

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, May 20, 2009

**Tenue à :**

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

le mercredi 20 mai 2009

## APPEARANCES / COMPARUTIONS

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1 Ottawa, Ontario / Ottawa (Ontario)  
2 --- Upon resuming on Wednesday, May 20, 2009  
3 at 9:55 a.m. / L'audience reprend le mercredi  
4 20 mai 2009 à 9 h 55

5 42514 COMMISSIONER OLIPHANT: Good morning,  
6 counsel. Be seated, please.

7 PREVIOUSLY SWORN: THE RIGHT HON. BRIAN MULRONEY /  
8 SOUS LE MÊME SERMENT : LE TRÈS HON. BRIAN MULRONEY

9 42515 COMMISSIONER OLIPHANT: Mr.  
10 Pratte...?

11 42516 MR. PRATTE: Good morning,  
12 Mr. Commissioner.

13 42517 COMMISSIONER OLIPHANT: Good morning.

14 42518 MR. PRATTE: I have advised other  
15 counsel, I just wanted to clarify something for the  
16 record before my friend Mr. Auger starts, having to do  
17 with the so-called fourth article.

18 42519 I would like to say this about that.

19 42520 Mr. Mulroney has already testified  
20 that he had several conversations with Mr. Kaplan  
21 during which he requested that his commercial  
22 relationship with Mr. Schreiber not be published, and  
23 he explained to you that it was in order to protect his  
24 family.

25 42521 He also acknowledges,

1 Mr. Commissioner, that similar requests were made of  
2 the editor of the Globe and Mail for the same reason.  
3 42522 That's all I have to say. Thank you.  
4 42523 COMMISSIONER OLIPHANT: Thank you.  
5 42524 Mr. Auger...?  
6 42525 MR. AUGER: Good morning.  
7 42526 COMMISSIONER OLIPHANT: Just before  
8 you start, Mr. Wolson, I take it that you wish to say  
9 nothing in response to Mr. Pratte's comments just now?  
10 42527 MR. WOLSON: No, I have no comment to  
11 make and you know if I did, I would have been up on my  
12 feet. I am going to just simply sit and listen to the  
13 next examination.  
14 42528 Thank you.  
15 42529 COMMISSIONER OLIPHANT: Thank you.  
16 42530 Mr. Auger...?  
17 42531 MR. AUGER: Yes, good morning,  
18 Commissioner. I am ready to proceed at your  
19 convenience.  
20 42532 COMMISSIONER OLIPHANT: Please  
21 proceed.  
22 42533 MR. AUGER: Thank you.  
23 EXAMINATION: THE RIGHT HON. BRIAN MULRONEY  
24 BY MR. AUGER / INTERROGATOIRE : LE TRÈS HON. BRIAN  
25 MULRONEY PAR Me AUGER

1 42534 MR. AUGER: Good morning,  
2 Mr. Mulroney.

3 42535 THE RIGHT HON. BRIAN MULRONEY: Good  
4 morning, sir.

5 42536 MR. AUGER: You started your  
6 testimony last Tuesday morning and had told the  
7 Commissioner that context is everything; correct?

8 42537 THE RIGHT HON. BRIAN MULRONEY: I  
9 believe so.

10 42538 MR. AUGER: And at page 3383 of the  
11 transcript last week you told the Commissioner the  
12 following in relation to Mr. Schreiber.

13 42539 THE RIGHT HON. BRIAN MULRONEY: I'm  
14 sorry, what page, sir?

15 42540 MR. AUGER: Page 3383.

16 42541 THE RIGHT HON. BRIAN MULRONEY:  
17 Excuse me just a second.

18 42542 MR. AUGER: Certainly. This is  
19 Tuesday, May 12th, page 3383.  
20 --- Pause

21 42543 THE RIGHT HON. BRIAN MULRONEY: Yes,  
22 sir.

23 42544 MR. AUGER: Thank you.  
24 42545 You told the Commissioner as  
25 follows -- and this is relating to Mr. Schreiber:

1                    "... He was a fugitive from  
2                    German justice, and so I had  
3                    known nothing of these troubles  
4                    that led to these charges. I  
5                    knew him as an accomplished  
6                    entrepreneur and now here he  
7                    was, as I say, a fugitive from  
8                    German justice.  
9                    So we were dealing with two  
10                   different people, in my  
11                   judgment, a Mr. Schreiber I had  
12                   known and the one who is with us  
13                   today."

14    42546                    That was your statement to the  
15                    Commissioner when you started your evidence last  
16                    Tuesday?

17    42547                    THE RIGHT HON. BRIAN MULRONEY: Yes,  
18                    sir.

19    42548                    MR. AUGER: The full context of that  
20                    statement is that you had told Mr. Kaplan that  
21                    Mr. Schreiber should not be extradited to Germany;  
22                    correct?

23    42549                    THE RIGHT HON. BRIAN MULRONEY: I  
24                    believe that Mr. Schreiber had all the rights of any  
25                    Canadian citizen and that I would say or obviously say



1           and do nothing that would impinge upon his rights  
2           before the courts.

3   42550                   MR. AUGER:   At P-25, Tab 7 --

4   42551                   THE RIGHT HON. BRIAN MULRONEY:  What  
5           book?

6   42552                   MR. AUGER:   It's Mr. Kaplan's notes.

7   42553                   THE RIGHT HON. BRIAN MULRONEY:  Yes,  
8           sir.  What tab, sir?

9   42554                   MR. AUGER:   Tab 7, please.

10  42555                   THE RIGHT HON. BRIAN MULRONEY:  M'hm.

11  42556                   MR. AUGER:   It's the third page in.

12  42557                   THE RIGHT HON. BRIAN MULRONEY:  Yes,  
13           sir.

14  42558                   MR. AUGER:   To give the complete  
15           context, you say this to Mr. Kaplan.  The date is  
16           October 24, 2003.

17                           "I don't want to say or do  
18                           anything that would impact on  
19                           Schreiber's extradition.  He is  
20                           a Canadian citizen.  I don't  
21                           think he should wind up in a  
22                           German court.  I don't want to  
23                           do anything that would cause him  
24                           even the slightest suspicion.  
25                           That is what Stevie Cameron has

1 spent her lifetime doing, sowing  
2 suspicion of my character. The  
3 big play for Eddy Greenspan is  
4 the extradition and I agree that  
5 it shouldn't happen and I don't  
6 want to say anything that could  
7 make that happen. So deal with  
8 this one."

9 42559 If you can go over two pages, to page  
10 7:

11 "When this thing is over, at  
12 some point in the future..."

13 42560 THE RIGHT HON. BRIAN MULRONEY:

14 Excuse me. I'm sorry.

15 42561 MR. AUGER: I'm sorry.

16 42562 THE RIGHT HON. BRIAN MULRONEY: Just  
17 a second.

18 42563 MR. AUGER: I'm sorry. I have gone  
19 two pages over, Mr. Mulroney. At the top it says "7".

20 42564 THE RIGHT HON. BRIAN MULRONEY: Yes.

21 42565 MR. AUGER:

22 "When this thing is over, at  
23 some point in the future, and  
24 you want clarification on this  
25 or any other thing, and we

1                   conclude that there is no impact  
2                   on the extradition hearing, than  
3                   you and I can sit down and we  
4                   can see how different the  
5                   situation is from what you  
6                   believe it to be."

7   42566                   That's what you told Mr. Kaplan?

8   42567                   THE RIGHT HON. BRIAN MULRONEY:  Yes,  
9           sir.

10  42568                   MR. AUGER:  And so the obvious point  
11           that I think you have already confirmed is you were of  
12           the view that Mr. Schreiber should not be extradited,  
13           and you are in fact defending that principle.

14  42569                   THE RIGHT HON. BRIAN MULRONEY:  I was  
15           defending the principle that Mr. Schreiber was entitled  
16           to the presumption of innocence, the full presumption  
17           of innocence, and that the context of this is that I  
18           don't -- I don't want to say or do anything that would  
19           impact on Schreiber's extradition.

20  42570                   He is a Canadian citizen.  And when I  
21           said I don't think he should wind up in a German court,  
22           that is unless and until the courts of Canada have  
23           fully dealt with this matter.

24  42571                   MR. AUGER:  Right, and if there is --

25  42572                   THE RIGHT HON. BRIAN MULRONEY:  And

1 resolved it. If the Supreme Court of Canada decided  
2 that Mr. Schreiber should be extradited, then he will  
3 have had the full benefit of Canadian law.

4 42573 MR. AUGER: And you --

5 42574 THE RIGHT HON. BRIAN MULRONEY: That  
6 was the context.

7 42575 MR. AUGER: And you believe that if  
8 there were any new or viable legal arguments to be made  
9 on behalf of Mr. Schreiber in relation to his  
10 extradition, they should be advanced.

11 42576 THE RIGHT HON. BRIAN MULRONEY: I was  
12 sure that Mr. Greenspan would do that. And for my  
13 part, I was not going to say or do anything that would  
14 damage in any way or impinge in any way on the rights  
15 of a Canadian citizen trying to put forward his rights  
16 before a Canadian court.

17 42577 MR. AUGER: And we know from you that  
18 that is in part informed by your own experience of  
19 false allegations.

20 42578 THE RIGHT HON. BRIAN MULRONEY:  
21 Exactly.

22 42579 MR. AUGER: You made reference to  
23 even Mr. Pelossi making false allegations; right?

24 42580 THE RIGHT HON. BRIAN MULRONEY: That  
25 is right.

1 42581 MR. AUGER: Did you know that  
2 Mr. Pelossi had made statements in support of  
3 Mr. Schreiber's extradition?  
4 42582 THE RIGHT HON. BRIAN MULRONEY: No, I  
5 did not.  
6 42583 MR. AUGER: You admitted to this  
7 Commission that the transaction with Mr. Schreiber on  
8 your part was a mistake and an error and you took  
9 responsibility for it; correct?  
10 42584 THE RIGHT HON. BRIAN MULRONEY: Yes,  
11 I did.  
12 42585 MR. AUGER: When did you come to the  
13 conclusion it was a mistake?  
14 42586 THE RIGHT HON. BRIAN MULRONEY: Oh,  
15 the event took place 16 or 17 years ago. I can't give  
16 you an exact answer to that right now, but if you allow  
17 me to reflect on it during the course of the -- of your  
18 discussion with me, I will see if I can't --  
19 42587 MR. AUGER: Well, let's try to break  
20 it down.  
21 42588 You declared the retainer as income I  
22 think you said in 1999?  
23 42589 THE RIGHT HON. BRIAN MULRONEY: In  
24 1999.  
25 42590 MR. AUGER: Is that the point at

1           which you concluded that this was an error?

2   42591                   THE RIGHT HON. BRIAN MULRONEY:  No.

3           I concluded that I was going to terminate my  
4           association with Mr. Schreiber when he was arrested in  
5           a restaurant in Toronto and charged with bribery,  
6           corruption, fraud and income tax evasion, and when he  
7           then told an individual in a conversation, that was  
8           reported to me, that he thought that I had an income  
9           tax problem.

10   42592                   And as I indicated yesterday, I  
11           didn't have an income tax problem, but I --

12   42593                   MR. AUGER:  We will get to that.

13   42594                   THE RIGHT HON. BRIAN MULRONEY:  --  
14           but I knew that he was going to try and create one.  
15           That's all.

16   42595                   MR. AUGER:  So the answer to my  
17           question is 1999 was not the point that you determined  
18           that you had made a mistake?

19   42596                   THE RIGHT HON. BRIAN MULRONEY:  Well,  
20           it was certainly sometime in that -- the timeframe we  
21           discussed, obviously.

22   42597                   MR. AUGER:  Was it before 1999?

23   42598                   THE RIGHT HON. BRIAN MULRONEY:  I  
24           believe it would have been, yes.

25   42599                   MR. AUGER:  You had told the

1 Commissioner to the effect that Mr. Schreiber swore the  
2 November 7, 2007 affidavit in order to delay his  
3 extradition.

4 42600 THE RIGHT HON. BRIAN MULRONEY: Yes.

5 42601 MR. AUGER: You will be able to  
6 confirm to the Commission that that affidavit was sworn  
7 in response to your own motion that you brought in  
8 Toronto?

9 42602 THE RIGHT HON. BRIAN MULRONEY: It  
10 was -- he filed it in regard to a litigation in Toronto  
11 that he had initiated against me, the Statement of  
12 Claim which was dismissed by the Toronto courts, yes.

13 42603 MR. AUGER: Well, the Toronto courts  
14 didn't dismiss Mr. Schreiber's claim that you owed him  
15 \$300,000 on the merits.

16 42604 THE RIGHT HON. BRIAN MULRONEY: I  
17 didn't say that. I said it was dismissed.

18 42605 MR. AUGER: The Ontario court  
19 concluded that Québec was the proper forum.

20 42606 THE RIGHT HON. BRIAN MULRONEY: Yes.  
21 And when he tried again in Québec, he collapsed his  
22 case just before he was to testify under oath because  
23 he didn't want to be interrogated under oath --

24 42607 COMMISSIONER OLIPHANT: Mr.  
25 Mulroney --

1 42608 THE RIGHT HON. BRIAN MULRONEY: -- in  
2 the circumstances.

