

Terms of Reference (Order In Council 2008 - 1092)

Whereas Karlheinz Schreiber has made various allegations with respect to his business and financial dealings with the Right Honourable Brian Mulroney, P.C., 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;

Whereas certain of the allegations with respect to the Right Honourable Brian Mulroney's tenure as Prime Minister, although unproven, go beyond the private interests of the parties, and raise questions respecting the integrity of an important office of the Government of Canada;

Whereas, by Orders in Council P.C. 2007-1719 of November 14, 2007 and P.C. 2008-600 of March 19, 2008, David Johnston of St. Clements, Ontario, was appointed as Independent Adviser to the Prime Minister, to conduct an independent review of the allegations respecting financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C.;

Whereas on January 9, 2008 and April 4, 2008, David Johnston submitted a first and second Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney on the appropriate mandate for a public inquiry into those allegations;

Whereas David Johnston concluded that "any public inquiry should be a focused inquiry into specific matters of legitimate public interest", and, in his view, "the issue of public concern in this matter remains compliance with the constraints on holders of high public office and the adequacy of the current constraints";

Whereas David Johnston concluded that certain of the allegations have already been the subject of prior examination or investigation;

And whereas David Johnston concluded that the questions set out in his report of January 9, 2008 are relevant questions for a commission of inquiry;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby directs that a Commission do issue under Part I of the Inquiries Act and under the Great Seal of Canada appointing the Honourable Jeffrey J. Oliphant as Commissioner to conduct an inquiry into certain allegations respecting business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C., (the "Inquiry"), which Commission shall:

(a) direct the Commissioner to investigate and report on the following questions relating to the business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C.:

1. What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?
2. Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?
3. If so, what was that agreement, when and where was it made?
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?
5. If so, what was that agreement, when and where was it made?
6. What payments were made, when and how and why?
7. What was the source of the funds for the payments?
8. What services, if any, were rendered in return for the payments?
9. Why were the payments made and accepted in cash?
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?
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?
12. Was there appropriate disclosure and reporting of the dealings and payments?
13. Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?
14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?
15. What steps were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007?
16. Why was the correspondence not passed on to Prime Minister Harper?
17. Should the Privy Council Office have adopted any different procedures in this case?

(b) direct the Commissioner to conduct the Inquiry under the name of the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney;

(c) authorize the Commissioner to adopt any procedures and methods that he considers expedient for the proper and efficient conduct of the Inquiry, including the holding of hearings in private, at any times and in any places in or outside of Canada;

(d) authorize the Commissioner, for the proper and efficient conduct of the Inquiry,

(i) to consider findings, as he considers appropriate, of other examinations or investigations that may have been conducted into any of the questions set out in paragraph (a), and to give them any weight, including accepting them as conclusive; and

(ii) to conduct any additional examinations or investigations as he considers appropriate, into any matter that is relevant to the questions set out in paragraph (a), such as any agreement, dealing, payment or declaration;

(e) authorize the Commissioner to grant to any person who satisfies him that they have a substantial and direct interest in the subject matter of the Inquiry an opportunity for appropriate participation in it;

(f) authorize the Commissioner to recommend to the Clerk of the Privy Council that funding be provided, in accordance with terms and conditions approved by the Treasury Board, to ensure the appropriate participation of any person granted standing under paragraph (e), to the extent of the person's interest, if the Commissioner is of the view the person would not otherwise be able to participate in the Inquiry;

(g) authorize the Commissioner to rent any space and facilities that may be required for the purposes of the Inquiry, in accordance with Treasury Board policies;

(h) authorize the Commissioner to engage the services of any experts and other persons referred to in section 11 of the Inquiries Act, at rates of remuneration and reimbursement approved by the Treasury Board;

(i) direct the Commissioner to use the automated document management program specified by the Attorney General of Canada and to consult with records management officials within the Privy Council Office on the use of standards and systems that are specifically designed for the purpose of managing records;

(j) direct the Commissioner, in respect of any portion of the Inquiry conducted in public, to ensure that members of the public can, simultaneously in both official languages, communicate with the Commission and obtain from it services, including any transcripts of proceedings that have been made available to the public;

(k) direct the Commissioner to follow established security procedures, including the requirements of the Government Security Policy, with respect to persons engaged under section 11 of the Inquiries Act and the handling of information at all stages of the Inquiry;

(l) direct the Commissioner to perform his duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization;

(m) direct the Commissioner to perform his duties in such a way as to ensure that the conduct of the Inquiry does not jeopardize any ongoing investigation or criminal proceeding, and to consult with the government institution responsible for any ongoing investigation or proceedings about any jeopardy that could result from the conduct of the Inquiry;

(n) direct that nothing in the Commission shall be construed as limiting the application of the provisions of the Canada Evidence Act;

(o) direct the Commissioner to submit, on or before June 12, 2009, a report or reports, simultaneously in both official languages, to the Governor in Council; and

(p) direct the Commissioner to file the papers and records of the Inquiry with the Clerk of the Privy Council as soon as reasonably possible after the conclusion of the Inquiry.