

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

Public Hearing

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Jeffrey James Oliphant

Commissaire

Held at:

Bytown Pavillion
Victoria Hall
111 Sussex Drive
Ottawa, Ontario

Wednesday, April 22, 2009

Tenue à :

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

le mercredi 22 avril 2009

APPEARANCES / COMPARUTIONS

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Mr. Paul B. Vickery Mr. Yannick Landry Me Philippe Lacasse	Attorney General of Canada
Mr. Robert E. Houston, Q.C.	Mr. Fred Doucet
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1 Ottawa, Ontario / Ottawa (Ontario)
2 --- Upon resuming on Wednesday, April 22, 2009
3 at 9:40 a.m. / L'audience reprend le mercredi
4 avril 2009 à 9 h 40
5 17325 COMMISSIONER OLIPHANT: Good morning,
6 counsel. Be seated, please.
7 PREVIOUSLY AFFIRMED: HARRY SWAIN /
8 SOUS LA MÊME DÉCLARATION SOLENNELLE / HARRY SWAIN
9 17326 COMMISSIONER OLIPHANT: Mr. Battista.
10 17327 MR. BATTISTA: Good morning.
11 17328 Simply for the benefit of everyone,
12 Commissioner, we are going to be proceeding with the
13 completion of Mr. Swain's testimony today, then after
14 that it will be followed by testimony of Mr. Hladun.
15 That will be Mr. Roitenberg.
16 17329 As all the parties know, and probably
17 most people here, Mr. MacKay's testimony for this
18 afternoon will be heard on another day. We had some
19 difficulties with getting documents to him through the
20 courier service, so that will be done for another day.
21 EXAMINATION: HARRY SWAIN BY MR. BATTISTA (cont'd) /
22 INTERROGATOIRE : HARRY SWAIN PAR Me BATTISTA (suite)
23 17330 MR. BATTISTA: Good morning,
24 Mr. Swain.
25 17331 MR. SWAIN: Good morning.

1 17332 MR. BATTISTA: Can you hear me well
2 now?

3 17333 MR. SWAIN: Thank you.

4 17334 MR. BATTISTA: Okay. I just want to
5 complete with Tab 5.

6 17335 I had mentioned yesterday we will
7 come back to Tab 1. The document at Tab 1 you will
8 note is not dated, but if we go to Tab 5, and simply if
9 we look at the first line, this is the document in
10 1987, September '87, and yesterday we saw it was a
11 modification of the 1986 proposal.

12 17336 It says:
13 "It would appear that the
14 proposal by Thyssen to build a
15 factory on Cape Breton Island is
16 still active."

17 17337 If we go to Tab 1, it's a memorandum
18 for the Prime Minister. You are, I would assume,
19 somewhat involved in the preparation of this document,
20 and it says:
21 "The proposal by Thyssen to
22 build a factory on Cape Breton
23 Island is still active."

24 17338 And then it goes on and some of the
25 concerns raised or outlined in Tab 5 are similar to the

1 ones in Tab 1.

2 17339 Is it fair to say that this memo
3 refers to that period of time, 1987?

4 17340 MR. SWAIN: Most likely.

5 17341 MR. BATTISTA: Okay. Thank you.

6 17342 On Tab 2 there is something I missed
7 yesterday and I would simply like to come back to it at
8 this point.

9 17343 In the third paragraph reference is
10 made to Mr. Doucet and Mr. McMillan as supporters who
11 are encouraging the Prime Minister to favour the 1986
12 proposal. You remember yesterday when we covered this,
13 this was 1986.

14 17344 Who is Mr. Doucet that you are
15 referring to in that memo?

16 17345 MR. SWAIN: I presume that is Fred
17 Doucet.

18 17346 MR. BATTISTA: Okay. At the time
19 what was his function?

20 17347 MR. SWAIN: He worked in the Prime
21 Minister's Office.

22 17348 MR. BATTISTA: And Mr. McMillan?

23 17349 MR. SWAIN: Charlie McMillan, an
24 economist who also worked in the Prime Minister's
25 Office.

1 17350 MR. BATTISTA: Okay. Do you know
2 what the function of Mr. Fred Doucet was at the time?

3 17351 MR. SWAIN: No, just that he was a
4 senior officer in PMO.

5 17352 MR. BATTISTA: Now, one final note on
6 this. Do you see that it signed or initialled by
7 Mr. Fowler, the document, the memo, and the copy that
8 is the memo prepared for Mr. Tellier is not signed.

9 17353 Would you have any indication if this
10 memo actually got to the Prime Minister?

11 17354 MR. SWAIN: At this stage, no.

12 17355 MR. BATTISTA: Okay.

13 17356 MR. SWAIN: I would not know.

14 17357 MR. BATTISTA: If it was received by
15 the Prime Minister, how would you be able to identify
16 that?

17 17358 MR. SWAIN: Well, first it would have
18 Tellier's distinctive signature on it.

19 17359 MR. BATTISTA: Yes.

20 17360 MR. SWAIN: And then it would
21 probably have some registry notes on the front page, a
22 stamp received or something to that effect.

23 17361 MR. BATTISTA: Okay. So is it fair
24 to say that this is a copy? An original may have gone
25 to the Prime Minister but from this document you

1 wouldn't be able to affirm that?

2 17362 MR. SWAIN: Correct.

3 17363 MR. BATTISTA: Okay.

4 17364 I am going to now take you to Tab 9.

5 17365 This is a memorandum prepared by you

6 for the Hon. Mr. Michael Wilson. Now, this document is

7 a document that has a date stamped on it on the top

8 right-hand side, December 4, 1992.

9 17366 By that time you were Deputy Minister

10 of Industry. Correct?

11 17367 MR. SWAIN: Yes.

12 17368 MR. BATTISTA: So now you were

13 involved again in the Bear Head matter?

14 17369 MR. SWAIN: Yes.

15 17370 MR. BATTISTA: Yes. So if we look at

16 page 1, second paragraph:

17 "The cancellation of DND's

18 multirole combat vehicle project

19 and the announcement of the

20 directed procurement of links

21 replacement vehicles from

22 General Motors Diesel Division

23 has forced Thyssen to rethink

24 their approach."

25 17371 You are indicating to the Minister

1 right now that there is a new proposal that is coming
2 forth from the Thyssen people or Bear Head people and
3 that this 1992 approach is a modification of a previous
4 one?

5 17372 MR. SWAIN: Yes.

6 17373 MR. BATTISTA: Okay. Page 2,
7 paragraph 1:

8 "In the spring of this year..."

9 17374 So we are in 1992:

10 "... Bear Head Industries
11 presented a proposal to DND
12 seeking assistance in the
13 development of a new family of
14 armoured vehicles focused on
15 peacekeeping missions. DND had
16 no operational requirement and
17 joined with ISTC in voicing
18 concern that there were
19 insufficient export markets to
20 support the proposal. Bear Head
21 Industries was informed by DND
22 and the Prime Minister's Office
23 that DND would not support the
24 proposal. At this time both DND
25 and PMO told BHI..."

1 17375 Bear Head Industries:
2 "... that the proposal would be
3 more appropriately addressed to
4 you as Minister of ISTC."
5 17376 That's correct? That's what happened
6 at that point?
7 17377 MR. SWAIN: Yes, sir.
8 17378 MR. BATTISTA: So there was a
9 proposal that was prepared in the spring of 1992 and
10 that was advanced to the Minister at that point.
11 Correct?
12 17379 MR. SWAIN: I believe so.
13 17380 MR. BATTISTA: Okay. Now, to better
14 understand this proposal I'm going to suggest that we
15 do a bit of background. In this memo that you prepared
16 you also prepared a sort of chronology of the Bear Head
17 Project as it stood in 1992.
18 17381 Is that correct?
19 17382 MR. SWAIN: Yes.
20 17383 MR. BATTISTA: And if we go to
21 page -- after page 4, the document at the bottom, 6 of
22 28 --
23 17384 MR. SWAIN: Yes.
24 17385 MR. BATTISTA: -- "Bear Head
25 Industries Summary and Chronology", maybe we can go

1 through it together.

2 17386 This is a document that you prepared
3 or was prepared for you in order to assist you for the
4 memorandum to the Minister?

5 17387 MR. SWAIN: Yes, prepared by staff.
6 You will see routing slips later on that show the
7 drafters.

8 17388 MR. BATTISTA: Okay. This was
9 annexed to your memo to the Minister?

10 17389 MR. SWAIN: Yes.

11 17390 MR. BATTISTA: So 1985-1986
12 negotiations ongoing for UIP, for Understanding in
13 Principle.

14 17391 So that would be the first, the
15 initial debut of this project?

16 17392 MR. SWAIN: It was certainly known to
17 officials at that time. The UIP was not, to most
18 officials anyway.

19 17393 MR. BATTISTA: Okay. Can you
20 elaborate on that?

21 17394 MR. SWAIN: I think what happened was
22 that Bear Head became aware of bureaucratic resistance
23 to their proposal and decided to deal directly with the
24 decision-makers.

25 17395 MR. BATTISTA: Okay. This was in

1 1985-1986?

2 17396 MR. SWAIN: My recollection is that
3 it was more like 1986, but I can't remember.

4 17397 MR. BATTISTA: So if we go back to
5 the documents I referred to yesterday, for example Tab
6 2, 1986 was the first formal proposal if we want.

7 17398 MR. SWAIN: Yes.

8 17399 MR. BATTISTA: So you are saying it
9 would be more accurate to say it was 1986?

10 17400 MR. SWAIN: Memory fails, frankly.

11 17401 MR. BATTISTA: Okay. Fine. That's
12 fair.

13 17402 The next inscription is February '87:
14 "Thyssen backs away after
15 unfavourable reading on
16 requested blanket export permits
17 and adverse publicity."

18 17403 I would presume that this refers to
19 what we looked at yesterday when you prepared the
20 speaking points for the Minister and the controversy
21 that had occurred in the press concerning the Thyssen
22 proposal?

23 17404 MR. SWAIN: Yes, the Simpson article
24 in the Globe and Mail.

25 17405 MR. BATTISTA: Exactly.

- 1 17406 MR. SWAIN: Yes.
- 2 17407 MR. BATTISTA: So Thyssen backed away
3 after that and sort of withdrew its proposal at that
4 point?
- 5 17408 MR. SWAIN: Yes.
- 6 17409 MR. BATTISTA: We now go to June 1988
7 and there is a Cape Breton investment tax credit
8 application that is received.
- 9 17410 I would assume that that means Bear
10 Head Industries on behalf of Thyssen made such a
11 request?
- 12 17411 MR. SWAIN: That would be correct.
- 13 17412 MR. BATTISTA: We have September
14 1988, a UIP is signed between Bear Head and the
15 Government of Canada as represented by Ministers of
16 National Defence, ACOA and DRIE?
- 17 17413 That's correct?
- 18 17414 MR. SWAIN: That's correct.
- 19 17415 MR. BATTISTA: And we have heard
20 evidence of that yesterday. You were here yesterday
21 when Mr. Alford was testifying.
- 22 17416 MR. SWAIN: Yes.
- 23 17417 MR. BATTISTA: December 1988, the
24 business plan is submitted but is found to be
25 unacceptable. That's correct?

1 17418 So we are in 1988.

2 17419 MR. SWAIN: Correct.

3 17420 MR. BATTISTA: July of 1989, a
4 business plan submitted, still unacceptable to ISTC.
5 That's Industry Science and Technology?

6 17421 MR. SWAIN: Yes.

7 17422 MR. BATTISTA: You were not there at
8 that point. Correct?

9 17423 MR. SWAIN: No, I was not.

10 17424 MR. BATTISTA: You had left by 1987?

11 17425 MR. SWAIN: Yes, sir.

12 17426 MR. BATTISTA: Okay. The fall of
13 1990 Bear Head Industries, sponsored by ACOA, submits
14 proposal for establishing a plant in Nova Scotia in
15 return for directed procurements of 250 light armoured
16 vehicles.

17 17427 You were not there, but you were made
18 aware of this information at that time?

19 17428 MR. SWAIN: Yes, sir.

20 17429 MR. BATTISTA: July '91, BHI is
21 informed that the proposal is not supported?

22 17430 That's correct?

23 17431 MR. SWAIN: Mm-hm.

24 17432 MR. BATTISTA: In August '91 BHI
25 offers to move proposed plant to Trenton Works Lavalin

1 or greenfield sites in Pictou County, Nova Scotia.

2 17433 Were you aware of this? I mean when
3 you came back were you made --

4 17434 MR. SWAIN: When I came back to the
5 Industry Department in --

6 17435 MR. BATTISTA: Ninety-two.

7 17436 MR. SWAIN: -- the fall of '92, I was
8 briefed on this.

9 17437 MR. BATTISTA: Okay.

10 17438 MR. SWAIN: So these items that we
11 are looking at are reported to me the same way they
12 were reported to you.

13 17439 MR. BATTISTA: Okay. And from an
14 historical perspective, in August '91 Minister Wilson
15 suggested to Bear Head Industries that they deal
16 directly with Trenton Works Lavalin.

17 17440 I understand this was a company that
18 was established in that area and the idea was to get
19 Bear Head Industries to try and see if they could do
20 something with them rather than trying to get a sort of
21 sole source contract on their own?