3 42609 COMMISSIONER OLIPHANT: -- if I could  
4 just back you up.

5 42610 THE RIGHT HON. BRIAN MULRONEY:  
6 Certainly.

7 42611 COMMISSIONER OLIPHANT: Mr. Auger  
8 asked a specific question and I didn't, I think, hear  
9 the answer.

10 42612 THE RIGHT HON. BRIAN MULRONEY: Okay.

11 42613 COMMISSIONER OLIPHANT: He asked you  
12 if Mr. Schreiber's affidavit of November the 7th was  
13 filed in response to a motion brought by you that would  
14 be in the litigation that he, Schreiber, had commenced?

15 42614 THE RIGHT HON. BRIAN MULRONEY: That  
16 is right, sir.

17 42615 COMMISSIONER OLIPHANT: Okay. That's  
18 fine.

19 42616 THE RIGHT HON. BRIAN MULRONEY:  
20 That's right, m'hm.

21 42617 COMMISSIONER OLIPHANT: Thank you.

22 42618 THE RIGHT HON. BRIAN MULRONEY:  
23 That's right.

24 42619 MR. AUGER: And just so we have the  
25 context, Mr. Mulroney, P-44 -- because the Commissioner



1           has asked -- Tab 112.

2   42620                   THE RIGHT HON. BRIAN MULRONEY: I'm  
3           sorry, what --

4   42621                   MR. AUGER: I'm sorry. It's Binder 2  
5           of 3 in support of your testimony and it is P-44.

6   42622                   THE RIGHT HON. BRIAN MULRONEY: Oh.  
7           This one here?

8   42623                   MR. AUGER: It's the large binder,  
9           yes.

10   42624                   THE RIGHT HON. BRIAN MULRONEY: Which  
11          tab?

12   42625                   MR. AUGER: Tab 112.

13          --- Pause

14   42626                   MR. AUGER: And if you could go to  
15          the end of page -- sorry, Tab 112, the second-last page  
16          from the back of the tab.

17   42627                   THE RIGHT HON. BRIAN MULRONEY: The  
18          second-last from the back?

19   42628                   MR. AUGER: Please. This is just to  
20          conclude the point that you --

21   42629                   THE RIGHT HON. BRIAN MULRONEY: I'm  
22          sorry, that is page -- oh yes, here we are.

23   42630                   MR. AUGER: Yes. This is --

24   42631                   THE RIGHT HON. BRIAN MULRONEY: "Page  
25          11".

1 42632 COMMISSIONER OLIPHANT: Go to  
2 paragraph 51, Mr. Mulroney.

3 42633 MR. AUGER: Thank you, Commissioner.

4 42634 THE RIGHT HON. BRIAN MULRONEY:  
5 Fifty-one, yes.

6 42635 MR. AUGER: This is where  
7 Mr. Schreiber, we can see he has sworn the affidavit.  
8 It is to the left of the signature, November 7, 2007.  
9 42636 Do you see that?

10 42637 THE RIGHT HON. BRIAN MULRONEY: Yes.

11 42638 MR. AUGER: Paragraph 51:  
12 "I swear this affidavit in  
13 relation to a Motion brought by  
14 Mr. Mulroney for an order  
15 dismissing this action for lack  
16 of jurisdiction..."

17 42639 Do you see that?

18 42640 THE RIGHT HON. BRIAN MULRONEY: Yes.

19 42641 MR. AUGER: So that simply confirms  
20 what you have said, that you brought a motion in  
21 Toronto alleging that Ontario was not the proper court;  
22 correct?

23 42642 THE RIGHT HON. BRIAN MULRONEY: Yes.

24 42643 MR. AUGER: And Mr. Schreiber simply  
25 swore this affidavit to respond to your motion in

1 court.

2 42644 THE RIGHT HON. BRIAN MULRONEY: So he  
3 said, yes.

4 42645 MR. AUGER: That is what paragraph 51  
5 says.

6 42646 THE RIGHT HON. BRIAN MULRONEY: That  
7 is what paragraph 51 says.

8 42647 MR. AUGER: Do you reject that?

9 42648 THE RIGHT HON. BRIAN MULRONEY: Well,  
10 if you examine the affidavit that was -- on which --  
11 this one here I believe, on which Mr. Schreiber was  
12 interrogated by Mr. Wolson and others, you will see  
13 that there are many things in here that do not relate  
14 to the Toronto action, and there are lots of things  
15 here that are, in my judgment anyway, designed to  
16 attract attention to his extradition and cause him to  
17 stay here in Canada.

18 42649 MR. AUGER: You and I would agree  
19 that your judgment and assessment of the affidavit is  
20 not as objective as the Commissioner's?

21 42650 THE RIGHT HON. BRIAN MULRONEY: I  
22 would certainly agree with that. That's right.

23 --- Pause

24 42651 THE RIGHT HON. BRIAN MULRONEY: I  
25 just -- I was looking for, if I may, sir.

1 42652 MR. AUGER: Certainly.

2 42653 THE RIGHT HON. BRIAN MULRONEY: I  
3 would just point out, for example, there are many in  
4 here, but in paragraph 39 where he swears to the fact:  
5 "I wrote the July 20, 2006  
6 letter at the request of Mr.  
7 Mulroney because he told me..."  
8 42654 He told me.  
9 "... that he was going to meet  
10 with The Right Honourable  
11 Stephen Harper..."  
12 42655 The moment he wrote that and swore  
13 that, I had not spoken with him for seven years. And I  
14 think Mr. Wolson has conclusively established that that  
15 and many other important provisions of this affidavit  
16 were incorrect.

17 42656 MR. AUGER: We will get to your  
18 discussions with Mr. Schreiber.

19 42657 THE RIGHT HON. BRIAN MULRONEY: Yes,  
20 sir.

21 42658 MR. AUGER: Can I ask you to please  
22 turn up P-9, which is the cerloxed brown covered  
23 volume.

24 42659 THE RIGHT HON. BRIAN MULRONEY: P-9,  
25 P-40. What page, sir?

1 42660 MR. AUGER: Is Tab 38, please.

2 42661 THE RIGHT HON. BRIAN MULRONEY: Tab

3 38. Yes, sir.

4 42662 MR. AUGER: You will see that this is

5 a decision of the Court of Appeal for Ontario in

6 relation to Mr. Schreiber's extradition case.

7 42663 THE RIGHT HON. BRIAN MULRONEY: I see

8 that, yes.

9 42664 MR. AUGER: This is really just to

10 establish the chronology.

11 42665 You will see on the first page,

12 Mr. Mulroney, it says:

13 "Heard and orally released:

14 November 15, 2007".

15 42666 THE RIGHT HON. BRIAN MULRONEY: Yes.

16 42667 MR. AUGER: And obviously that is

17 eight days after Mr. Schreiber's affidavit.

18 42668 THE RIGHT HON. BRIAN MULRONEY: If

19 you say so, sir.

20 42669 MR. AUGER: And so obviously the

21 Court of Appeal had an outstanding piece of litigation

22 or a legal issue that it was in the course of

23 determining in November of 2007?

24 42670 THE RIGHT HON. BRIAN MULRONEY: I

25 have no idea.

1 42671 MR. AUGER: Well, we have the  
2 decision not Tab 38.

3 42672 THE RIGHT HON. BRIAN MULRONEY: You  
4 may have the decision, but I have no knowledge of it.

5 42673 MR. AUGER: That is the first time  
6 you have heard about Mr. Schreiber pursuing legal  
7 arguments at the Ontario Court of Appeal in 2007?

8 42674 THE RIGHT HON. BRIAN MULRONEY: Mr.  
9 Schreiber has been before the courts for a decade, so  
10 there was lots of comments about his many efforts to  
11 try and stop his extradition to Germany.

12 42675 I believe that this -- if you look at  
13 the time, this is probably just before the Supreme  
14 Court of Canada again ordered him extradited.

15 42676 I may be wrong on that, but I believe  
16 that to be the case.

17 42677 MR. AUGER: You have anticipated me.

18 42678 If you can go to Tab 40 --

19 42679 THE RIGHT HON. BRIAN MULRONEY: Yes,  
20 sir.

21 42680 MR. AUGER: -- because you are  
22 exactly right. March 6, 2008 the Supreme Court of  
23 Canada dismisses an application for leave in relation  
24 to the November 15, 2007 Court of Appeal decision.

25 42681 THE RIGHT HON. BRIAN MULRONEY: Yes,

1 sir.

2 42682 MR. AUGER: Right? And so the point  
3 is that -- maybe you didn't know -- in 2007 and 2008  
4 Mr. Schreiber was in fact pursuing a legal remedy in  
5 the courts.

6 42683 THE RIGHT HON. BRIAN MULRONEY: Well,  
7 I knew he was in the courts. He had sued me.

8 42684 MR. AUGER: I am talking about his  
9 extradition case.

10 42685 THE RIGHT HON. BRIAN MULRONEY: I  
11 was -- I was aware essentially of the extradition case  
12 when it came before the Supreme Court and it was  
13 dismissed, I believe, by the Supreme Court, his request  
14 to appeal the decision to the Ontario Court of Appeal.

15 42686 And if -- am I right or wrong in  
16 telling you, sir, that I believe that was at least the  
17 second such decision from the Supreme Court of Canada?

18 42687 MR. AUGER: At least.

19 42688 THE RIGHT HON. BRIAN MULRONEY: Yes,  
20 for him to be extradited.

21 42689 MR. AUGER: The Supreme Court of  
22 Canada decision is March 6, 2008, so obviously well  
23 after the November 7th, 2007 affidavit.

24 42690 THE RIGHT HON. BRIAN MULRONEY: Yes,  
25 okay.

1 42691 MR. AUGER: Right?

2 42692 THE RIGHT HON. BRIAN MULRONEY: Fine.

3 42693 MR. AUGER: Tab 41, another decision  
4 from the Ontario Court of Appeal.  
5 "Heard: July 11, 2008".

6 42694 Do you see that?

7 42695 THE RIGHT HON. BRIAN MULRONEY: I see  
8 that, yes.

9 42696 MR. AUGER: You have already said in  
10 your testimony that you don't see anything improper in  
11 Mr. Schreiber advancing legal arguments before the  
12 court in defending his extradition?

13 42697 THE RIGHT HON. BRIAN MULRONEY: Of  
14 course not. I believe that every Canadian citizen --  
15 you know, we have had a lot of people condemned wrongly  
16 in Canada, and there have been terrific battles to have  
17 purged the record of some of this deleterious comment  
18 about people. So I believe in the presumption of  
19 innocence.

20 42698 And I also believe in never  
21 interfering, publicly or privately, with the  
22 administration of justice, and that includes the  
23 protection of course of Mr. Schreiber's rights and his  
24 Charter rights.

25 42699 So I had -- whatever he wished to do



1 to pursue his battle in the courts, I had no problem  
2 with it.

3 42700 MR. AUGER: And you still have no  
4 complaint about that?

5 42701 THE RIGHT HON. BRIAN MULRONEY: None  
6 whatsoever, not for him or any other citizen of this  
7 country.

8 42702 MR. AUGER: Mr. Wolson spent a lot of  
9 time taking you through correspondence with  
10 Mr. Schreiber at the time that you were Prime Minister.

11 42703 You remember that?

12 42704 THE RIGHT HON. BRIAN MULRONEY: I  
13 remember Mr. Wolson taking me through it --

14 42705 MR. AUGER: Exactly.

15 42706 THE RIGHT HON. BRIAN MULRONEY: --  
16 much more than I remember the correspondence.

17 42707 MR. AUGER: And we don't need to go  
18 back through all of those letters, but, at the end of  
19 the day, your evidence was that you didn't receive Mr.  
20 Schreiber's correspondence on Bear Head because he was  
21 lobbying.

22 42708 THE RIGHT HON. BRIAN MULRONEY: Yeah,  
23 I have no recollection of receiving any of the letters  
24 that Mr. Wolson brought forward.

25 42709 I have also told Mr. Wolson that it's

1 possible that some of those somehow got through, but I  
2 have no recollection of any of them.

3 42710 MR. AUGER: Could I ask you, please,  
4 to go to P-25, which is the William Kaplan binder.

5 42711 THE RIGHT HON. BRIAN MULRONEY:  
6 P-25 --

7 42712 MR. AUGER: Tab 1, sir, please.

8 42713 The fourth page in, please.

9 42714 Just to give you the context, this is  
10 a December 2nd, 1997 interview with Mr. Kaplan.

11 42715 Do you see that?

12 42716 THE RIGHT HON. BRIAN MULRONEY: Yes.

13 42717 MR. AUGER: You say to Mr. Kaplan:

14 "Schreiber was involved in Bear  
15 Head. I knew that because I had  
16 correspondence with him and I  
17 met him. I know that he was  
18 trying to do the deal."

19 42718 So you had confirmed to Mr. Kaplan  
20 that you had correspondence with Mr. Schreiber on Bear  
21 Head.

