether Mr. Mulroney's conduct or behaviour was appropriate, I would be guided by the standard that he himself set during his tenure as the holder of the highest elected office in Canada. In other words, I would play by the rules that Mr. Mulroney himself had set.

In terms of Mr. Mulroney's business dealings with Mr. Schreiber including his entering into an agreement with Mr. Schreiber on August 27, 1993, I asked myself the question, "Would a reasonable, fair-minded observer, being informed of all the circumstances surrounding Mr. Mulroney's business dealings with Mr. Schreiber, say that those dealings conformed to the highest standards of conduct and were so scrupulous that they can bear the closest possible scrutiny?"

In my view, legitimate questions as to the propriety of what Mr. Mulroney was doing would have arisen in the mind of any reasonable, informed, objective observer. Even Mr. Mulroney conceded that point while testifying before me. I find, applying Mr. Mulroney's own test, that his business dealings with Mr. Schreiber were not appropriate.

If the dealings were appropriate, there would have been a contract, an exchange of letters, or some other documentation confirming the agreement Mr. Mulroney and Mr. Schreiber made on August 27, 1993. If the dealings were appropriate, Mr. Mulroney would have used his corporation, Cansult, as a party to the agreement. The fact of the dealings Mr. Mulroney had with Mr. Schreiber would have been recorded in the company's books. Why, then, was there a need for such secrecy? And why did Mr. Mulroney not use Cansult to conduct his business dealings with Mr. Schreiber? The answer is that Mr. Mulroney wanted to conceal the fact that he had received money from Mr. Schreiber.

I turn now to consider briefly the financial dealings between Mr. Schreiber and Mr. Mulroney. They consisted of three payments, all in \$1000 bills in Canadian currency concealed in envelopes.

None of the cash was ever deposited to an account at a bank or other financial institution nor was there any document to record the exchange of cash. I do not accept the reasons proffered by Mr. Mulroney for failing to deposit the monies in an account at a bank or other financial institution, one of which was that the transaction at the Queen Elizabeth Hotel occurred on a Saturday, another of which was that Mr. Mulroney did not have any support staff at the time.

There was more than one option open to Mr. Mulroney. First, he could have insisted on receiving cheques rather than cash. Second, he could have issued receipts for the cash he received. Third, instead of squirreling the cash away in a safe in his residence or a safety deposit box in New York (where no record of the deposit was kept), he could have deposited the cash into an account or accounts at a bank or financial institution where he did business. Mr. Mulroney chose to do none of the foregoing.

The conduct exhibited by Mr. Mulroney in accepting cash-stuffed envelopes from Mr. Schreiber on three separate occasions, failing to record the fact of the cash payments, failing to deposit the cash into a bank or other financial institution, and failing to disclose the fact of the cash payments when given the opportunity to do so goes a long way, in my view, to supporting my position that the financial dealings between Mr. Schreiber and Mr. Mulroney were inappropriate. These dealings do not reflect the highest standards of conduct, nor do they represent conduct that is so scrupulous it will bear the closest public scrutiny.

## DISCLOSURE AND REPORTING

Question 12 of the Terms of Reference directs me to determine whether there was appropriate disclosure and reporting by Mr. Mulroney of his dealings with Mr. Schreiber and the cash paid to him as a result of those dealings.

In Chapter 8 of my report, I set forth the numerous opportunities presented to Mr. Mulroney when he could have disclosed and reported on his dealings with Mr. Schreiber. In each of those instances, Mr. Mulroney chose not to make disclosure.

I propose now to deal in some detail with what I consider the most significant opportunity Mr. Mulroney had to disclose his business and financial dealings with Mr. Schreiber. That opportunity arose in April 1996, when Mr. Mulroney was examined under oath in connection with the \$50 million lawsuit he initiated against the Government of Canada and others claiming damages for injury to his reputation. This lawsuit stemmed from the letter of request (LOR) sent by the Government of Canada to the Competent Legal Authority of Switzerland.

While Mr. Mulroney was on the way to the law courts for the proceeding, he said to an associate that Mr. Sheppard was going to have a problem. Mr. Mulroney said "He is going to ask me questions and he expects me to answer them.". In his testimony, Mr. Mulroney did not deny making this comment though he stated that he made it in jest. Bearing in mind what transpired during the course of the examination before plea, the nature of that comment by Mr. Mulroney seems to me to have been more ominous than humorous.

Mr. Wolson pressed Mr. Mulroney more than once as to why, during the course of his being examined before plea, he had failed to disclose his dealings with and the payments from Mr. Schreiber. On each occasion, Mr. Mulroney responded in one or more of the following ways: that he had been advised by his counsel not to answer any question that was not within the parameters of the statement of claim; that he had also been advised by his counsel not to volunteer information; and that Mr. Sheppard had failed to ask the right question.

Advice to a person about to be examined not to volunteer information is good legal advice. However, in my view, not volunteering information is substantially different from avoiding answering legitimate, proper questions to which no objection has been taken by counsel for the person being examined. I also note that, while a witness being examined before plea is obliged to answer only those questions that fall within the confines of the statement of claim, if a person does not object to a question and chooses to answer it, he or she must do so truthfully and fully.

