

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

Commissioner

L'Honorable juge /
The Honourable Justice
Jeffrey James Oliphant

Commissaire

Held at:

Government Conference Centre
2 Rideau St.
Annex Room
Montréal, Québec

Friday, March 20, 2009

Tenue à :

Centre de Conférence du
Gouvernement
2 rue Rideau
Pièce Annex
Montréal, Québec

Vendredi le 20 mars 2009

Appearances

Mr. Richard Wolson	Lead Commission Counsel
Mr. Even Roitenberg	Co-Counsel
M ^e Guy J. Pratte Mr. Jack Hughes	The Right Honourable Brian Mulroney
Mr. Richard Auger	Mr. Karlheinz Schreiber
Mr. Paul B. Vickery	Attorney General of Canada

Table of Contents

	Page
Opening Remarks by/Remaques d'ouverture par Mr. Richard Wolson	1
Submissions by/Représentations par M ^e Guy Pratte	4
Submissions by/Représentations par Mr. Paul Vickery	28
Submissions by/Représentations par Mr. Richard Auger	33
Submissions by/Représentations par Mr. Richard Wolson	35
Reply by/Réplique par M ^e Guy Pratte	38
Ruling by the Commissioner/Décision par le Commissaire	40

1 Montreal, Quebec / Montréal (Québec)

2 --- Upon commencing on Friday, March 20, 2009

3 at 9:31 a.m. / L'audience débute

4 le vendredi, 20 mars 2009 à 9 h 30

5 THE REGISTRAR: All rise.

6 THE COMMISSIONER: Good morning,
7 counsel.

8 THE REGISTRAR: Please be seated.

9 THE COMMISSIONER: Mr. Wolson.

10 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WOLSON,**
11 **Q.C.:**

12 MR. WOLSON, Q.C.: Good morning,
13 sir.

14 We're here this morning to
15 consider -- for you to consider an application on
16 behalf of Mr. Mulroney to delay the start of this
17 Inquiry from the 30th of March until the 14th of
18 April.

19 In real terms, Mr. Commissioner,
20 that's six days, and I say that because if we were
21 to start on the 30th of March, we would sit four
22 days that week until April 2nd. Fridays,
23 generally, we're not sitting to allow counsel time
24 to prepare. We would then reconvene on the 6th of
25 April and sit on the 6th and 7th, not sitting on the

1 8th or 9th because of Passover and not sitting on
2 the Friday or the following Monday because of
3 Easter.

4 So, in effect, the request for a
5 delay is six days.

6 I can tell you that your counsel
7 are ready to start on the 30th of March. There
8 have been many late hours, with more to come, and
9 I'm sure that all counsel are in the same
10 position.

11 But I am, that said, sympathetic
12 to Mr. Pratte's application. I understand it.
13 There has been voluminous disclosure, some in
14 recent days, and it's important for counsel to be
15 prepared so that they can properly contribute to
16 this Commission of Inquiry.

17 I'm also mindful, sir, of your
18 desire to start on time and finish this Inquiry on
19 time, and the 30th of March is now the present
20 start date.

21 On balance and given the need for
22 counsel's preparation, I advance this position
23 this morning, that we start on the 30th of March -
24 - it will give us time to call one witness who is
25 otherwise difficult to schedule because of that

1 witness' prior commitments -- that we call
2 evidence on the 30th and the 31st. On the 31st we
3 would deal with an aspect of the case that's
4 background but important, and we would call four
5 or five witnesses starting March 30 and finishing
6 on the 31st, hopefully, unless we need some slight
7 more time.

8 We would then, my position is,
9 break until the 14th of April and, in effect, give
10 counsel a good chunk of time to further prepare
11 and be available when we come back on the 14th to
12 start with a lengthy witness.

13 I am mindful that Mr. Vickery,
14 whom I've talked to for the Attorney General for
15 Canada, has commitments after the 22nd of May.

16 In my view, if we were to start,
17 as I've indicated, on the 30th of March and work
18 through to the 31st, we will, in effect, have lost
19 four days. I believe we can make up that time.

20 If we need more time, we'll sit on
21 Fridays or longer in a day. In my view, that
22 proposal is a reasonable one and will allow us to
23 do as you have indicated in the past at least,
24 that you would like to start on time, and will
25 also accommodate counsel with an ability to have

1 some additional preparation time.

2 So that's the position that I
3 advance to you this morning, and subject to any
4 questions, sir, you may have, you would then have
5 my position.

6 THE COMMISSIONER: That's fine.

7 I'll reserve saying anything until
8 I've heard from all counsel.

9 MR. WOLSON, Q.C.: Thank you.

10 THE COMMISSIONER: Mr. Pratte,
11 good morning.

12 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. PRATTE:**

13 MR. PRATTE: Good morning, sir.

14 I will address Mr. Wolson's
15 representations to you, sir, at the end of my
16 comments, if I might.

17 And so I will start by telling you
18 that the purpose of the application that is made
19 for a modest change in the schedule -- I call it
20 modest because as Mr. Wolson indicates, it really
21 represents six hearing days -- the purpose of this
22 is really threefold, or I ask for it for three
23 main reasons.

24 One is -- and I'll develop each of
25 those for a few minutes. The first one, of

1 course, is that in my submission, the issue of the
2 standards and actually the scope of this Inquiry
3 will not be resolved until you have heard and
4 ruled on the application for clarification, which
5 is scheduled for next Tuesday, the 24th of March.

6 And I will be submitting to you,
7 sir, that even if you change not a word to your
8 decision, notwithstanding that, the adjournment or
9 rescheduling that we request is still necessary
10 and fair.

11 And that brings me to the second
12 point I want to make, which is that the additional
13 time would afford us, all parties, but especially
14 Mr. Mulronev and his counsel, the time to review
15 the voluminous disclosure and anticipate the
16 evidence that is to be called by the Commission of
17 the 20-plus witnesses we've been advised in recent
18 weeks.

