

Commission of Inquiry into Certain Allegations
Respecting Business and Financial Dealings
Between Karlheinz Schreiber and
the Right Honourable Brian Mulroney



Commission d'enquête concernant les allégations
au sujet des transactions financières et
commerciales entre Karlheinz Schreiber et
le très honorable Brian Mulroney

**Hearing for Standing and
Funding**

**Audience relative au statut de
partie intéressée et au
financement**

Commissioner

L=Honorable juge /
The Honourable Justice
Jeffrey James Oliphant

Commissaire

Held at:

Bytown Pavillion
Victoria Hall
111 Sussex Drive
Ottawa, Ontario

Thursday, October 2, 2008

Tenue à :

pavillion Bytown
salle Victoria
111, promenade Sussex
Ottawa (Ontario)

le jeudi 2 octobre 2008

APPEARANCES / COMPARUTIONS

Mr. Guy J. Pratte
Mr. Jack Hughes

The Right Honourable Brian Mulroney

Mr. Richard Auger
Mr. Richard Greenspan

Mr. Karlheinz Schreiber

Mr. Paul B. Vickery

Attorney General of Canada

Mr. Robert E. Houston, Q.C.

Mr. Fred Doucet

Me Louis Demers

Le Bloc Québécois

Mr. Michel Savonitto

M. Pierre Gauthier

Mr. Yohan Cherrier

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1 Ottawa, Ontario / Ottawa (Ontario)
2 --- Upon commencing on Thursday, October 2, 2008
3 at 9:30 a.m. / L'audience débute
4 le jeudi 2 octobre 2008 à 9 h 30

5 COMMISSIONER OLIPHANT: Good
6 morning, ladies and gentlemen. Bonjour, mesdames
7 et messieurs. Welcome to the first session of
8 this Inquiry.

9 The purpose of today's hearing is
10 to hear applications for standing and for funding
11 for Part One of the Inquiry.

12 Part One will focus on factual
13 questions relating to business and financial
14 dealings as between Karlheinz Schreiber and the
15 Right Honourable Brian Mulroney, as set out in
16 paragraph (a), sections 1 through 16, of the Terms
17 of Reference.

18 Before we begin to hear the
19 applications for standing and funding, I would
20 like to make some preliminary remarks.

21 My name is Jeff Oliphant. I am a
22 judge of the Court of Queen's Bench of Manitoba,
23 having been on that Court for 23 years, 18 of
24 which I served as Associate Chief Justice.

25 By virtue of Order-in-Council

1 2008-1092, the Government of Canada appointed me
2 to conduct an Inquiry under Part 1 of the
3 Inquiries Act into Certain Allegations Respecting
4 Certain Business and Financial Dealings as Between
5 Karlheinz Schreiber and the Right Honourable Brian
6 Mulroney.

7 Le gouverneur général en conseil
8 m'a chargé de mener une Enquête concernant les
9 allégations au sujet des transactions financières
10 et commerciales entre Karlheinz Schreiber et le
11 Très honorable Brian Mulroney.

12 By virtue of two earlier
13 Orders-in-Council, Dr. David Johnston, the
14 President and Vice-Chancellor of the University of
15 Waterloo, was appointed as a Special Advisor to
16 the Prime Minister to conduct an independent
17 review of certain allegations made about the
18 business and financial dealings as between Messrs.
19 Mulroney and Schreiber and to provide reports to
20 the Prime Minister with his recommendations on the
21 appropriate mandate for a public inquiry into
22 those allegations.

23 Dr. Johnston submitted two
24 reports.

25 In his reports, Dr Johnston

1 concluded that the public interest issue in the
2 present case remains the need to determine whether
3 there was a breach of the rules imposed on high
4 public office holders, and whether those rules are
5 adequate in their current form.

6 Dr. Johnston also concluded that
7 some allegations have already been the subject of
8 a review or inquiry.

9 Dr. Johnston concluded that the
10 public interest issue to which the allegations of
11 financial dealings give rise is the integrity of
12 government and whether there was a breach of
13 existing constraints on the activities of the
14 holders of high government office or, if not,
15 whether there is a need for further constraints on
16 former high office holders after they leave
17 office.

18 He recommended further that the
19 inquiry be a focused inquiry into specific matters
20 of legitimate public interest rather than a
21 further extensive examination of matters already
22 considered by others.

23 The Terms of Reference of this
24 Inquiry reflect the recommendations made by
25 Dr. Johnston in the two reports.

1 The mandate of the Inquiry is
2 fixed by the Terms of Reference. As noted
3 earlier, the Terms of Reference reflect the
4 recommendations of Dr. Johnston that this be a
5 focused Inquiry and incorporate the 17 questions
6 as formulated by Dr. Johnston.

7 Having reviewed the Terms of
8 Reference carefully, I have concluded that this
9 Inquiry is to focus upon the financial and
10 business dealings of Messrs. Mulroney and
11 Schreiber in relation to the Bear Head Project and
12 the payments made to Mr. Mulroney by Mr. Schreiber
13 in 1993 and 1994.

14 This Inquiry will be conducted in
15 two parts.

16 During Part One, I will hear
17 testimony regarding the factual matters raised in
18 the Terms of Reference.

19 Part Two will deal with the policy
20 issues identified in the Terms of Reference.

21 The applications for standing and
22 funding concerning Part Two of the Inquiry will
23 not be dealt with today. They will be heard at a
24 later date.

25 At this time I propose to conduct

1 all hearings in public.

2 Following the Part One and Part
3 Two hearings, I will prepare and submit to
4 government my report. Hopefully, that report will
5 shine a light upon the factual issues that are of
6 interest to both the public and the government and
7 will make useful recommendations regarding the
8 policy issues that have been referred to me.

9 Each public inquiry establishes
10 its own rules. As the Commissioner for this
11 Public Inquiry, I have the authority to set
12 procedures and practices that will be followed by
13 the Inquiry. My goal is to ensure that the
14 process we will follow be fair.

15 Commission counsel have drafted a
16 set of Procedural Rules. Those Draft Procedural
17 Rules appear on the Commission's website.

18 I will invite those parties who
19 are granted standing to make submissions
20 respecting anything in the Draft Rules that they
21 believe should be changed.

22 After receiving comments on the
23 Draft Rules from parties who are granted standing,
24 I will finalize the Rules. The Final Rules will
25 be posted on the Commission's website.

1 Let me briefly say what an inquiry
2 is and what it is not.

3 While this Inquiry has broad
4 powers of subpoena, it is not a court of law. A
5 public inquiry is not a trial.

6 A public inquiry is meant to
7 investigate and report upon matters of substantial
8 public interest.

9 I am not empowered to find anyone
10 guilty of a criminal offence or liable for a civil
11 law matter, nor does my mandate permit me to make
12 any award of damages as may occur in a civil
13 lawsuit.

14 I am committed to conducting this
15 Inquiry independent of government. Having been a
16 judge for some 23 years, I am mindful of the fact
17 that the need for me to be independent of
18 government in my capacity as Commissioner of this
19 Inquiry is as crucial as the requirement that in a
20 democracy the judicial branch must be independent
21 from the executive and legislative branches of
22 government.

23 Judicial independence as well as
24 my being independent from government as
25 Commissioner is for the benefit of the public.

1 I am also committed to conduct
2 this Inquiry in a manner that is seen to be
3 impartial and fair to all concerned. While it is
4 true that this Commission cannot make findings of
5 liability, either civil or criminal, I am
6 sensitive to the fact that it has the capacity to
7 have an adverse impact on reputations. That is
8 why I want to be fair to all who appear before
9 this Commission as parties or as witnesses.

10 That is also why, to the extent
11 possible, I intend Part One of the hearings of
12 this Commission to be open and public. Enabling
13 public access to the hearings of the Inquiry
14 contributes, in my opinion, to both impartiality
15 and fairness.

16 I have assembled an outstanding
17 legal team to assist me with the work of this
18 Commission.

19 Richard Wolson Q.C. of Winnipeg is
20 lead counsel. He is supported by three senior
21 counsel: Nancy Brooks of Ottawa, Evan Roitenberg
22 of Winnipeg and Giuseppe Battista de Montréal.