22 17441 MR. SWAIN: Yes. The Trenton Works
23 were an ongoing industrial disaster in Nova Scotia, and
24 there were many efforts to find a resolution to that.
25 This was thought to be possibly one of them.

1 17442 MR. BATTISTA: Okay. So Bear Head
2 was directed to sort of try and work with them and see
3 if they could do something there in terms of industrial
4 development?

5 17443 MR. SWAIN: Yes, apparently.

6 17444 MR. BATTISTA: Okay.

7 17445 In April '92 DND announces
8 cancellation of multirole combat vehicle program.

9 17446 This is what you are referring to in
10 your memo in 1992.

11 17447 MR. SWAIN: Yes.

12 17448 MR. BATTISTA: In July '92 the Prime
13 Minister's Office and DND inform Bear Head Industries
14 the MOU proposal better suited to Minister Wilson's
15 portfolio. This directly refers to what you are
16 talking about in the letter.

17 17449 And then in September '92, proposal
18 resurfaces addressed to Province of Québec and FORD-Q
19 and this is what you are addressing in that memo at Tab
20 9.

21 17450 MR. SWAIN: Yes.

22 17451 MR. BATTISTA: Now, I am going to
23 take you to Tab 6 so that we can situate the proposal
24 that came in '92 by understanding what happened in
25 1990.

1 17452 At Tab 6 I will refer you to simply
2 two paragraphs. You will find that paragraphs 16 and
3 17 of Tab 6 is a letter accompanied by a document
4 prepared by Mr. Fowler.

5 17453 Tab 6 is a December 7, 1990 letter to
6 Mr. Lesseau from Mr. Fowler?

7 17454 You are following me on that?

8 17455 MR. SWAIN: I am.

9 17456 MR. BATTISTA: Okay. An annex to
10 that document is December 5, 1990, and I would imagine
11 this is a sort of memo background and analysis of the
12 proposal?

13 17457 The title is "DND portion of the ACOA
14 coordinated paper on Thyssen proposal"?

15 17458 MR. SWAIN: Yes.

16 17459 MR. BATTISTA: It's a sort of
17 analysis and a rather in-depth analysis of it by --
18 simply by the volume.

19 17460 I would direct you to -- if you see
20 there are handwritten page numbers at the bottom --
21 page 10.

22 17461 MR. SWAIN: Yes.

23 17462 MR. BATTISTA: Paragraph 16:
24 "The TH495 suggested by Thyssen
25 as an option suitable for

1 discussion once the directed
2 contract is let is a conceptual
3 vehicle existing on paper only.
4 It eventually might promise to
5 satisfy all the MRCV
6 requirements. Intended as a
7 tracked vehicle, it would offer
8 reasonable mobility over all
9 terrain. Its proposed
10 dimensions and basic weight
11 would indicate a suitability for
12 the C130 Hercules aircraft. The
13 suggested family environs would
14 meet the MRCV principal
15 requirements for a
16 reconnaissance vehicle, a
17 directed fire armoured vehicle
18 and/or infantry carrier.
19 Furthermore, it has been
20 suggested that the TH495 would
21 meet current and anticipated
22 projected requirements. Given
23 the advertised characteristics
24 of the TH495, it is judged that
25 the Thyssen vehicle could enter

StenoTran

1 with good prospects, subject to
2 price, the opening competition
3 in the period of '94-'95 to
4 satisfy the Canadian MRCV
5 requirements."

6 17463

Paragraph 17:

7 "The Thyssen proposal however
8 would have us begin planning to
9 acquire the Fox and then switch
10 plans to accommodate the TH495.
11 The TH495 is still on the
12 drawing board and development
13 timeline for the TH495 is
14 optimistic, in our view. Given
15 that quantity, price and
16 specifications would be subject
17 to negotiations, such a proposal
18 makes little sense. It would
19 double the disruption in the
20 MRCV project and would require
21 that we agree to purchase an
22 unknown quantity of unproven
23 vehicles for an unspecified
24 price. Clearly we are unable to
25 calculate costs of this part of

1 the proposal."

2 17464 That was the analysis made of the
3 proposal in 1990. Correct?

4 17465 MR. SWAIN: Yes.

5 17466 MR. BATTISTA: That proposal entailed
6 we are going to produce something which on paper looks
7 good and you will be able to acquire that once you buy
8 the Fox vehicles which DND thought they didn't need.

9 17467 Is that correct? That's a fair
10 evaluation?

11 17468 MR. SWAIN: Yes.

12 17469 MR. BATTISTA: Go back to Tab 9 now
13 to sort of understand the new proposal which is to
14 replace the 1990 proposal.

15 17470 On page 2, the second, third and
16 fourth paragraphs:

17 "In the late summer..."

18 17471 So we are in 1992:
19 "... the proposal resurfaced
20 addressed to the Minister
21 Responsible for the Federal
22 Offices of Regional Development
23 for Québec (FORD-Q). This
24 proposal is not significantly
25 different than those which have

1 been rejected previously. The
2 proposal has two phases. In
3 Phase 1 four variant prototypes
4 of the Thyssen 495 multipurpose
5 base armoured vehicle would be
6 developed. Thyssen would
7 provide \$13 million in cash and
8 existing technology to be
9 transferred from Germany valued
10 by them at \$40 million. The
11 federal government would provide
12 an interest-free forgivable loan
13 of \$117 million. The provincial
14 government would provide a
15 development facility at no cost
16 to the company. Phase 2
17 establishment of the
18 manufacturing facility would
19 require a further interest-free
20 forgivable loan from the federal
21 government of \$56 million. The
22 province would provide a
23 production facility at no cost
24 to the company and the company
25 would provide an additional \$12

1 million cash. DND has been
2 asked to consider support
3 through testing programs and
4 assignment of engineering
5 resources."
6 17472 So this is the proposal in 1992.
7 Correct?
8 17473 MR. SWAIN: Yes.
9 17474 MR. BATTISTA: It is to develop --
10 the purpose is to develop the TH495 at that point and
11 to have it tested by the government?
12 17475 MR. SWAIN: Yes.
13 17476 MR. BATTISTA: Right? What we also
14 have here is that this vehicle now is a peacekeeping
15 vehicle. Correct?
16 17477 That's how it's being presented?
17 17478 MR. SWAIN: Yes.
18 17479 MR. BATTISTA: And we are dealing
19 specifically only with the TH495 prototype. We are
20 not -- there is no precondition to buy another vehicle
21 before getting to that one?
22 17480 MR. SWAIN: That's correct.
23 17481 MR. BATTISTA: Okay. Now, we have
24 seen some of the cost concerns outlined in these
25 paragraphs, the amount of money that the government was

1 required to invest for the first phase. So these
2 amounts were those that you had calculated at the time?

3 17482 We are talking \$117 million and then
4 an eventual \$56 million additional investment by the
5 federal government with this proposal?

6 17483 MR. SWAIN: Yes. Yes.

7 17484 MR. BATTISTA: You were going to say
8 something else?

9 17485 MR. SWAIN: No, just the staff who
10 prepared this would have prepared it from the document
11 supplied by Thyssen Bear Head.

12 17486 MR. BATTISTA: Correct. And one
13 would presume that they were probably more detailed.
14 These numbers came from --

15 17487 MR. SWAIN: This is a summary.

16 17488 MR. BATTISTA: Exactly, okay.

17 17489 Now, this proposal led to the
18 creation of an Interdepartmental Task Force. Correct?

19 17490 MR. SWAIN: Yes.

20 17491 MR. BATTISTA: Now, if we go little
21 further in the document you will find -- we have some
22 transmission forms that follow a second copy of the
23 document you have. We have a memorandum, it doesn't
24 have a date, but it is to the Hon. Michael Wilson and
25 it is from Mr. Bannigan.

1 17492 MR. SWAIN: Yes.

2 17493 MR. BATTISTA: Do you have that?

3 17494 MR. SWAIN: Yes. Wait a minute. I

4 have one to Wilson from me --

5 17495 MR. BATTISTA: Yes, keep going.

6 17496 MR. SWAIN: And then another one.

7 17497 MR. BATTISTA: The copies are

8 doubled.

9 17498 MR. SWAIN: Lots of copies.

10 17499 MR. BATTISTA: Yes.

11 17500 MR. SWAIN: After the transmission

12 slips there is one from Bannigan to Wilson --

13 17501 MR. BATTISTA: Correct.

14 17502 MR. SWAIN: -- with a slash mark

15 across it.

16 17503 MR. BATTISTA: That's right. Okay?

17 17504 MR. SWAIN: Yes.

18 17505 MR. BATTISTA: If we look at that

19 document --

20 17506 MR. SWAIN: That would indicate that

21 it was prepared but not used.

22 17507 MR. BATTISTA: It was not used?

23 17508 MR. SWAIN: No.

24 17509 MR. BATTISTA: Okay. So this was a

25 memo that Mr. Bannigan was preparing to send to

1 Mr. Wilson, but in fact never got to him?

2 17510 MR. SWAIN: It was probably overtaken
3 by events in some fashion.

4 17511 MR. BATTISTA: Okay. But could we
5 nonetheless rely on it sort of for background
6 understanding?

7 17512 MR. SWAIN: Yes, we can.

8 17513 MR. BATTISTA: Okay. So at page 3 of
9 that document we can see that at the request of the
10 Privy Council Office on September 29, 1992, FORD-Q
11 hosted a meeting on September 29, 1992 of
12 representatives from ISTC, DND, External Affairs and
13 International Trade Canada, Department of Finance,
14 Treasury Board Secretariat and PCO in order to put in
15 place an interdepartmental task group to carry out
16 analysis of the BHI proposal.

17 17514 That's what happened at that point?
18 You were there by the time?

19 17515 MR. SWAIN: Yes.

20 17516 MR. BATTISTA: Okay. And at that
21 point the recommendation was to proceed with this
22 analysis.

23 17517 Is that correct?

24 17518 MR. SWAIN: PCO directed that an
25 analysis be done.

1 17519 MR. BATTISTA: Okay. And I take it
2 from -- we see that this is referencing a September
3 29th meeting. Your memo is December '94.

4 17520 I mean, you are referring in your
5 memo --

6 17521 MR. SWAIN: Ninety-two.

7 17522 MR. BATTISTA: -- to that task force
8 that had been created September 29th.

9 17523 MR. SWAIN: Yes.

10 17524 MR. BATTISTA: So one could
11 presume -- correct me if I'm wrong -- that the numbers
12 you have here are probably the numbers that came out
13 from that task force?

14 17525 MR. SWAIN: I would believe so.

15 17526 MR. BATTISTA: Okay. Now, in this
16 memo you raise concerns, and if we go to page 4 you
17 outline the major concerns for this proposal.

18 17527 MR. SWAIN: Page 4 of...?

19 17528 MR. BATTISTA: Of your memo, I'm
20 sorry. So we are back to --

21 17529 MR. SWAIN: The first one.

22 17530 MR. BATTISTA: -- the first document,
23 yes, I'm sorry. Thank you. And for my colleagues
24 also.

25 17531 So page 4 of your memo to the

1 Minister.

2 17532 On page 4 you outline the major
3 concerns and what we see, the concerns deal with the
4 domestic market, the question of it's far too small so
5 there is no real demand domestically.

6 17533 Company's export market projections
7 appear to be excessively optimistic at that point.

8 17534 MR. SWAIN: Yes.

9 17535 MR. BATTISTA: No comprehensive
10 business plan. This is something that is recurrent.
11 17536 And financial details are sketchy.
12 17537 Those are the major concerns that are
13 raised.

14 17538 MR. SWAIN: Yes.

15 17539 MR. BATTISTA: At this point the
16 quality of the TH495 vehicle is not in issue. Is that
17 correct?

18 17540 MR. SWAIN: Recall that this is
19 written by the Department of Industry, so it looks at
20 the kind of arguments that the Industry Department
21 would look at.

22 17541 DND would write another one. Foreign
23 Affairs would write another one. Each of them would
24 have a different perspective on the proposal.

25 17542 MR. BATTISTA: Okay. So it would not

1 then be inhabitual to not find comments in an Industry
2 memo concerning matters of the quality of the product
3 or export issues?

4 17543 MR. SWAIN: They might come up in a
5 briefing. If the Minister expressed an interest in
6 knowing more about this, there might be an oral
7 briefing in which case the reasoning of the whole
8 interdepartmental committee might be brought to bear.
9 They weren't in this note.

10 17544 MR. BATTISTA: Okay. I will take you
11 to Tab 10.

12 17545 So Tab 9 was a December '92 memo.
13 Tab 10 is a July 27, 1993 memo. It is an e-mail from
14 Ms Lafrance, Joanne Lafrance, to Bruce Deacon and it
15 also contains a memorandum prepared by you for the Hon.
16 Jean Charest, who was then I take it Industry, Science
17 and Technology Minister?

18 17546 MR. SWAIN: Yes. I think they were
19 called Industry and Science Canada at that point,
20 but -- the names kept changing.

21 17547 MR. BATTISTA: Okay. Fine. So this
22 memo on the first document in Tab 10 requests that
23 Mr. Charest be briefed basically on the history of
24 Thyssen, what is Thyssen, what is this all about, and
25 specifically also on two areas: Grande Anse in Saguenay

1 and Grosse Kokuna (ph) .