19 And the third is that, in my
20 respectful submission, to grant the request would
21 not in any way affect the substantive public
22 interest and certainly not compromise the date for
23 your ultimate report.

24 So let me deal first, if I might,
25 Mr. Commissioner, with the first point, the

1 request for clarification.

2 As you know, on March 16, Mr.
3 Mulroneu submitted a request for clarification of
4 your Ruling on Standards which was issued on the
5 25th of February. It asks you to clarify some of
6 the points that are made therein, address what we
7 say are substantive new questions arising there
8 from.

9 This is a fundamental ruling, as
10 yourself recognized, because it affects the scope
11 of the Inquiry both in terms of the relevant
12 standards and the timeframe, and I'll touch on
13 that in a moment.

14 Now, you endorsed, quite properly
15 so from the outset, the issue of clarity around
16 those standards before we get started. You did so
17 when the matter was heard on January the 7th when
18 you said the following:

19 "I think it's important we
20 have this hearing..."

21 That's the January 7th hearing that you scheduled.

22 "...prior to my hearing
23 evidence for a couple of
24 reasons. You've named one,
25 and that is what's required

1 by law in accordance with the
2 *Stevens* case, but I think as
3 well, out of an abundance of
4 fairness, counsel should know
5 what the standard that I will
6 be looking at is in order to
7 properly prepare to meet the
8 case that needs to be met.”

9 And I note in passing, Mr.
10 Commissioner, that the one person who needs to
11 know that the most is my client. He’s the person
12 whose conduct is being assessed here. And that is
13 something you actually recognized in your own
14 ruling at paragraph 7, where you came back to that
15 topic and you said this:

16 “I think it’s important that
17 before I hear the evidence in
18 a factual inquiry, all
19 parties granted standing,
20 particularly Mr. Mulroney,
21 know by what standard the
22 appropriateness of Mr.
23 Mulroney’s business and
24 financial dealings, as well
25 as the disclosure and

1 reporting of those, will be
2 assessed."

3 Then you, of course, at paragraph
4 31, referred to the *Stevens* case and you quoted
5 extensively from the *Stevens* case, which as you'll
6 recall deals with the importance of knowing the
7 standard before the case starts, not midway or
8 after. And in that case, Justice O'Keefe of the
9 Federal Court had concluded, and I quote from a
10 couple of paragraphs you, yourself, noted:

11 "I am of the view that it was
12 a breach of duty of
13 procedural fairness owed to
14 the plaintiff to set a
15 standard definition of
16 conflict of interest by
17 stating the definition for
18 the first time in the report.
19 In my view, the definition
20 should have been stated in
21 the various conflict of
22 interest guidelines or code."

23 And you said you endorse that.

24 Now, of course, you are well aware
25 of that and I'm not suggesting you'll be -- or you

1 intend to tell us at the end in your report what
2 the standard is, but I make the point because it
3 stresses how important it is to know clearly what
4 the standard is at the outset. And the standard -
5 - I don't want to anticipate what I'm going to be
6 saying too much next week -- but the standard that
7 you have ---

8 THE COMMISSIONER: It could
9 shorten the hearing next week.

10 MR. PRATTE: I'm sorry, sir?

11 THE COMMISSIONER: I said it could
12 shorten the hearing next week.

13 MR. PRATTE: The point that I want
14 to emphasise, sir, is that the standard that's
15 identified in your ruling should not be thought of
16 as akin to saying such-and-such inside of the code
17 of conduct or such-and-such of a statute.

18 It's a standard that is what I
19 would call multi-faceted. It refers to five
20 statutes that in some way or other have to be
21 taken into account, and it covers effectively a
22 very long period of time, at least 1984 to the
23 present in some way or other.

24 THE COMMISSIONER: And let me
25 assure you, I am painfully aware that I can't

1 wonder into a field covered by those statutes,
2 particularly the *Criminal Code*. I am very, very
3 sensitive to that fact.

4 MR. PRATTE: Okay. As I sit here
5 today, Mr. Commissioner, I nevertheless have a
6 ruling, which refers to those statutes being
7 useful to inform your decisions and, to that
8 extent at least, they are made relevant.

9 Now, I say that procedural
10 fairness, and what we might call just plain old
11 basic fairness, requires that Mr. Mulroney know
12 before we start clearly what the standard is, not
13 just to know it in the sense I can identify what
14 it is but in order to have a reasonable
15 opportunity to prepare. As you have acknowledged,
16 the stakes here couldn't be higher for Mr.
17 Mulroney. It's his reputation that's at stake.

18 Now, Mr. Mulroney, in respect of
19 trying to find out and sort out and clarify the
20 issue of the standard, has been diligent. As
21 Commission counsel will know, we made inquiries
22 going back to last August, August 21st; repeated in
23 September and October and ultimately a Notice of
24 Hearing was issued -- I believe it was on the 12th
25 of November for a hearing on January 7th, 2009 to

1 accommodate, I guess, the convenience of some
2 counsel. But Mr. Mulroney's conduct in respect of
3 seeking clarification could not be criticized as
4 being belated.

5 And then after the hearing on
6 standards on January the 7th and your ruling in
7 particular on the 25th of February, Mr. Mulroney
8 and his counsel gave it, believe me, immediate and
9 very careful attention. It's plain from the
10 application that was filed and that you are going
11 to hear next week, that it gave us serious
12 concern; maybe misplaced, we'll find out, but
13 serious concerns, and in order to deal with those
14 concerns it was ultimately decided that the most
15 expeditious, least disruptive and reasonable way
16 was to come back before you.

17 Now, the issue of the proper
18 interpretation of your mandate, the scope of this
19 Inquiry, the standards, they're all wrapped up,
20 you'll be hearing on the 24th.