23 I am pleased to see members of the
24 media here today because not everyone can
25 physically be present to attend the public

1 hearings. It is through the media that most
2 members of the public will learn what is
3 transpiring on a day-to-day basis.

4 Given the nature and importance of
5 these proceedings, during the course of this
6 Inquiry it would be improper for me to speak to
7 the media. Commission counsel will not be
8 granting interviews on any matters under
9 investigation.

10 Any media requests for information
11 are to be directed to the Commission's
12 Communications Consultant, Barry McLoughlin.

13 I can assure members of the media
14 that where appropriate I will do whatever I am
15 able to ensure that you have timely access to all
16 public documents that are filed with and form part
17 of the record of this Commission and to such other
18 information to which you are entitled.

19 In terms of providing the public
20 access to the workings of the Commission, we have
21 established a website. The Commission's website
22 can be found at www.oliphantcommission.ca.

23 Today I will be hearing
24 applications to determine which individuals or
25 organizations will be granted what is known as

1 Standing in Part One of the Inquiry, which will
2 deal, as I have said, with the factual issues.

3 I may grant an applicant one of
4 two types of standing: Party Standing or
5 Intervenor Standing.

6 For Party Standing an applicant
7 must demonstrate that it will be directly and
8 substantially affected by matters to be
9 investigated in Part One of the Inquiry. I can
10 grant either Full or Partial Standing depending on
11 the extent of the applicant's interest.

12 I may grant Intervenor Standing if
13 the applicant satisfies me that it has a genuine
14 concern about issues raised by the factual Inquiry
15 and it has a particular perspective or expertise
16 that may assist me in carrying out my mandate.

17 After I have heard all of the
18 applications for standing, I will give each of the
19 applicants an opportunity to comment upon whether
20 they think any other applicant should or should
21 not be granted standing.

22 Under the Terms of Reference I am
23 authorized to make recommendations that funding be
24 provided in accordance with the terms and
25 conditions approved by Treasury Board. Those

1 terms and conditions have been posted on the
2 Commission website. I will hear today from any
3 applicant who wishes to apply for funding.

4 If I am unable to decide today
5 whether or not standing ought to be granted to any
6 one or more of the applicants, I will reserve my
7 decision and provide to the parties, as soon as
8 possible, a written decision on standing, and, if
9 applicable, on funding.

10 I will ensure that the media and
11 the public will be made aware of any decision on
12 the day it is released. The decisions will be
13 posted on the Commission's website.

14 We will now move to that part of
15 today's proceedings where I will hear from the
16 applicants for standing and for funding.

17 Mr. Wolson.

18 MR. WOLSON: Good morning, sir.
19 We have, as Commission counsel, properly
20 advertised the Inquiry and the procedure to apply
21 for standing and funding.

22 That said, we received eight
23 applications, and some of those would include
24 applications for funding.

25 You have been provided with all of

1 the applications and have had an opportunity to
2 read them and review them.

3 In terms of appearances today, we
4 have appearances by counsel for the Right
5 Honourable Brian Mulroney, Mr. Guy Pratte, and
6 Jack Hughes, who is assisting him.

7 We have Mr. Edward Greenspan and
8 Richard Auger for Karlheinz Schreiber, and
9 Mr. Auger is here today.

10 For the Attorney General of Canada
11 we have Paul Vickery. He is here today.

12 For Mr. Fred Doucet we have
13 Mr. Robert Houston, who is present today.

14 For the Bloc Québécois, counsel is
15 here. I believe it is Mr. Lefebvre.

16 For Mr. Pierre Gauthier, Michel
17 Savonitto is representing him, and he is here
18 today.

19 Mr. Yohan Cherrier is here today,
20 unrepresented.

21 Also, you have an application from
22 a Jonathan Wilde, who is not here today but, of
23 course, has filed an application for standing and
24 for funding.

25 In that you have the material

1 already, you have set a period of time of 15
2 minutes for each applicant to make their
3 submissions today. Of course, they needn't take
4 all of that time. The purposes of the submissions
5 are merely to supplement the materials that have
6 already been filed.

7 In that regard then, I will call
8 on Mr. Guy Pratte.

9 Thank you, sir.

10 COMMISSIONER OLIPHANT: Good
11 morning, Mr. Pratte.

12 I have carefully considered the
13 application for your client, and unless there is
14 something that you wish to say in addition to what
15 appears in the application, I really need not hear
16 any submission from you, sir.

17 PRESENTATION ON BEHALF OF THE RIGHT HONOURABLE
18 BRIAN MULRONEY / PRÉSENTATION AU NOM DU TRÈS
19 HONORABLE BRIAN MULRONEY

20 MR. PRATTE: Good morning,
21 Mr. Commissioner. I can take a cue, and I have
22 nothing to add on behalf of the Right Honourable
23 Brian Mulroney.

24 Thank you, sir.

25 COMMISSIONER OLIPHANT: Thank you.

1 Mr. Auger.

2 PRESENTATION ON BEHALF OF MR. KARLHEINZ
3 SCHREIBER / PRÉSENTATION AU NOM DE M. KARLHEINZ
4 SCHREIBER

5 MR. AUGER: Good morning,
6 Commissioner.

7 COMMISSIONER OLIPHANT: Mr. Auger,
8 I will simply repeat the comments that I made to
9 Mr. Pratte. I have carefully considered the
10 application of your client, Mr. Schreiber, and
11 unless there is something that you wish to add to
12 the application itself, I need not hear any
13 submission.

14 MR. AUGER: Thank you very much,
15 Commissioner.

16 COMMISSIONER OLIPHANT: Thank you.
17 Mr. Vickery.

18 PRESENTATION ON BEHALF OF THE ATTORNEY GENERAL OF
19 CANADA / PRÉSENTATION AU NOM DU PROCUREUR GÉNÉRAL
20 DU CANADA

21 MR. VICKERY: Good morning,
22 Commissioner.

23 COMMISSIONER OLIPHANT:
24 Mr. Vickery, in a similar vein, I have read the
25 application on behalf of the Government of Canada.

1 Unless there is something that you wish to say in
2 addition to what is stated in the application, I
3 need not hear from you this morning, sir.

4 MR. VICKERY: I have nothing to
5 add, Commissioner. Thank you.

6 COMMISSIONER OLIPHANT: Thank you.
7 Good morning, Mr. Houston.

8 PRESENTATION ON BEHALF OF MR. FRED DOUCET /
9 PRÉSENTATION AU NOM DE M. FRED DOUCET

10 MR. HOUSTON: Good morning,
11 Mr. Commissioner.

12 COMMISSIONER OLIPHANT: Mr.
13 Houston, with respect to the application, it is
14 what I might refer to as a double-barrelled
15 application, one for standing and one for funding.

16 With respect to the application
17 for standing, I have no problem with that
18 whatsoever, unless there is something that you
19 wish to add to that aspect of the application.

20 You can, if you want, confine your
21 submission to the application for funding.

22 MR. HOUSTON: May I deal very
23 briefly with the aspect of standing?

24 COMMISSIONER OLIPHANT: Sure.

25 MR. HOUSTON: I would like to talk

1 about one element in the material. It refers to
2 the fact that Mr. Doucet has knowledge of No. 7 in
3 the list of the terms of reference, namely, the
4 source of the funds. He does not. That was a
5 mistake. It was an error, and he is not able to
6 speak to the source of the moneys that Mr.
7 Schreiber gave to the Right Honourable Mr.
8 Mulroney.

9 May I just, very briefly, deal
10 with funding, sir.

11 My client has indicated in the
12 material that he is almost 70 years of age. This
13 particular matter has had a devastating impact
14 upon him personally and financially.

15 He has carried on business, as
16 indicated in the material, as a government
17 consultant for almost 20 years.

18 The publicity that has been
19 generated by this particular controversy, as the
20 press refers to it on a regular basis, has had a
21 profound impact upon him personally and
22 financially.

23 He has health problems, which are
24 briefly noted in the material.

25 COMMISSIONER OLIPHANT: Yes.

1 MR. HOUSTON: I represented his
2 interests when he appeared before the Ethics
3 Committee of the House of Commons. He retained me
4 out of personal funds at that time.