2 17548 Do you recall why that was?

3 17549 MR. SWAIN: No, I don't, but I could

4 guess. I could guess that --

5 17550 MR. BATTISTA: Or at least explain to

6 us what that would be for.

7 17551 MR. SWAIN: There had been a

8 suggestion that the plant could be built in one of

9 those places.

10 17552 MR. BATTISTA: Okay. And so you were

11 the one who prepared the memo for the Minister to give

12 him the background on this?

13 17553 MR. SWAIN: No, Helmut Zenkl wrote

14 the memorandum and I signed it.

15 17554 MR. BATTISTA: Okay. So the same

16 principle as what Mr. Tellier uses.

17 17555 MR. SWAIN: Yes.

18 17556 MR. BATTISTA: Other people would

19 prepare it for him --

20 17557 MR. SWAIN: Sure.

21 17558 MR. BATTISTA: So in this case the

22 document is prepared for you but it is something

23 obviously you read at the time.

24 17559 MR. SWAIN: Correct.

25 17560 MR. BATTISTA: Now, this memo was

1 prepared because Mr. Charest was scheduled to meet with
2 Mr. Corbeil who was also Minister at the time.

3 17561 That's correct?

4 17562 MR. SWAIN: Yes, correct.

5 17563 MR. BATTISTA: And this is habitual
6 standard procedure. Two Ministers are going to meet.
7 This is a new file. They are not aware of the history
8 of this. They ask their senior bureaucrats to prepare
9 something to feed them and fill them in on this?

10 17564 MR. SWAIN: Yes.

11 17565 MR. BATTISTA: Okay. And that is
12 what the purpose of this memorandum was for?

13 17566 MR. SWAIN: Yes.

14 17567 MR. BATTISTA: Okay. I will take you
15 to page 2, paragraph 2.

16 17568 So you are filling him in on what
17 happened in '92.

18 "In the autumn of 1992 ISTC led
19 an interdepartmental working
20 group which was charged by PCO
21 to provide an assessment of
22 BHI's market projections. The
23 findings of this study did not
24 support the Thyssen projections.
25 The result of the

1 interdepartmental analysis was
2 provided to FORD-Q in October
3 '92. In March '93 officials of
4 the Province of Québec met with
5 Thyssen in Germany. IST
6 officials did not participate on
7 the basis that nothing had
8 changed since the 1992
9 interdepartmental market
10 assessment and that global
11 overcapacity in the production
12 of military vehicles continues.
13 Furthermore, the establishment
14 of a vehicle plant would be in
15 competition with the Diesel
16 Division General Motors in
17 London who built the LAV 25
18 vehicles for export markets."

19 17569

it goes on:

20 "However, subsequent to the
21 Québec provincial officials
22 visit in March '93 the
23 interdepartmental committee was
24 asked to revisit the issue."

25 17570

So what sparked the re-examination of

1 this matter was that the Québec government seemed to
2 now show some interest for this project.

3 17571 Is that a fair assessment?

4 17572 MR. SWAIN: Yes.

5 17573 MR. BATTISTA: So that is why the
6 matter is brought to your attention again?

7 17574 MR. SWAIN: Yes.

8 17575 MR. BATTISTA: I will take you to Tab
9 11.

10 17576 This is another memo and this one is
11 prepared by you for Mr. Charest. There is no date on
12 this except that what we know is that it is prepared
13 for his meeting with people from Thyssen August 26,
14 '93. So presumably it was written a few days before
15 that.

16 17577 MR. SWAIN: Yes.

17 17578 MR. BATTISTA: Is that correct?

18 17579 MR. SWAIN: That would be correct.

19 17580 MR. BATTISTA: And again, this
20 document is prepared by Mr. Zenkl?

21 17581 MR. SWAIN: Yes.

22 17582 MR. BATTISTA: And obviously signed
23 by you?

24 17583 MR. SWAIN: Correct.

25 17584 MR. BATTISTA: Now, the content of

1 this document I will suggest to you is similar to the
2 document we found at Tab 10, except that this one has a
3 recommendation and I will read it to you:

4 "I recommend that you listen and
5 encourage your visitor to
6 continue to work with ISC
7 officials in identifying
8 initiatives which are not
9 related to the manufacture of
10 military vehicles and, hence,
11 minimize disruption in the
12 industry."

13 17585 That was your recommendation at that
14 point?

15 17586 MR. SWAIN: Yes, sir.

16 17587 MR. BATTISTA: Can you talk to us
17 about that or can you elaborate a little more?

18 17588 MR. SWAIN: Well, at the time the
19 Government of Canada had a number of industrial subsidy
20 programs, but in general we tried to look for things
21 which were genuinely new, let's say a new greenfield
22 proposition or a new product that might be brought to
23 the country.

24 17589 On the other hand, we tried not to
25 subsidize proposals which work to the disadvantage of

1 existing Canadian manufacturers. This was a case I
2 guess where regional development issues were very
3 important to a series of ministers through the whole
4 history of this and where the cost would probably be
5 borne by a workforce in General Motors Diesel Division
6 in London, Ontario.

7 17590 We tried to stay away from those
8 kinds of propositions.

9 17591 MR. BATTISTA: Okay. We see here
10 then you prepared a series of talking points for the
11 Minister.

12 17592 Is it fair to say -- you have had an
13 opportunity to sort of review these. Is it fair to say
14 that what you have just told us is a little bit in
15 keeping with what is written here in terms of
16 encouraging them to enter into other forms of
17 activities?

18 17593 MR. SWAIN: Yes.

19 17594 MR. BATTISTA: Discouraging them from
20 being in the military field?

21 17595 MR. SWAIN: You will recall that we
22 were in --

23 17596 MR. BATTISTA: Nineteen ninety-three,
24 August 1993.

25 17597 MR. SWAIN: Yes. We are in an

1 election campaign or just before it --

2 17598 MR. BATTISTA: Yes. Ms Kim Campbell
3 had become Prime Minister in June.

4 17599 MR. SWAIN: Yes.

5 17600 MR. BATTISTA: And an election was
6 held sometime in October.

7 17601 MR. SWAIN: In October.

8 17602 MR. BATTISTA: Yes.

9 17603 MR. SWAIN: And the humble
10 subjunctive tends to get used even more than normal in
11 those circumstances.

12 17604 MR. BATTISTA: So that is what you
13 get here?

14 17605 MR. SWAIN: Yes.

15 17606 MR. BATTISTA: Okay. But simply --
16 so just for the record, basically what the talking
17 points refer to is recognizing that Thyssen has
18 something to offer, applauding the company's efforts to
19 want to bring industry here, but discourage them from
20 military activity and try to sort of direct them to
21 other areas.

22 17607 Is that fair?

23 17608 MR. SWAIN: That's correct.

24 17609 MR. BATTISTA: Okay. Tab 12. This
25 is a memo to another minister now. So you were writing

1 memos to Mr. Wilson and you were writing memos to
2 Mr. Charest, and now you are writing memos to
3 Mr. Manley. Right?

4 17610 MR. SWAIN: That's correct.

5 17611 MR. BATTISTA: This one is dated
6 December 15, 1993, so he would have assumed his new
7 functions just a little over a month before this.

8 17612 MR. SWAIN: That's correct.

9 17613 MR. BATTISTA: I will take you to
10 page 3 or 4. What you have here at the bottom of page
11 3 and four of this memo is sort of analysis of the
12 current company proposal for the Minister. So I will
13 read it with you:

14 "In August and September '93 the
15 company once again approached
16 the government with a proposal
17 to establish a facility to
18 manufacture tracked light
19 military vehicles in East
20 Montréal or at some other
21 location in Canada acceptable to
22 the government. Proposal
23 elements are: that DND test and
24 evaluate two existing TH495
25 tracked vehicle prototypes in

1 Canada; design, develop and
2 build a prototype, one variant
3 of a family of eight models in
4 an existing facility in Canada;
5 see if government's assistance
6 is provided and markets are
7 encouraging to commence
8 production of the family of
9 TH495 vehicles in Canada for
10 export markets"

11 17614

You refer then:

12 "In early September '93
13 government officials were
14 instructed to reopen the file on
15 the following basis: DND
16 officials would commence
17 negotiations on the potential
18 service contract with the
19 company for a test and
20 evaluation program for two
21 prototype vehicles provided that
22 it was on a full cost recovery
23 basis; discussions were
24 initiated but subsequently
25 suspended pending direction from

StenoTran

1 the new government."

2 17615 So that was the election period you
3 were talking about:

4 "Industry Canada would lead an
5 interdepartmental team to
6 examine the company's most
7 recent proposal with an initial
8 focus on the market aspects."

9 17616 That's correct?

10 17617 MR. SWAIN: That's correct.

11 17618 MR. BATTISTA: When we talk about the
12 interdepartmental team, that's the one that was created
13 after the Québec government in March of '93 indicated a
14 renewed interest in this matter?

15 17619 MR. SWAIN: It would be the same
16 group of people.

17 17620 MR. BATTISTA: Okay. Now, on page 5
18 we read your proposed position and there is a
19 handwritten note that we will come to.

20 17621 So your proposed position to the
21 Minister is we recommend that you be noncommittal.
22 That's correct?

23 17622 So we are adopting the language that
24 was adopted with the previous Minister as well?

25 17623 MR. SWAIN: Yes.

1 17624 MR. BATTISTA: And you raise the
2 concern of the policy not to use public funds to create
3 a competitor. The market has difficulty sustaining
4 one, and it would be difficult to sustain two; and that
5 Thyssen should be encouraged to examine other
6 prospects. Right?

7 17625 MR. SWAIN: Yes.

8 17626 MR. BATTISTA: Now, you have a
9 handwritten note and I will read it to you. I assume
10 this is your handwritten note?

11 17627 MR. SWAIN: Yes, it is.

12 17628 MR. BATTISTA:
13 "Thyssen's persistence in this
14 folly has been encouraged by far
15 too many Ministers each of whom
16 was willing to subsidize
17 production in some desperate
18 place at the expense of London.
19 The Forces do not need their
20 hardware and Canada hardly needs
21 a second exporter."

22 17629 Can you explain the purpose of that
23 handwritten note?

24 17630 MR. SWAIN: My feeling at the time
25 was that the note was a little bit anodyne and the

1 proposed position perhaps mild. I was encouraging the
2 Minister to in effect shut this down.

3 17631 MR. BATTISTA: Okay. So what you are
4 telling us is the note here that is signed by you was
5 prepared by someone for you?

6 17632 MR. SWAIN: Yes.

7 17633 MR. BATTISTA: And you didn't find
8 the language strong enough from your perspective?

9 17634 MR. SWAIN: Rather than sending it
10 all back downstairs and having it redrafted, and so on
11 and so forth, I just added a personal note.

12 17635 MR. BATTISTA: Okay. And you
13 expressed your personal view on the matter in this
14 manner?

15 17636 MR. SWAIN: I did.

16 17637 MR. BATTISTA: Okay. Tab 13. This
17 is a document that is dated 18 December 1993.

18 17638 MR. SWAIN: Yes.

19 17639 MR. BATTISTA: So it is just a few
20 days after the one we just saw, the memo you had
21 prepared.

22 17640 MR. SWAIN: Yes.

23 17641 MR. BATTISTA: And this concerns a
24 Thyssen meeting with the minister, and it is a memo to
25 you from Mr. Bannigan. Mr. Bannigan was who at the

1 time?

2 17642 MR. SWAIN: Was which?

3 17643 MR. BATTISTA: What was Mr.
4 Bannigan's position at the time?

5 17644 MR. SWAIN: He was the assistant
6 deputy minister for the industry sector of the
7 department.

8 17645 MR. BATTISTA: And in this memo I
9 would direct your attention to paragraph 2:

10 "Company explained attempts to
11 strike alliance with DDGM failed
12 because of insistence of both
13 parties to maintain control.
14 Thyssen has abandoned talks with
15 DDGM..."

16 -- Diesel Division, General Motors:

17 "...and has returned to proposal
18 of Greenfield plant, which could
19 be located wherever government
20 wishes, again appealing to
21 regional development theme.
22 Motivation is Canadian
23 endorsement by way of DND
24 testing and IC funding to help
25 in export markets, as Maple Leaf

1 memo talks about the contents of that meeting.

2 Correct?

3 17658 MR. SWAIN: Yes.

4 17659 MR. BATTISTA: Now, your memo was
5 dated December 15th, and this meeting occurred on the
6 17th. What is the relationship with that?

7 17660 You sent a memo to the minister on
8 the 15th making rather strong recommendations. The
9 minister meets with Thyssen officials on the 17th.

10 17661 MR. SWAIN: Apparently he met only
11 with Marc Lalonde, according to the handwritten
12 business here. That would be entirely normal, in the
13 sense that Mr. Lalonde was an elder of the party, a
14 mentor and senior person, I suppose, for Mr. Manley; of
15 course he would meet him.

16 17662 MR. BATTISTA: And what was the
17 feedback that you got in terms of your memo to the
18 minister, and the discussions that ensued afterwards,
19 and the meetings that took place?

20 17663 MR. SWAIN: I can't remember the
21 specific feedback, but I do know that the minister
22 understood the file and our concerns. I spoke to him
23 about it personally.