21 I say that even if we assume, even
22 if I were to assume you are going to issue a
23 ruling on that day, on the 24th, and even if you
24 were to change nothing that the time required in
25 the circumstances to properly prepare for this

1 case is not sufficient if we start on the 30th.
2 And I say this because of the scope and the impact
3 of that ruling and that leads me to move into my
4 second point because the scope and impact of
5 ruling has a direct bearing on the relevance, the
6 weight, and the admissibility of any document
7 we've seen so far and of the testimony of the
8 twenty-plus witnesses that are contemplated at
9 this time.

10 So let me move then to the issue
11 of evidentiary review or document review and
12 witness evidence. And, again, for this purpose,
13 although the first point is a distinct point
14 needing to clarify the standard, the second point
15 on document review is obviously related. It's
16 where the rubber meets the road in effect because
17 it is to apply your ruling to the evidence to be
18 called. You may not be fully aware of this, sir,
19 but these facts in terms of putting in perspective
20 the practicality of dealing with this evidence in
21 view of this multi-faceted ruling of the 25th of
22 February is what I want to come to, because that's
23 what we have to deal with.

24 To date, we have received roughly
25 2,771 documents containing a total of

1 approximately 25,000 pages of materials. Last
2 week alone we received 200 new documents, about
3 1,200 pages from the Attorney General of Canada.
4 In fact, of the 841 documents we've received from
5 the Attorney General so far, 556 of them,
6 containing some 4,900 pages, have been received
7 since February 16th. The vast majority of the
8 documents received from the Attorney General,
9 about 770, have been received since January the
10 13th.

11 Some of these documents have been
12 redacted in whole or in part, and some have been
13 produced in German and Italian without
14 translations. We are in the process of seeking
15 those translations. These do not include another
16 category of government documents covered by
17 Cabinet Confidences, which cover a major portion
18 of the timeframe for your Inquiry starting in
19 1989.

20 We were first able to review some
21 of those documents, and as you know, Mr.
22 Commissioner, I should have said that, the law in
23 practice requires that a former Prime Minister
24 whose confidences are involved be asked to waive
25 or consider waiving their privilege ---

1 THE COMMISSIONER: Yes.

2 MR. PRATTE: --- so they have to
3 be reviewed, and I'm given to understand
4 Commission counsel hasn't even seen those
5 documents.

6 In any event, we first were given
7 an opportunity to review about a third of those
8 documents on February the 6th and then the last of
9 them, about 95, 2 days ago. That is, we were told
10 "You can come on either Wednesday or Thursday" and
11 then -- and we went yesterday to spend several
12 hours reviewing them.

13 Obviously, I'm not permitted to
14 tell you what's in those documents, but you can
15 assume that because they're responsive to a
16 request by the Commission to produce from the
17 government relevant documentation, they must be
18 relevant to your mandate.

19 Now, these delays in terms of the
20 government documents may not affect the Government
21 of Canada so much because they've had them in
22 their possession and have been able to review
23 them. And I say that not only for the Cabinet
24 Confidences but all nine hundred some of them; but
25 they potentially directly affect all parties but

1 especially Mr. Mulroney.

2 Now, let me make this clear, Mr.
3 Commissioner. I do not mean by setting out those
4 facts and that chronology in any way to be
5 critical of the government chronology in producing
6 those documents. It's reality. I assume everyone
7 was working as hard as they could, but that's
8 where we are.

9 THE COMMISSIONER: Well, let me
10 make the point now, to add to what you have said.

11 My understanding is that request
12 was made for documents initially by my counsel on
13 or about July the 18th of last year.

14 MR. PRATTE: Yeah.

15 THE COMMISSIONER: And having said
16 that, don't fault the government. We've gone into
17 this before. It was a reason why I had to ask for
18 an extension of the mandate and an adjournment of
19 the start date of this Inquiry.

20 MR. PRATTE: As you say, Mr.
21 Commissioner, these facts are relevant to explain
22 to you or, as I say, these facts are relevant to
23 give you a real practical sense of the predicament
24 that we are in and they in no way impute any lack
25 of diligence upon government counsel. But here we

1 are; that's reality.

2 Similarly, there are a number of
3 witnesses that, we've been advised, the Commission
4 may call. The rules require we be provided with
5 whatever will says or transcripts are available.
6 We have received some of them recently but not all
7 of them and certainly not from some of the main
8 witnesses. And, again, let me stress, and I don't
9 say this just for the forum only, that the
10 Commission counsel have been extraordinarily
11 diligent in the pursuit of their mandate and have
12 afforded us as much access as they could as early
13 as they could, but it's still obviously a lot of
14 evidence to deal with.

15 Now, this point is particularly
16 relevant, that is the volume of information in
17 light of a multi-faceted ruling, wide-ranging
18 ruling, is particularly important, and I want to
19 emphasize this point which I've made in another
20 context but in this particular context, this is
21 unique public inquiry.

22 We're not -- or you're not asked
23 to look into some natural disaster or the crash of
24 an airplane or systemic problems of blood or water
25 contamination or some scandal involving millions

1 of public money. Maybe in those wide-ranging
2 inquiries, it makes sense to allow for a more
3 dynamic flow of evidence even as the commission
4 starts because the purpose is not primarily to
5 assess the propriety of the conduct of a single
6 individual. But that is the purpose of this
7 Inquiry and, in my respectful submission, that
8 enhances the need to clearly set the standard and
9 to have the evidence and be able to put that
10 evidence in sufficient time in the context of the
11 standard and the scope of the Inquiry.

12 As I say, this Inquiry involves a
13 former Prime Minister who, coincidentally, turns
14 70 today, and seeks to review matters going back
15 to 1984, 25 years ago, 20-plus witnesses, 25,000
16 documents, most of which have been received in the
17 last couple of months. Now even as I said, if
18 your ruling doesn't change one iota, that's a
19 massive undertaking.

20 It's a massive undertaking not
21 because of anything that the Commissioner has done
22 but because the mandate, in part, may not have
23 been as "limpide", we would say, as -- in French --
24 -- as perhaps might have been wished. It refers to
25 a number of allegations that have been made by Mr.