On November 2, 1995, Mr. Schreiber advised Mr. Mulroney by telephone of the LOR. Mr. Sheppard asked Mr. Mulroney about that conversation. He also asked Mr. Mulroney about conversations he may have had subsequent to November 2, 1995, dealing with commissions paid to Mr. Schreiber by Airbus. Mr. Mulroney responded that he did not know what arrangements, if any, had been made by Mr. Schreiber or anyone else in respect of any commercial transaction.

When he gave that answer, Mr. Mulroney knew about his commercial transaction with Mr. Schreiber. He also knew that, within a few miles of the courthouse in Montreal, he had either \$150,000 or \$200,000 in cash sitting dormant in a safe in his residence, not to mention a further \$75,000 or \$100,000 again, in cash, sitting in a safety deposit box in a bank in New York.

In response to another question Mr. Sheppard asked about discussions he might have had with Mr. Schreiber after he knew about the LOR, Mr. Mulroney responded that his principal preoccupation was not Mr. Schreiber's business dealings. He then stated, "I had never had any dealings with him."

Mr. Mulroney's position is that the answers he gave to those questions were given in the context of Airbus. However, as I have already noted, both the LOR and the statement of claim also referred to the Bear Head Project.

Mr. Sheppard also asked Mr. Mulroney whether he maintained contact with Mr. Schreiber after he ceased being the prime minister. In his answer, Mr. Mulroney failed to disclose the true state of affairs, including his agreement with Mr. Schreiber; the two cash payments in envelopes he received from Mr. Schreiber in hotel rooms at Mirabel and in New York, respectively; or the cash payment he received, again in an envelope, in the coffee shop at the Queen Elizabeth Hotel in Montreal. Mr. Mulroney's response would lead anyone not knowing the true situation about his dealings with Mr. Schreiber or the money he had received from Mr. Schreiber to believe that the post-prime ministerial contact consisted of a couple of brief meetings to have a cup of coffee.

For Mr. Mulroney to attempt to justify his failure to make disclosure in those circumstances by asserting that Mr. Sheppard did not ask the correct question is, in my view, patently absurd. It was not Mr. Sheppard's question that was problematic; rather, it was Mr. Mulroney's answer to the question. What the question called for was a clear, complete, forthright answer. Some may suggest that Mr. Mulroney's answer was not complete, while others may say it was not forthright. It is sufficient for my purpose to say that Mr. Mulroney's answer to Mr. Sheppard's question failed to disclose appropriately the facts of which Mr. Mulroney was well aware, when such disclosure was clearly called for. And that answer was not forthcoming from Mr. Mulroney.

I find that Mr. Mulroney acted inappropriately in failing to disclose his dealings with Mr. Schreiber and the payments he received when he gave evidence at his examination before plea in 1996.

I find that Mr. Mulroney failed to take advantage of each and every other opportunity he had to disclose his business and financial dealings with Mr. Schreiber. That failure is tantamount to inappropriate conduct on the part of Mr. Mulroney.

## **ETHICAL RULES AND GUIDELINES**

Upon reviewing the evidence of Mr. Mulroney's conduct and applying the ethical rules and guidelines in force at the relevant times, I find that Mr. Mulroney contravened Section 7(b) of the 1985 Ethics Code which provides that public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

Section 7(d) of the 1985 Ethics Code requires public office holders to arrange their affairs so as to prevent "real, potential or apparent conflicts of interest." Section 36 of the 1985 Ethics Code states that a public office holder shall not accord preferential treatment to friends or to organizations in which their friends have an interest, and shall take care not to be placed under "an obligation to any person or organization that might profit from special consideration on the part of the public office holder." Mr. Mulroney, by agreeing to meet with Mr. Schreiber, accorded special treatment to a friend – Mr. Doucet – in relation to the Bear Head Project, an official matter that was under consideration by various government departments from 1988 through to 1994. Mr. Doucet, who lobbied on behalf of Mr. Schreiber, would have benefited from that access. I believe that an appearance of conflict of interest was created, and that Mr. Mulroney acted contrary to his obligations under section 7(d) and section 36 of the 1985 Ethics Code.

## **PRIME MINISTER'S CORRESPONDENCE**

Mr. Schreiber wrote a letter dated March 29, 2007 to Prime Minister Harper. That was the 12th in a series of 16 letters sent by Mr. Schreiber to Prime Minister Harper between June 2006 and September 2007. None of Mr. Schreiber's letters came to the attention of Prime Minister Harper.

Questions 15 and 16 of the Terms of Reference direct me to consider what steps were taken in processing the letters and why the letter of March 29, 2007 was not passed on to Prime minister Harper. Question 17 directed me to determine whether the Privy Council Office should have adopted different procedures.

I found there was an oversight by an analyst who handled the March 29, 2007 letter from Mr. Schreiber to Prime Minister Harper. That oversight resulted in Mr. Schreiber's letter being filed without any response going to him. There is no evidence that the Prime Minister's Office ever gave any instructions to the Executive Correspondence Unit of the Privy Council Office concerning Mr. Schreiber's mail or the issues addressed by Mr. Schreiber in his mail. There is no evidence that there was a desire by anyone in the Executive Correspondence Unit to conceal from the PMO or the PMC any letters from Mr. Schreiber, including the March 29, 2007, letter.