5 One of the difficulties that I
6 have in advising him, sir, as counsel, if I were
7 to be retained privately, is to try to determine
8 for him some reasonable estimate as to the time
9 involved in this matter.

10 The proceedings, obviously, here
11 today will be short, and you have already
12 indicated that we will soon have a determination
13 from you on the question of standing, so we will
14 know who will be before you with standing.

15 Witnesses, I understand, will be
16 identified in the near future, but what I cannot
17 do at this time, on his behalf, is give him any
18 clear indication of how much preparation time
19 would be required, and, in addition, the length of
20 time of the Commission hearings, obviously, is
21 unknown probably to all of us at this point.

22 COMMISSIONER OLIPHANT: I can
23 confirm that, Mr. Houston.

24 MR. HOUSTON: As a consequence,
25 sir, trying to advise a client as to what is

1 involved for him financially is virtually
2 impossible for me to do at this time.

3 He has now, as indicated in the
4 material, some modest pension income. He relies
5 primarily, and will be relying in the future, on
6 his investments, which, unfortunately, like all of
7 us who have any money invested, have been
8 devastated as a consequence of the mess south of
9 the border.

10 He does not know where he stands.

11 He has an integral part to play and is able to
12 assist this Commission, and seeks, in the
13 circumstances, funding from the Commission, sir.

14 Those are all my comments, sir.

15 COMMISSIONER OLIPHANT: Thank you
16 very much, Mr. Houston.

17 Maître Demers?

18 PRÉSENTATION AU NOM DU BLOC QUÉBÉCOIS /
19 PRESENTATION ON BEHALF OF LE BLOC QUÉBÉCOIS

20 Me LEFEBVRE: Good morning,
21 Commissioner. My name is Jasmin Lefebvre. I am
22 an associate of Louis Demers, whose name no doubt
23 appears in your documentation. I am a lawyer in
24 Montreal with DeGrandpré Chait. I am representing
25 the Bloc Québécois for the purposes of this

1 hearing.

2 Commissioner, for the purposes of
3 this morning's presentation, we first need to
4 address the two aspects in respect of which an
5 intervenor's interest must be determined, that is,
6 a real interest and/or a particular perspective
7 for the purposes of an intervention with the
8 Commission.

9 As a federal political party, the
10 Bloc Québécois has a real interest in
11 participating in a process reviewing the actions
12 of a former prime minister of Canada, because in
13 the case at hand, that review is clearly within
14 the public interest.

15 The Bloc also has a genuine
16 interest in the Commission's review of
17 interactions among lobbyists, members of the
18 government and former members of the government.
19 In effect, that interaction raises questions as to
20 actions and omissions by governments in the course
21 of their mandate.

22 The Bloc Québécois is evolving
23 within the political arena in connection with this
24 government that is acting or omitting to act
25 because of various considerations. That is an

1 important interest for the purposes of the Bloc's
2 participation.

3 As a Quebec political party that
4 represents a sizeable portion of the Quebec
5 electorate, the Bloc also has an immediate and
6 direct interest in participating in this review of
7 the facts and actions of a high-level Quebec
8 political figure.

9 The characteristics of the Bloc
10 Québécois as a Quebec political party also lend
11 relevance to that participation, which also
12 justifies a real interest by the Bloc in being
13 party to this exercise as an intervenor.

14 The questions and actions
15 submitted for review bring into cause the interest
16 of Quebec taxpayers, and indeed of Canadian
17 taxpayers as well, as a large proportion of those
18 Quebec taxpayers are represented by the Bloc
19 Québécois.

20 The hypothesis being examined by
21 your Commission, quite clearly, is the possibility
22 that public money was misspent, was not spent in
23 the best possible way, and that hypothesis also
24 underlies the hypothesis that a profit might have
25 been made on that money spent inadvisedly by a

1 former government of Canada.

2 Moreover, the component of the
3 inquiry pertaining to the Privy Council Office's
4 management of correspondence to the prime minister
5 also has a significant and immediate interest for
6 the party I represent.

7 The events at issue, that
8 management of correspondence addressed to the
9 prime minister, are recent events. They took place
10 during the mandate of the outgoing government.
11 Those events raise major questions as to the
12 relationship between the Privy Council Office,
13 which is supposed to be politically impartial, and
14 the Prime Minister's Office, which is a key player
15 in political life, a key payer with which the Bloc
16 Québécois, as an opposition party in the House of
17 Commons, interacts on a daily basis in public
18 affairs.

19 During the review of these issues,
20 the Bloc Québécois can make an invaluable
21 contribution as a counterbalance to the members of
22 the Prime Minister's office, as that contribution
23 will enable the Commission to more easily get to
24 the bottom of things with respect to those
25 relations, those interactions between the Privy

1 Council Office and the Prime Minister's Office.
2 The Bloc's practical experience with political
3 institutions in Ottawa may prove to be of
4 invaluable assistance to the Commission.

5 With regard to the Bloc
6 Québécois's particular perspective or expertise
7 for the purposes of your hearings, in our opinion
8 the Bloc has substantial tools and particular
9 expertise at its disposal that justify its being
10 granted intervenor standing.

11 The Bloc has been a major player
12 on the federal political scene for some time now,
13 and is indeed a third party in relation to the
14 Progressive Conservative Party, the former party
15 of Prime Minister Mulroney. The Bloc has
16 extensive knowledge of the workings of federal
17 institutions and is qualified to contribute to the
18 inquiry on this basis and by virtue of that
19 particular aptitude.

20 Moreover, the Bloc actively
21 participated in the inquiry of the Standing
22 Committee on Ethics, whose report is at the origin
23 of the mandate you hold. From our viewpoint, it is
24 relevant and logical that there be a continuum, a
25 continuation between the inquiry by the Ethics

1 Committee and your own, which results from it to
2 some extent, and as the Bloc Québécois was a party
3 to the inquiry by the Ethics Committee, its
4 presence among the intervenors with your
5 Commission is relevant to show that continuation
6 that exists between your inquiry and the previous
7 inquiry conducted by the Ethics Committee.

8 Your Commission falls within the
9 tradition of the inquiry conducted by the Ethics
10 Committee. The participation of the Bloc, which
11 was a party thereto, thus lends legitimacy to your
12 activities in the arena of public opinion, which
13 is something that is important to all the parties
14 involved in this inquiry: the legitimacy and
15 credibility of your inquiry with respect to public
16 opinion.

17 Finally, the Bloc Québécois's
18 participation in the proceedings of the Gomery
19 Commission, as an intervenor, demonstrated
20 Commissioner Gomery's recognition that the Bloc
21 can provide a useful perspective on public
22 administration issues, on the roles and
23 obligations of public office holders and
24 parliamentarians, and relevant perspectives on the
25 rules that should be enforced and established for

1 the sound management of public funds.

2 With regard to the real interest
3 and particular expertise of the Bloc Québécois in
4 connection with application for intervenor
5 standing with your Commission, that is the
6 essential part of my representation.

7 I would also like to make
8 representation with regard to the financial
9 assistance requested by the Bloc for the purposes
10 of its participation in this process, and I shall
11 continue without further ado.

12 The criterion evoked in the rules
13 of your Commission concerning the accessibility of
14 financial assistance cannot be interpreted, in our
15 view, in the absolute. It ought not to be an
16 absolute impossibility, in our view, to
17 participate in the Commission unless funding is
18 granted. I believe the need for financial
19 assistance should be seen as relative in relation
20 to the interests and particular standing of the
21 intervening parties.

22 In this instance, the Bloc
23 Québécois is a political party which is funded
24 through voluntary contributions by its members,
25 which contributes to Canadian democratic life and

1 enables the Bloc to affect Canadian policy through
2 its political activities.

3 It so happens that the role of
4 intervenor within your Commission is not
5 directly - certainly not directly - a political
6 role. It is, ultimately an austere role and a
7 role of contributing to public life that can be
8 very important in the progress you will make.