1 Schreiber without specifying which are of public
2 interest.

3 In your ruling you make reference
4 to five separate statutes and we'll discuss what
5 that means next week, but obviously it's of some
6 moment because you made specific reference to
7 them.

8 We need to examine these
9 unspecified allegations and all the evidence that
10 we've had, documentary and testimonial, from the
11 point-of-view of that length of time and from the
12 point-of-view of the breadth of considerations
13 drawn in whatever way from those statutes that
14 might ultimately inform your decision. That
15 breadth, in my respectful submission, is
16 unprecedented in the context of a public inquiry
17 involving a single individual.

18 Now, as I said, I want to make
19 clear, I don't blame anybody -- neither government
20 counsel and certainly not Commission counsel for
21 the fact that we find ourselves in this position -
22 - to seek a modest readjustment of your schedule,
23 but I submit that Mr. Mulroney is not to blame
24 either. He has acted diligently at all times and
25 he's the only person whose reputation is at stake

1 here. He is certainly the least to blame and has
2 the most to lose.

3 Now those are the stakes. Let me
4 move then to the third and last part of my
5 submissions, to now look at the impact of what we
6 are seeking.

7 Like Mr. Wolson, I recognize you
8 have a special responsibility to the public to
9 ensure that it proceeds efficiently and
10 expeditiously, and you are determined to fulfil
11 that responsibility. But even in that context, I
12 submit that with the number of outstanding issues
13 involved and the evidence in particular that needs
14 to be fit in to the standards that you've
15 articulated on the 25th of February, the
16 readjustment of the schedule, the six days
17 involved, is the minimum needed to ensure
18 fairness.

19 The two-week postponement will
20 neither disrupt nor significantly delay the
21 hearings because as my friend Mr. Wolson said,
22 really we're talking about six days and, in my
23 respectful submission, there is sufficient
24 flexibility in the schedule to meet the end date
25 of the 22nd of May anyway. It's a much less

1 significant extension than that which you were --
2 I guess, based on your comments, Mr. Commissioner
3 -- forced to trigger when you moved from the
4 February the 9th to the March 30th date. That
5 would involve seven weeks and the end date, that
6 is May 22nd, in my respectful submission, because
7 of that flexibility can be met because you have
8 already opened up the possibility in the schedule,
9 anyway your counsel has, of sitting a fifth day
10 and even on Saturdays.

11 Now, I understand that Mr. Vickery
12 in particular may have a problem after the 22nd of
13 May and I'm sympathetic to that, but there was
14 never any guarantee, of course, we would finish on
15 that date in any event. And I want to point out,
16 I'm not -- not my style to tell you about my
17 personal issues but maybe it's not irrelevant here
18 -- that when you were compelled to postpone the
19 hearings from the target date of, I believe it was
20 February the 9th to March the 30th, that meant that
21 I had to be forced out of a six-week, huge trial
22 in Montreal which had been scheduled for May. I
23 attempted to get that trial adjourned in the
24 Superior Court and that application was refused.

25 Also, I was scheduled in a four-

1 week arbitration which had already been scheduled
2 to try to accommodate the February 9th start date
3 and it had to be rescheduled, to the party's
4 discontent let me tell you, to mid-June. I only
5 point this out, not to bring anyone to tears here,
6 but that others of us have had to make some
7 accommodations.

8 THE COMMISSIONER: If you want to
9 see tears, you should speak to my chief justice.

10 MR. PRATTE: Now, sir, as I say,
11 there are two points I want to make there about
12 this.

13 Even with the six-day adjournment,
14 effectively two weeks but six days in reality, we
15 are confident that we can finish by the 22nd.

16 And, secondly, there's no doubt
17 that you should be able to complete your task by
18 the time reporting comes, at least I hope so, on
19 the 31st, because in fact you have a bit more ---

20 THE COMMISSIONER: Of what?

21 MR. PRATTEE: Of December.

22 THE COMMISSIONER: That's not the
23 fact, that's the problem. What you've got to
24 understand is this, and you've said it so I'll respond.

25 I have been advised that in order

1 to edit, translate and print my report and get it
2 in the hands of government by December 31st, my
3 writing has to be completed by September 30th.

4 Now, that's not a lot of time, and
5 don't forget you keep talking about May the 22nd;
6 that's where your involvement may end -- may end.
7 There's a whole other part of this Inquiry to be
8 dealt with subsequent to May 22nd. I have a
9 massive, massive task facing me to write my report
10 and have it in by September 30th.

11 MR. PRATTE: My point, Mr.
12 Commissioner, is not in any way to suggest that
13 you can go on holiday on May 22nd. My point is the
14 following; that looking at the schedule, the
15 number of days involved, the worst that could
16 happen -- the worst that could happen is that we
17 might have to go for a few days over May 22nd,
18 that's the worst.

19 In my respectful submission, there
20 is sufficient flexibility in the schedule to
21 preclude that from happening. And so that we will
22 finish the hearings at a time that you can then
23 move on to the Phase 2 and then have to undertake
24 the burden you've just described.

25 So at the end of the day, we are

1 talking really about the starting date, not so
2 much the ending dates, and so we have to consider
3 trying to balance all the interests, the public
4 interest on starting the 30th rather than on the
5 14th.

6 Now, from the point-of-view of
7 substantive justice, which affects Mr. Mulroney
8 most of all, I submit that it's unarguable that
9 this modest readjustment is warranted to ensure
10 that his rights are protected.

11 Now, does the public have a
12 pressing interest in starting to hear the evidence
13 on the 30th rather than the 14th? I submit that the
14 answer to that question is "No".

15 Now, I understand however that you
16 have a legitimate concern Mr. Commissioner with
17 too many false starts. You obviously -- you had
18 one postponement and having another one may at the
19 very least create in the eyes of the public the
20 impression that there are too many false starts.
21 And that's a valid concern.

22 But I submit to that in the
23 circumstances of the evidence that needs to be
24 assessed before we start, an unfair start is the
25 worst of all false starts. And that is what would

1 result if we had to press on on the 30th.