24 17664 MR. BATTISTA: Did you --

25 17665 COMMISSIONER OLIPHANT: I'm sorry,

1 Mr. Battista, just before you go on, I have a couple of
2 things that I want to catch so I don't lose them.

3 17666 Ottawa lives in a world of acronyms,
4 Mr. Swain.

5 17667 MR. SWAIN: Yes, sir.

6 17668 COMMISSIONER OLIPHANT: Help me out
7 here. In the last paragraph of that memo, what is
8 DIPP?

9 17669 MR. SWAIN: That was the Defence
10 Industry Productivity Program.

11 17670 COMMISSIONER OLIPHANT: Okay. And at
12 the very bottom of the handwritten, or printed note,
13 there is a reference to Mr. Collenette --

14 17671 MR. SWAIN: Yes.

15 17672 COMMISSIONER OLIPHANT: -- DDIR.
16 17673 Do you know what that is?

17 17674 MR. SWAIN: It is --
18 17675 No, I don't.

19 17676 COMMISSIONER OLIPHANT: This isn't a
20 test.

21 --- Laughter / Rires

22 17677 MR. SWAIN: It's a Defence Department
23 acronym, so we wouldn't know about it in industry.

24 17678 COMMISSIONER OLIPHANT: What do you
25 take from that note, "Collenette did not prepare

1 briefing"?

2 17679 Do you know what that means?

3 17680 MR. SWAIN: I would guess that an

4 official or an office in DND called DDIR did not

5 prepare a briefing.

6 17681 That's kind of how I would read that,

7 but it is ambiguous.

8 17682 COMMISSIONER OLIPHANT: I see. Okay,

9 thank you.

10 17683 Sorry, Mr. Battista. Go ahead,

11 please.

12 17684 MR. BATTISTA: No, thank you for

13 that.

14 17685 You were just about to say that you

15 had met Minister Manley about this.

16 17686 MR. SWAIN: Yes.

17 17687 MR. BATTISTA: What was the sense of

18 the discussion?

19 17688 MR. SWAIN: I talked to him in less

20 varnished terms than are written down. He certainly

21 understood the history of the file.

22 17689 MR. BATTISTA: And what position did

23 he have at that point? Did he express a position to

24 you?

25 17690 MR. SWAIN: He was skeptical about

1 the proposition.

2 17691 MR. BATTISTA: Did he go any further
3 than that?

4 17692 MR. SWAIN: Oh, I can't recall at
5 this point.

6 17693 MR. BATTISTA: And with Mr. Charest
7 or with Mr. Wilson -- those were other ministers you
8 worked with and other ministers you sent memos to.

9 17694 MR. SWAIN: Yes.

10 17695 MR. BATTISTA: What were the
11 discussions with them?

12 17696 MR. SWAIN: I never saw Mr. Charest
13 during the time of his --

14 17697 MR. BATTISTA: Tenure?

15 17698 MR. SWAIN: -- incumbency. He was
16 busy running an election. I saw his political staff
17 from time to time and talked to them on the phone.

18 17699 With Mr. Wilson, I can't recall a
19 specific conversation with him about this, but I am
20 sure there must have been one.

21 17700 MR. BATTISTA: Is it fair to say that
22 when you did speak to Mr. Wilson you would have
23 conveyed to him your concerns, as you expressed them in
24 your memos --

25 17701 MR. SWAIN: Oh, certainly.

1 17702 MR. BATTISTA: -- and without the
2 varnish, as you say?

3 17703 MR. SWAIN: Yes, and he was also
4 aware of the proposal from his time in Finance. You
5 will recall that Finance officials were participating
6 in some of these reviews and so on.

7 17704 MR. BATTISTA: So he was not new to
8 this proposal --

9 17705 MR. SWAIN: Oh, he was not new --

10 17706 MR. BATTISTA: We say "to this
11 proposal"; he was not new to the Bear Head Industry's
12 project, if we can call it that --

13 17707 MR. SWAIN: That's correct.

14 17708 MR. BATTISTA: -- because there had
15 been several proposals over the years.

16 17709 MR. SWAIN: That's correct, yeah.

17 17710 MR. BATTISTA: So he was involved in
18 initial proposals when he was at Finance?

19 17711 MR. SWAIN: He would have been
20 briefed in a routine way by his officials on this. I
21 doubt that it took very much of his attention.

22 17712 MR. BATTISTA: Okay. Very good.

23 17713 I will take you now to Tab 15. Tab
24 15 is what appears to be an e-mail from Mr. Deacon to
25 Mr. Krajewski, and the subject is: "Thyssen -

1 Ouellet".

2 17714 Ouellet was, at the time, Minister
3 responsible for La Francophonie and Secretary of State
4 for External Affairs. Correct?

5 17715 MR. SWAIN: Yes.

6 17716 This is a memorandum from Diana
7 Dernford(Oh), which is attached to -- or forwarded from
8 Bruce Deacon to Dick Krajewski.

9 17717 MR. BATTISTA: I'm sorry, you are at
10 Tab 15?

11 17718 MR. SWAIN: On the bottom half of the
12 page it says "From: Dernford, Diana J."

13 17719 MR. BATTISTA: Yes, you're right.
14 Thank you.

15 17720 And you were cc'd on the initial
16 e-mail transmission.

17 17721 MR. SWAIN: Yes.

18 17722 MR. BATTISTA: And then it was
19 forwarded to Mr. Krajewski. Correct?

20 17723 MR. SWAIN: Yeah. It was addressed
21 to Deacon, and Deacon turned to his staff officer and
22 said --

23 17724 Well, it might explain why Bruce
24 asked for a business case analysis.

25 17725 MR. BATTISTA: Okay. And what we see

1 here in this memo is that Minister Ouellet still plans
2 to support going ahead with the Thyssen project.

3 "His support is based on the
4 projected 500 jobs to be created
5 in the Montreal area, and is
6 premised on export market sales
7 potential. He recognizes low
8 domestic sales potential. He
9 will probably sign a revised
10 version of the letter tonight."

11 17726 Now, this was sent on the 20th of
12 September 1994.

13 17727 MR. SWAIN: Yes.

14 17728 MR. BATTISTA: Approximately nine
15 months after your previous memo to Minister Manley.

16 17729 What is he referring to when he
17 refers to, "He will probably sign a revised version of
18 the letter tonight"?

19 17730 MR. SWAIN: I presume that that was
20 what was referred to earlier as the UIP.

21 17731 MR. BATTISTA: A Memorandum of
22 Understanding, an MOU?

23 17732 MR. SWAIN: Yes, the memorandum that
24 was signed by ministers of the previous government.

25 17733 MR. BATTISTA: The previous

1 government had signed, in 1988, an Understanding in
2 Principle, and then there were talks about getting a
3 Memorandum of Understanding.

4 17734 MR. SWAIN: Yes.

5 17735 MR. BATTISTA: You would understand
6 this to mean that the minister was prepared to go ahead
7 with this?

8 17736 MR. SWAIN: Yes.

9 17737 MR. BATTISTA: And would it have been
10 under his responsibility?

11 17738 MR. SWAIN: I can't remember what Mr.
12 Ouellet was minister of at the time.

13 17739 MR. BATTISTA: I will suggest to you
14 that he was Secretary of State for External Affairs and
15 Minister responsible for La Francophonie between `93
16 and `95.

17 17740 Would it be as External Affairs?

18 17741 MR. SWAIN: External Affairs would
19 have no authority to make a binding commitment. The
20 most he could have done would be to produce some sort
21 of letter of comfort, along the lines perhaps of the
22 `88 letter.

23 17742 MR. BATTISTA: Would it be fair to
24 say that it could be something that would show, sort
25 of, political support for this idea?

1 17743 MR. SWAIN: This is speculation on my
2 part, but I would imagine so.

3 17744 MR. BATTISTA: Okay. You were cc'd
4 on this, obviously, because your department was
5 involved in these matters.

6 17745 Is that correct?

7 17746 MR. SWAIN: Yes. We were the owners
8 of the file after the PCO decision.

9 17747 MR. BATTISTA: Okay. When Louise is
10 saying to Dick, "It might explain why Bruce asked for a
11 business case analysis," what would that refer to?

12 17748 MR. SWAIN: It's hard to say, but I
13 would imagine that Deacon, as the first addressee on
14 this, looked at it and said, "Gosh," and said to
15 Louise, who might be, I don't know, his secretary or an
16 officer in the section, "we had better update the
17 business case and see where we are on this one."

18 17749 MR. BATTISTA: So is it fair to say
19 that it's a situation where there appears to be
20 political support from the ministerial level, and the
21 bureaucrats are saying, "We had better get together the
22 economics and submit this to the ministers, because
23 they may be going ahead with something here"?

24 17750 Is that a fair assessment?

25 17751 MR. SWAIN: Yes, that's fair.

1 17752 MR. BATTISTA: Okay. I am going to
2 take you to Tab 16. This is a letter that you are
3 addressing to Mr. Fowler, November 17th, '94. I would
4 direct your attention to paragraph 2:

5 "In this regard, it is important
6 that Industry Canada become more
7 involved in the major
8 procurements which your people
9 are now working on: the
10 armoured personnel carrier, the
11 helicopter replacement, the
12 military space project, and the
13 possible submarine replacement
14 program. In all cases, they are
15 issues of mutual interest and
16 political sensitivity."

17 17753 Could you, maybe, elaborate on that,
18 what the sense of this was and what the purpose of this
19 letter was?

20 17754 MR. SWAIN: I think it was written
21 because my officials were beginning to feel a bit left
22 out of the loop as DND went through its Defence Policy
23 review.

24 17755 MR. BATTISTA: Just for the record,
25 we know that on December 1st the White Paper was

1 published -- the Defence White Paper of December 1st,
2 1994.

3 17756 MR. SWAIN: Yeah.

4 17757 MR. BATTISTA: I would assume that
5 the White Paper was in the works at that point.

6 17758 MR. SWAIN: Oh, yes.

7 17759 MR. BATTISTA: And you are indicating
8 here that your concern is that the Defence Department
9 is, maybe, going ahead with projects, and you are not
10 being fully informed or apprised of what is happening.

11 17760 MR. SWAIN: That's correct.

12 17761 MR. BATTISTA: Were you referring to
13 anything specific, because you were talking about the
14 armoured personnel carrier? Would that involve the TH
15 495, for example?

16 17762 MR. SWAIN: I am guessing at this
17 point, but if I remember, the multi-role vehicle had
18 been put aside in the work that led up to the White
19 Paper, and their established -- their newly established
20 priorities included an APC, helicopters, and so on and
21 so forth.

22 17763 An armoured personnel carrier was not
23 the same thing as the TH 495, I gather.

24 17764 MR. BATTISTA: Okay. Your
25 understanding was that the TH 495 was not an armoured

1 personnel carrier?

2 17765 MR. SWAIN: I should be careful about
3 that. It was said to be capable of a number of
4 different roles, but it was also about three times as
5 expensive as the one that the military wanted to buy.

6 17766 And it was still, at that point -- I
7 think, at that point, it was still pretty much a paper
8 project. There may have been some prototypes produced,
9 I am not sure.

10 17767 MR. BATTISTA: At that time, were you
11 aware of discussions with the ministers concerning the
12 armoured personnel carrier and projects relating to the
13 Thyssen Bear Head proposal, other than what we have
14 seen with Mr. Ouellet?

15 17768 MR. SWAIN: No, I don't recall
16 anything.

17 17769 I don't recall.

18 17770 MR. BATTISTA: I am now going to
19 direct you to Tab 17. These are documents that you did
20 not create, but that refer to you in some sense.

21 17771 The first one is a memo from Mr.
22 Alford to Mr. Lalonde, relaying discussions that he has
23 had with someone who has had a discussion with you.

24 17772 I would refer you to the second page,
25 which is a memo from Mr. Dacey to Greg Alford of

1 February 1st, `95. I will read it to you and I will
2 ask you for your comments.

3 "Subsequent to our conversation,
4 I have met with Dr. Harry Swain,
5 the Deputy Minister of Industry,
6 and raised the Thyssen issues
7 with him. Swain was moderately
8 aware and informed about the
9 file. For example, he knew that
10 GM's order book was full until
11 the end of `99, and he was
12 surprised that IC's assessment
13 of Thyssen's market review
14 hadn't been released to you yet.
15 He undertook to check on that.
16 Further, he noted that the
17 letter Manley had sent to other
18 ministers had suggested that the
19 Thyssen market assessment was
20 optimistic, but that a
21 significant market did exist,
22 and Thyssen could reasonably
23 expect to be successful in it.
24 Swain's general demeanour on
25 this file was favourable and,

StenoTran

1 when pressed, he said he would
2 meet with senior Thyssen
3 officials when it was
4 appropriate and necessary.
5 Finally, he agreed that, given
6 the speed that events were
7 moving on procurements,
8 Thyssen's best bet was to find a
9 Quebec champion."

10 17773 Can you comment on that?

11 17774 MR. SWAIN: Jamie Dacey is a former
12 political assistant that I have known now for about 33
13 years, I guess. He was the executive assistant to
14 Alistair Gillespie in EMR when I worked there. He is a
15 lobbyist by trade, and he is, in this memo and the
16 material that follows it, seeking a commission to do
17 some work.