22 42719 THE RIGHT HON. BRIAN MULRONEY:  
23 Simply because I was told by a staffer that some had  
24 come in, that was never brought to my attention.

25 42720 MR. AUGER: So when you conveyed that

1 statement to Mr. Kaplan, your evidence is, you weren't  
2 referring to the fact that you saw any of the letters.

3 42721 THE RIGHT HON. BRIAN MULRONEY: That  
4 is right, sir.

5 42722 I say that is right with the caveat  
6 that I just gave you about my interrogation by Mr.  
7 Wolson. Possibly one slipped through, but I have no  
8 recollection of it.

9 42723 MR. AUGER: Right, but you don't deny  
10 receiving the letters, you just don't recall.

11 42724 THE RIGHT HON. BRIAN MULRONEY: I  
12 just don't recall. It wasn't habitual for that to have  
13 taken place, and I gather that the same general policy  
14 exists with Prime Minister Harper, and I am sure with  
15 other prime ministers. There is only so much you can  
16 read in the course of a day.

17 42725 MR. AUGER: Can I ask you, please, to  
18 turn up P-7, which is Binder 4, Mr. Schreiber's binder  
19 of letters.

20 42726 Tab 38, please.

21 42727 This is, just to situate you, a  
22 February 20th, 2007 letter from Mr. Schreiber to you.

23 42728 Correct?

24 42729 THE RIGHT HON. BRIAN MULRONEY: Yes.

25 42730 MR. AUGER: The "RE:" line reads:

1 "Return of \$300,000.00 cash  
2 payments plus 5% interest from  
3 January 1, 1995 until February  
4 28, 2005 \$185,000.00 (Total  
5 amount \$485,000.00)."

6 42731 Do you see that?

7 42732 THE RIGHT HON. BRIAN MULRONEY: Yes,  
8 I do.

9 42733 MR. AUGER: You told the Commissioner  
10 that the last time you spoke to Mr. Schreiber was at  
11 The Royal York Hotel, where you had come out of the  
12 washroom and simply said "Hi".

13 42734 THE RIGHT HON. BRIAN MULRONEY: I  
14 believe that's right. I think that was at the dinner  
15 honouring Mr. Munk, I believe.

16 42735 MR. AUGER: As I appreciated your  
17 evidence, you had no other discussion with him, is your  
18 recollection?

19 42736 THE RIGHT HON. BRIAN MULRONEY:  
20 That's my recollection, I had no discussion -- I'm  
21 sorry, no recollection of any discussion with him after  
22 that, and that was a chance meeting.

23 42737 MR. AUGER: Did you make a point of  
24 not engaging in discussion when you saw Mr. Schreiber?

25 42738 THE RIGHT HON. BRIAN MULRONEY: Well,

1 I think I indicated that I didn't see him. I didn't  
2 not engage in conversation with him when I saw him, I  
3 don't believe I saw him.

4 42739 MR. AUGER: There was one point, as I  
5 understood your evidence, you said, that you had come  
6 out of the washroom at The Royal York event and simply  
7 said "Hi" to Mr. Schreiber.

8 42740 THE RIGHT HON. BRIAN MULRONEY: We  
9 had a chat. By "chat", we had a -- "Hello. How are  
10 you?"

11 42741 And he had gotten up -- what I  
12 remember is, he got up from the table --

13 42742 I was coming back from the washroom,  
14 and he got up from the table and came over to see me as  
15 I was heading back to my table. It was a very  
16 perfunctory hello and goodbye, and that's what I  
17 remember about it.

18 42743 It certainly wasn't, I think I can  
19 safely tell you, what is referred to as "The Royal York  
20 Meeting". There was no meeting at The Royal York. It  
21 was as I have described it.

22 42744 MR. AUGER: The letter that I have  
23 taken you to, Mr. Schreiber writes in the first  
24 paragraph:

25 "Unfortunately, nothing came of

1                                   our plans as discussed during  
2                                   our meetings in 1993 and 1994."  
3 42745                           Jumping down to the next paragraph:  
4                                   "When we last spoke on the  
5                                   occasion of the dinner in honor  
6                                   of Mr. Peter Munk on May 23,  
7                                   2000 we agreed that we would  
8                                   meet again after your return  
9                                   from Florida."  
10 42746                           Does that assist your recollection as  
11                                   to whether or not there was another meeting with Mr.  
12                                   Schreiber at a dinner involving Mr. Munk?  
13 42747                           THE RIGHT HON. BRIAN MULRONEY: I  
14                                   have no recollection of that, and seeing it now, I  
15                                   would simply point out that he said:  
16                                   "When we last spoke on the  
17                                   occasion of the dinner in honor  
18                                   of Mr. Peter Munk on May 23,  
19                                   2000 we agreed that we would  
20                                   meet again after your return  
21                                   from Florida."  
22 42748                           I don't go to Florida after May 23rd,  
23                                   and we would be into June. I have no recollection of  
24                                   ever having been in Florida in those circumstances.  
25 42749                           So that conversation never took

1 place. We said hello, I went back to the table, and  
2 that was it.

3 42750 And I think he confirms -- "When we  
4 last spoke on the occasion of the dinner in honour of  
5 Mr. Peter Munk on May 23, 2000..." -- effectively that  
6 was the seven years to which I referred. I had had --  
7 and which he falsely stated on the affidavit that I had  
8 asked him.

9 42751 We had not spoken for seven years.

10 42752 MR. AUGER: So the point is, you  
11 speak in 2000 and you don't speak for seven years.

12 42753 THE RIGHT HON. BRIAN MULRONEY: I  
13 believe that's right, sir.

14 42754 We are now to nine years.

15 42755 MR. AUGER: Did Mr. Schreiber call  
16 you in 2005 to report to you that the MBB Eurocopter  
17 charges were dismissed?

18 42756 THE RIGHT HON. BRIAN MULRONEY: No.

19 42757 MR. AUGER: By telephone?

20 42758 THE RIGHT HON. BRIAN MULRONEY: No.

21 42759 MR. AUGER: So your evidence is, at  
22 no point did Mr. Schreiber report to you or discuss  
23 with you the fact that those charges were dismissed?

24 42760 THE RIGHT HON. BRIAN MULRONEY: No.

25 42761 MR. AUGER: You don't recall Mr.

1 Schreiber calling you in Florida, raising that topic?

2 42762 THE RIGHT HON. BRIAN MULRONEY: No, I  
3 certainly do not.

4 42763 MR. AUGER: Do you deny that that  
5 happened?

6 42764 THE RIGHT HON. BRIAN MULRONEY: I  
7 haven't spoken with him, as he has confirmed, in seven  
8 years, and I can tell you that it's now nine.

9 42765 So he has told you that himself, I  
10 think.

11 42766 MR. AUGER: Could I ask you, please,  
12 to go to Binder 2, P-44, which is your binder, Mr.  
13 Mulroney.

14 42767 THE RIGHT HON. BRIAN MULRONEY: Yes.  
15 42768 What number?

16 42769 MR. AUGER: Tab 118.  
17 42770 Just so you have the subject, this  
18 relates to the safety deposit box in New York.

19 42771 THE RIGHT HON. BRIAN MULRONEY: Yes.  
20 42772 MR. AUGER: The document, as I  
21 understand it -- and maybe you can confirm from your  
22 knowledge -- indicates that you had not visited the box  
23 since July 2006.

24 42773 Correct?

25 42774 THE RIGHT HON. BRIAN MULRONEY: What



1 I see here is a note that says:

2 "Unfortunately, all we can say  
3 for certain is that Mr. Mulroney  
4 has not visited the box since  
5 July 2006, which is when we  
6 started keeping records about  
7 safe deposit boxes in New York,  
8 New Jersey and Connecticut.  
9 Before then we only verified  
10 authorization to enter the box  
11 but did not maintain logs or  
12 keep copies of the access  
13 requests. As noted below, I  
14 think it is possible he visited  
15 the box on..."

16 42775 -- such-and-such and so-and-so.

17 42776 MR. AUGER: Yes, and that's what I  
18 want to ask you. Are you able to tell the Commissioner  
19 whether or not you visited the box on or around  
20 December 13th, 1999?

21 42777 THE RIGHT HON. BRIAN MULRONEY: I  
22 can't --

23 42778 December 13th, 1999?

24 42779 MR. AUGER: You just read that from  
25 the e-mail.

1 42780 THE RIGHT HON. BRIAN MULRONEY: Yeah,  
2 I just read from the e-mail. I may have, but I have no  
3 recollection of it.

4 42781 And they seem to be saying that they  
5 didn't keep any records in those days.

6 42782 MR. AUGER: Wouldn't that coincide  
7 with the timing of you determining this to be income?

8 42783 THE RIGHT HON. BRIAN MULRONEY: I  
9 have no idea. What is the --

10 42784 MR. AUGER: I don't know. I  
11 thought --

12 42785 THE RIGHT HON. BRIAN MULRONEY: July  
13 2006?

14 "...[he] has not visited the box  
15 since July 2006."

16 42786 MR. AUGER: My question relates to  
17 the last sentence that you just read:

18 "As noted below, I think it is  
19 possible he visited the box on  
20 or around December 13, 1999 when  
21 the lock was replaced and a new  
22 key issued..."

23 42787 Do you see that?

24 42788 THE RIGHT HON. BRIAN MULRONEY: But  
25 we do not know for sure; right?

1 42789 MR. AUGER: That's why I am asking  
2 you.

3 42790 THE RIGHT HON. BRIAN MULRONEY:  
4 That's what he says. Just keep reading, sir.

5 42791 MR. AUGER: Fair enough, but we do  
6 not know for sure.

7 42792 THE RIGHT HON. BRIAN MULRONEY: Yeah.

8 42793 MR. AUGER: Yeah, he said that it was  
9 a possibility.

10 42794 THE RIGHT HON. BRIAN MULRONEY: Well,  
11 it may be a possibility, but that's all it would be,  
12 sir. I have no recollection of anything like that.

13 42795 MR. AUGER: And your evidence that  
14 1999 was the year that you determined the cash to be  
15 income, does that in any way refresh your memory about  
16 visiting the box?

17 42796 THE RIGHT HON. BRIAN MULRONEY: No,  
18 not at all.

19 42797 MR. AUGER: Did you instruct anyone  
20 on your behalf to attend the safety deposit box?

21 42798 THE RIGHT HON. BRIAN MULRONEY: No.

22 42799 MR. AUGER: Are you able to tell the  
23 Commissioner why the lock was replaced and a new key  
24 issued?

25 42800 THE RIGHT HON. BRIAN MULRONEY: No,

1 idea.

2 42801 MR. AUGER: Are you telling the  
3 Commissioner that when this e-mail was obtained in  
4 January of 2008, that that was the first time you  
5 learned that the lock was changed?

6 42802 THE RIGHT HON. BRIAN MULRONEY:  
7 Absolutely.

8 42803 And we were asked -- I think I was  
9 asked to obtain it for the parliamentary committee  
10 hearings.

11 42804 MR. AUGER: Could I ask you to go two  
12 pages further in the same tab, please, because there is  
13 another e-mail that says, at the third line down:

14 "However, we changed the lock at  
15 Mr. Mulroney's request on  
16 December 13..."

17 42805 Do you have the page, sir? Sorry.

18 42806 THE RIGHT HON. BRIAN MULRONEY: I'm  
19 sorry, what page?

20 42807 MR. AUGER: That's okay. It's the  
21 second from the end. It says "Bill" at the top.

22 42808 At the very top of the page it says  
23 "Bill", and then it starts, "Mr. Mulroney..."

24 42809 THE RIGHT HON. BRIAN MULRONEY: Oh,  
25 yes, here we are.

1 42810 MR. AUGER: The third sentence reads:  
2 "However, we changed the lock at  
3 Mr. Mulroney's request on  
4 December 13, 1999, apparently  
5 because he lost the key it's  
6 possible he accessed the box at  
7 that time."  
8 42811 Does that refresh your memory as to  
9 whether or not you requested the change of the lock?  
10 42812 THE RIGHT HON. BRIAN MULRONEY: It  
11 doesn't, but if the bank points out that my office had  
12 told them that I had lost my key, they would probably  
13 change the lock, I assume.  
14 42813 MR. AUGER: The bank points out in  
15 this e-mail that you requested that the lock be  
16 changed.  
17 42814 THE RIGHT HON. BRIAN MULRONEY: Yeah,  
18 because I had lost the key.  
19 42815 MR. AUGER: So, obviously, you knew  
20 that in December of 1999.  
21 42816 THE RIGHT HON. BRIAN MULRONEY: Well,  
22 it's written here, so it has to be accurate, but I have  
23 no recollection of that at all.  
24 42817 MR. AUGER: When was the cash removed  
25 from that safety deposit box?

1 42818 THE RIGHT HON. BRIAN MULRONEY: After  
2 it became my money.

3 42819 MR. AUGER: What year?

4 42820 THE RIGHT HON. BRIAN MULRONEY: That  
5 was starting about the end of 2000.

6 42821 MR. AUGER: The end of 2000 --

7 42822 THE RIGHT HON. BRIAN MULRONEY:  
8 Thereabouts. Sometime in 2000, yes. Starting then,  
9 yes.