2 Now, let me speak in conclusion to
3 Mr. Wolson's submissions. And I want to say
4 genuinely that I'm grateful to him for attempting
5 as best he could to reconcile the imperatives that
6 press on in this Commission counsel.

7 He's trying to strike, as he said,
8 an appropriate balance between Mr. Mulroney's
9 rights on the one hand and the public interest and
10 your interest as Commissioner on the other hand,
11 and that's not an easy thing to do. But I take a
12 different view of the balance that is required
13 because of the facts I've outlined, Mr.
14 Commissioner.

15 And I say that Canadians would
16 understand that this two-week postponement is fair
17 and reasonable. Mr. Wolson's proposal has the
18 merit of getting things going, arguably it gives a
19 little more time for preparation. I say
20 "arguably" because it still involves a number of
21 witnesses that weren't anticipated to be called at
22 that time, but whatever.

23 But it doesn't really address the
24 main fairness point which is simply having
25 sufficient time, a bit more time, uninterrupted

1 time, to assess the massive evidence that faces us
2 in the context of your ruling, clarified in
3 whatever way.

4 I understand one of his witnesses
5 may have a problem with appearing before you later
6 but that there would be time to hear him at least
7 in the early days even if we started on the 14th.
8 It could be argued he would be heard out of the
9 normal order but that'll happen anyway if we start
10 on the 30th.

11 And as to the other witnesses, the
12 background witnesses, in my respectful view, some
13 of the evidence certainly contained in the Cabinet
14 Confidences could be relevant to fully exploring
15 and putting in context their evidence.

16 So with the greatest respect for
17 my friend and genuine appreciation for the balance
18 he's tried to strike, in my respectful submission,
19 that is -- it is not the best way to ensure that
20 fairness and substance happens here.

21 But obviously, Mr. Commissioner,
22 if you would dismiss my application, I would urge
23 you to consider Mr. Wolson's submission. And I'm
24 doing so, though I don't mean to diminish the
25 seriousness of the concerns I've tried to put to

1 you on behalf of Mr. Mulroney seeking the -- I'm
2 not just kind of throwing out a line here -- I
3 didn't speak to you for too long just to have you
4 say, "I'm satisfied with starting on the 30th over
5 two days".

6 I conclude with this comment, Mr.
7 Commissioner. Mr. Mulroney is not trying to
8 derail this Inquiry. And I know it's important
9 and I don't say this facetiously -- if I can
10 pronounce that word -- it's important for trains
11 to run on time but it's at least as important that
12 they reach their proper destination safely. And I
13 say, in the circumstances in which we find
14 ourselves through no one's fault, the best way and
15 only way to ensure that is to grant the
16 application as framed.

17 Subject to your questions, those
18 are my submissions, Mr. Commissioner.

19 THE COMMISSIONER: Thank you, Mr.
20 Pratte, I have no questions. Thanks very much.

21 Mr. Auger is here but Mr. Houston
22 is not here. Do we have a position from Mr.
23 Houston?

24 MR. PRATTE: I omitted to say
25 that, Mr. Commissioner. I am informed by Mr.

1 Houston that he would support the adjournment or
2 the application that is made on Mr. Mulroney's
3 behalf.

4 THE COMMISSIONER: For all of the
5 reasons that you have given this morning?

6 MR. PRATTE: I'm sure that he
7 would say he would have put them more convincingly
8 but, roughly, he'll have to be satisfied in his
9 absence.

10 THE COMMISSIONER: I won't comment
11 on that last remark by you Mr. Pratte, okay?

12 MR. WOLSON, Q.C.: I can tell you,
13 Mr. Commissioner, that I did receive a letter from
14 Mr. Houston and while it wasn't an extensive
15 letter, he did ask for a similar adjournment to
16 the one that Mr. Pratte has.

17 THE COMMISSIONER: I see. In
18 other words, he needs more time to prepare?

19 MR. WOLSON, Q.C.: I put it to you
20 the way I received it, sir.

21 THE COMMISSIONER: All right.
22 Thank you.

23 Mr. Vickery or Mr. Auger?

24 MR. VICKERY: Yes, Mr.
25 Commissioner. Thank you.

1 THE COMMISSIONER: Good morning,
2 Mr. Vickery.

3 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR.
4 VICKERY:

5 MR. VICKERY: Good morning, Mr.
6 Commissioner.

7 The Attorney General is indeed
8 prepared to commence on March 30th, however, having
9 said that, it takes no position on Mr. Pratte's
10 application for adjournment. I do however wish to
11 respond very briefly to one or two of the matters
12 that Mr. Pratte has raised.

13 I appreciate the acknowledgement
14 by all parties that the delivery of documents and
15 the timing of the delivery of documents has not,
16 in fact, been delayed as a result of any action on
17 the part of the government.

18 You will be aware, Mr.
19 Commissioner, that the government has, in fact,
20 worked diligently since last summer to review an
21 enormous number of documents and that task has now
22 been completed.

23 THE COMMISSIONER: I'm also aware
24 of the difficulties that you face because of the
25 use of different software programs.

1 MR. VICKERY: That's correct, yes.

2 THE COMMISSIONER: Right.

3 MR. VICKERY: That certainly was
4 part of the difficulty that all parties
5 encountered in moving forward with this.

6 And, now, you will also be aware
7 that the Attorney General takes a quite different
8 view of Mr. Pratte's application for
9 clarification.

10 We have filed written submissions
11 on this point and suffice it to say this morning
12 that the view of the Attorney General is that no
13 such clarification is, in fact, required.

14 THE COMMISSIONER: I don't need to
15 hear the arguments.

16 MR. VICKERY: Yes.

17 THE COMMISSIONER: I don't need
18 sort of advance notice of your position.

19 MR. VICKERY: No. All right, and
20 I simply -- I think it goes to the position put
21 before you by Mr. Pratte and that's why I raise
22 it.