18 17775 His description of what I knew and
19 thought, and so on and so forth, doesn't appear
20 entirely according to my recollection, but knowing that
21 he was a lobbyist interested in that kind of business,
22 I would not have been very forthcoming with him. I
23 wouldn't have told him much about what the department
24 was doing that wasn't already public.

25 17776 MR. BATTISTA: Is it fair to say that

1 when he refers to the fact that you appeared to be
2 moderately aware and informed, that would be what you
3 are saying in terms of -- you would not necessarily
4 share with him everything you knew or thought about the
5 matter.

6 17777 Is that correct?

7 17778 MR. SWAIN: Correct.

8 17779 MR. BATTISTA: In this he refers to
9 the fact that Mr. Manley had suggested that there may
10 be a significant market for this product, the TH 495
11 vehicle, as a peacekeeping -- you know, I am referring
12 to that -- as a peacekeeping vehicle for export
13 markets.

14 17780 Is that, to your recollection,
15 something that occurred or could have occurred?

16 17781 MR. SWAIN: It could have occurred,
17 but I don't recall any such letter.

18 17782 MR. BATTISTA: And you don't recall
19 sharing that with Mr. Dacey?

20 17783 MR. SWAIN: Certainly not.

21 17784 COMMISSIONER OLIPHANT: Is this a
22 case, Mr. Swain, in your view, of a lobbyist
23 name-dropping to impress a potential client?

24 17785 MR. SWAIN: Yes.

25 17786 MR. BATTISTA: Just to follow up on

1 what the Commissioner said, was this, maybe, a sense
2 of, from his side, reading more into what you were
3 telling him than what you were actually telling him?

4 17787 MR. SWAIN: I would think so, and I
5 think that Mr. Dacey is also trying to demonstrate that
6 he has a personal relationship with one of the players
7 in the game.

8 17788 MR. BATTISTA: From an objective
9 point of view, if we come back to February 1995, at
10 that time was there an assessment that, in fact, there
11 was a potential market for the TH 495 vehicle, at that
12 point?

13 17789 This is after the White Paper has
14 been released, when the White Paper indicates that a
15 personnel carrier is going to be something that the
16 Defence forces will be looking to.

17 17790 We have seen with other witnesses
18 here that that document for the people lobbying on
19 behalf of Thyssen seemed to be important for them. Was
20 it your recollection that, at that point, with market
21 studies that were being produced by Thyssen, and
22 internal studies that had been conducted by government
23 officials, that there was a potential market at that
24 time?

25 17791 MR. SWAIN: The TH 495 was assessed

1 by the military people as a potentially useful,
2 well-designed piece of equipment. We have seen that in
3 those earlier documents.

4 17792 We didn't, in the Industry
5 Department, have an independent view of that, we just
6 took the military's word for it. Our concern was with
7 market analysis.

8 17793 Our view, which really hadn't changed
9 very much over the years, was that a number of the
10 countries to which these might be exported would not
11 find favour with the government, and that, in
12 particular, exports to the United States would be hard
13 to come by because of the strong "buy America"
14 protectionist approach that their military tends to
15 take.

16 17794 I can't recall, at this point, having
17 seen a market analysis in 1995, but aside from the fact
18 that the revolution in Eastern Europe had taken place,
19 not much had happened to change our view. We were not,
20 at that stage, maybe yet, interested in exporting
21 military equipment to the former socialist economies of
22 Eastern Europe.

23 17795 MR. BATTISTA: I just want to
24 double-check something.

25 --- Pause

1 17796 MR. BATTISTA: Just, Mr. Swain, a
2 point of clarification. When you said that the PCO had
3 sort of made you owners of the file, I take it that
4 that was after the 1993 proposal to reactivate the --

5 17797 MR. SWAIN: Yes, when they
6 commanded --

7 17798 MR. BATTISTA: An interdepartmental
8 task force?

9 17799 MR. SWAIN: Right, and it was an
10 occasion where I thought I was bested in the
11 bureaucratic wars by Robert Fowler, whom I am very
12 sorry is not here to talk to you today.

13 17800 MR. BATTISTA: Okay. I thank you for
14 that, sir.

15 17801 Those are my questions, Commissioner.

16 17802 COMMISSIONER OLIPHANT: All right.
17 Thank you very much.

18 17803 Mr. Grondin...?

19 17804 MR. GRONDIN: Yes, this time I would
20 have a few questions.

21 17805 COMMISSIONER OLIPHANT: Mr. Grondin
22 represents Mr. Mulroney.

23 17806 By the way, I'm sorry, are you
24 prepared to go on, or would you like a break?

25 17807 MR. SWAIN: I'm fine.

1 EXAMINATION: HARRY SWAIN BY MR. GRONDIN /
2 INTERROGATOIRE: HARRY SWAIN PAR Me GRONDIN
3 17808 MR. GRONDIN: Mr. Registrar, I will
4 need P-18 for the witness. I will be referring to
5 documents in support of Mr. Greg Alford's testimony.
6 17809 Some people might think that I am
7 trying to recycle yesterday's questions, but they are
8 new questions.
9 17810 COMMISSIONER OLIPHANT: You just ask
10 the questions that you feel need to be asked.
11 17811 Maybe your parents are watching again
12 today.
13 --- Laughter / Rires
14 17812 MR. GRONDIN: I will certainly find
15 out today if they are.
16 17813 Good morning, Mr. Swain.
17 17814 MR. SWAIN: Good morning.
18 17815 MR. GRONDIN: First, I would draw
19 your attention to Tab 12 of your binder, the one that
20 was prepared for your testimony, please. It is your
21 memorandum of December 15, 1993 to the Hon. John
22 Manley, and I would ask you to go to page 4 of this
23 memorandum, or page 5 of 6, depending on where you
24 look.
25 17816 MR. SWAIN: Yes.

1 17817 MR. GRONDIN: My colleague, Mr.
2 Battista, quoted the first section of page 4, but if
3 you go on to subparagraph (ii), it starts by saying:
4 "Drafts of the company's market
5 projections, as well as the
6 underlining assumptions and
7 supporting data, have since been
8 received by Industry Canada.
9 Initial indications, yet to be
10 verified, are that future
11 international markets for the TH
12 495 family of vehicles may
13 exist. However, the magnitude
14 and timing of the market
15 demands, its exploitability by a
16 new Canadian manufacturer,
17 whether a company will receive
18 export permits, and whether the
19 proposed project can be crafted
20 to be of net benefit to Canada
21 remains to be determined."
22 17818 You were saying that in the
23 memorandum you signed on December 15, 1993, which was
24 addressed to Mr. Manley. Right?
25 17819 MR. SWAIN: Yes.

1 17820 MR. GRONDIN: The market assessment
2 still had to be verified as to whether or not there
3 were, in fact, international markets -- you used the
4 plural here -- for the TH 495, and it was raising the
5 possibility that such a market may exist.

6 17821 MR. SWAIN: May exist.

7 17822 MR. GRONDIN: May exist. Hence the
8 verifications. Right?

9 17823 MR. SWAIN: Yes.

10 17824 MR. GRONDIN: Now I would like to
11 draw your attention to Tab 20 of Mr. Alford's binder.
12 This is a letter from Mr. Greg Alford, who testified
13 yesterday, Senior Vice-President of Bear Head
14 Industries, to Mr. Dick Krajewski of Industry.

15 17825 Is that correct?

16 17826 MR. SWAIN: Yes.

17 17827 MR. GRONDIN: The letter is dated
18 December 14, 1993, and it says:

19 "Dear Mr. Krajewski:

20 The accompanying document is a
21 market analysis for the TH 495
22 Multi Purpose Base Armoured
23 Vehicle (MBAV). Methodology of
24 this market analysis is
25 consistent with that which was

1 proposed from Industry Canada,
2 November 1993, as per attached."

3 17828 So, in fact, the verifications that
4 had to be made were being made at that time, as to
5 whether or not there existed a viable international
6 market for the TH 495. Correct?

7 17829 And, in the process of verifying that
8 very fact, Mr. Alford was sending BHI's forecast or
9 market analysis to the attention of Mr. Krajewski.
10 Correct?

11 17830 MR. SWAIN: Apparently.

12 17831 MR. GRONDIN: I now draw your
13 attention to Tab 30 of Mr. Alford's documents. Again
14 we see -- and I will spare you the details, but there
15 have been several meetings between Industry Canada
16 representatives and Bear Head representatives, as shown
17 by various documents, to discuss these forecasts, but I
18 want to draw your attention to this one.

19 17832 This is a summary of a meeting that
20 was held between Thyssen representatives and Industry
21 Canada representatives on October 11, 1994. You will
22 see that in attendance for Industry Canada were Mr.
23 Bruce Deacon, who you mentioned this morning, Dick
24 Krajewski, who received the letter we just talked
25 about, and Mr. Baj Hafez; and for Thyssen, Greg Alford

1 and Ian Reid were present.

2 17833 I would draw your attention to the
3 heading "General", under which it states the purpose of
4 the meeting, and it says:

5 "This meeting was scheduled as a
6 direct follow-up to the meeting
7 held in Ottawa on September 20,
8 1994, which was attended by Mr.
9 Massmann. A specific aim was to
10 reach agreement or accommodation
11 on the market projections based
12 on Company and IC analysis."

13 17834 So in September and October `94,
14 representatives of Industry Canada and Bear Head
15 Industries were meeting to try to come to an agreement
16 as to what was a reasonable assessment of the
17 international market available for the TH 495.
18 Correct?

19 17835 MR. SWAIN: Yes.

20 17836 MR. GRONDIN: If you turn to page 2
21 of the same memorandum, still at Tab 30, I now draw
22 your attention to the last full paragraph on page 2.

23 17837 First, I will go to the first
24 paragraph under the heading "Market Data". It says:

25 "After a comparison of the

1 Company and IC projections (as
2 summarized on the IC charts
3 titled Scenario 1 and 2) and an
4 explanation of the significant
5 areas of contention, Mr. Deacon
6 made the following observation:
7 - based on the preceding
8 logic, it was not correct
9 for IC to project a zero
10 market share in the
11 "unspecified non-NATO"
12 portion of the summary
13 (line ..."

14 17838 Then, if I go to the last full
15 paragraph on the page, it says -- and this is a summary
16 of the discussions of that day:

17 "- It appeared that there was a
18 close similarity in the
19 gross market figures on
20 serials 1-3."

21 17839 We had previously seen that there
22 were four segments with that market analysis, specified
23 NATO, unspecified NATO and the same for non-NATO
24 countries.

25 17840 And it says:

1 "We should therefore re-examine
2 serial four to reach a level of
3 common agreement. The company
4 agreed to re-examine their
5 estimate in this area and meet
6 with the government as soon as
7 possible."

8 17841 If you go to the next page, page 3 in
9 the middle of the page, beginning with:

10 "After further discussion Mr.
11 Deacon proposed future actions
12 as follows:

13 (a) BHI should re-examine or
14 resubstantiate the serial four
15 unspecified non-NATO gross
16 market of 18,500 units."

17 17842 So in other words, still in October
18 '94, representatives of Industry Canada were telling
19 BHI to work or redo their homework, if you will, on
20 that serial four, that segment four unspecified
21 non-NATO, and again it was in the process of verifying
22 whether there was an international market, a viable one
23 for TH495.

24 17843 Is that correct? Would you agree
25 with that?

1 17844 MR. SWAIN: I suppose, yes.

2 17845 MR. GRONDIN: Because that first memo
3 that we referred to that you had sent in December '93
4 to Mr. Manley obviously was not shared with BHI's
5 representatives. Correct?

6 17846 It was an internal memorandum.
7 Right?

8 17847 MR. SWAIN: Clearly.

9 17848 MR. GRONDIN: I now bring your
10 attention to Tab 50.

11 17849 MR. SWAIN: If I may just make one
12 point?

13 17850 MR. GRONDIN: Sure.

14 17851 MR. SWAIN: Mr. Deacon is a senior
15 civil servant of high quality. He was the Director
16 General of the sector branch that dealt with defence
17 and so on and so forth. It was his job to find
18 opportunities in that industry. He was
19 institutionally, if you will, kind of a proponent.

20 17852 MR. GRONDIN: I understand. I see.

21 17853 MR. SWAIN: Thank you.

22 17854 MR. GRONDIN: But he was a
23 representative of Industry Canada --

24 17855 MR. SWAIN: Absolutely.

25 17856 MR. GRONDIN: -- and in that role he

1 was --

2 17857 MR. SWAIN: Absolutely he was.

3 17858 MR. GRONDIN: -- working with BHI's

4 representatives and trying to come to an agreement as

5 to what would be --

6 17859 MR. SWAIN: And in the context of the

7 request from the Privy Council Office that we forwarded

8 to him.

9 17860 MR. GRONDIN: I understand.

10 17861 MR. SWAIN: Yes.

11 17862 MR. GRONDIN: You have already

12 testified to that effect.

13 17863 So Tab 50, it is a fax from

14 Mr. Alford to Mr. Lalonde, dated April 10, 1995, but

15 it's not that fax that I'm interested in but rather the

16 attachment.