10 42823 MR. AUGER: So at the end of 2000, it  
11 is your evidence that you, or somebody on your behalf,  
12 removed the cash from the New York safety deposit box.

13 42824 THE RIGHT HON. BRIAN MULRONEY: In  
14 increments.

15 42825 MR. AUGER: More than one visit.

16 42826 THE RIGHT HON. BRIAN MULRONEY: Yes.

17 42827 MR. AUGER: When was the last  
18 increment removed from the safety deposit box in New  
19 York?

20 42828 THE RIGHT HON. BRIAN MULRONEY: I  
21 have no idea.

22 42829 MR. AUGER: Could it have been in  
23 2001 or 2002?

24 42830 THE RIGHT HON. BRIAN MULRONEY: I  
25 have no idea, sir.

1 42831 MR. AUGER: Could it have been in  
2 2008?  
3 42832 THE RIGHT HON. BRIAN MULRONEY: 2008?  
4 No, sir.  
5 42833 MR. AUGER: Could it have been in  
6 2005?  
7 42834 THE RIGHT HON. BRIAN MULRONEY: I  
8 think I have indicated to you that it was, most likely,  
9 beginning in late 2000.  
10 42835 MR. AUGER: You said in increments.  
11 42836 So the first increment was removed in  
12 late 2000.  
13 42837 THE RIGHT HON. BRIAN MULRONEY: I  
14 believe so, yes.  
15 42838 MR. AUGER: How much?  
16 42839 THE RIGHT HON. BRIAN MULRONEY: I  
17 can't remember, sir.  
18 42840 MR. AUGER: There was \$75,000  
19 Canadian in that safety deposit box?  
20 42841 THE RIGHT HON. BRIAN MULRONEY: That  
21 is right.  
22 42842 MR. AUGER: Was there more than  
23 \$50,000 removed at that first instalment?  
24 42843 THE RIGHT HON. BRIAN MULRONEY: Of  
25 course not.

1 42844 As I indicated to the Commission, the  
2 money was disbursed both in Canada and the United  
3 States -- not the money that was in the bank in the  
4 United States, that was in the United States -- to  
5 members of my immediate and extended family in the  
6 United States.

7 42845 MR. AUGER: Just so I understand your  
8 answer, you are telling the Commissioner that the cash  
9 in the New York deposit box was not disbursed to family  
10 members?

11 42846 THE RIGHT HON. BRIAN MULRONEY: Yes,  
12 it was.

13 42847 MR. AUGER: It was. That's how I  
14 understood your evidence earlier.

15 42848 THE RIGHT HON. BRIAN MULRONEY: Yeah.

16 42849 COMMISSIONER OLIPHANT: Mr. Mulroney,  
17 at that time, did you have children, or a child  
18 attending school in the United States perhaps?

19 42850 I happen to be a father who has a  
20 child that has been educated out of the country, and I  
21 am wondering whether some of the money went to that.

22 42851 THE RIGHT HON. BRIAN MULRONEY: Yes.  
23 I think there were, in that timeframe, at least two, if  
24 not three in New York and Connecticut at the time -- in  
25 that general timeframe, and you are quite right, that's



1           what it was used for, principally.

2   42852                   MR. AUGER:  Thank you, Commissioner.

3   42853                   Could I ask you, Mr. Mulroney, to

4           turn in the same binder to Tab 119.

5   42854                   THE RIGHT HON. BRIAN MULRONEY:  Yes,

6           sir.

7   42855                   MR. AUGER:  This is the same subject

8           matter, in relation to the safety deposit box.  You

9           will see at the second page that there is a letter of

10          January 16, 2008, and it says "Draft" at the top.

11   42856                   Do you see that?

12   42857                   THE RIGHT HON. BRIAN MULRONEY:  I do,

13          yes.

14   42858                   MR. AUGER:  It is not signed by the

15          author.  Correct?

16   42859                   THE RIGHT HON. BRIAN MULRONEY:  No,

17          it's not.

18   42860                   MR. AUGER:  It gives a full

19          paragraph -- we don't need to read it into the record,

20          but, essentially, it sets out what you have already

21          described in relation to establishing the box, and

22          accessing it, and the lock replacement --

23   42861                   THE RIGHT HON. BRIAN MULRONEY:  Yes.

24   42862                   MR. AUGER:  -- and the full

25          description.  Correct?

1 42863 THE RIGHT HON. BRIAN MULRONEY: Yes.  
2 42864 MR. AUGER: If I could ask you to go  
3 to Tab 120 --  
4 42865 THE RIGHT HON. BRIAN MULRONEY: Yes.  
5 42866 MR. AUGER: -- we see the same author  
6 from the Chase Bank. It's a letter that is signed,  
7 dated January 28, 2008, and it provides one sentence:  
8 "Mr. Mulroney had on December 8,  
9 1994 a safe deposit box at  
10 Chase's 270 Park Avenue branch  
11 in New York, and the box is  
12 still open."  
13 42867 Do you see that?  
14 42868 THE RIGHT HON. BRIAN MULRONEY: Yes,  
15 I do.  
16 42869 MR. AUGER: That is the signed letter  
17 that you obtained.  
18 42870 THE RIGHT HON. BRIAN MULRONEY:  
19 That's right.  
20 42871 MR. AUGER: My question is: Why is  
21 the signed letter that you obtained --  
22 42872 That's the official letter that you  
23 wanted; right?  
24 42873 THE RIGHT HON. BRIAN MULRONEY: That  
25 the committee wanted.

1 42874 MR. AUGER: The Ethics Committee.  
2 42875 THE RIGHT HON. BRIAN MULRONEY: The  
3 Ethics Committee.  
4 42876 MR. AUGER: And that's the letter  
5 that you provided.  
6 42877 THE RIGHT HON. BRIAN MULRONEY: That  
7 is right.  
8 42878 MR. AUGER: The letter at Tab 120,  
9 that is signed by Mr. Lipsitz.  
10 42879 THE RIGHT HON. BRIAN MULRONEY:  
11 That's right.  
12 42880 MR. AUGER: My question is: Why  
13 would you not get the full description in the previous  
14 draft letter, at Tab 119, which sets out the full  
15 chronology and the full explanation?  
16 42881 Why do you get a shorter, one-line  
17 sentence letter?  
18 42882 THE RIGHT HON. BRIAN MULRONEY:  
19 Perhaps it is because I was informed by the bank -- and  
20 I was, as I pointed out to you, a director of the -- a  
21 member of the International Board of the bank, JPMorgan  
22 Chase at the time, and I was informed that --  
23 42883 I had asked them to comply with the  
24 request of the committee, which was: Did I have a  
25 safety deposit box in New York, and so on.

1 42884                   They checked the records and, indeed,  
2           they came up with the answer that I had, and then --

3 42885                   MR. AUGER:   The answer they came up  
4           with is in the draft --

5 42886                   I'm sorry.

6 42887                   THE RIGHT HON. BRIAN MULRONEY:  
7           Somebody communicated with me, saying:   Look, we were  
8           scouring through the records, and we got a telephone  
9           call from a Canadian television CBC program, and they  
10          want to get into your bank accounts.   We don't allow  
11          that, and we're not going to talk about that kind of  
12          stuff, but we had to let you know.

13 42888                  And I said:   Well, give them -- not  
14          them, give the committee the information, and what they  
15          are requesting is an answer to the question:   Did I  
16          have a safety deposit box on such-and-such a day.

17 42889                  Provide an answer to that.

18 42890                  And either I or they communicated it  
19          directly to the committee.   That's all I know.

20 42891                  MR. AUGER:   The draft letter, with  
21          the complete explanation --

22 42892                  THE RIGHT HON. BRIAN MULRONEY:   No,  
23          the letter that you see here on --

24 42893                  MR. AUGER:   The signed letter.

25 42894                  THE RIGHT HON. BRIAN MULRONEY:   Yes,

1 of course.

2 42895 MR. AUGER: So the reason you didn't  
3 give the complete draft letter that gave the full  
4 explanation of the lock change, and the details we have  
5 discussed, is that you feared somebody might try to  
6 access --

7 42896 THE RIGHT HON. BRIAN MULRONEY: Are  
8 you --

9 42897 MR. AUGER: I'm asking.

10 42898 THE RIGHT HON. BRIAN MULRONEY: I  
11 thought I gave you my answer.

12 42899 MR. PRATTE: I'm sorry, Mr. Mulroney.

13 42900 I am sure that my friend Mr. Auger is  
14 not trying to put a spin on this, but the witness'  
15 first answer was: I provided the letter that the  
16 committee requested, and all they wanted to know was,  
17 was there a safety deposit box open on that date.

18 42901 That's the letter that they got, no  
19 more, no less.

20 42902 I just want to make sure that the  
21 evidence is not mischaracterized, or that parts thereof  
22 are not dropped as the questioning proceeds.

23 42903 Beyond that, he can question the  
24 witness as much as he wants, but at least the preface  
25 should be accurate.

1 42904 COMMISSIONER OLIPHANT: Okay.  
2 Thanks, Mr. Pratte.  
3 42905 I have to tell you, I think Mr.  
4 Mulroney can handle himself pretty well on the stand.  
5 Okay? It's cross-examination.  
6 42906 MR. AUGER: Thank you, Commissioner.  
7 42907 COMMISSIONER OLIPHANT: While Mr.  
8 Auger is looking for his next question, a small point.  
9 You made it again today, Mr. Mulroney, that you were a  
10 member of the Board of Directors of Chase Manhattan, or  
11 JP Chase, or whatever the bank was.  
12 42908 Is that correct?  
13 42909 THE RIGHT HON. BRIAN MULRONEY: At  
14 that time, JPMorgan Chase, yes.  
15 42910 COMMISSIONER OLIPHANT: In any event,  
16 you were a member of the Board of the bank where the  
17 safety deposit box was located.  
18 42911 THE RIGHT HON. BRIAN MULRONEY:  
19 That's right.  
20 42912 COMMISSIONER OLIPHANT: Did you tell  
21 us earlier that the bank provided you a safety deposit  
22 box as a courtesy because you were a member of the  
23 Board?  
24 42913 THE RIGHT HON. BRIAN MULRONEY: No, I  
25 didn't say that, Mr. Commissioner.

1 42914 COMMISSIONER OLIPHANT: Okay. That's  
2 fine, if you didn't say that --

3 42915 THE RIGHT HON. BRIAN MULRONEY: What  
4 I said was that, at an earlier moment, I had simply  
5 said to the Secretary of the Board, I believe: I am  
6 going to require this in New York. Please set it up  
7 for me.

8 42916 And he said: Fine.

9 42917 Let me know it's done.

10 42918 When you're in New York, drop by and  
11 sign it, and it's yours.

12 42919 That was it.

13 42920 COMMISSIONER OLIPHANT: Okay. The  
14 reason I ask that is, I noticed from looking at the  
15 e-mail that you owed a rental fee at the time, and it  
16 looked to me like they were dinging you for it.

17 42921 THE RIGHT HON. BRIAN MULRONEY: I  
18 still do.

19 --- Laughter / Rires

20 42922 COMMISSIONER OLIPHANT: Okay. That's  
21 fine. Go ahead.

22 42923 THE RIGHT HON. BRIAN MULRONEY: I  
23 think they can afford it more than me. There you go.

24 42924 COMMISSIONER OLIPHANT: I'm not so  
25 sure, and that says nothing about you, it's more about

1 the bank.

2 42925 THE RIGHT HON. BRIAN MULRONEY: The  
3 banks these days, yeah, you're right.

4 42926 Although I have to say that JPMorgan  
5 Chase seems to have escaped better than most of them  
6 down there.

7 42927 COMMISSIONER OLIPHANT: Go ahead, Mr.  
8 Auger.

9 42928 MR. AUGER: Thank you.

10 42929 You sued the federal government for  
11 \$50 million in relation to the libellous, defamatory  
12 comments that were made.

13 42930 And I don't propose to review that,  
14 but, plainly, you launched a lawsuit for \$50 million.

15 42931 THE RIGHT HON. BRIAN MULRONEY:  
16 That's right.

17 42932 MR. AUGER: You were confident that  
18 you would succeed if you had to go through and battle  
19 to trial?

20 42933 THE RIGHT HON. BRIAN MULRONEY: Yes.

21 42934 MR. AUGER: Mr. Wolson reviewed with  
22 you, in great detail, your discovery transcript, and  
23 you gave your explanations as to how and why you  
24 answered.

25 42935 THE RIGHT HON. BRIAN MULRONEY:



1           That's right.

2   42936                   MR. AUGER:  Ultimately, before trial,  
3           you settled that lawsuit, where you sought \$50  
4           million -- you settled that for \$2 million.

5   42937                   THE RIGHT HON. BRIAN MULRONEY:  \$2.1  
6           million.

7   42938                   MR. AUGER:  \$2.1 million, for costs.

8   42939                   THE RIGHT HON. BRIAN MULRONEY:

9           That's right.

10  42940                   MR. AUGER:  And I thought your  
11           evidence was that that occurred on the eve of trial.