9 Therefore, given the importance of
10 that role that the Bloc Québécois is seeking
11 through its application to intervene, and in light
12 of the fact that it is relevant for those purposes
13 to be supported by the services of counsel during
14 your hearings, the Bloc has applied for funding in
15 accordance with its standing and its particular
16 characteristics, to obtain, under the applicable
17 Treasury Board rules, funding for the purposes of
18 its presence as an intervenor with your
19 Commission.

20 Thank you.

21 COMMISSIONER OLIPHANT: Thank you.

22 Maître Savonitto, please.

23 PRÉSENTATION AU NOM DE M. PIERRE GAUTHIER /

24 PRESENTATION ON BEHALF OF MR. PIERRE GAUTHIER

25 Me SAVONITTO: Good morning,

1 Commissioner. I am representing Mr Pierre
2 Gauthier, who is here in attendance this morning.
3 Mr Gauthier will present his application to the
4 Commission himself for the purposes of
5 demonstrating his standing.

6 Our law office helped Mr Gauthier
7 to prepare this application, even though he did
8 not have the financial resources to afford the
9 services of counsel to assist him, but he
10 nevertheless needed assistance to do so, and so he
11 will be addressing you directly, based on the
12 documents we have prepared on his behalf.

13 So I yield the floor to Mr
14 Gauthier to present his application. Thank you.

15 COMMISSAIRE OLIPHANT: Thank you.
16 Good morning, Mr Gauthier.

17 Mr GAUTHIER: Good morning,
18 Commissioner. Before I begin, I would like to say
19 I'm somewhat nervous, and I will try to control my
20 emotions.

21 Four elements were necessary for
22 me to stay the course over the past 20 years: my
23 courage, my tenacity, my irrepressible desire to
24 achieve something of value, and my perserverance.

25 So I am pleased to be appearing

1 before you to present my application for standing
2 as an interested party for funding.

3 I don't intend to reiterate the
4 entire contents of the affidavit I signed on
5 September 23, 2008, to support my application for
6 standing, except to present the highlights of that
7 document, as I assume you have already examined
8 it.

9 I am a chartered accountant,
10 specializing in finance. I did submit my CV,
11 incidentally.

12 Over 20 years ago, I took action
13 to publicly denounce what seemed to me at that
14 time to be a scandal, the privatization of Air
15 Canada. My actions were not directed against the
16 privatization as such, but rather the methods used
17 to achieve it, including information which I
18 described as fraudulent or misleading, which was
19 distributed to the general public at that time.

20 In September 1998, I had
21 difficulty understanding the insistence and, in
22 particular, the impatience demonstrated by the
23 securities commissions and Air Canada officials to
24 proceed with the privatization project, when the
25 draft preliminary prospectus obviously contained

1 highly questionable information as to the
2 company's debt-equity ratio and pension fund.

3 While mention was made at that
4 time of political and material pressures by Ms
5 Julie-Luce Farrell, the Secretary of the Ontario
6 Securities Commission, I was not very interested
7 in that, as I still had no information to enable
8 me to figure out what it meant.

9 I kept up my efforts non-stop
10 until 1995 with Air Canada, the Quebec Securities
11 Commission, the Ontario Securities Commission, ,
12 the Quebec Ombudsman, the Canadian Transportation
13 Agency, Quebec's Committee on the Budget and
14 Administration, the American Securities
15 Commission, the SEC, the Order of Chartered
16 Accountants of Quebec, federal and provincial
17 elected officials, and a variety of media
18 organizations, to denounce that situation.

19 Starting in September 1995, a
20 series of events made me realize that one of the
21 reasons that my actions in connection with Air
22 Canada were ultimately to no avail was likely
23 because high public office holders had personal
24 interests in the file, which were place above the
25 interests of the general public.

1 In September 1995, I purchased the
2 updated version of the book *On the Take* by Stevie
3 Cameron. I then learned that Mr Lucien Bouchard,
4 when he was Ambassador to France in 1986, had
5 considerable influence in the Airbus file. Some
6 passages in the book really sparked my interest,
7 making me wonder whether the lack of results I
8 obtained from my efforts with the Bloc Québécois
9 and Parti Québécois may not have been attributable
10 to those influences.

11 On October 31, 1996, I obtained a
12 copy of the request for information addressed to
13 the Swiss authorities by Mr K. Prost. One excerpt
14 from that letter drew my attention in particular,
15 as it confirmed that on September 26, 1988, Air
16 Canada signed a supply contract with Airbus for 34
17 aircraft, after receiving Treasury Board approval,
18 at the same time as the visa was issued on the
19 provisional prospectus, whose irregularities I had
20 been denouncing for eight years. This was just a
21 few days before the election was called on October
22 1, 1988. So, 20 years ago yesterday.

23 I also learned, from Mr
24 Schreiber's affidavit of November 7, 2007, that on
25 September 27, 1988, he signed, through a company

1 he controlled, Bear Head Industries, an agreement
2 with three Progressive Conservative ministers for
3 a plant in Cape Breton, the same project for which
4 cash payments of between \$225,000 and \$300,000
5 were made to Mr Mulroney starting in 1993.

6 That the RCMP did not discover
7 those payments also made me wonder about the
8 assertion that the matter of business relations
9 between Mr Schreiber and Mr Mulroney had been
10 settled once and for all.

11 I also learned, by reading *On the*
12 *Take* and rereading the Mr Pelosi's testimony
13 before the Ethics Committee, that substantial
14 commissions of several million dollars were to be
15 paid by Airbus to Mr Schreiber or affiliated
16 companies, and were to be distributed at Mr
17 Schreiber's discretion.

18 I also learned that the
19 involvement of the Progressive Conservative
20 government was a key element of the agreement
21 between Air Canada and Airbus, as the matter was
22 to be settled before the Progressive Conservatives
23 lost power.

24 Following those revelations, I
25 realized the connection with the political and

1 material pressures criticized by the
2 representative of the Ontario Securities
3 Commission, Ms Julie-Luce Farrell, in 1988.

4 As indicated, as an ordinary
5 citizen I denounced what I felt was improper with
6 the privatization of Air Canada, but I then
7 realized that my efforts were doomed to failure,
8 as other forces were working to ensure that the
9 transaction would go ahead, even if it harmed
10 investors and future shareholders.

11 I still believe that the political
12 pressures exerted to privatize Air Canada were
13 indispensable, because without them, Air Canada
14 would probably not have signed the Airbus
15 contract, and Mr Schreiber would not have received
16 lavish commissions, which, according to the
17 testimony of his own accountant, Mr Pelosi, he
18 redistributed to the people who had helped make
19 such a transaction possible.

20 My efforts as an ordinary citizen
21 were guided by a desire for transparency, and were
22 free of any political partisanship.

23 And to this day, my efforts are
24 guided by the same desire for transparency, and to
25 ensure that full light is finally shed on the

1 business and financial transactions between Mr
2 Mulroney and Mr Schreiber, which may, according to
3 the latter, date back to 1983, according to his
4 affidavit of November 2007, which also seems
5 plausible considering that on September 27, 1988,
6 he signed, for an affiliated company, a contract
7 with three Progressive Conservative ministers.

8 The first question the Commission
9 will need to answer is the following: What
10 business and financial transactions took place
11 between Mr Schreiber and Mr Mulroney?

12 That question is immaterial
13 according to the same terms of the mandate, and
14 would leave you no other choice but to review, for
15 the whole time that Mr Mulroney was an MP or prime
16 minister, the business relations he had with Mr
17 Schreiber.

18 As an ordinary citizen who has
19 been involved in the Air Canada privatization file
20 since 1988, and indirectly in the Airbus contract,
21 I have demonstrated an immediate, substantial
22 interest in the issues that this Commission will
23 have to examine, as well as the issues underlying
24 those transactions.

25 It is essential that ordinary

1 citizens be able to participate in this
2 Commission, so as to prevent its proceedings from
3 becoming the exclusive right of a few individuals
4 who took part in the events, under the pretext
5 that any deviations, or any repetition of the work
6 already accomplished by others, notably the RCMP,
7 must be avoided, when it is in fact clear that
8 those inquiries did not shed full light on the
9 matter.

10 My affidavit shows that I have
11 addressed the possible consequences of business
12 relations that may exist between high public
13 office holders and the breach of some rules in
14 their code of ethics, which is another issue the
15 Commission will need to address under the terms of
16 its mandate.