17 17864 Mr. Alford in fact was informing

18 Mr. Lalonde of the position that had -- the official

19 position that had finally been taken by Industry Canada

20 regarding the market assessment and the discussions

21 with Bear Head regarding the international market.

22 17865 And you see there is a letter dated

23 April 7, 1995 for Mr. Leacock to Mr. Jürgen Massmann,

24 the President of Thyssen BHI.

25 17866 And that says:

1 "Dear Mr. Massmann,
2 Please find attached the tracked
3 LAV market forecast summary
4 tables and graphs which compare
5 your forecasts..."

6 17867 Meaning those of the company.
7 "... with those of the
8 government. The results are
9 based on information gathered in
10 the first quarter of 1994 and
11 assumptions made at that time.
12 You will appreciate that markets
13 are dynamic and consequently
14 market forecasts have a limited
15 time span ."

16 17868 If you look at the attachments, you
17 see that you have the BHI forecast and --

18 17869 MR. SWAIN: They diverge somewhat.

19 17870 MR. GRONDIN: Yes. And I'm not -- my
20 point is not about a diversion, but isn't it correct
21 that it was on April 7, 1995 that the official position
22 taken by Industry Canada, which I understand was
23 leading that multi-departmental force that had been
24 created for the BHI project gave the company its
25 official position as to its position on the market

1 forecast?

2 17871 MR. SWAIN: Yes.

3 17872 MR. GRONDIN: I will have no further
4 questions. Thank you, Mr. Swain.

5 17873 COMMISSIONER OLIPHANT: Counsel, I'm
6 not sure in what order you have agreed to go. I'm just
7 going to go down the line.

8 17874 Mr. Vickery, do you have questions
9 for Mr. Swain?

10 17875 MR. VICKERY: Commissioner, since we
11 act for Mr. Swain in his personal capacity, I would ask
12 that we be permitted to reserve that decision until the
13 others have examined.

14 17876 COMMISSIONER OLIPHANT: All right.
15 That's fair enough.

16 17877 Mr. Houston, any questions, sir?

17 17878 MR. HOUSTON: Yes, I do, sir.

18 17879 COMMISSIONER OLIPHANT: Mr. Auger,
19 are you going to have questions for Mr. Swain?

20 17880 MR. AUGER: Little or none,
21 Commissioner.

22 17881 COMMISSIONER OLIPHANT: All right.
23 17882 How long do you expect to be,
24 Mr. Houston?

25 17883 MR. HOUSTON: I would think under 10

1 minutes, sir.

2 17884 COMMISSIONER OLIPHANT: All right.

3 Why don't we proceed with your questions and then we

4 will take the morning break.

5 17885 MR. HOUSTON: Fine, sir.

6 17886 COMMISSIONER OLIPHANT: Thank you.

7 17887 Mr. Houston represents Mr. Doucet,

8 Fred Doucet, Mr. Swain.

9 EXAMINATION: HARRY SWAIN BY MR. HOUSTON /

10 INTERROGATOIRE : HARRY SWAIN PAR Me HOUSTON

11 17888 MR. HOUSTON: Mr. Swain, you know

12 Fred Doucet?

13 17889 MR. SWAIN: Yes, sir.

14 17890 MR. HOUSTON: You have known him for

15 many years?

16 17891 MR. SWAIN: Since he -- since the

17 election of 1984, I guess.

18 17892 MR. HOUSTON: Do you know his brother

19 Gerald?

20 17893 MR. SWAIN: I have met him.

21 17894 MR. HOUSTON: I'm sorry, sir?

22 17895 MR. SWAIN: I have met him.

23 17896 MR. HOUSTON: And under what

24 circumstances did you meet him?

25 17897 MR. SWAIN: I can't recall now, but

1 he was a personality around town. One would run into
2 him on occasion.

3 17898 MR. HOUSTON: Did you know he
4 practised law in the Province of Nova Scotia?

5 17899 MR. SWAIN: No.

6 17900 MR. HOUSTON: I assume, sir, that you
7 are unaware of the fact that his law firm incorporated
8 Bear Head Industries?

9 17901 MR. SWAIN: I'm unaware of that.

10 17902 MR. HOUSTON: And obviously you would
11 be unaware of any role that he and his law firm played
12 in dealing with the shares of Bear Head Industries?

13 17903 MR. SWAIN: Absolutely.

14 17904 MR. HOUSTON: Do you know of the firm
15 Government Consultants International Inc., otherwise
16 known as GCI?

17 17905 MR. SWAIN: Yes.

18 17906 MR. HOUSTON: Were you aware of the
19 fact that Mr. Gerald Doucet was the principal of that
20 operation?

21 17907 MR. SWAIN: Yes.

22 17908 MR. HOUSTON: Were you also aware of
23 the fact, sir, that there was some relationship between
24 GCI and Bear Head Industries beginning in 1985?

25 17909 MR. SWAIN: I can't say for sure, but

1 I probably did know that.

2 17910 MR. HOUSTON: My understanding, sir,
3 is that Mr. Gerald Doucet played a role for GCI dealing
4 with Bear Head Industries and government officials.

5 17911 Were you aware of that, sir?

6 17912 MR. SWAIN: I can't recall.

7 17913 MR. HOUSTON: I wonder,
8 Mr. Commissioner, if the witness could be shown a
9 document. It is P-7, Book 1, Tab 26.

10 17914 COMMISSIONER OLIPHANT: Book 1 of
11 Mr. Schreiber's?

12 17915 MR. HOUSTON: Yes, sir.

13 17916 COMMISSIONER OLIPHANT: The tab,
14 Mr. Houston, please?

15 17917 MR. HOUSTON: It's Tab 26, sir.

16 17918 COMMISSIONER OLIPHANT: Thank you.

17 17919 MR. HOUSTON: Just for the record, it
18 is a memorandum to the Hon. Lowell Murray.

19 17920 MR. SWAIN: Yes.

20 17921 MR. HOUSTON: Do you have that in
21 front of you, sir?

22 17922 MR. SWAIN: I do, sir.

23 17923 MR. HOUSTON: And it's dated July 15,
24 1988. Do you see that?

25 17924 MR. SWAIN: Yes.

1 17925 MR. HOUSTON: It's stamped on it. It
2 is from Mr. McPhail, who was associated with the
3 Atlantic Canada Opportunities Agency.

4 17926 MR. SWAIN: Yes.

5 17927 MR. HOUSTON: And it is addressed
6 "Subject: Thyssen".

7 17928 The first few lines read, and I
8 quote:

9 "Following a six-hour session
10 today with Thyssen (Schreiber
11 plus Gerry Doucet), we reached
12 agreement on a document - an
13 'understanding in principle',
14 which effectively constitutes
15 what, in my judgement, both the
16 company and the Government of
17 Canada can bear..."

18 17929 Correct?

19 17930 MR. SWAIN: Yes.

20 17931 MR. HOUSTON: You indicated already
21 that by 1987-1988 you were no longer directly involved?

22 17932 MR. SWAIN: That's correct.

23 17933 MR. HOUSTON: So you would have no
24 way of knowing what role Mr. Gerald Doucet played, I
25 suggest, based on what you told us, from 1985 right

1 through 1988?

2 17934 MR. SWAIN: That's probably correct.

3 17935 MR. HOUSTON: Would you take a look,
4 sir, again at your document, Tab 2.

5 17936 MR. SWAIN: Yes.

6 17937 MR. HOUSTON: Now, this is a
7 memorandum dated 5 February 1986 and, in fairness, you
8 have already noted, that I certainly can agree with you
9 in this regard, 23 years ago the memory fades a little
10 bit about detail.

11 17938 Is that fair?

12 17939 MR. SWAIN: It does.

13 17940 MR. HOUSTON: Now, this is a
14 memorandum from Mr. Fowler who, as you have already
15 indicated, unfortunately cannot be with us given his
16 circumstances, to Mr. Tellier. And he talks about, and
17 I quote, partway down the last paragraph:
18 "The Prime Minister -- strongly
19 encouraged by both Messrs.
20 Doucet and McMillan appear to
21 favour."
22 17941 Now, you have indicated to the
23 Commissioner in response to Mr. Giuseppe's question --
24 Mr. Battista's question, that you "presume that's Fred
25 Doucet".

1 17942 You don't know that, do you?

2 17943 MR. SWAIN: No, I do not.

3 17944 MR. HOUSTON: I suggest to you more
4 likely it's Gerald Doucet, given what I have just shown
5 to you?

6 17945 You have no way of knowing one way or
7 the other, do you?

8 17946 MR. SWAIN: I know that Fred Doucet
9 was interested in this file, and Fred Doucet and
10 Charlie McMillan both worked in the PMO. It was that
11 association that made me believe that this was Fred
12 Doucet that is being referred to. I could be wrong.

13 17947 MR. HOUSTON: But other than that,
14 you have no way of knowing that this was --

15 17948 MR. SWAIN: No, sir.

16 17949 MR. HOUSTON: -- Fred as opposed to
17 Gerald Doucet?

18 17950 MR. SWAIN: That's correct.

19 17951 MR. HOUSTON: All right, sir. Thank
20 you very much.

21 17952 Thank you, Mr. Commissioner.

22 17953 COMMISSIONER OLIPHANT: Those are
23 your questions, Mr. Houston?

24 17954 MR. HOUSTON: Yes, sir. Thank you.

25 17955 COMMISSIONER OLIPHANT: All right.

1 Thank you very much.

2 17956 We will take the morning break.

3 17957 Mr. Vickery, you can consider your
4 position over the morning break and let us know, when
5 that's done, if you are going to be questioning
6 Mr. Swain.

7 17958 MR. VICKERY: Unless Mr. Auger
8 intends to ask questions, I will not be questioning
9 Mr. Swain.

10 17959 COMMISSIONER OLIPHANT: Oh, okay.

11 17960 Mr. Auger, do you know if you were
12 going to be asking questions or would you like to
13 consider that?

14 17961 MR. AUGER: I would like to consult
15 with Mr. Schreiber over the break, if I may.

16 17962 COMMISSIONER OLIPHANT: Okay, that's
17 fine.

18 17963 We will take the morning break until
19 11:15 on the clock on the wall, please.

20 --- Upon recessing at 10:55 a.m. / Suspension à 10 h 55
21 --- Upon resuming at 11:15 a.m. / Reprise à 11 h 15

22 17964 COMMISSIONER OLIPHANT: Be seated,
23 please.

24 17965 Mr. Battista...?

25 17966 Put your microphone on, please.

1 17967 MR. BATTISTA: Yes. Mr. Auger has no
2 questions.

3 17968 COMMISSIONER OLIPHANT: All right.

4 17969 MR. BATTISTA: And I understand that
5 Mr. Vickery does not have any questions either.

6 17970 COMMISSIONER OLIPHANT: Mr. Vickery,
7 you have no questions?

8 17971 MR. VICKERY: Subject to whatever my
9 friend is going to ask now.

10 17972 COMMISSIONER OLIPHANT: All right.
11 Do you have questions?

12 17973 MR. BATTISTA: Yes, there are two
13 issues that I would like to come back on, follow-up to
14 questions raised by Mr. Grondin and Mr. Houston.

15 EXAMINATION: HARRY SWAIN BY MR. BATTISTA /
16 INTERROGATOIRE : HARRY SWAIN PAR Me BATTISTA

17 17974 MR. BATTISTA: Mr. Swain, I would
18 like to direct you to what was called P-19, if I'm not
19 mistaken, the documents in support of Mr. Alford's
20 testimony. I would like to take you to Tab 28.

21 17975 Now, correct me if I'm wrong, but I
22 take it that it was your understanding that
23 fundamentally the TH495 vehicle posed a problem in
24 terms of competition with the light armoured vehicles
25 that were being produced by GM Diesel Division in

1 London.

2 17976 Is that correct?

3 17977 MR. SWAIN: Yes, sir.

4 17978 MR. BATTISTA: I direct your

5 attention to this memo. It is obviously a memo that

6 was not prepared by you, but it refers to a meeting

7 between Mr. Deacon, Mr. Krajewski, Mr. Massmann,

8 Mr. Alford and Mr. Vance.

9 17979 Massmann, Alford and Vance are from

10 BHI or Thyssen and the other two are from Industry

11 Canada.

12 17980 The second paragraph indicates:

13 "Mr. Deacon explained the delay

14 by pointing out that Industry

15 Canada has shared their

16 conclusion of the TH495 market

17 analysis with all interested

18 departments and urged them to

19 acknowledge the existence of the

20 export market. Their clear

21 understanding is that it is

22 distinctly different from the

23 market for GM LAV and the

24 likelihood of TH495 penetrating

25 that market. The government

1 forecast export market
2 penetration for TH495 is some
3 2,000 units over 15 years. This
4 is in contrast with the
5 company's forecast of 8,000
6 units and it is agreed that the
7 actual market win will be in the
8 range of between \$2000 and
9 \$8000."

10 17981 This was in September '94. Were you
11 made aware of this information at that time? Do you
12 recall?

13 17982 MR. SWAIN: I don't recall.

14 17983 MR. BATTISTA: Okay. Is it likely
15 that you would have been? I know we are some years
16 away from this, but is it likely that you would have
17 been made aware if Mr. Deacon had made such an analysis
18 and he would have likely shared it with you?