23 I am glad to have heard from Mr.
24 Pratte that he has now had the opportunity to
25 review all of the Cabinet Confidence documents,

1 which were referred to by the Attorney General,
2 and I anticipate of course that we will and you
3 will be hearing from Mr. Pratte as to whether he
4 does propose to waive Cabinet Confidence in due
5 course ---

6 THE COMMISSIONER: It's in the
7 hands of Mr. Pratte's client.

8 MR. VICKERY: Yes, of course.

9 Now, having said all of that, I
10 did want to record the fact that, as has been
11 referred to, I do have a prior commitment. It is
12 before the British Columbia Court of Appeal and so
13 that my timing does become quite precarious after
14 May 22nd. I am comforted by the fact that all
15 concerned are currently of the view that Phase 1
16 of the Inquiry can be completed by May 22nd.

17 I have indicated to Mr. Wolson
18 that should that not arise, then I anticipate
19 being instructed to seek a brief adjournment at
20 the end of May in order to permit me to meet that
21 other commitment, and I simply wish to have that
22 on the record at this point, Mr. Commissioner.

23 THE COMMISSIONER: What is the
24 date that the appeal is to be heard; when are you
25 not available?

1 MR. VICKERY: Yes. The appeal
2 itself is to be heard beginning June 1st for eight
3 days. It's a quite complex constitutional law
4 matter arising out of the tobacco litigation in
5 British Columbia. The reason that I have said of
6 course that I am unavailable in the preceding week
7 is that there is a necessity ---

8 THE COMMISSIONER: Oh, no, no, I
9 appreciate that.

10 MR. VICKERY: --- to prepare.

11 THE COMMISSIONER: But let me ask
12 you this. Did you then not purport to be involved
13 in Phase 2 or Part 2 of the Inquiry?

14 MR. VICKERY: My understanding, as
15 Phase 2 is currently envisaged, is that there
16 would be a public forum during the period from
17 June 1st to June 8th.

18 THE COMMISSIONER: Yes.

19 MR. VICKERY: If I have it
20 correctly, and the Co-counsel with me, Mr. Landry
21 and Mr. Lacasse ---

22 THE COMMISSIONER: Okay.

23 MR. VICKERY: --- would be in a
24 position to deal with that.

25 THE COMMISSIONER: Fine, okay.

1 MR. VICKERY: And I would then
2 come back into the matter of course as soon as the
3 appeal was concluded. So I'm not proposing in any
4 way to step away from Phase 2 stage ---

5 THE COMMISSIONER: No, I was just
6 curious when you said you were going to be away
7 commencing June 1st for an eight-day appeal.

8 MR. VICKERY: Yes.

9 THE COMMISSIONER: Because that
10 does take in a part of what will be Part 2 or the
11 policy review conducted by the Commission.

12 MR. VICKERY: Yes, and I am
13 sensitive to that, Mr. Commissioner.

14 I can tell you that -- obviously
15 Mr. Pratte has referred to the difficulties he has
16 had in rearranging other matters and I, in fact,
17 was called upon to rearrange the appeal date on
18 that matter. And that's the problem; we're all
19 busy practitioners and we all have those issues.
20 It's simply a question of attempting to find a way
21 of pushing forward.

22 THE COMMISSIONER: Listen; talk
23 about rearranging matters. I've got a daughter
24 who's getting married this summer. That can't be
25 rearranged.

1 MR. VICKERY: Oh, dear, that
2 cannot be rearranged, and I'm enormously
3 sympathetic to that problem.

4 In any event, I simply raise it
5 because of course my clients on the appeal have an
6 interest in having me lead that appeal. So that -
7 - there are difficulties if we don't ---

8 THE COMMISSIONER: I appreciate
9 that and I know the case that you're talking
10 about. It's an important case.

11 MR. VICKERY: Yes, and so that I
12 would hope that with the matter proceeding
13 hopefully in the very near future, we'll be in a
14 position to complete the Phase 1 evidence by May
15 22nd.

16 Those are my comments,
17 Commissioner. Thank you.

18 THE COMMISSIONER: All right.
19 Thank you very much.

20 Mr. Auger?

21 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. AUGER:

22 MR. AUGER: Thank you,
23 Commissioner. Good morning.

24 On behalf of Mr. Schreiber, the
25 position is quite simple, and that is that Mr.

1 Schreiber supports the position advanced by your
2 counsel, Mr. Wolson, that we start on March 30th
3 and continue on March 31st with brief but important
4 background witnesses, and then reconvene on April
5 14th for the purpose of preparing and reviewing
6 documents.

7 Mr. Pratte advances the position
8 as well that there's a need for the adjournment
9 for the request for clarification. I'm not going
10 to get into that but simply put, it's our position
11 that that's not an appropriate reason for the
12 adjournment. Mr. Mulroney is of course entitled
13 to know the rules before we begin, and you've made
14 that ruling and we know the rules as we speak, and
15 Mr. Schreiber is anxious for the Inquiry to
16 proceed.

17 THE COMMISSIONER: All right.

18 MR. AUGER: Subject to any
19 questions, those are my submissions.

20 THE COMMISSIONER: I have no
21 questions.

22 MR. WOLSON, Q.C.: Mr.
23 Commissioner, I would like to make a comment, if I
24 could please.

25 THE COMMISSIONER: Sure.

1 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WOLSON,
2 Q.C.:

3 MR. WOLSON, Q.C.: And it deals
4 with the issue of disclosure because I should put
5 on the record the issue regarding disclosure.

6 I can tell you, sir, that I have
7 been involved in other public inquiries where in
8 one instance a wrongful conviction, and in another
9 an injustice where reputations of lawyers have
10 been involved as well as police officers, and I
11 know the importance for all counsel to have all
12 material and be familiar with all disclosures.