17 It is essential that this
18 Commission be able to benefit from the testimony
19 of certain parties who were not directly involved
20 in those business relations, so that full light
21 can finally be shed on this matter.

22 As an ordinary citizen, I have
23 demonstrated, over a period of 20 years, an
24 immediate interest in the issues raised by the
25 Commission's mandate, and I respectfully put it to

1 you that my participation in the Commission's
2 proceedings, by virtue of my knowledge and skills,
3 will provide an additional contribution toward the
4 transparency and credibility of that process.

5 For all these reasons, I submit
6 that my application for standing is well founded
7 and should therefore be granted by the Commission.

8 If such standing is granted, I
9 would appreciate it if you also approved my
10 application for funding, so as to enable me to
11 participate in the proceedings of the Commission,
12 as I do not have the financial resources to afford
13 such involvement.

14 Thank you, Commissioner.

15 COMMISSIONER OLIPHANT: Thank you
16 very much.

17 Mr GAUTHIER: Thank you.

18 COMMISSIONER OLIPHANT:

19 Mr. Cherrier.

20 PRESENTATION BY MR. YOHAN CHERRIER /

21 PRÉSENTATION PAR MR. CHERRIER

22 MR. CHERRIER: Thank you,

23 Mr. Commissioner.

24 I wish to thank Mr. Gauthier for
25 opening the window for me so well.

1 My presentation here is in
2 association and/or in relation to actions that
3 were taken and ramifications of those decisions
4 pertaining to Air Canada and its privatization and
5 an injustice that was done to women in Canada by
6 virtue of discrimination.

7 I have given the Commission a
8 skeleton of my synopsis, which is only 44 pages
9 long.

10 I wish to advise the Commission
11 that on September 15th I distributed the last
12 portion of that communication to the flight
13 attendant group in Canada. I have roughly 650
14 people on my list. They are in receipt of it.

15 Letters were addressed to the
16 Prime Minister Mr. Harper, Mr. Dion, M. Duceppe,
17 Elizabeth May. They have been made aware of this
18 situation and it has been stagnant, to me, for
19 seven years. I have been fighting since December
20 13th, 2001.

21 COMMISSIONER OLIPHANT: I have
22 read the history of what you have been doing.

23 MR. CHERRIER: I have sent out
24 this letter and I addressed it as well to an
25 independent Air Canada Flight Attendant news

1 information bulletin that is used as a proxy by
2 the union to disseminate information through the
3 flight attendant ranks to its advantage, and
4 interestingly enough, this bulletin is issued
5 usually on a weekly basis, and since I wrote to
6 them and asked them to print all of the materials
7 that I have given this Commission today, and to
8 send them out, I received the following memo on
9 the 21st of September: Air Canada has ordered me
10 to stop writing unauthorized e-mail communication
11 to cabin personnel.

12 "Cease and desist" were the actual
13 words used, as well as the word "dismissal".

14 By the way, they did say that if I
15 let them read it first, and they authorized it,
16 then I could send it out.

17 Needless to say, the materials
18 that I wanted to send to all of the flight
19 attendants did not make their way through to those
20 people.

21 I am here today by virtue, first
22 of all, of the Charter of Rights and Freedoms of
23 the country. I am here by virtue that the
24 Minister of Labour sent me, during the CCAA, to
25 Justice Farley. Justice Farley recommended that I

1 pursue my endeavours, which I did, through the
2 Canadian Human Rights Commission, who gracefully
3 denied to do anything about it, and who sent me to
4 the Federal Court.

5 I went before Justice O'Brien. I
6 went three times. I appealed three times, at my
7 own cost, to Justice O'Brien, who eventually came
8 with a decision which said that my complaint had
9 to be carried forward by way of a grievance
10 through the union.

11 I re-filed my grievance with the
12 union, including the letter from Justice O'Brien,
13 and the union refused to act upon it.

14 I am also here by virtue of a
15 Supreme Court decision that was rendered to Air
16 Canada on January 26, 2006, which basically told
17 Air Canada that the methodology that they used to
18 administer and/or describe what is the term
19 "establishment" in the Charter or in the Human
20 Rights Act would serve to entrench discrimination
21 in collective bargaining.

22 The Supreme Court did not say that
23 it would serve to create, it said that it would
24 serve to entrench, which means that there is
25 already discrimination at Air Canada.

1 Therefore, anything that was
2 transpiring with the privatization of Air Canada
3 has a direct bearing on me, as I have been
4 discriminated as a man, yet my complaint is for
5 women in general.

6 I handed in today, to you, a
7 judgment, because, of course, I continue to
8 pursue, and I hired a lawyer --

9 COMMISSIONER OLIPHANT: Let me
10 just say, in respect of those documents, that I
11 received two documents just before coming into the
12 room this morning. I don't know whether you have
13 distributed them to other counsel.

14 I see that Mr. Pratte indicates
15 that he doesn't have them.

16 MR. CHERRIER: I do have copies,
17 if people want copies.

18 COMMISSIONER OLIPHANT: Okay. But
19 what I received was a final argument, on your
20 behalf, as a defendant in an action in the Small
21 Claims Division of the Superior Court of Ontario,
22 as well as Reasons for Judgment by a deputy judge
23 of the Small Claims Court.

24 I did not -- I want to confess --
25 I did not have time to read these documents before

1 coming in. I am not sure what significance they
2 have in terms of the mandate --

3 MR. CHERRIER: I will try to
4 highlight them as they relate to the
5 discrimination portion, and, of course, the
6 concept that moves forward with this, and I will
7 try to answer the question of Mr. Gauthier, as it
8 relates to employees of Air Canada.

9 COMMISSIONER OLIPHANT: All right.

10 MR. CHERRIER: First of all, the
11 judgment is against me for \$10,000. I have
12 already spent a considerable amount of money
13 trying to move forward on this issue.

14 The judgment award was to a lawyer
15 that I tried to hire to help me move forward on
16 the discrimination aspect.

17 Interestingly enough, in the
18 judge's decision -- and I highlighted it at page 2
19 of that decision:

20 "In June 2004, the defendant
21 and a certain party called
22 Lesley Swann, 'a union
23 representative,' met with the
24 plaintiff to get an opinion
25 on the viability of a group

1 flight attendant proceeding
2 and class action suit against
3 their union and/or Air
4 Canada." (As read)

5 I highlighted that particular
6 portion because that particular person is now the
7 president of the union, and if that particular
8 person was an officer of the union at the time,
9 then it was certainly a surprise to me, but she is
10 the president of the union now.

11 What I trust is that this
12 Commission will be able to appropriate all of the
13 materials that I deposited before the Superior
14 Court Small Claims Division, because it also
15 includes all of the materials that I presented
16 before Justice Farley.

17 It also included all of the
18 materials that I presented to the Canadian Human
19 Rights Commission.

20 It also contains all of the
21 materials that I presented to the Superior
22 Court -- to the Federal Court, Judge O'Brien, who
23 was privy to what I was claiming as
24 discrimination.

25 COMMISSIONER OLIPHANT: Mr.

1 Cherrier, could I stop you just for a second --
2 and I want to do this because you are here without
3 counsel. You realize, of course, that you are
4 entitled to be represented by counsel, but I know
5 the difficulties that can come along with that,
6 financial and otherwise perhaps.

7 Could you help me, please, because
8 I have to make a decision on your application for
9 standing -- could you tell me what the issues that
10 you are discussing, and which you raised in your
11 application, have to do with the financial and
12 business dealings as between Mr. Schreiber and Mr.
13 Mulroney?

14 MR. CHERRIER: I am certainly
15 getting to that, sir. It definitely gave a
16 predetermination of what Air Canada felt was its
17 mandate during the time that it was a private
18 company, and I --

19 COMMISSIONER OLIPHANT: Mr.
20 Cherrier, let me say this -- and I don't want to
21 cut you off, and I want to be fair.

22 The mandate of this inquiry is a
23 focused mandate, as I indicated in my opening
24 remarks, and, in my view, relates to the Bear Head
25 Project and the financial dealings and business

1 dealings as between these two gentlemen, which
2 started in June of 1993. Really --

3 MR. CHERRIER: There has been
4 cause and effect by all of those matters, Your
5 Honour. I mean, the Canadian public literally got
6 hosed, and if you will allow me, I will explain,
7 very briefly, how.