19 17984 MR. SWAIN: Not necessarily. It
20 would have come up through John Bannigan. The
21 documents that were shown to me just before the
22 break --

23 17985 MR. BATTISTA: Yes.

24 17986 MR. SWAIN: -- with the dramatically
25 different sales curves I had not seen before. They are

1 quite memorable.

2 17987 MR. BATTISTA: Okay. So this
3 information would not have been shared with you
4 necessarily?

5 17988 MR. SWAIN: Not necessarily.

6 17989 MR. BATTISTA: Okay. Now, as far as
7 you understand it, did the policy at Industry ever
8 change at any point during your tenure there towards
9 this project and towards the proposals that were made
10 by the Bear Head group, in particular in relation to
11 the TH495?

12 17990 MR. SWAIN: There were variants on
13 the proposal and each of the variants would call
14 forward perhaps a slightly different set of arguments.
15 But at heart we were being asked to buy something that
16 the military had no immediate need for, at great cost
17 to the public purse, beyond mere procurement and we
18 would be doing so to the disadvantage of an established
19 Canadian firm.

20 17991 So in that sense our fundamental view
21 did not change very much.

22 17992 If we had had a credible forecast for
23 the TH495 that demonstrated, as is asserted here, that
24 it was a different market, that it was not what General
25 Motors were involved in, that might have changed our

1 view. But I don't believe that that happened.

2 17993 MR. BATTISTA: Certainly your view
3 didn't change on this matter. Is that fair?

4 17994 MR. SWAIN: Yes.

5 17995 MR. BATTISTA: And what you are
6 telling us is that, as far as you can recall today, you
7 do not believe that the view of Industry Canada changed
8 at any point in relation to this?

9 17996 MR. SWAIN: I was responsible for
10 Industry Canada for the three years, '92 to '95.

11 17997 MR. BATTISTA: That's right.

12 17998 MR. SWAIN: And in that time we spent
13 a lot of analytic time on it and you have seen some of
14 the results. We established the theoretical
15 possibility of a market, never did get a serious
16 business plan. So in those three years I don't believe
17 our views changed, if I may say, at the corporate
18 level. I would expect my sector branch to be an
19 advocate and they were.

20 17999 MR. BATTISTA: And who would that be?

21 18000 MR. SWAIN: That would be Mr. Deacon.

22 18001 MR. BATTISTA: Okay. So what you are
23 telling us is that it would not be either inappropriate
24 or surprising that Mr. Deacon would pursue this matter
25 and would try to investigate and see whether or not,

1 for example, a foreign market did exist and whether or
2 not this project was viable?

3 18002 MR. SWAIN: No, a very good officer.

4 18003 MR. BATTISTA: Okay. And that was
5 his role and what we are seeing here is that that was
6 in fact what he was doing?

7 18004 MR. SWAIN: Yes.

8 18005 MR. BATTISTA: Okay. So what you are
9 telling us is that he could have been doing this and
10 you would not necessarily have been aware of it?

11 18006 MR. SWAIN: Correct.

12 18007 MR. BATTISTA: And so he could have
13 been engaged in meetings with people from Thyssen, as
14 we see here where we have reports --

15 18008 MR. SWAIN: Oh, yes.

16 18009 MR. BATTISTA: -- and he is exploring
17 with them possibilities and you are not necessarily
18 made aware of them. Is that what you are telling us?

19 18010 MR. SWAIN: Yes. In 1993 the
20 department had 6,600 people and a correspondingly large
21 budget. In '94 and '95 we cut the budget by 50 per
22 cent and the staff by 26 per cent. I was busy on other
23 things.

24 18011 MR. BATTISTA: All right.

25 18012 I'm going to now ask you about Tab 2

1 of your documents.

2 18013 I understand from your answers to
3 Mr. Houston that you knew Mr. Fred Doucet personally?

4 18014 MR. SWAIN: Yes.

5 18015 MR. BATTISTA: And did you know
6 Mr. Gerry Doucet personally?

7 18016 MR. SWAIN: Yes, I have met him.

8 18017 MR. BATTISTA: Did you know them
9 equally? Did you know them as well?

10 18018 MR. SWAIN: No. I knew Fred Doucet
11 better, and I can recall being surprised to learn that
12 they were brothers because they physically are rather
13 different.

14 18019 MR. BATTISTA: Okay. Now, in this
15 memo here you specifically mention Mr. Doucet and
16 Mr. McMillan as being individuals who are strongly
17 encouraging the Prime Minister.

18 18020 What was your understanding when you
19 wrote this? Why did you write this and what was your
20 understanding?

21 18021 MR. SWAIN: Well, first, I didn't
22 write it.

23 18022 COMMISSIONER OLIPHANT: Mr. Fowler
24 wrote this.

25 18023 MR. SWAIN: Fowler wrote this.

1 18024 MR. BATTISTA: Yes, but -- thank you.
2 Thank you, Commissioner.

3 18025 But I understood from what you
4 testified was that Mr. Fowler would sign these but you
5 would have a hand in preparing this.

6 18026 MR. SWAIN: Sure.

7 18027 COMMISSIONER OLIPHANT: Okay.

8 18028 MR. SWAIN: So I knew about this
9 memorandum.

10 18029 MR. BATTISTA: Okay.

11 18030 MR. SWAIN: And I believe that it was
12 Fred Doucet because I can't imagine why Bob would
13 bother referencing some lobbyist in a note to Tellier.

14 18031 MR. BATTISTA: Okay. And what was
15 your understanding of the time of the Prime Minister's
16 strong support and what these people were promoting?
17 What was your understanding?

18 18032 MR. SWAIN: I never spoke to the
19 Prime Minister about it, but my understanding was that,
20 like many other Ministers, he was concerned about
21 regional development and if there was an opportunity to
22 do something for the Maritimes and Nova Scotia that
23 made sense, why he would be all for it.

24 18033 Now, it is in the nature of
25 propositions that get made straight to the political

1 level that the benefits are featured and the costs are
2 not.

3 18034 MR. BATTISTA: Did you ever discuss
4 this matter with Mr. Fred Doucet?

5 18035 MR. SWAIN: I don't believe I did.

6 18036 MR. BATTISTA: Not in that time
7 period?

8 18037 MR. SWAIN: I don't think so.

9 18038 MR. BATTISTA: Okay. Those are my
10 questions, Commissioner.

11 18039 COMMISSIONER OLIPHANT: Thank you
12 very much, Mr. Battista.

13 18040 I have a couple of questions, if you
14 don't mind, Mr. Swain.

15 18041 I am given to understand that Deputy
16 Ministers get together on an informal but rather
17 regular basis, perhaps over breakfast, to discuss
18 matters of mutual interest and concern.

19 18042 Was that the case when you were a
20 Deputy Minister?

21 18043 MR. SWAIN: Very much so.

22 18044 COMMISSIONER OLIPHANT: And I also am
23 given to understand that from time to time Deputy
24 Ministers may have engagements with the Chief of Staff
25 in the Prime Minister's Office.

1 18045 Is that the case as well?

2 18046 MR. SWAIN: Less frequently, but from
3 time to time, yes.

4 18047 COMMISSIONER OLIPHANT: Okay. That
5 was the case so far as you are concerned?

6 18048 MR. SWAIN: Yes.

7 18049 COMMISSIONER OLIPHANT: You indicated
8 that you had never spoken to the Prime Minister about
9 the Thyssen proposals but you understood that there was
10 some modicum of support for the proposals?

11 18050 MR. SWAIN: Yes, sir.

12 18051 COMMISSIONER OLIPHANT: And how did
13 you learn that?

14 18052 To be fair, what you said was if
15 there was a proposal that would help Nova Scotia that
16 made sense -- and you qualified it by that -- the Prime
17 Minister would support the proposal.

18 18053 MR. SWAIN: Well, he would take an
19 interest in it certainly, yes.

20 18054 COMMISSIONER OLIPHANT: And I take it
21 that your view -- and as far as you know, the views of
22 other senior bureaucrats -- to use unvarnished
23 language, which is a term that you used, that the
24 proposals here didn't make a lot of sense.

25 18055 MR. SWAIN: That's correct.

1 18056 COMMISSIONER OLIPHANT: And that's
2 why you discouraged the government moving ahead?
3 18057 MR. SWAIN: Yes, sir.
4 18058 COMMISSIONER OLIPHANT: Even though
5 there might have been a political advantage to doing
6 so?
7 18059 MR. SWAIN: Yes.
8 18060 COMMISSIONER OLIPHANT: All right.
9 Thank you very much.
10 18061 Any questions arising out of that?
11 18062 Mr. Swain, thank you very much for
12 coming to assist us. I appreciate your help.
13 18063 MR. SWAIN: Thank you, sir.
14 18064 COMMISSIONER OLIPHANT: Mr.
15 Roitenberg...?
16 18065 MR. ROITENBERG: Thank you,
17 Mr. Commissioner.
18 18066 The next witness we intend to call is
19 Robert Hladun. Mr. Hladun is coming forward.
20 18067 COMMISSIONER OLIPHANT: Okay.
21 18068 Good morning, Mr. Hladun.
22 18069 MR. HLADUN: Good morning.
23 18070 COMMISSIONER OLIPHANT: Welcome.
24 18071 MR. ROITENBERG: If I could trouble
25 Mr. Brisson to tend with the witness.

1 SWORN: ROBERT HLADUN /
2 ASSERMENTÉ : ROBERT HLADUN
3 EXAMINATION: ROBERT HLADUN BY MR. ROITENBERG /
4 INTERROGATOIRE : ROBERT HLADUN PAR Me ROITENBERG
5 18072 MR. ROITENBERG: Mr. Hladun, welcome.
6 18073 MR. HLADUN: Good morning.
7 18074 MR. ROITENBERG: Thank you for
8 joining us today.
9 18075 I know that you are a lawyer and a
10 member of the Alberta Bar. Am I correct?
11 18076 MR. HLADUN: That's correct.
12 18077 MR. ROITENBERG: And, as most
13 lawyers, you would much prefer to be on this side of
14 the microphone than that.
15 18078 MR. HLADUN: That's what I'm used to.
16 18079 MR. ROITENBERG: And I understand,
17 sir, that you are here to testify, but unhappily so, as
18 you are concerned with solicitor-client privilege and
19 matters of litigation privilege.
20 18080 Am I correct?
21 18081 MR. HLADUN: That is correct.
22 18082 MR. ROITENBERG: You are currently,
23 as you have been for some time, counsel for
24 Mr. Karlheinz Schreiber?
25 18083 MR. HLADUN: That is correct.

- 1 18084 MR. ROITENBERG: And it is your
2 understanding that but for certain letters that have
3 been made public, Mr. Schreiber has not waived
4 solicitor-client privilege as it pertains to your
5 dealings and conversations with him.
- 6 18085 MR. HLADUN: That is correct.
- 7 18086 MR. ROITENBERG: We are going to
8 respect that privilege. I have questions for you that
9 deal with certain documents that have been made public
10 and the substance of those documents.
- 11 18087 There are three letters which I
12 forwarded to you last week.
- 13 18088 Mr. Brisson, if we could have those
14 marked chronologically as the next exhibits, there is a
15 letter dated January 26, 2000; a letter which seems to
16 predate March 10, 2005 -- actually an e-mail, excuse
17 me; and a letter dated March 17, 2005.
- 18 18089 Could those sequentially be the next
19 three exhibits?
- 20 18090 COMMISSIONER OLIPHANT: I take it,
21 counsel, these documents are going in by consent, are
22 they?
- 23 18091 MR. PRATTE: Yes.
- 24 18092 MR. VICKERY: Yes.
- 25 18093 COMMISSIONER OLIPHANT: Thank you.

1 18094 Mr. Auger...?

2 18095 MR. AUGER: Yes, Commissioner.

3 18096 COMMISSIONER OLIPHANT: Thank you.

4 18097 The letter, then, dated January 26,
5 2000, from Mr. Hladun to the Greenspan firm will be
6 received and marked as Exhibit P-22.

7 EXHIBIT NO. P-22: Letter dated
8 January 26, 2000 from Mr. Hladun
9 to Greenspan law firm

10 18098 COMMISSIONER OLIPHANT: The letter
11 from Mr. Hladun's firm to Mr. Henry, Senior Legal
12 Counsel at CBC, dated March 17, 2005, will be marked as
13 Exhibit P-23.

14 EXHIBIT NO. P-23: Letter from
15 Mr. Hladun's firm to Mr. Henry,
16 Senior legal counsel at CBC,
17 dated March 17, 2005

18 18099 COMMISSIONER OLIPHANT: The fax
19 transmission, which includes an e-mail message -- the
20 fax transmission of March 24, 2005 from Mr. Hladun to
21 Mr. Wakim, dated March 24, 2005, together with an
22 e-mail from -- it's an e-mail address. It looks like
23 Mr. Schreiber's wife to Harvey Cashore.

24 18100 There is no date on this except there
25 is a date written March 10, 2005.

1 18101 That will be received and marked as
2 Exhibit P-24.

3 EXHIBIT NO. P-24: Fax
4 transmission dated March 24,
5 2005 from Mr. Hladun to Mr.
6 Wakim, including an e-mail
7 message from Mr. Schreiber's
8 wife to Harvey Cashore with
9 handwritten date March 10, 2005

10 18102 COMMISSIONER OLIPHANT: Okay?