12  42941                   THE RIGHT HON. BRIAN MULRONEY:  I  
13           believe that's right, that night or the night before.

14  42942                   MR. AUGER:  So, obviously, there was  
15           no trial.

16  42943                   THE RIGHT HON. BRIAN MULRONEY:

17           That's right.

18  42944                   MR. AUGER:  And you had to make your  
19           own assessment, in light of the fact that you knew you  
20           were entirely innocent, and you and your family  
21           suffered great harm.

22  42945                   Right?

23  42946                   THE RIGHT HON. BRIAN MULRONEY:

24           That's right.

25  42947                   MR. AUGER:  And you had to make a

1 decision.

2 42948 Right?

3 42949 THE RIGHT HON. BRIAN MULRONEY: Yes,  
4 sir.

5 42950 MR. AUGER: Part of your analysis in  
6 making your decision was that you knew full well that  
7 you could be asked directly about your relationship  
8 with Mr. Schreiber at trial.

9 42951 THE RIGHT HON. BRIAN MULRONEY: That  
10 wasn't part of my analysis at all.

11 42952 MR. AUGER: It was no concern  
12 whatsoever?

13 42953 THE RIGHT HON. BRIAN MULRONEY: None  
14 whatsoever, as I have amply explained to Mr. Wolson.

15 42954 MR. AUGER: You explained your  
16 answers at discovery, and that was a pre-trial setting.  
17 Right?

18 42955 THE RIGHT HON. BRIAN MULRONEY: The  
19 same thing.

20 42956 MR. AUGER: Right. Your evidence is  
21 that, at the pre-trial discovery, the government didn't  
22 ask you directly if you had a commercial, business,  
23 cash transaction with Mr. Schreiber.

24 42957 THE RIGHT HON. BRIAN MULRONEY:  
25 That's right.

1 42958 MR. AUGER: And you answered those  
2 questions at discovery.

3 42959 THE RIGHT HON. BRIAN MULRONEY: That  
4 is right.

5 42960 MR. AUGER: And that was a pre-trial  
6 forum for the parties to prepare for trial.  
7 42961 You knew that.

8 42962 THE RIGHT HON. BRIAN MULRONEY: Of  
9 course.

10 42963 MR. AUGER: All I am suggesting to  
11 you is, when you left that discovery, you knew that you  
12 hadn't been asked directly.

13 42964 Right?

14 42965 THE RIGHT HON. BRIAN MULRONEY:  
15 Obviously.

16 42966 MR. AUGER: So jumping forward in  
17 preparing for trial and making assessments -- your own  
18 assessments -- you knew full well that that could come  
19 up again.

20 42967 THE RIGHT HON. BRIAN MULRONEY: I  
21 suppose so.

22 42968 MR. AUGER: And that was a risk, to  
23 go to trial and the judge look over and ask you  
24 directly: Did Mr. Schreiber ever pay you for services?  
25 42969 You would have to answer "Yes".

1 42970 THE RIGHT HON. BRIAN MULRONEY: Yes,  
2 and I have indicated that, had I been asked the  
3 question, I, of course, would have answered truthfully.

4 42971 MR. AUGER: And you would have had to  
5 do that at trial.

6 42972 THE RIGHT HON. BRIAN MULRONEY: Of  
7 course.

8 42973 MR. AUGER: So, obviously, that was  
9 part of the risk assessment in your own mind.

10 42974 THE RIGHT HON. BRIAN MULRONEY: It  
11 was not. You forget to mention that around Christmas a  
12 motion, Mr. Commissioner, that we had made to the  
13 Federal Court -- and I am going from memory here --

14 42975 The trial was going to take place on  
15 the 6th, I believe, of January. Mr. Jacques Jeansonne,  
16 one of my lawyers, then working for Gérald Tremblay, my  
17 senior counsel at the time, made a motion to the  
18 Federal Court to have access to some documents.

19 42976 We arrived up there, just before  
20 Christmas, I believe, at the Federal Court, and there  
21 was an affidavit signed by a federal cabinet minister  
22 saying that they couldn't give us the information,  
23 because that would violate national security. We  
24 argued that that was entirely preposterous, that there  
25 was something they were trying to hide, and the Justice

1 Department and the RCMP were trying to hide something,  
2 as they did from the very beginning.

3 42977 Indeed, the judge granted us this,  
4 sometime on the 1st, 2nd, or 3rd of January, and lo and  
5 behold, there was information in there which, I  
6 believe, indicated collusion between the RCMP and a  
7 journalist, which totally destroyed the good-faith  
8 provisions of the case, and I think that that is what,  
9 quite frankly, provoked the government to urgently call  
10 my attorneys and say we want to settle this.

11 42978 I was not so disposed, but then they  
12 made a persistent plea.

13 42979 You mentioned the \$50 million. I had  
14 no -- \$50 million, or whatever amount, would have had  
15 to come from the taxpayers of Canada. I had no  
16 interest in asking for any -- or accepting any money  
17 that came from the taxpayers.

18 42980 What I was insisting on, that the  
19 costs that they had forced upon me by this false and  
20 libelous suit, \$2.1 million, be paid.

21 42981 I got -- I didn't get a nickel of it.  
22 It went to my attorneys and advisers.

23 42982 So that was -- those were the  
24 circumstances that obtained when my lawyers came to me  
25 and said look, these guys are collapsing their case on

1 the courthouse steps. They very badly want to settle.

2 Here are the circumstances.

3 42983 And, as I indicated a few days ago,  
4 in the settlement, Mr. Commissioner, there was going to  
5 be an apology. There was going to be -- Chief Justice  
6 Alan B. Gold was certainly going to look after these  
7 things.

8 42984 The only thing I insisted upon, I  
9 wanted a statement by the RCMP and the Government of  
10 Canada in the settlement that said words to the effect:  
11 we do not have, nor have we ever had any information to  
12 justify the false and libelous things we have said  
13 about Mr. Mulroney. That was what I wanted.

14 42985 And when they accepted all of those  
15 conditions, I remember Yves Fortier, who was one of my  
16 partners, and Gerald Tremblay coming to see me and  
17 saying not only are you getting what you want, but you  
18 are getting something that a court might not give you;  
19 that is, an apology to you and your family, which was  
20 very important to me for Mila and the children, that  
21 long after I am gone they had these kinds of documents  
22 showing that I had done absolutely nothing wrong at  
23 all.

24 42986 So they said you can't get this from  
25 a court, this kind of apology. You are going to win,

1 but you can't get it. Inasmuch as you are not going to  
2 take any cash from the government beyond your costs, we  
3 recommend that this collapse is total by the government  
4 so you should accept it, which is what we did.

5 42987 MR. AUGER: At that point in time you  
6 didn't get what you wanted with respect to the RCMP  
7 conclusion. I acknowledge ultimately you did in 2003.

8 42988 THE RIGHT HON. BRIAN MULRONEY: Which  
9 was...?

10 42989 MR. AUGER: The April 2003 --

11 42990 THE RIGHT HON. BRIAN MULRONEY: I'm  
12 sorry, you said I didn't get what the RCMP...

13 42991 MR. AUGER: The RCMP, I think it was  
14 April 2003, wrote to you confirming there is no  
15 evidence --

16 42992 THE RIGHT HON. BRIAN MULRONEY:  
17 That's right --

18 42993 MR. AUGER: -- and clearing you.

19 42994 THE RIGHT HON. BRIAN MULRONEY:  
20 Absolutely.

21 42995 MR. AUGER: But at that point that  
22 you were mentioning when you were making a decision  
23 about the settlement and the lawsuit, you wanted to be  
24 cleared by the RCMP, obviously, but you didn't get it  
25 at that point in time.

1 42996 THE RIGHT HON. BRIAN MULRONEY: We  
2 didn't ask for it. I knew full well that the RCMP had  
3 to continue its investigations and we acknowledged  
4 readily that while Mr. Mulroney has done nothing wrong,  
5 if the RCMP wants to continue its investigations, we  
6 are not seeking to impede that in any way.

7 42997 And you are quite right, sir. That  
8 was in 1997, January 1997. They continued their  
9 investigations for another six or seven years, and then  
10 in April of 2003, I believe, they wrote to me and said  
11 we have investigated this domestically and  
12 internationally. There is nothing anywhere that  
13 involved you in wrongdoing. There will be no charges  
14 of any kind.

15 42998 I am paraphrasing that, but that is  
16 what it meant.

17 42999 MR. AUGER: I'm going to move back in  
18 time and deal with Bear Head a little bit just so I  
19 understand your position.

20 43000 THE RIGHT HON. BRIAN MULRONEY: Yes,  
21 sir.

22 43001 MR. AUGER: Obviously --

23 43002 THE RIGHT HON. BRIAN MULRONEY: Is  
24 there a document you would like me to --

25 43003 MR. AUGER: At this point, no. I



1 just want to ask you in general.

2 43004 In the late '80s, early '90s  
3 obviously you knew that Fred Doucet was heavily  
4 involved in advocating for the Bear Head Project.

5 43005 THE RIGHT HON. BRIAN MULRONEY:  
6 Certainly in the early '90s, yes. Late '80s, no.

7 43006 MR. AUGER: The same was true  
8 obviously for Mr. MacKay and Mr. Schreiber. They were  
9 actively advocating for the project?

10 43007 THE RIGHT HON. BRIAN MULRONEY: Yes.

11 43008 MR. AUGER: But you didn't tell  
12 either of those three individuals that you had killed  
13 the project in 1990?

14 43009 THE RIGHT HON. BRIAN MULRONEY: I  
15 think that I testified, and others have testified, that  
16 I had commissioned Mr. Spector, a fresh pair of eyes,  
17 to take a look at this.

18 43010 Having done that, he told me, I  
19 believe in that automobile going to Buckingham for the  
20 speech, that the new costs could range to in excess of  
21 from 100 or 200 to \$750 million, which obviously we  
22 couldn't afford. We were in the middle of a recession  
23 and we didn't have funds for any of that kind of stuff.

24 43011 He told me that in the car and I said  
25 in that case, words to the effect, this project is

1 dead.

2 43012 He was my Chief of Staff. I made the  
3 decision. It is his responsibility to execute it.

4 43013 He then calls Paul Tellier and  
5 conveys to Paul Tellier, who was the Clerk of the  
6 Council, would I have just said.

7 43014 Ron Bilodeau, one of Mr. Tellier's  
8 assistants, confirms that in writing and acknowledges  
9 that that is what has taken place.

10 43015 MR. AUGER: And that is the normal  
11 course of dealing --

12 43016 THE RIGHT HON. BRIAN MULRONEY: That  
13 is exactly --

14 43017 MR. AUGER: -- delegating and having  
15 others deal with that.

16 43018 THE RIGHT HON. BRIAN MULRONEY: That  
17 is -- the decision was made by me in the car and it was  
18 conveyed to my Chief of Staff. My Chief of Staff then  
19 conveyed it to the Clerk of the Council, who clearly  
20 discussed it with his senior assistant, senior advisor.  
21 And I just assumed at that point in time that it was  
22 done.

23 43019 MR. AUGER: My question is  
24 thereafter -- and I appreciate you delegated it to  
25 others and assumed that it was done.

1 43020 My question is: Thereafter, you have  
2 further discussions with Mr. MacKay, Mr. Schreiber and  
3 Mr. Doucet about that very project; true?

4 43021 THE RIGHT HON. BRIAN MULRONEY: I  
5 believe that they were in the process of changing or  
6 reconfiguring it in various ways. It was a movable  
7 feast. They were changing things on a fairly regular  
8 basis: the costs, the number of vehicles that the  
9 government would have to acquire, the location.

10 43022 I think it was moved in that general  
11 timeframe from Cape Breton to Central Nova, and then  
12 sometime later, in a brand-new reconfiguration, to the  
13 east end of Montréal.

14 43023 So the timeframes are pretty  
15 important, sir, and you have to compare those with the  
16 information that they were then indicating would be the  
17 new Bear Head Project.

18 43024 MR. AUGER: Which you continued to  
19 discuss with those three parties?

20 43025 THE RIGHT HON. BRIAN MULRONEY: Yes.  
21 As I explained to the Commissioner, principally because  
22 of my great respect and affection for Elmer MacKay and  
23 his desire and mine to do something for the people of  
24 Nova Scotia who desperately needed jobs.

25 43026 MR. AUGER: Can I ask you to please

1 go to Binder 2 of 3, P-44, Tab 93.

2 43027 Just to position you, this is the  
3 mandate document.

4 43028 THE RIGHT HON. BRIAN MULRONEY: Yes,  
5 sir.

6 43029 MR. AUGER: You have already  
7 testified at some length about this. As I understood  
8 your evidence, you agreed with Mr. Doucet that it was a  
9 good idea to get something drafted to memorialize.

10 43030 THE RIGHT HON. BRIAN MULRONEY: Yes,  
11 sir.

12 43031 MR. AUGER: And in 2000 obviously you  
13 were well situated at your firm in Montréal?

14 43032 THE RIGHT HON. BRIAN MULRONEY: Two  
15 thousand and what, sir?

16 43033 MR. AUGER: I believe this  
17 document -- we heard evidence that this document was  
18 prepared in 2000.