8 COMMISSIONER OLIPHANT: Okay.

9 MR. CHERRIER: I will get down to
10 how the whole matter evolved, but I need to make
11 some explanations.

12 COMMISSIONER OLIPHANT: I am not
13 trying to cut you off, I am trying to sort of
14 steer you in the direction that I think would be
15 of assistance to me, in terms of my being able to
16 make a decision on your application, sir.

17 MR. CHERRIER: I thank you, sir.
18 I have a layout that I have laid out for myself to
19 make the exposure.

20 COMMISSIONER OLIPHANT: Okay.
21 Proceed.

22 MR. CHERRIER: Basically, in my
23 arguments -- my final arguments at the Superior
24 Court of Ontario -- and you may have them in front
25 of you -- the most pertinent portion of what I

1 presented to that judge comes in the last two
2 paragraphs, and I will take the opportunity to
3 read them, because they are very important to how
4 our country runs and how our corporations run.

5 "In my opinion, of importance
6 to this Court should be the
7 amendments to the Rules of
8 Professional Conduct arising
9 from the review of the
10 lawyer's role in corporate
11 governance. The amendments
12 describe in detail the steps
13 that lawyers must abide by
14 when confronted with
15 dishonesty, fraud, crime, or
16 illegal conduct. These
17 amendments were approved by
18 convocation by the Law
19 Society on March 25th, 2004.

20 With this in mind, I would
21 request that this Court
22 [give] a thorough review of
23 my affidavit sworn on May
24 1st, 2006, and all its
25 accompanying exhibits, where

1 I have carefully elaborated
2 my case.

3 Should this Court concur
4 with my arguments, then it
5 should be noted that the
6 particular lawyer that I
7 hired is in breach of
8 contract in regard to the
9 retainers that I signed,
10 retainers that include an ink
11 and pen addition that
12 reflects my investments made
13 into the air industry that
14 formed part of my pension
15 strategy." (As read)

16 In there lies where this is all
17 going. It has a lot to do with a lot of people
18 that lost a lot of pensionable income by virtue of
19 questionable -- questionable -- actions by people.

20 I bring to that -- I happened to
21 take out this book. I did not buy it. I wouldn't
22 buy it. It was Robert Milton's testimony to the
23 world of what transpired at Air Canada. I took
24 the time to read it, and when I compare what he
25 writes to my sworn affidavit, I cringe at the

1 obvious absent portions that underscore
2 mismanagement, and I think that the character of
3 this Air Canada description is best summarized
4 directly in the preface of the book, which was
5 written by Robert Milton.

6 It says:

7 "I remember standing in our
8 driveway in Brussels in front
9 of a blue VW 1600, at no more
10 than 10 years old, and asking
11 my dad if he would prefer his
12 VW or a Porsche. He
13 answered, 'I would prefer the
14 Porsche. I would sell it. I
15 would buy a VW 1600 and
16 pocket the cash.' I liked
17 his logic." (As read)

18 Not even 10 pages later, on page
19 22 of this book, which is particularly interesting
20 and should have bearing to this Court --

21 "Bob Perreault, a terrific
22 guy who now runs our Jetz
23 divisions, tells a story that
24 illustrates this point
25 perfectly. Before

1 privatization, Bob managed
2 our Texas base of operations,
3 running DC-9 flights in and
4 out of Dallas/Houston.
5 Economically, this route made
6 no sense, because the
7 passenger revenue on
8 virtually every flight was
9 not enough to cover the cost
10 of putting the plane in the
11 air, yet the route continued
12 to be flown. Why? Because
13 Air Canada had a right to go
14 in and out of Dallas and
15 Houston under Canada's
16 bilateral agreement with the
17 United States, and Air Canada
18 was going to exercise that
19 right."

20 It says later:

21 "One day an order arrived
22 from Montreal for Bob to
23 close shop on that route.
24 Air Canada was suspending its
25 service to Texas. Bob had

1 been proposing the idea for
2 some time, without any luck,
3 so he wondered why the
4 company had suddenly decided
5 to withdraw after all those
6 years of losses on that
7 route.

8 `Because,' the answer came
9 back, `we are nearing the end
10 of the fiscal year, and a
11 loss has been projected.'

12 Rather than declare a
13 deficit, even a relatively
14 small one, management chose
15 to sell one of the DC-9s,
16 thereby generating enough
17 profit to move the bottom
18 line into the black. With
19 one fewer aircraft, not
20 enough DC-9s would be
21 available to service the
22 Texas route, so the company
23 was pulling up stakes." (As
24 read)

25 What we are talking about here,

1 Your Honour, is taking materials that were donated
2 to a company, selling them to show a profit, and
3 pocketing the money.

4 COMMISSIONER OLIPHANT:
5 Mr. Cherrier, I must have missed something,
6 because I fail to understand what that has to do,
7 sir, with the business and financial dealings as
8 between Messrs. Schreiber and Mulroney.

9 MR. CHERRIER: Well, Messrs.
10 Schreiber and -- we talked earlier exactly of the
11 situation whereby Air Canada was given -- was
12 given -- out of taxpayer money -- out of taxpayer
13 money -- their operation. They were given a clean
14 bill of health. They were given a clean balance
15 sheet in 1988. They owed nothing to anyone.

16 In 1999 they had sold off every
17 asset that they had to maintain a position that
18 was unsustainable, and I, coming from the
19 competing airline, was swallowed up into this
20 mess, and lost --

21 COMMISSIONER OLIPHANT: So you
22 were with Canadian, were you?

23 MR. CHERRIER: I was with
24 CANairlines, sir. I lost -- lost --

25 COMMISSIONER OLIPHANT: Now,

1 Mr. Cherrier, I have actually let you go over the
2 time allotted. Could I ask you to bring your
3 submission to a conclusion, please?

4 MR. CHERRIER: The Canadian public
5 was disadvantaged by not knowing exactly what they
6 were getting into when they allowed the CCAA
7 proceedings to proceed as they did and/or the
8 purchase of Canadian Airlines relative to what Air
9 Canada's financial position was. They never
10 disclosed their financial position, and I,
11 personally, know that there is absolutely no
12 way -- I have conclusive proof that there is
13 absolutely no way that company ever made one dime
14 while it operated as a private operator, from
15 1988, when it was privatized, to 1999.

16 I am aware of a scam that was
17 initiated by certain people within my own union,
18 which served to make them very, very wealthy, and
19 which served to disadvantage women and served to
20 disadvantage the flight attendant group as a
21 whole; and the present of how the acquisition of
22 Canadian occurred, and how Robert Milton became
23 the CEO of Air Canada, as it stood, occurred by
24 virtue of the people that were scamming money,
25 going behind the scenes and subverting my rights

1 via my union, because they made absolutely
2 disastrous decisions.

3 That scam served to affect me and
4 the Canadian public as follows.

5 Every penny that was invested,
6 first of all, when Air Canada was privatized in
7 1988 -- as was mentioned, they were given all of
8 their assets that had already been paid for by the
9 Canadian public -- the aircraft that had been
10 accumulated, the materials, the machinery, the
11 trucks, the loading things -- the best facilities
12 in Canada, all of that was given to Air Canada,
13 including 34 Airbuses, which were gifted by virtue
14 of our taxes.

15 In 11 years -- let me go back --
16 then, when it was privatized -- by the way, they
17 were forgiven a \$4.5 billion loss that was
18 exonerated before they were actually put on the
19 market to sell shares.

20 By virtue of the Air Canada Public
21 Participation Act, Air Canada was a very widely
22 distributed shareholding, because nobody could own
23 more than 10 percent.

24 Literally, who held Air Canada
25 stock? It was held in pension plans. It was held

1 in RRSPs. It was held by mutual fund companies.
2 It was held by insurance companies. It was held,
3 virtually, by every Canadian, and 11 years later,
4 again, they had pissed everything away.
5 Everything.