11 18103 MR. ROITENBERG: Thank you, sir.

12 18104 And it is that last document,
13 Mr. Hladun, that I would like to start with, if we may,
14 Exhibit P-24.

15 18105 The Commissioner, in trying to mark
16 it as an exhibit and ascertain exactly what it is and
17 the dates surrounding it, is exactly the reason why I'm
18 putting this document to you.

19 18106 It seems to be an e-mail from
20 Mr. Schreiber's wife's e-mail account to Harvey
21 Cashore, signed by Karlheinz, or at least written in
22 there as the last signatory of the e-mail, Karlheinz,
23 and it appears to, at the very bottom of the page,
24 indicate it was printed for Robert W. Hladun at your
25 e-mail address on 10 March 2005.

1 18107 Do you see that at the bottom of the
2 page?

3 18108 MR. HLADUN: Yes, I do.

4 18109 MR. ROITENBERG: Other than that and
5 what is written at the top of the page in handwriting,
6 March 10, 2005, 2:47 p.m., looking at this document, do
7 you have any way of assisting the Commission in
8 determining the date of the e-mail?

9 18110 MR. HLADUN: No, I don't.

10 18111 MR. ROITENBERG: Do you have any
11 independent recollection as to when this e-mail may
12 have been written or sent to the recipient, Harvey
13 Cashore?

14 18112 MR. HLADUN: No, I don't.

15 18113 MR. ROITENBERG: Would it be fair to
16 say that other than being able to offer that it would
17 have been sometime either on or prior to March 10,
18 2005, that's as close an approximation as we can reach?

19 18114 MR. HLADUN: That would be fair.

20 18115 MR. ROITENBERG: Thank you, sir.

21 18116 If I could then direct your attention
22 to Exhibit P-22, this is a letter dated January 26,
23 2000. It is addressed to the attention of Edward
24 Greenspan and it is under your signature.

25 18117 Do you see that, sir?

1 18118 MR. HLADUN: Yes, I do.

2 18119 MR. ROITENBERG: The first paragraph,
3 other than "Further to your letter of", indicates the
4 date and a telephone message.

5 18120 The date listed is October 17, 1997.

6 18121 Is that the correct date?

7 18122 MR. HLADUN: That is a typo. It was
8 October 17, 1999.

9 18123 MR. ROITENBERG: October 17, 1999.

10 And you can tell that from the subject matter that in
11 fact it references October of '99.

12 18124 Is that fair?

13 18125 MR. HLADUN: That is correct.

14 18126 MR. ROITENBERG: The second paragraph
15 of that letter indicates as follows:

16 "October 17, 1999 - received a
17 call from Mr. Mulroney who
18 advised that he had instructed
19 Mr. Tremblay to issue a letter
20 to CBC's Fifth Estate indicating
21 that if there was the slightest
22 implication that Mr. Schreiber,
23 Mr. Moores and Brian Mulroney
24 were involved in any way (I
25 assumed as alleged in Letter of

1 Request), then there would be
2 terrible consequences (I assumed
3 that to mean a lawsuit)."

4 18127 Was that an accurate depiction of
5 that portion of the telephone conversation you had with
6 Mr. Mulroney on 17 October 1999?

7 18128 MR. HLADUN: Yes, as I recall.

8 18129 MR. ROITENBERG: It goes on:
9 "He would issue the letter but
10 first wanted an assurance or
11 comfort in writing from Mr.
12 Schreiber saying that he would
13 confirm what he had said
14 publicly on many occasions, that
15 at no time did Brian Mulroney
16 solicit or receive compensation
17 of any kind from Mr. Schreiber."

18 18130 Is that an accurate depiction of the
19 nature of the conversation had between yourself and
20 Mr. Mulroney on October 17, 1999?

21 18131 MR. HLADUN: Generally speaking it
22 would be, but you have to appreciate this letter was an
23 informal letter written by myself to Mr. Greenspan and
24 the informality of it was just that.

25 18132 I at that time thought it might have

1 been privileged, given that it was to myself and the
2 lawyer that I arranged for Mr. Schreiber.

3 18133 MR. ROITENBERG: Just to assuage any
4 fears you may have as to the nature of the privilege,
5 Mr. Schreiber appended this to his affidavit of
6 November 7, 2007, at Exhibit 11 to the affidavit.

7 18134 That is found, for your reference,
8 Mr. Commissioner, at Mr. Schreiber's Books of Evidence,
9 Book 3, Tab 21.

10 18135 So it has been made a public
11 document.

12 18136 But your understanding at the time
13 was that the informality of your words was as between
14 counsel.

15 18137 MR. HLADUN: That's correct.

16 18138 MR. ROITENBERG: There is a word used
17 in there. The word is "compensation". I'm going to
18 ask you today whether you can recall whether that was a
19 word you used in your letter or whether it was a word
20 used by Mr. Mulroney in his conversation with you of
21 that date.

22 18139 MR. HLADUN: I'm not certain whether
23 that is my word or Mr. Mulroney's word. I think I
24 explained that in a subsequent correspondence.

25 18140 But that particular word I have no

1 actual recollection whether it was mine or his.

2 18141 MR. ROITENBERG: I'm going to take
3 you to Exhibit P-23.

4 18142 This is a letter dated March 17,
5 2005. It was penned by yourself and it was addressed
6 to Mr. Daniel Henry, Senior Legal Counsel with the
7 Canadian Broadcasting Corporation.

8 18143 The first paragraph of that letter
9 states:

10 "I have learned that the CBC has
11 referenced that they have
12 evidence..."

13 18144 And the word "evidence" is
14 underlined:

15 "... that the writer was asked
16 to have Mr. Schreiber provide a
17 letter to Mr. Mulroney that 'at
18 no time did Mr. Mulroney solicit
19 or receive compensation of any
20 kind from Mr. Karlheinz
21 Schreiber'."

22 18145 Do you see where it says that?

23 18146 MR. HLADUN: Yes, I do.

24 18147 MR. ROITENBERG: The next paragraph
25 starts off with:

1 "First off, to my mind, there is
2 no such evidence because I never
3 had a conversation with Brian
4 Mulronev about compensation."
5 18148 That is your letter to the CBC where
6 you say that. Am I correct?
7 18149 MR. HLADUN: That's correct.
8 18150 MR. ROITENBERG: Having both letters
9 in front of you, I take it you would agree with me that
10 in your first paragraph where you state that you are
11 led to believe that the CBC had evidence and then you
12 quote what that evidence states, they are quoting
13 directly from your letter of January 26, 2000 to
14 Mr. Greenspan.
15 18151 Am I correct?
16 18152 MR. HLADUN: That would seem to be
17 the case, yes.
18 18153 MR. ROITENBERG: The quote is a
19 direct quote of your words?
20 18154 MR. HLADUN: Yes.
21 18155 MR. ROITENBERG: So in terms of the
22 existence of some evidence, that question seems to be
23 answered when you have your letter of January 26, 2000
24 and front of you. Correct?
25 18156 MR. HLADUN: It does. At the time I

1 thought there may have been more, but quite clearly
2 that is what it referenced.

3 18157 MR. ROITENBERG: Go back to your
4 letter of March 17, 2005.

5 "First off, to my mind there is
6 no such evidence because I never
7 had a conversation with Brian
8 Mulroneu about compensation.
9 The only conversations I had
10 with anyone were in the context
11 of and limited to the
12 allegations of improper payments
13 made as referenced in the
14 September 1995 letter of request
15 delivered by the Canadian
16 government to the Swiss
17 authorities in what became known
18 as the Airbus case. My retainer
19 was directed to the allegations
20 stated in that Letter of
21 Request."

22 18158 You start off that paragraph with:

23 "First off, to my mind there is
24 no such evidence, because I
25 never had a conversation with

1 Brian Mulroney about

2 compensation."

3 18159 You would agree with me that, if one
4 were to look at your January 26, 2000 letter, it
5 appears as if you had that very conversation. Yes?

6 18160 MR. HLADUN: Well, I would like to
7 preface it again by being an informal letter, but as I
8 read the letter of January 26th, it is not italicized
9 or in quotation marks, it is just a statement.

10 18161 So that, when you look at the March
11 17th reference of conversation, my recollection at that
12 time -- and that, again, is some five and a half years
13 later -- dealt with the letter that Mr. Tremblay and
14 Mr. Mulroney were speaking of. So there was no
15 conversation about compensation in the context of a
16 payment for loss or damages, as that word most
17 appropriately is used.

18 18162 MR. ROITENBERG: You said "the
19 letter" that they were speaking of. I take it that the
20 letter you are referring to is the Letter of Request.

21 18163 MR. HLADUN: The Letter of Request
22 was the letter of September 29th, 1995, written from
23 the Canadian government to the Swiss authorities,
24 seeking the disclosure of banking documents.

25 18164 MR. ROITENBERG: Just so it is clear

1 for the Commissioner, in the January 26th, 2000 letter
2 you state that you had a conversation with Mr. Mulroney
3 in which he requested you to confirm, or have Mr.
4 Schreiber confirm, by way of letter, what he had said
5 publicly on many occasions, that at no time did Brian
6 Mulroney solicit or receive compensation of any kind
7 from Schreiber.

8 18165 In your letter of March 17th, 2005,
9 you state categorically that there is no such evidence,
10 "because I never had a conversation with Mr. Mulroney
11 about compensation".

12 18166 If you could, for the Commissioner,
13 reconcile those two.

14 18167 MR. HLADUN: The context of the
15 conversations that I had with Mr. Mulroney dealt with
16 the Letter of Request and improper payments which were
17 alleged in the Letter of Request.

18 18168 So that's the context of the
19 conversation.

20 18169 The CBC's the fifth estate was coming
21 with a program that dealt with Airbus -- dealt with
22 what they were focusing on, which was the payments that
23 they allege were secret commissions and Airbus.

24 18170 So that's the context, improper
25 payments to do with what is alleged in that letter.

1 18171 MR. ROITENBERG: So you took it in
2 your mind to reference the Airbus investigation, as
3 alleged in the Letter of Request, and nothing more.

4 18172 MR. HLADUN: That's all I was talking
5 about.

6 18173 And the letter, I understood, dealt
7 with that.

8 18174 MR. ROITENBERG: Thank you very much,
9 sir; others may have some questions for you.

10 18175 MR. HLADUN: Thank you.

11 18176 COMMISSIONER OLIPHANT: I don't know
12 whether counsel have agreed on the order of
13 questioning, but, Mr. Pratte, you are on your feet, do
14 you have any questions for Mr. Hladun?

15 18177 MR. PRATTE: I don't, thank you.

16 18178 COMMISSIONER OLIPHANT: Thank you
17 very much.

18 18179 Mr. Vickery, do you have any
19 questions, sir?

20 18180 MR. VICKERY: No, I don't, sir.

21 18181 COMMISSIONER OLIPHANT: Mr. Houston?

22 18182 MR. HOUSTON: No, I do not, sir.
23 Thank you.

24 18183 COMMISSIONER OLIPHANT: Mr. Auger?

25 18184 MR. AUGER: No questions,

1 Commissioner.

2 18185 COMMISSIONER OLIPHANT: All right.

3 18186 You might have been here under

4 protest, Mr. Hladun, but your visit was mercifully

5 short.

6 18187 Thank you very much for coming to

7 assist us, sir.

8 18188 MR. HLADUN: Thank you, sir.

9 18189 MR. ROITENBERG: Thank you, Mr.

10 Hladun.

11 18190 Mr. Commissioner, as we advised you

12 yesterday, due to some difficulties with getting

13 documents to Mr. MacKay, who was to be our witness for

14 the balance of the day via videolink with Nova Scotia,

15 we are unable to do his examination today. We did not

16 have time to schedule any further witnesses for this

17 afternoon, so counsel will have time to play catch-up

18 with the disclosure and materials they currently

19 possess in anticipation of tomorrow and the week to

20 follow.

21 18191 COMMISSIONER OLIPHANT: What do we

22 have on schedule for tomorrow?

23 18192 MR. ROITENBERG: Tomorrow morning we

24 commence with Mr. William Kaplan.

25 18193 COMMISSIONER OLIPHANT: Yes.

1 18194 MR. ROITENBERG: Following Mr.

2 Kaplan's testimony, I believe we have Mr. Terrien.

3 18195 COMMISSIONER OLIPHANT: All right.

4 So we will adjourn for the day and come back tomorrow
5 morning at 9:30 to commence with Mr. Kaplan's evidence.

6 18196 MR. ROITENBERG: Thank you, sir.

7 18197 COMMISSIONER OLIPHANT: Thank you.

8 Good morning, counsel.

9 --- Whereupon the hearing adjourned at 11:50 a.m., to
10 resume on Thursday, April 23, 2009 at 9:30 a.m. /
11 L'audience est adjournée à 11 h 50, pour reprendre
12 le jeudi 23 avril 2009 à 9 h 30

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We hereby certify that we have accurately
transcribed the foregoing to the best of
our skills and abilities.

Nous certifions que ce qui précède est une
transcription exacte et précise au meilleur
de nos connaissances et de nos compétences.

Lynda Johansson

Jean Desaulniers

Fiona Potvin

Sue Villeneuve