19 43034 THE RIGHT HON. BRIAN MULRONEY: Yes,  
20 I was established in my law firm, yes.

21 43035 MR. AUGER: My simple question is:  
22 To the extent that you thought it was a good idea to  
23 have a document drafted, did you consider having a  
24 junior associate or a member of your firm simply  
25 prepare a proper legal document?

1 43036

THE RIGHT HON. BRIAN MULRONEY:

2 Nothing was sent to me. There was a conversation over  
3 the telephone where Mr. Doucet reported to me that he  
4 had had this conversation with Mr. Schreiber and that  
5 these are the things they talked about.

6 43037

I don't believe anything was conveyed  
7 to me, any documentation at all. I wasn't asked to  
8 receive any. I wasn't asked to sign anything.

9 43038

As I indicated to the Commissioner  
10 yesterday, to Mr. Wolson, that had someone send me a  
11 document, I would have sat down with it very carefully  
12 and gone through it and pointed out any inaccuracies or  
13 inconsistencies in the document, in good faith with my  
14 own recollection of it.

15 43039

So that's all I knew.

16 43040

MR. AUGER: Mr. Doucet testified, and  
17 I believe this was covered yesterday in your  
18 acknowledgment, that Mr. Doucet read the document to  
19 you over the phone, both before meeting with  
20 Mr. Schreiber and after meeting with Mr. Schreiber.

21 43041

Am I right about that?

22 43042

THE RIGHT HON. BRIAN MULRONEY: My  
23 recollection is that he read it to me over the phone  
24 after he had met with Mr. Schreiber, because -- and I'm  
25 not saying that he -- that the first didn't happen

1           either, but I have no recollection of it.

2   43043                   The reason I remember it is that he  
3           mentioned a few of these companies that he had written  
4           out the German names, or one from Calgary as well, that  
5           was there. And I remember that because I had never  
6           heard of the companies before.

7   43044                   I just concluded that he was choosing  
8           to pay the retainer, as he told Mr. Doucet, and has  
9           been conveyed to the -- in ways that would be most  
10          advantageous to him personally with his corporations.

11   43045                   That's all I concluded.

12   43046                   MR. AUGER: Just so I'm clear on your  
13          evidence, sir, if Mr. Doucet testified under oath at  
14          this proceeding, at page 2309, that he read the sheet  
15          to you before meeting with Mr. Schreiber, you would  
16          accept Mr. Doucet's evidence?

17   43047                   THE RIGHT HON. BRIAN MULRONEY: Oh  
18          sure, absolutely.

19   43048                   MR. AUGER: Coming back to my  
20          question, to the extent that it was read to you before  
21          the meeting with Mr. Schreiber, and you agreed it was a  
22          good idea, did it occur to you or did you -- maybe you  
23          didn't, think that well, Fred, this is a good idea, why  
24          don't I get one of my colleagues to draft a proper  
25          document?

1 43049 THE RIGHT HON. BRIAN MULRONEY: No.  
2 It was in Mr. Doucet's hand -- it was his idea. It was  
3 in his hands and if he had a document he was going to  
4 send down to me, perhaps I would have done that at the  
5 time.

6 43050 But most likely I would have looked  
7 at it myself, because I was the only one that had some  
8 information on it.

9 43051 I draw also to your attention, sir,  
10 the fact that this is in 2000 -- pardon me? This is  
11 around 2000?

12 43052 MR. AUGER: Yes, sir. If you turn to  
13 the second page in that tab you will see at the top --

14 43053 THE RIGHT HON. BRIAN MULRONEY: Yes.

15 43054 MR. AUGER: -- and the Commissioner  
16 has heard evidence that it was constructed on or about  
17 February 4, 2000.

18 43055 THE RIGHT HON. BRIAN MULRONEY:  
19 February 4th.

20 43056 Well, I think it would be important  
21 to remember that I had decided in December, for other  
22 reasons, to begin the process of terminating my  
23 association with Mr. Schreiber. This was of marginal  
24 interest to me in that light.

25 43057 I appreciated Mr. Doucet's

1 willingness to try and get this done, but I proposed  
2 not to have an association with him in the future,  
3 which is basically what happened.

4 43058 So that was in my mind as well.

5 43059 MR. AUGER: Well, the whole issue in  
6 relation to the mandate and the transaction was in your  
7 mind, because two days before, on February 2nd, and  
8 indeed in January of 2000, your lawyer was negotiating  
9 the voluntary disclosure of your taxes.

10 43060 THE RIGHT HON. BRIAN MULRONEY: On my  
11 instructions, yes.

12 43061 MR. AUGER: So clearly -- sorry?

13 43062 THE RIGHT HON. BRIAN MULRONEY: And  
14 why? Why did I reach the determination that this was  
15 appropriate? Because Mr. Schreiber was conveying a  
16 threat about me that I had a tax problem. And, as I  
17 indicated to you, I didn't have a tax problem but I  
18 knew full well that given what we were finding out  
19 about him, he was going to see that I did have a tax  
20 problem.

21 43063 I suspected through the fifth estate  
22 for some of his friends in the media that we would be  
23 seeing that pretty soon. So I figured it was  
24 appropriate to do what I did.

25 43064 MR. AUGER: In January or February of



1           2000 when your tax advisor was dealing with your income  
2           tax, did you or your tax advisor advise Revenue Canada  
3           that you were working on or obtaining a document that  
4           set out the deal?

5   43065                   THE RIGHT HON. BRIAN MULRONEY: Well,  
6           I told you I was not working on anything, and I have  
7           given the information to you about the tax advisor. I  
8           gave him the information. I asked him to resolve it  
9           and he did. And I was simply told ex post facto to  
10          prepare cheques to send to the -- not me, but my  
11          accountant to send to the Government of Canada and the  
12          Government of Québec.

13   43066                   MR. AUGER: Mr. Wolson has just  
14          kindly indicated that it might be helpful, just for the  
15          record, if you could either speak up or perhaps move  
16          the microphone a little closer.

17   43067                   THE RIGHT HON. BRIAN MULRONEY: Okay,  
18          I'm sorry.

19   43068                   MR. AUGER: Just to follow up on your  
20          last answer, sir, I appreciate that you gave  
21          information to assist in the voluntary disclosure.

22   43069                   My specific question is whether or  
23          not you advised anyone of a piece of paper that set out  
24          the mandate?

25   43070                   THE RIGHT HON. BRIAN MULRONEY: No.

1 43071 MR. AUGER: And so on February 2,  
2 2000 Revenue Canada was advised that the amount was  
3 \$225,000; correct?

4 43072 THE RIGHT HON. BRIAN MULRONEY: I  
5 have no idea of it. I have told you I was not involved  
6 in any way in the negotiations or discussions. I was  
7 simply told at the end that it was concluded and that  
8 was that.

9 43073 I don't know, sir, what was told to  
10 whom and when.

11 43074 MR. AUGER: In the same Volume  
12 P-44 --

13 43075 THE RIGHT HON. BRIAN MULRONEY: I'm  
14 sorry, what number?

15 43076 MR. AUGER: I'm sorry, 124. Tab 124  
16 in the same volume, please.

17 43077 At the second-last page in the tab,  
18 February 2, 2000, this is your tax lawyer's letter to  
19 CCRA at the time.

20 43078 THE RIGHT HON. BRIAN MULRONEY: Yes.

21 43079 MR. AUGER: The second paragraph --

22 43080 THE RIGHT HON. BRIAN MULRONEY: The  
23 letter of January 27th?

24 43081 MR. AUGER: I'm sorry, I am at the  
25 second-last page in the tab and it is dated February

1           2nd.

2   43082                   THE RIGHT HON. BRIAN MULRONEY:  
3           February 2nd, yes.

4   43083                   MR. AUGER:   Correct.

5   43084                   THE RIGHT HON. BRIAN MULRONEY:   Yes,  
6           sir.

7   43085                   MR. AUGER:   And as I understand it,  
8           this is really the last letter that defines the  
9           agreement with CCRA; correct?

10   43086                   THE RIGHT HON. BRIAN MULRONEY:   I  
11           assume so.

12   43087                   MR. AUGER:   Well, you have had a  
13           chance to study these documents in preparing for your  
14           testimony; correct?

15   43088                   THE RIGHT HON. BRIAN MULRONEY:  
16           That's when I saw them I believe for the first time.

17   43089                   MR. AUGER:   In the second paragraph  
18           in the February 2nd letter, your lawyer is advising  
19           CCRA that the amount is \$75,000 for each of the three  
20           years; correct?

21   43090                   THE RIGHT HON. BRIAN MULRONEY:   Yes,  
22           sir.

23   43091                   MR. AUGER:   So consistent with your  
24           evidence, you are reporting \$225,000.

25   43092                   THE RIGHT HON. BRIAN MULRONEY:   That

1 is right.

2 43093 MR. AUGER: On February 2, 2000?

3 43094 THE RIGHT HON. BRIAN MULRONEY: Yes.

4 43095 MR. AUGER: The mandate document that  
5 was read to you, dated February 4, 2000, says the  
6 amount is \$250,000.

7 43096 THE RIGHT HON. BRIAN MULRONEY: Mr.  
8 Schreiber told Mr. Doucet, I think, that it was  
9 \$250,000. And I was somewhat startled by that, because  
10 for many years he had been telling everybody it was  
11 \$300,000.

12 43097 MR. AUGER: Well, you knew that your  
13 representations to Revenue Canada had to be exact to  
14 the penny.

15 43098 THE RIGHT HON. BRIAN MULRONEY:  
16 Absolutely, and they were.

17 43099 MR. AUGER: And soon after  
18 Mr. Doucet's meeting of February 4, 2000, you are  
19 advised that there is a different amount that you  
20 received.

21 43100 THE RIGHT HON. BRIAN MULRONEY: I am  
22 not advised of that at all.

23 43101 MR. AUGER: Mr. Doucet -- I'm  
24 sorry...?

25 43102 THE RIGHT HON. BRIAN MULRONEY: I am

1           advised that there was a -- they got together and  
2           Mr. Doucet apparently asked Mr. Schreiber what the  
3           amount was that he was going to put in there.

4   43103                    You are referring to the miracle  
5           letter.  Is that -- the miracle document.  Is that the  
6           one?

7   43104                    MR. AUGER:  I am referring to the  
8           mandate document at Tab 93.

9   43105                    THE RIGHT HON. BRIAN MULRONEY:  Yes.  
10          It was what it is.

11   43106                    Apparently Mr. Schreiber told  
12          Mr. Doucet that the amount was no longer \$300,000, that  
13          it was \$250,000, which was I knew to be wrong,  
14          obviously.  But it was not meaningful to me because I  
15          had already undertaken steps to sever our relationship.

16   43107                    MR. AUGER:  Well, two days before you  
17          confirmed through your tax lawyer that the amount was  
18          \$25,000 less, so of course that was significant.

19   43108                    THE RIGHT HON. BRIAN MULRONEY:  No,  
20          it wasn't significant because what I had told the tax  
21          lawyer initially in December, I believe -- I wasn't, by  
22          the way, being consulted in any way on any of these  
23          documents.

24   43109                    But the fact that Mr. Schreiber  
25          changed his mind and said it is no longer \$300,000, it

1 is \$250,000, you know, wait a week and he probably  
2 would be down to \$225,000 or \$200,000.

3 43110 MR. AUGER: Well, Mr. Lefebvre is a  
4 very experienced, distinguished tax lawyer in Canada.  
5 We all know that; right?

6 43111 THE RIGHT HON. BRIAN MULRONEY: That  
7 is right.

8 43112 MR. AUGER: He didn't come up with  
9 the number \$225,000 himself on February 2nd.

10 43113 THE RIGHT HON. BRIAN MULRONEY: I  
11 have told you -- it wasn't February 22nd.

12 43114 MR. AUGER: I'm sorry if I misspoke.  
13 February 2nd.

14 43115 THE RIGHT HON. BRIAN MULRONEY: Yes.  
15 And it wasn't -- but indeed I believe it was earlier  
16 than that, was it not, that he had discussions and  
17 meetings with them -- let me just go back here.

18 43116 MR. AUGER: Certainly. It is Tab  
19 124.

20 43117 THE RIGHT HON. BRIAN MULRONEY:  
21 January 10th he has already -- the \$225,000 is there in  
22 the letter of January 10th and --

23 43118 MR. AUGER: Well, that is not what is  
24 in the letter. It says "(between \$150,000 and  
25 \$225,000)", which was going to be my next question.

1 43119 THE RIGHT HON. BRIAN MULRONEY: Yes.  
2 Well, I have no idea with this negotiation or  
3 discussion. I told them it was \$225,000.

4 43120 MR. AUGER: Well, you don't negotiate  
5 the amount of cash you received. That is not  
6 negotiable.

7 43121 THE RIGHT HON. BRIAN MULRONEY: I'm  
8 sorry, I don't understand the question.

9 43122 MR. AUGER: I'm sorry.

10 43123 COMMISSIONER OLIPHANT: Mr. Auger, I  
11 don't know if you heard what Mr. Mulroney said.  
12 43124 He said he doesn't understand the  
13 question.