6 So the Canadian public got hosed
7 not once for taking them out and giving them their
8 livelihood, but by virtue of internal theft within
9 the company, 11 years later shareholders got hosed
10 on top of that.

11 And then we go back in and go to
12 CCAA, and they do it again.

13 What has this cost me, besides
14 seven years of my life trying to prove -- and
15 finally getting a Supreme Court decision, which
16 basically came out and said: Yes, Air Canada has
17 elements within its own policies that are
18 discriminatory against women.

19 I will tell you what it cost me.
20 As it relates to me, personally, I lost \$50,000
21 worth of investments, invested in a good company,
22 which ended up getting swallowed by garbage.

23 My wife and I were heavily
24 invested. It cost me my marriage.

25 I have spent another \$35,000 to be

1 able to stand here today and tell this Commission
2 that I have been through three judges, and they
3 all read it with their hands over their eyes.

4 I have a \$10,000 judgment against
5 me now that I cannot pay. I don't have two dimes
6 to rub together.

7 I lost ownership of my company,
8 representation on the Board of Directors of my
9 company, and an integral role in making sure that
10 my company was honest to its employees and to the
11 Canadian public.

12 I enjoyed 40 percent pay cuts, by
13 virtue of a union that, through their seniority,
14 advantaged themselves at the top, and it all
15 disappeared, and it left me, disadvantaged by
16 virtue of my pay, to have to support them in their
17 retirement.

18 I also lost nine years of
19 seniority.

20 I lost all of these things to
21 protect a small group of men, who took it upon
22 themselves to discriminate against women and, by
23 virtue of collective bargaining, and areas within
24 it which offered them special advantages, they
25 literally robbed their company blind, and now they

1 are asking me, out of my meagre wages, to support
2 what they stole.

3 And the bearing to this -- the
4 bearing of all of this has a lot to do with how
5 Air Canada was privatized. Inevitably, it has
6 cost everybody, notably taxpayers, shareholders --
7 and now I am bringing to the attention of the
8 Oliphant Commission that there has been
9 discrimination of which women have been
10 discriminated, and I am here fighting on behalf of
11 women by myself.

12 COMMISSIONER OLIPHANT: I applaud
13 you for that, sir, but, as you know, I think --
14 and if you don't, I will make you aware now --
15 this is not a court of law. When I sit as a judge
16 of the court on which I serve, my jurisdiction is
17 not limited, it is an inherent jurisdiction that I
18 have.

19 However, when I sit as a
20 commissioner of an inquiry, by virtue of a mandate
21 provided by government, my jurisdiction is limited
22 to the terms of reference that are set forth in
23 the Order-in-Council by which I was appointed.

24 And I have indicated in my opening
25 remarks that, by virtue of the terms of reference

1 that have been fixed, the focus of this inquiry
2 has to be on the business and financial dealings
3 of Messrs. Schreiber and Mulroney that have to do
4 with the Bear Head Project and with business that
5 commenced in June of 1993.

6 MR. CHERRIER: Well, sir, the
7 effects of that, and the ramifications of those
8 dealings certainly, by virtue of the Canadian
9 government and decisions that they took, have
10 served to undermine the rights -- the general
11 rights of Canadians right across this nation, and
12 I sincerely believe that all Canadians have an
13 inherent right to know how they got hosed.

14 COMMISSIONER OLIPHANT: Well, for
15 those who have listened to you today, they might
16 be convinced that that occurred, Mr. Cherrier.

17 Thank you for your submission,
18 sir.

19 MR. CHERRIER: Thank you.

20 COMMISSIONER OLIPHANT:
21 Mr. Wolson.

22 MR. WOLSON: Mr. Commissioner, I
23 know that some counsel may want to respond, but I
24 would suggest that we take the morning break now,
25 and my suggestion would be that we break for about

1 15 minutes.

2 COMMISSIONER OLIPHANT: All right.

3 By my watch it is 10:40. We will come back
4 at 10:55.

5 --- Upon recessing at 10:40 a.m.

6 --- Upon resuming at 11:00 a.m.

7 COMMISSIONER OLIPHANT: I
8 indicated just prior to the adjournment this
9 morning that we would come back at 10:55. I try
10 to be a stickler for time, and it is 11 o'clock.
11 I just wanted to indicate that the reason I took
12 the extra five minutes was to read the documents
13 that were presented to me this morning by
14 Mr. Cherrier, including the argument that he
15 submitted in the Small Claims Court of the
16 Superior Court of Justice of Ontario in the case
17 of Brian Shell vs. Yohan Cherrier, and the Reasons
18 for Judgment in that suit by Deputy Judge Shapiro.

19 With respect to the applications
20 before me, there is an application filed by
21 Jonathan Wilde. It is in the form of a letter. I
22 am advised that Mr. Wilde is not here and never
23 intended to be here. I have considered the letter
24 that forms his application. I am not satisfied
25 that he has a direct and substantial interest in

1 the matters before this Commission and his
2 application for standing is therefore dismissed.

3 With respect to the applications
4 of M. Gauthier and Mr. Cherrier, having considered
5 the documents that were provided to me with
6 respect to those applications and having listened
7 to the submissions of Mr. Gauthier and
8 Mr. Cherrier this morning, while I have
9 considerable sympathy for the positions that each
10 has taken in respect of Air Canada and other
11 matters, I am bound, as I indicated in my opening
12 remarks, by the Terms of Reference that were set
13 in the Order-in-Council appointing me as
14 Commissioner and I am not satisfied that either of
15 those applicants fits within the Terms of
16 Reference. In other words, I am of the view that
17 I do not have jurisdiction to deal with the issues
18 that they have raised and their applications for
19 standing are therefore dismissed.

20 With respect to the application of
21 the Bloc, I will hear from counsel that wish to
22 address me on that.

23 As I indicated at the outset, I am
24 bound by the Terms of Reference. I indicated to
25 counsel for Mr. Mulroney, Mr. Schreiber and for

1 the Attorney General of Canada and that I need not
2 hear submissions from any of them. They fit right
3 within the Terms of Reference and their
4 applications for full standing are all granted.

5 With respect to Mr. Doucet, I will
6 grant full standing, but with respect to the
7 application for funding, I want to reserve on that
8 because, as you know, Mr. Houston, all that I can
9 do respecting funding is to make recommendations
10 and I intend to do that quickly. Mr. Doucet,
11 obviously, ought to have full standing before this
12 Commission and I can indicate that I am very
13 sympathetic to the application for funding but I
14 will be providing my recommendations in writing
15 and that will be done very quickly. Okay? Thank
16 you.

17 Having granted standing to
18 Messrs. Mulroney, Schreiber, the Attorney General
19 of Canada and Mr. Doucet, I now invite counsel for
20 them, perhaps beginning with you, Mr. Pratte, to
21 take advantage of the offer that I made to have
22 you make submissions if you wish in respect of any
23 other application for standing.

24 PRESENTATION ON BEHALF OF THE RIGHT HONOURABLE
25 BRIAN MULRONEY / PRÉSENTATION AU NOM DU TRÈS

1 HONORABLE BRIAN MULRONEY

2 MR. PRATTE: Thank you,
3 Mr. Commissioner. I will only address the
4 application for standing from the Bloc Québécois.

5 COMMISSIONER OLIPHANT: Yes.

6 Mr PRATTE: I should say, from the
7 outset, that I understand that the application is
8 for standing as an intervenor, and not a party.
9 Unless I am mistaken, I would simply say that it
10 seems clear to me, on the face of the application,
11 that it does not meet the requirements to obtain
12 standing as a party.

13 I will therefore limit my very
14 brief comments to the Bloc Québécois's application
15 to obtain intervenor standing.

16 I note, first of all, that in your
17 rules... I will read them in English to practise my
18 English.

19 The Rule on intervenor status, as
20 you know, is Rule 12 of the Draft Rules. One has
21 to have a genuine concern about issues raised by
22 the factual inquiry mandate and -- and -- have a
23 particular perspective or expertise. Those are
24 conjunctive. My friend who presented the
25 application for the Bloc said it was and/or. It

1 is not and/or. It has to have two of these
2 elements.