13 The difficulty has been in this
14 Inquiry and in others. I think it's the
15 difficulty seen in, if not all, most inquiries.
16 Documents have to be obtained. And I'm not
17 critical of anybody because all have been diligent
18 in that regard. Third parties, government, we
19 have received a huge amount of material and your
20 counsel, as I said before, have not just been
21 burning the midnight oil on one or two days but
22 everyday, often seven days a week. So we
23 certainly understand the enormous difficulty in
24 terms of reviewing disclosures that we've received
25 and then getting them out to the parties, but I --

1 as Mr. Pratte has indicated, and he didn't do so
2 in a critical way, it's -- I say to you, it's a
3 very, very difficult task in any inquiry for the
4 parties to have full disclosure well in advance
5 and sometimes disclosures are given as the inquiry
6 is in progress.

7 I can tell you that -- I can speak
8 for Commission counsel and I'm sure for you -- we
9 don't want any injustice here at all. I want to
10 ensure that the parties are well prepared and are
11 able to have the benefit of any document that we
12 have or that -- documents that are relevant to
13 this Inquiry.

14 In the early days, if you were to
15 adopt my recommendation, a witness is called and
16 documents later become available that impact that
17 witness, I would find a way to remedy that
18 situation because I wouldn't want it said that
19 because a witness is called early that some party
20 has been disadvantaged. That's certainly not the
21 route that we want to take and we want to ensure
22 fairness, absolute fairness from the beginning to
23 the end of this Inquiry, and I know that you would
24 support that view for sure.

25 THE COMMISSIONER: I take it that

1 when you say what you just did, that you are
2 talking about the prospect of perhaps recalling a
3 witness if necessary.

4 MR. WOLSON, Q.C.: If we had to, I
5 would do that or find a way to remedy the
6 situation.

7 THE COMMISSIONER: Yes. Okay.

8 MR. WOLSON, Q.C.: I don't
9 anticipate that, and that's why the witnesses --
10 if you were to accept my recommendation -- that's
11 why the witnesses that we would call early, as I
12 said before, while important, certainly they in
13 part are for the unfolding of the history of the
14 matter, the Bear Head matter, that's before this
15 Inquiry.

16 I just wanted to speak to the
17 issue of disclosure. No one has made accusations,
18 but the problem is a very difficult one and one
19 faced in other inquiries.

20 Thank you, sir.

21 THE COMMISSIONER: All right.

22 Thank you.

23 MR. PRATTE: Sir, I'm sorry, may I
24 have one minute of your time?

25 THE COMMISSIONER: Absolutely.

1 --- REPLY BY/RÉPLIQUE PAR MR. PRATTE:

2 MR. PRATTE: As I said, my
3 application stands even if Mr. Vickery's position
4 and Mr. Auger's position on the ruling stands and
5 ---

6 THE COMMISSIONER: Oh, you've made
7 it clear; even if nothing changes.

8 MR. AUGER: The issue that my
9 friend, Mr. Wolson, just raised and the
10 possibility of having to recall witnesses, the
11 reality is that while he may say those are
12 background witnesses and so on, I have to look at
13 this ruling, these witnesses, from the perspective
14 of their relevance in the totality of this Inquiry
15 and of the propriety of the conduct gauged, for
16 example, from the *Financial Administration Act*,
17 and that goes back to 1984.

18 And what Commission counsel
19 intends to do with those witnesses may not be what
20 other parties will do. And I have to do that in
21 respect of every witness from every perspective as
22 it may inform your ultimate decision, whether it
23 be the 1985 *Ethics Code*, the Guide to the
24 Ministers, the *Income Tax Act*, the *Criminal Code*,
25 the *Excise Tax Act*, the *Financial Administration*

1 *Act, the Parliament of Canada Act.*

2 All I'm telling you, Mr.
3 Commissioner, is that if we were to adopt the --
4 if you were to adopt the request I'm making of
5 you, it would be unlikely you'd have to recall any
6 witnesses because we would have been able, from
7 our perspective, to put the evidence we've got so
8 far, the 25,000 pages or so, the evidence expected
9 from the 20-plus witnesses, in the context of the
10 overall exercise that you will be engaged in and
11 will have to report on ultimately.

12 So while I appreciate -- and I say
13 this with genuine appreciation -- Mr. Wolson's
14 attempt at balancing the equities here, as we
15 would say in the vernacular, in my respectful
16 submission, the potential harm to my client's
17 interests here balanced as against the need to
18 just start on the 30th while the balance tips in my
19 client's favour, in my respectful submission.

20 Grateful for giving me the
21 opportunity to address a couple of those points.

22 THE COMMISSIONER: Thank you.

23 We'll take a brief adjournment
24 until 10:45. I want to just gather my thoughts,
25 read my notes and I'll deliver a decision on the

1 application then.

2 Thank you.

3 THE REGISTRAR: All rise.

4 Veuillez vous lever.

5 --- Upon recessing at 10:23 a.m./

6 L'audience est suspendue à 10h23

7 --- Upon resuming at 10:42 a.m./

8 L'audience est reprise à 10h42

9 --- **RULING BY THE COMMISSIONER/DÉCISION PAR LE**
10 **COMMISSAIRE:**

11 THE COMMISSIONER: I have before
12 me an application by counsel for the Right
13 Honourable Brian Mulroney to adjourn the
14 commencement of this Inquiry from March 30th to
15 April 14th.

16 The application is supported by a
17 three-pronged argument, made very well as usual by
18 Mr. Pratte.

19 First of all, that the issue
20 revolving around the standards of conduct may not
21 be resolved by March the 30th.

22 Secondly, that the adjournment
23 would give more time that is required for
24 preparation.

25 And last of all, that the public

1 interest substantively would not be adversely
2 affected by the granting of the adjournment
3 sought.

4 Commission counsel, through Mr.
5 Wolson, has taken the position that the
6 commencement should be kept at March the 30th; that
7 we will proceed by hearing the evidence of several
8 witnesses who will give evidence of what is
9 referred to as "background evidence" that will
10 lead up to the answering of the questions that I
11 am required to answer by virtue of the mandate
12 given to me government.