14 43125 MR. AUGER: Fair enough.

15 43126 COMMISSIONER OLIPHANT: Okay? But  
16 maybe you can ask it in a way that it is understandable  
17 by him.

18 43127 MR. AUGER: Certainly.  
19 43128 You have gone back to the January 10,  
20 2000 letter.

21 43129 THE RIGHT HON. BRIAN MULRONEY: Yes,  
22 I just pointed out, yes.

23 43130 MR. AUGER: I have pointed out that  
24 in paragraph 2 it reads:  
25 "The complete disclosure of the

1 amount involved (between  
2 \$150,000 and \$225,000) will be  
3 completed by March 5, 2000."  
4 43131 Did I read that accurately?  
5 43132 THE RIGHT HON. BRIAN MULRONEY: Yes,  
6 you did.  
7 43133 MR. AUGER: My point is, on January  
8 10, 2000 you are advising Revenue Canada, through your  
9 tax counsel, that the amount of money you received was  
10 somewhere between \$150,000 and \$225,000; true?  
11 43134 THE RIGHT HON. BRIAN MULRONEY:  
12 That's to be completed by March 5, 2000.  
13 43135 MR. AUGER: Exactly.  
14 43136 THE RIGHT HON. BRIAN MULRONEY: Yes.  
15 43137 MR. AUGER: So the point is on  
16 January 10, 2000 you didn't know with certainty if it  
17 was \$150,000 or \$175,000 or \$200,000 or \$225,000.  
18 43138 THE RIGHT HON. BRIAN MULRONEY: I did  
19 indeed know.  
20 43139 MR. AUGER: Well, why didn't you tell  
21 Mr. Lefebvre?  
22 43140 THE RIGHT HON. BRIAN MULRONEY: I  
23 did. And I told Mr. Lefebvre in December of 1999.  
24 43141 Is Mr. Lefebvre in the process of  
25 negotiating with the Québec government or the federal



1 government? I don't know.

2 43142 I simply told Mr. Lefebvre,  
3 distinguished -- highly distinguished counsel, as you  
4 quite accurately state -- that it was \$225,000 and to  
5 resolve it.

6 43143 I don't know what -- is this a  
7 negotiation? Is this him sounding them out? I don't  
8 know. I was not consulted in any way on it.

9 43144 But you are quite wrong, sir, to say  
10 that this came up on January 10th, if I may say that  
11 respectfully. It came up in December when I initiated  
12 the process with Mr. Lefebvre.

13 43145 COMMISSIONER OLIPHANT: On that  
14 point, Mr. Mulroney, I know that anything is possible,  
15 but we are dealing with an amount in December somewhere  
16 between -- sorry, January the 10th, an amount of  
17 \$150,000 to \$225,000 --

18 43146 THE RIGHT HON. BRIAN MULRONEY: M'hm.

19 43147 COMMISSIONER OLIPHANT: -- which is a  
20 range.

21 43148 And I'm wondering -- I'm wondering,  
22 \$75,000 of the amount that you received, according to  
23 you, was paid to you and received by you in the State  
24 of New York.

25 43149 THE RIGHT HON. BRIAN MULRONEY: M'hm.

1 43150 COMMISSIONER OLIPHANT: And I'm  
2 wondering whether consideration was being given to  
3 claiming, for tax purposes, monies that you received in  
4 New York there rather than in Canada, which might  
5 account for the difference between \$150,000 and  
6 \$225,000.

7 43151 THE RIGHT HON. BRIAN MULRONEY: I  
8 don't know the answer to that, sir, but it also may  
9 have been that Mr. Lefebvre, who was aware that I had  
10 expenses, as it turned out in the neighbourhood of  
11 \$45,000, \$45,000 or \$50,000 -- and we perhaps may not  
12 have concluded that discussion and he wanted to hold  
13 some room for himself in the event that he was going to  
14 deal with this on the expenses side.

15 43152 But all I know is I conveyed to him  
16 in December of 1999 the fact that it was \$225,000, and  
17 he began talking with the federal and provincial  
18 governments in 1999 and began some of this  
19 correspondence in early 2000.

20 43153 COMMISSIONER OLIPHANT: But you  
21 understand the gist of my question?

22 43154 THE RIGHT HON. BRIAN MULRONEY: Yes I  
23 do, indeed.

24 43155 COMMISSIONER OLIPHANT: That the plan  
25 might have been to claim \$150,000 in Canada and \$75,000

1 in the U.S., specifically in the State of New York.

2 43156 THE RIGHT HON. BRIAN MULRONEY: It's  
3 possible. It's possible, Mr. Commissioner, that when I  
4 explained to Mr. Lefebvre the background of this and  
5 where the money was located, and so on --

6 43157 COMMISSIONER OLIPHANT: Yes...?

7 43158 THE RIGHT HON. BRIAN MULRONEY: --  
8 perhaps he came to the conclusion I better hold this in  
9 reserve until I talk to the governments and see how  
10 they feel about it.

11 43159 COMMISSIONER OLIPHANT: And just one  
12 last question while I'm at it on this point.

13 43160 THE RIGHT HON. BRIAN MULRONEY: Yes,  
14 sir.

15 43161 COMMISSIONER OLIPHANT: To your  
16 knowledge, was any reporting of the receipt of that  
17 income in New York State made to American authorities?

18 43162 THE RIGHT HON. BRIAN MULRONEY: Not  
19 that I am aware of.

20 43163 COMMISSIONER OLIPHANT: Okay, thanks.

21 43164 MR. AUGER: Thank you, Commissioner.

22 43165 THE RIGHT HON. BRIAN MULRONEY: As I  
23 understand it, there is no reporting requirements and  
24 nothing was done.

25 43166 Can we --

1 43167 MR. AUGER: I see that it is shortly  
2 after 11:10.

3 43168 I am happy to continue, Commissioner,  
4 or if, through you, the witness would like a break.

5 43169 COMMISSIONER OLIPHANT: I will leave  
6 that up to Mr. Mulroney.

7 43170 THE RIGHT HON. BRIAN MULRONEY: May I  
8 ask, Mr. Commissioner, how much time Mr. Auger would --

9 43171 COMMISSIONER OLIPHANT: I will allow  
10 you that question of Mr. Auger.

11 43172 THE RIGHT HON. BRIAN MULRONEY: Yes.  
12 Just for scheduling purposes.

13 43173 COMMISSIONER OLIPHANT: No, no, I  
14 understand. Listen, I understand exactly what you are  
15 asking.

16 43174 Mr. Auger, do you have any idea how  
17 long you are going to be?

18 43175 Mr. Wolson could tell us with  
19 specificity the number of pages he had left and I'm  
20 wondering if you can do the same.

21 43176 MR. AUGER: Well, I was about to do  
22 the same, Commissioner, but I don't know that my  
23 pages -- I have a number of pages left.

24 43177 I think my best estimate is in the  
25 range of an additional couple of hours.

1 43178 COMMISSIONER OLIPHANT: Okay. Now  
2 it's your turn. What would you like to do?  
3 43179 I will tell you this, Mr. Mulroney,  
4 if you want, and subject to hearing from counsel, if we  
5 take a break now -- I'm not holding this out as a  
6 carrot, but if we take a break now, I am quite prepared  
7 to continue until cross-examination is complete and  
8 then break for lunch; in other words, to go until  
9 1 o'clock. But that is up to you.

10 43180 THE RIGHT HON. BRIAN MULRONEY:  
11 That's fine, sir.

12 43181 COMMISSIONER OLIPHANT: Do you want  
13 to take a break now --

14 43182 THE RIGHT HON. BRIAN MULRONEY: Sure.

15 43183 COMMISSIONER OLIPHANT: -- and then  
16 just continue until Mr. Auger is done?

17 43184 THE RIGHT HON. BRIAN MULRONEY: Yes.  
18 Whatever you would like, sir.

19 43185 COMMISSIONER OLIPHANT: No, I'm  
20 leaving it to you.

21 43186 THE RIGHT HON. BRIAN MULRONEY: Yes.  
22 Good.

23 43187 COMMISSIONER OLIPHANT: Okay.

24 43188 MR. AUGER: Thank you.

25 43189 COMMISSIONER OLIPHANT: We will break

1 for 15 minutes.

2 43190 THE RIGHT HON. BRIAN MULRONEY: Thank  
3 you.

4 --- Upon recessing at 11:15 a.m. / Suspension à 11 h 15

5 --- Upon resuming at 11:40 a.m. / Reprise à 11 h 40

6 43191 COMMISSIONER OLIPHANT: Be seated,  
7 please.

8 43192 Apropos nothing at all, a complaint  
9 was delivered to me that people are finding it a little  
10 bit chilly in here. I don't find it chilly and they  
11 tell me it is because all of the lights are on  
12 Mr. Mulroney and me.

13 43193 I would like to invite you to come up  
14 and sit beside me so that you won't be cold, but I  
15 can't do that. I am told that the people who manage  
16 the facility have put the heat up, but they are  
17 concerned because it is supposed to go up to 26 degrees  
18 this afternoon and you will all be complaining that it  
19 is far too hot.

20 43194 In any event, I am told the heat has  
21 been turned up and that has nothing to do with you,  
22 Mr. Mulroney, turning the heat up.

23 43195 Mr. Auger, if you would like to  
24 continue now, we can get on with it.

25 43196 MR. AUGER: Thank you, Commissioner.

1 43197 Mr. Mulroney, before the break I was  
2 asking about the mandate document, just to situate you  
3 again, at Tab 93.

4 43198 Do you have that? In Binder 2, P-44.  
5 --- Pause

6 43199 THE RIGHT HON. BRIAN MULRONEY: Yes,  
7 sir.

8 43200 MR. AUGER: If you can please go to  
9 the second page in the tab, the one with handwriting on  
10 it, your evidence is all of your work for Mr. Schreiber  
11 was international, that it was exclusively  
12 international work.

13 43201 THE RIGHT HON. BRIAN MULRONEY: Yes,  
14 sir.

15 43202 MR. AUGER: The document that I'm  
16 showing you in the first sentence reads:  
17 "To provide a watching brief to  
18 develop economic opportunities  
19 for our companies, ... including  
20 travelling abroad to meet with  
21 government and private sector  
22 leaders to assist..."

23 43203 And it continues.

24 43204 THE RIGHT HON. BRIAN MULRONEY: Yes.

25 43205 MR. AUGER: The focus of my inquiry

1 to you is the use of the word "including".

2 43206 Mr. Doucet testified that he read  
3 this document to you and you agreed that it was  
4 accurate.

5 43207 THE RIGHT HON. BRIAN MULRONEY: Well,  
6 he read it to me quickly and I certainly wasn't struck  
7 by anything inappropriate in the document beyond the  
8 discrepancy in the money. But that number had come  
9 from Mr. Schreiber.

10 43208 MR. AUGER: Mr. Doucet testified that  
11 you didn't dispute the wording of the mandate and you  
12 didn't ask for any changes to be made.

13 43209 Would you agree with that?

14 43210 THE RIGHT HON. BRIAN MULRONEY: I had  
15 no changes to ask for. I was simply being read a --  
16 quickly read a working document, and I think it was  
17 this one here that was scribbled on by both  
18 participants in the meeting.

19 43211 MR. AUGER: For the record, you are  
20 holding up the second page in Tab 93.

21 43212 THE RIGHT HON. BRIAN MULRONEY: That  
22 is right, sir.

23 43213 MR. AUGER: With handwriting on it.

24 43214 THE RIGHT HON. BRIAN MULRONEY:  
25 That's right. And then there is another one similar to



1           that.

2   43215                   MR. AUGER:  Correct.  At this point  
3           in time, February 2000, you are situated as a senior  
4           partner in a national business law firm; correct?

5   43216                   THE RIGHT HON. BRIAN MULRONEY:  
6           That's right, sir.

7   43217                   MR. AUGER:  You had practised law for  
8           a number of years prior to 2000?

9   43218                   THE RIGHT HON. BRIAN MULRONEY:  Yes.

10  43219                   MR. AUGER:  You would agree in  
11          hindsight that you would have the document indicate  
12          exclusively international travel.  Is that something  
13          you would agree with?

14  43220                   THE RIGHT HON. BRIAN MULRONEY:  I  
15          wasn't struck by that.  I have indicated to you, sir,  
16          that had this gone any further, I presume Mr. Doucet  
17          and/or Mr. Schreiber would have sent a copy to me.  I  
18          would have reviewed it carefully, as I do, made the  
19          changes that I felt were appropriate, conveyed that to  
20          Mr. Doucet and asked him to convey that to  
21          Mr. Schreiber.

22  43221                   This was not a formal proposal or  
23          anything.  This was something captured by Mr. Doucet  
24          seeking to help both parties.

25  43222                   MR. AUGER:  The first and only

1 document to capture your business relationship with  
2 Mr. Schreiber; true?

3 43223 THE RIGHT HON. BRIAN MULRONEY: I  
4 believe so.

5 43224 MR. AUGER: When this document was  
6 read to you, you would agree that there is an  
7 interpretation that your mandate meant things other  
8 than travelling abroad?