In Chapter 10, I reviewed the correspondence handling procedures of the Privy Council Office. I concluded that the Privy Council Office has a system that generally meets the objectives required. However, a number of problems with the handling of Mr. Schreiber's mail led me to make four recommendations arising out of my findings in answer to Questions 15 and 16. Those recommendations are set forth in Chapter 10 of my report. Generally speaking, my recommendations have to do with acknowledging receipt of correspondence sent to the Prime Minister.

With respect to mail forwarded by the Privy Council Office to the Prime Minister's Office, I have made a number of recommendations including a recommendation that a procedure be developed to ensure that when a letter is received by the Prime Minister's Office, the writer should receive at least an acknowledgment of receipt if it is the first time the writer has written and another response if it is not the first letter written.

## **TRUST, ETHICS AND INTEGRITY**

In Chapter 11, I discussed the current ethics regime. I noted that, in terms of substance, the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons (MP Code) are now among the most legally rigorous of the jurisdictions scrutinized by this Commission and its experts.

However, I am concerned that the rules contain ambiguities that make it difficult for public office holders to understand the extent of their legal obligations.

Put bluntly, if the events that prompted this Commission of Inquiry were to occur today, I am not persuaded that the Conflict of Interest and Ethics Commissioner would learn about them, because there is no process or procedure in place that would allow her to detect them.

I believe it important that steps be taken to enhance Canada's ethical political culture, especially through greater ethics education and training of public office holders.

I made a number of recommendations that I believe will allow government to deal more effectively with ethical considerations at this transition point. The recommendations are set forth in detail in Chapter 11 of my report.

Briefly put some of the recommendations I have made include the following:

The Conflict of Interest Act should be amended as follows:

- to expand the definition of “employment” to include any form of employment involving the provision of services including the services of a consultant amongst others;
- to revise the definition of “conflict of interest” to include an apparent conflict of interest;
- to require disclosure of the identities of entities with whom a public office holder is seeking, negotiating or has been offered employment;
- to extend to actions taken by public office holders whether those actions occur in Canada or elsewhere;
- to require Ministers to participate in ethics training conducted by the Conflict of Interest and Ethics Commissioner and to ensure members of their staff also participate in that training. Party Leaders should require their party’s members of parliament to participate in equivalent training; and
- to make it an offence for a former public office holder to fail to meet the disclosure obligations set forth in the Act.

I urge parliamentarians to view these recommendations in a positive light. I have no reason to doubt the high calibre and dedication of Canada’s public officials. It is in the interest of all parliamentarians and the Canadians they serve to make these legislative changes quickly. We all have an interest in sustaining public faith in the Conflict of Interest Act and the federal ethics regime generally.

## **CONCLUSION**

Before concluding, let me assure you that in arriving at my conclusions and findings, I have considered and carefully analyzed all of the evidence that I heard and read.

While the Terms of Reference precluded me from dealing with the Airbus matter, there was a point in the Factual Inquiry where Mr. Wolson led evidence about three pieces of correspondence purportedly written by Fred Doucet to Mr. Schreiber that obviously deal with the Airbus matter. One piece of that

correspondence was written on August 27, 1993, the same day as the meeting between Mr. Schreiber and Mr. Mulroney at the hotel at Mirabel Airport. There is a reference in the correspondence to Frank Moores, a former supporter of Mr. Mulroney.

I permitted Mr. Wolson to question Mr. Doucet about the correspondence to assist me in determining, if possible, why the payment of August 27, 1993 and the others were made.

Nothing in the correspondence sheds any light on why the three payments were made to Mr. Mulroney. Nothing in the correspondence or in any of the other evidence I heard or read links Mr. Mulroney to the correspondence, to the Airbus matter or to any potential business dealings between Mr. Doucet and Mr. Schreiber other than the Bear Head Project.

Mr. Schreiber and Mr. Mulroney both testified that their financial dealings had nothing to do with the Airbus matter.

The only way to link Mr. Mulroney to the Airbus matter is to speculate or to endorse the concept of guilt by association. Based on my sense of fairness and my experience as a trial judge for twenty-five years, I am not prepared to indulge in either.

As I stated at the outset of my remarks this afternoon, the importance of the integrity of government, and, more particularly, the integrity of those who govern, is the theme that resonates throughout this Report.

In my view, Canadians are entitled to expect from those who govern, particularly the holders of high office, exemplary conduct in their professional and personal lives. Further, those who are making the transition from public life to private life must live up to the standards of conduct expected of them in order to preserve the integrity of government.

I consider it a signature honour to have led this Commission and to tackle these issues which are so essential to our democracy. I could not have done this work without the highly talented legal team, the administrative and professional staff's dedication and the valuable contributions of our expert panels.

I wish to thank them, the parties and all who have participated in the work of the Commission – either directly or in the reporting of it.

Thank you.