13 Mr. Vickery, for the Government of
14 Canada, does not take a position with respect to
15 the application but has indicated that there could
16 be some difficulties encountered if we don't
17 complete our work on the day scheduled and that an
18 adjournment at the back end may be required.

19 Mr. Auger, on behalf of Mr.
20 Schreiber, supports the proposal made by
21 Commission counsel, Mr. Wolson. And Mr. Houston,
22 who is not here today, supports an adjournment as
23 requested by Mr. Pratte.

24 Let me say that this Inquiry is a
25 public inquiry involving the public interest.

1 While I recognize that it is somewhat unique in
2 terms of inquiring into the conduct of a former
3 Prime Minister of this country, it is still a
4 public inquiry and is being conducted in the
5 public interest.

6 So that is first and foremost in
7 my mind, but a close second comes with the
8 interests of Mr. Mulroney and the need to be fair
9 to him, and to ensure that a reputation is not
10 damaged by anything that this Commission does or
11 does not do.

12 As I indicated, the submission of
13 Mr. Pratte rests on three foundations. One is a
14 concern that the resolution of the standard of
15 conduct question won't be resolved. The
16 Commission received notice, I think, March the 25th
17 of the request -- was it March the -- okay, March
18 the 16th, I'm sorry, March, yes it's not March the
19 25th, March the 16th, that Mr. Pratte wanted me to
20 consider some issues raised by him with respect to
21 the ruling. I convened a hearing for that purpose
22 for Tuesday, March the 24th at 9:30 a.m. at 111
23 Sussex Drive.

24 Let me say in terms of delivering
25 reasons -- and Mr. Pratte mentioned from the

1 January 7th hearing that it wasn't until February
2 25th -- that my reasons were ready well in advance
3 of the 25th of February but we ran into
4 difficulties with editors and translators.

5 I'll just tell you the process is
6 that I write; it's edited by an English editor,
7 not substantively but it's edited. Then it goes
8 to French translation, it's translated; then it
9 goes to a French editor and the French translation
10 is edited, and that all takes time. And I don't
11 apologize for that because we have an *Official*
12 *Languages Act* that requires everything to be in
13 both official languages.

14 But what I intend to do here
15 because of the concern and out of an abundance of
16 concern for fairness to the parties, I will hear
17 the submissions on the application and if I am
18 convinced that clarification is required and ought
19 to be given, and there are two sides to that
20 argument, but I will give my decision orally one
21 way or the other and I propose to do so Thursday
22 of next week, which gives me one day to do the
23 decision.

24 So talk about burning midnight
25 oil. I'm prepared to do that and I've done it

1 before where I've worked right through a whole day
2 and a night to do it, but you'll have your
3 decision one way or the other and whatever way the
4 decision goes you would have -- if I decide to go
5 March the 30th, you'd have from Thursday right
6 through till Monday to consider your approach to
7 the evidence on this Inquiry which leads me to the
8 second argument that was made.

9 And that had to do with the volume
10 of evidence that is given, and I've heard what Mr.
11 Wolson has had to say in his proposal; we would
12 start on March the 30th and hear evidence from
13 certain witnesses who will testify about events
14 that lead up to the events that require
15 investigation by this Commission and answers to
16 questions raised.

17 My understanding of the process is
18 that with respect to each of the witnesses, all
19 counsel are given books that indicate what the
20 witness is expected to say, or if there's a
21 transcript from an interview that has been
22 recorded, a transcript, as well as the documents
23 to which reference will be made. I understand
24 that that is done so that counsel presumably are
25 prepared to deal with the evidence of witnesses.

1 In any event, the witnesses that
2 would be called first -- and I'm not sure who they
3 are, but I know the area that will be covered and
4 it is, indeed, background.

5 And I think with respect to the
6 third part, and that is the substantive public
7 interest, I've made my views known.

8 So I am going to dismiss the
9 application to adjourn to April the 14th. The
10 Commission will commence its hearings on the 30th
11 of March at 9:30 in the morning and we will
12 proceed as proposed by Mr. Wolson on behalf of the
13 Commission.

14 MR. WOLSON, Q.C.: Just one
15 comment, Mr. Commissioner.

16 You had indicated that we will be
17 preparing books as to what witnesses are going to
18 say. If I may just clarify that, sir.

19 If a witness has consented to an
20 interview, we would -- if the interview is
21 recorded, we would provide a recording.

22 THE COMMISSIONER: Yes.

23 MR. WOLSON, Q.C.: If the
24 interview is not recorded, and that's the option
25 of the witness, we will provide a will say from

1 that interview. That being said, the book that we
2 would provide would be a book of documents which
3 we may refer to or which we believe other counsel
4 may refer to. We don't intend, for instance, to
5 refer to every document.

6 THE COMMISSIONER: No.

7 MR. WOLSON, Q.C.: So that would
8 be the position that we'll take and provide
9 witnesses -- or provide counsel at least with
10 either a will say or a transcription.

11 THE COMMISSIONER: Yes, that's
12 what I meant to say and all I wanted to do is make
13 it clear that my counsel are doing everything in
14 their power to give full disclosure in a timely
15 way to counsel for all other parties with respect
16 to the documents involved with each of the
17 witnesses and the recorded statement, if one is
18 recorded, or a will say and that merely indicates
19 what is expected will be the evidence of a
20 witness.

21 You never know, of course, what a
22 witness is going to say, but in any event, it's my
23 view that accepting your proposal, Mr. Wolson, we
24 strike an appropriate balance in ensuring that the
25 interests of the public are attended to as well as

1 all of the principles of natural justice and
2 fairness to all of the parties.

3 Thank you.

4 THE REGISTRAR: All rise.
5 Veuillez vous lever.

6 The hearing is adjourned.

7 --- Upon adjourning at 10:53 a.m./

8 L'audience est ajournée à 10h53

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Sean Prouse a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Sean Prouse, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Sean Prouse, CR