3 On the question of real interest,
4 I simply note that jurisprudence... and I will
5 give you an excerpt from the decision by
6 Commissioner Gomery, citing Justice O'Connor -
7 which I will not read, but I will provide it to
8 you - on the very question of the interest of a
9 political party, is that it is not sufficient to
10 say that something is of public interest to
11 transform that into a legal interest or to an
12 interest in a case.

13 I would also note that, in light
14 of your initial comments, your mandate is limited,
15 and certainly does not extend to a general review
16 of the activities of lobbyists or the expenditures
17 of public funds, in general, and moreover, there
18 is no evidence that the moneys paid by Mr
19 Schreiber were public funds, and this inquiry is
20 clearly different in that regard from the Gomery
21 inquiry, which was an inquiry into a systemic
22 problem within the Government of Canada.

23 So, when we look at your mandate
24 and ask ourselves - which is where I turn to the
25 second criterion, Commissioner - can they provide

1 you with clarification? Do they have an expertise
2 or a particular point of view to contribute as an
3 intervenor?

4 So, basically, in Part 1 of your
5 mandate... and here I am interested in the matters
6 that are more directly... that affect Mr Mulroney,
7 namely questions 1 to 14.

8 You will basically have to decide
9 the facts on the questions you have listed.

10 The Bloc Québécois has no
11 particular knowledge of the facts in question that
12 occurred in 1993 or 1994, no witnesses, nothing.

13 Second, you will need to decide to
14 what extent, once you have ruled on the facts, the
15 applicable rules of ethics at the time were
16 breached or were followed, as the case may be.

17 Those rules, incidentally, which
18 were established by Prime Minister Mulroney, are
19 something the Bloc Québécois has no particular
20 expertise in - indeed, it did not even exist, I
21 believe, at the time they were enacted - so it has
22 no particular expertise to enlighten you on the
23 application of those rules. At least, they are
24 not mentioned anywhere in their application and no
25 representation in that regard was made here this

1 morning.

2 So, if we look at the criterion of
3 expertise or particular perspective on the
4 particular task you have at hand, the Parti (sic)
5 Québécois... the Bloc Québécois - I'm sorry, a
6 slip of the tongue - cannot help you, and it is
7 clear that the Commission or the Commission's
8 counsel, as you noted this morning, are perfectly
9 capable of uncovering all of the relevant facts
10 and all of the jurisprudence you need to apply the
11 applicable rules of ethics to those facts.

12 I therefore respectfully submit
13 that, with respect to the criteria of your own
14 rules, the Draft Rules, the Bloc Québécois does
15 not meet them.

16 I will conclude merely by noting,
17 as Justice O'Connor noted in the Walkerton case,
18 that caution is called for, so as not to politicize
19 a commission of inquiry which, just as you have
20 noted, was established to be and must be
21 completely independent, independent of the
22 government, and I also respectfully submit,
23 independent of political parties, and the fact
24 that the Bloc Québécois has called for this
25 inquiry, as Justice O'Connor noted in his ruling

1 in the Walkerton case, is not a reason to grant it
2 intervenor standing. In that case, in Walkerton,
3 it was the NDP that wanted to justify its role by
4 the fact that they had called for an inquiry.

5 Moreover, the Bloc Québécois
6 played its role in its own arena, namely the
7 Ethics Committee. They called for an independent
8 inquiry with full powers to uncover the truth, and
9 that was done, and you have all the means, with
10 your counsel and the parties that have a direct
11 interest, to uncover the elements you need to
12 uncover.

13 I would just like to... if you
14 look in particular at paragraphs 4 and 5, in the
15 application by the Bloc Québécois, it says, for
16 example:

17 [Translation] "...the
18 Commissioner will no doubt
19 want to to ensure..."

20 That's in paragraph 4 of the
21 application by the Bloc Québécois.

22 [Translation] "...that those
23 parties that called for the
24 present commission be
25 regularly informed of the

1 choices that are made by the
2 commission..."

3 That's paragraph 4, the last three
4 lines, Commissioner.

5 [Translation] "...the
6 commissioner will no doubt
7 want to ensure that those
8 parties who called for the
9 present commission [including
10 the Bloc Québécois] be
11 regularly informed of the
12 choices that will be made by
13 the commission..."

14 And they will be so informed, as
15 will all members of the public, and you stated at
16 the beginning of the hearing that the hearings
17 will be public, the website will be there, the
18 information will be freely circulated.

19 Paragraph 5:

20 [Translation] "...it [will]
21 need to demonstrate to the
22 public that it has done
23 everything possible to reject
24 the central hypothesis..."

25 That is the job of counsel, for

1 which you are being assisted in an expert manner,
2 as you have already stated.

3 So, for those reasons, I
4 respectfully submit, Commissioner, that the Bloc
5 Québécois does not have an interest or expertise
6 to assist you with Part 1, which does not mean
7 that where they may possibly play a useful role,
8 with Part 2 when you have ruled on the facts and
9 the application of the rules of ethics, they will
10 not be useful to you specifically in helping you
11 to formulate, as need be, improvements or changes
12 to the rules of ethics for the future. On that
13 point, I believe that they will then perhaps have
14 a more sympathetic ear when the time comes.

15 Thank you, Commissioner.

16 COMMISSIONER OLIPHANT: Thank you,
17 Sir.

18 Mr. Auger.

19 PRESENTATION ON BEHALF OF MR. KARLHEINZ

20 SCHREIBER / PRÉSENTATION AU NOM DE M. KARLHEINZ

21 SCHREIBER

22 MR. AUGER: Thank you,
23 Commissioner.

24 Mr. Schreiber takes no position in
25 connection with the application brought by the

1 Bloc. Thank you.

2 COMMISSIONER OLIPHANT: Thank you.
3 Mr. Vickery.

4 PRESENTATION ON BEHALF OF THE ATTORNEY GENERAL OF
5 CANADA / PRÉSENTATION AU NOM DU PROCUREUR GÉNÉRAL
6 DU CANADA

7 MR. VICKERY: Mr. Commissioner,
8 the Attorney General takes no position with regard
9 to the application of the Bloc.

10 Thank you.

11 COMMISSAIRE OLIPHANT: Merci.
12 Mr. Houston.

13 PRESENTATION ON BEHALF OF MR. FRED DOUCET /
14 PRÉSENTATION AU NOM DE M. FRED DOUCET

15 MR. HOUSTON: Mr. Commissioner,
16 Mr. Doucet takes no position.

17 Thank you, sir.

18 --- Pause

19 COMMISSIONER OLIPHANT: Because it
20 is easier for me to speak English, I will now
21 speak in English.

22 I am going to reserve my decision
23 in respect of the application of le Bloc
24 Québécois. I will provide a written decision
25 tomorrow or next week. Thank you.

1 I believe --

2 MR. PRATTE: Just before you
3 adjourn --

4 COMMISSIONER OLIPHANT: Yes.

5 MR. PRATTE: -- Mr. Commissioner,
6 perhaps I will hand to the clerk or to Mr. Wolson
7 the decision -- the extract from the decision of
8 Commissioner Gomery which has the excerpt from
9 Justice O'Connor.

10 COMMISSIONER OLIPHANT: All right.

11 I would appreciate that very much.

12 Thanks, Mr. Pratte.

13 Is there anything further for this
14 morning, Mr. Wolson?

15 MR. WOLSON: Mr. Commissioner,
16 though we had set a number of days for this
17 proceeding, as is usually the case in applications
18 of this kind, we are complete. You have a
19 reserve, actually, two issues to deal with and it
20 is time to get on with our work as counsel and we
21 are complete for this morning.

22 COMMISSIONER OLIPHANT: All right.

23 Thank you very much.

24 I wish to thank everyone for
25 participating this morning. I know that there are

1 some disappointed people here today. Let me just
2 say, in respect of the applications that I
3 dismissed, that I am sympathetic to the positions
4 taken by people. Unfortunately, I am just not
5 clothed with the jurisdiction to deal with those
6 issues.

7 Thank you, and we will see you at
8 the next session of this Commission.

9 --- Whereupon the hearing adjourned
10 at 11:15 a.m. / L'audience est ajournée
11 à 11 h 15