9 43225 THE RIGHT HON. BRIAN MULRONEY: Well,  
10 may I take a look at it?

11 43226 MR. AUGER: Please.

12 43227 THE RIGHT HON. BRIAN MULRONEY: It  
13 says:

14 "To provide a watching brief to  
15 develop economic opportunities  
16 for our companies, ... including  
17 travelling abroad to meet with  
18 government and private sector  
19 leaders to assist in opening new  
20 markets for our products and to  
21 report regularly to us in this  
22 regard. In this context,  
23 priority should be given to  
24 opportunities relating to  
25 Canadian based manufacturing of

1 peace keeping and/or peace  
2 making military equipment in  
3 view of Canada's prominence in  
4 this area."

5 43228 That was my recollection of the  
6 mandate that was quickly read to me and I wasn't  
7 offended by anything in there.

8 43229 MR. AUGER: So therefore what you are  
9 telling the Commissioner is that, as you just read,  
10 this language reflects what you understood you were  
11 doing for Mr. Schreiber?

12 43230 THE RIGHT HON. BRIAN MULRONEY:  
13 Generally speaking. It's not the -- it's not as full  
14 as it ought -- as it would have been had we negotiated  
15 a final conclusion to this.

16 43231 It would have been somewhat  
17 different, but essentially that captures what I was  
18 trying to do.

19 43232 MR. AUGER: Right. And had you  
20 negotiated, as you say, a full accurate document, you  
21 would, as a business lawyer, want to have made it clear  
22 that your mandate was exclusively international work;  
23 true?

24 43233 THE RIGHT HON. BRIAN MULRONEY: Yes,  
25 indeed. And I believe that is what this basically

1 does.

2 43234 MR. AUGER: Where does it say that  
3 "exclusively international work"?

4 43235 THE RIGHT HON. BRIAN MULRONEY: I  
5 didn't say that. I said I believe this is what the  
6 document basically does when it says "including  
7 travelling":

8 "... a watching brief to develop  
9 economic opportunities ...  
10 including travelling abroad to  
11 meet with government and private  
12 sector leaders to assist in  
13 opening new markets for our  
14 products and to report regularly  
15 to us in this regard. In this  
16 context, priority should be  
17 given to opportunities relating  
18 to Canadian based manufacturing  
19 of peace keeping and/or peace  
20 making..."

21 43236 And so on. That is what I construed  
22 to be international.

23 43237 MR. AUGER: Would you acknowledge as  
24 a senior business lawyer that the use of the term  
25 "including" could refer to other work?

1 43238 THE RIGHT HON. BRIAN MULRONEY: I  
2 suppose it's possible, but I think, sir, the intent of  
3 the parties to confine this pretty exclusively to  
4 international may very well be that something would  
5 have to be done domestically, meetings and things like  
6 that, eventually meetings with bankers and so on.

7 43239 That too is a component of  
8 international work.

9 43240 If you were to begin today to try and  
10 do something internationally, the first thing that you  
11 would need would be to turn to a Canadian bank because  
12 they are in a much better position than others to  
13 sustain the kind of investments required for  
14 international competition.

15 43241 So it's possible, but I think the  
16 general thrust of this document is that it was for  
17 international work.

18 43242 MR. AUGER: Why not just send a  
19 regular invoice setting out your fee, international  
20 trips, the date, sign it and be done with it?

21 43243 THE RIGHT HON. BRIAN MULRONEY: Mr.  
22 Schreiber didn't ask for one. I think he told the  
23 Commissioner that not only did he not ask for one, he  
24 wasn't interested in one. He was hoping that I would  
25 do this, but that eventually he hoped to keep me in

1 reserve for a major event.

2 43244 MR. AUGER: But you, in the normal  
3 course of your business -- and I don't want to ask  
4 anything about other clients.

5 43245 THE RIGHT HON. BRIAN MULRONEY: Yes.

6 43246 MR. AUGER: But in the normal course  
7 you don't only send invoices because a client asks;  
8 true?

9 43247 THE RIGHT HON. BRIAN MULRONEY: What  
10 is your question?

11 43248 MR. AUGER: It is a suggestion. I am  
12 asking you whether or not you would agree.

13 43249 In the normal course of your practice  
14 in business -- and I'm not asking about confidential  
15 client matters -- you don't only send invoices because  
16 a client asks; true?

17 43250 THE RIGHT HON. BRIAN MULRONEY: No.  
18 I only send invoices on this kind of business when the  
19 client asks.

20 43251 I have had clients and have clients  
21 on the international basis where, as I have indicated,  
22 they want to retain my services for a number of  
23 reasons, including one of which is that I don't wind up  
24 acting for another party against them in an  
25 international transaction. And the arrangement is that

1 I am to provide them, in this particular sliver of  
2 activity, with my exclusive services. And I wait to  
3 hear from them when they ask me for something and so  
4 on. That is not unusual.

5 43252 MR. AUGER: When you get paid by  
6 other clients in the course of your normal practice,  
7 leaving aside confidential matters, you send an  
8 invoice?

9 43253 THE RIGHT HON. BRIAN MULRONEY: Yes.  
10 These are -- all of the others are publicly traded  
11 corporations in Canada and elsewhere.

12 43254 When dealing with Mr. Schreiber I was  
13 not dealing with a publicly traded corporation. As it  
14 turns out, it was Mr. Schreiber himself with various  
15 ideas and interests ranging from this kind of product  
16 to the anti-obesity pasta products and machinery.

17 43255 So this was Mr. Schreiber, as we have  
18 learned, and not some international publicly traded  
19 company, as we found out.

20 43256 MR. AUGER: Right. Effectively your  
21 interpretation was you were dealing with an individual.

22 43257 THE RIGHT HON. BRIAN MULRONEY: That  
23 is my interpretation now, yes.

24 43258 MR. AUGER: The Commissioner has  
25 heard evidence that Mr. Doucet left government

1           officially on August 16, 1988. Obviously you are aware  
2           of that.

3   43259                   THE RIGHT HON. BRIAN MULRONEY: Yes,  
4           sir.

5   43260                   MR. AUGER: And the Commissioner has  
6           heard, and you will confirm, that you and Mr. Doucet  
7           were best of friends for many decades, continuing  
8           through until today.

9   43261                   THE RIGHT HON. BRIAN MULRONEY: That  
10          is right.

11   43262                  MR. AUGER: Obviously you would have  
12          shared intimate details in good times and bad?

13   43263                  THE RIGHT HON. BRIAN MULRONEY: I'm  
14          not sure of that, but we were -- we were good friends.

15   43264                  The intimate details I save for my  
16          wife and children, that's enough.

17   43265                  MR. AUGER: Business details.

18   43266                  THE RIGHT HON. BRIAN MULRONEY: No,  
19          no business details.

20   43267                  MR. AUGER: When Mr. Doucet left  
21          government in 1988, you were aware that he was  
22          embarking upon his own government consulting business?

23   43268                  THE RIGHT HON. BRIAN MULRONEY: I  
24          have -- I certainly became aware of it sometime later.  
25          I don't know that I was aware at the time.



1 43269 He left after, as I indicated, the  
2 special responsibilities for the three international  
3 Summits which happened, for the first time in our  
4 history, to take place within a nine or a ten-month  
5 period. We needed the best person we could to organize  
6 this highly sophisticated group of people coming to  
7 Canada: la Francophonie, the Commonwealth and the G7.

8 43270 So the Cabinet decided that  
9 Mr. Doucet was the best person we had in government to  
10 do that, and he was named Ambassador to accommodate the  
11 requirements of international diplomacy. He did it and  
12 did it extremely well.

13 43271 My recollection of that period is  
14 that he had some serious cardiac problems, either as he  
15 was leaving or in the weeks or months after, and that  
16 he eventually got into business.

17 43272 I do remember visiting him at the  
18 Ottawa Heart Institute. I can't give you the exact  
19 date, but it was in that general timeframe.

20 43273 So yes, I knew it was going on  
21 generally, but not with any specifics.

22 43274 MR. AUGER: Did you know that  
23 Mr. Doucet was establishing a government lobbying  
24 business in late '88 or early '89?

25 43275 THE RIGHT HON. BRIAN MULRONEY: I

1 found that -- I came to know that, but I don't believe  
2 I knew it then.

3 43276 MR. AUGER: When did you come to know  
4 that?

5 43277 THE RIGHT HON. BRIAN MULRONEY: Oh, I  
6 think in the months that followed the election of 1988,  
7 which was on the 21st of November. You know, I was  
8 pretty preoccupied with some other things, as we have  
9 discussed.

10 43278 We had just finished the Meech Lake  
11 Accord. We were just finishing the Canada-U.S. Free  
12 Trade negotiations, working on the Acid Rain Treaty,  
13 the three Summits we are talking about, and so on.

14 43279 There was a lot going on and I called  
15 an election.

16 43280 There was so much going on that I  
17 kept Parliament in session for the first time all of  
18 that summer of 1988 and called the election for, I  
19 think the 21st of November.

20 43281 So we were pretty busy at that time.

21 43282 MR. AUGER: I appreciate you were  
22 busy and I just want to be clear in your last answer.

23 43283 You were aware that Mr. Doucet had  
24 established a lobbying business in the fall of '88?

25 43284 THE RIGHT HON. BRIAN MULRONEY: No.

1 I said I became aware of it in the months that  
2 followed. I don't remember anyone telling me that he  
3 had established a lobbying business.

4 43285 MR. AUGER: And you are telling the  
5 Commissioner that Mr. Doucet never told you?

6 43286 THE RIGHT HON. BRIAN MULRONEY: No,  
7 he did not.

8 43287 MR. AUGER: And you had told the  
9 Commissioner earlier in your evidence that you only  
10 learned about him obtaining a waiver from the cooling  
11 off period, I think you said during the course of these  
12 proceedings.

13 43288 THE RIGHT HON. BRIAN MULRONEY: Well,  
14 it was either these proceedings or the proceedings  
15 before the Ethics Committee. That's when I learned of  
16 it.

17 --- Pause

18 43289 MR. AUGER: When Mr. Wolson was  
19 questioning you about the cash at Mirabel, you had  
20 indicated that you had hesitated when Mr. Schreiber  
21 handed you the cash.

22 43290 Do you remember that evidence?

23 43291 THE RIGHT HON. BRIAN MULRONEY: Yes.

24 43292 MR. AUGER: And you remember that as  
25 you sit here today?

1 43293 THE RIGHT HON. BRIAN MULRONEY: Yes,  
2 I do.

3 43294 MR. AUGER: That's not something that  
4 had happened to you before.

5 43295 THE RIGHT HON. BRIAN MULRONEY: It  
6 had never happened to me before -- or since.

7 43296 MR. AUGER: When you -- sorry?

8 43297 THE RIGHT HON. BRIAN MULRONEY: Or  
9 since.

10 43298 MR. AUGER: Well, it happened with  
11 Mr. Schreiber two times thereafter.

12 43299 THE RIGHT HON. BRIAN MULRONEY: Yes,  
13 but in reference, since with other people.

14 43300 MR. AUGER: Fair enough.

15 43301 Focusing on the Mirabel exchange  
16 where you had hesitated, did you hesitate because you  
17 were thinking about or had concerns about the source of  
18 the cash?

19 43302 THE RIGHT HON. BRIAN MULRONEY: No.

20 43303 MR. AUGER: Did you hesitate or pause  
21 and think in your own mind that this might give rise to  
22 a suspicious transaction?

23 43304 THE RIGHT HON. BRIAN MULRONEY: No.  
24 I hesitated at the time because it had never happened  
25 to me before and I was surprised. I had had no

1 experience like that, as I say, before or since.

2 43305 I was just leaving government after a  
3 decade and I was invited to this meeting, and I have  
4 explained the circumstances to the Commissioner. I was  
5 simply taken aback when the offer was made.

6 43306 MR. AUGER: I appreciate you were  
7 taken aback and I am just simply exploring what was in  
8 your mind at the time.

9 43307 Another suggestion is whether or not  
10 you hesitated with concerns about how you would  
11 possibly spend this cash.

12 43308 THE RIGHT HON. BRIAN MULRONEY: Of  
13 course not. I have already told you the answer.

14 43309 I hesitated because -- I indicated to  
15 you, sir, I hesitated because I was surprised. It had  
16 never happened to me before.

17 43310 MR. AUGER: So there was no thought  
18 in your mind about a concern of the source of the cash?

19 43311 THE RIGHT HON. BRIAN MULRONEY: No.

20 43312 MR. AUGER: No concern in your mind  
21 about it giving rise to a suspicious transaction?

22 43313 THE RIGHT HON. BRIAN MULRONEY: I  
23 didn't think so, no.

24 43314 MR. AUGER: Was there any concern in  
25 your mind about how you would possibly fulfil the

1 mandate in exchange for the cash?

2 43315 THE RIGHT HON. BRIAN MULRONEY: None  
3 whatsoever. I thought that the manner in which it had  
4 been set out for me was something that I could usefully  
5 and effectively do internationally.

6 43316 MR. AUGER: Mr. Schreiber wrote to  
7 you in February 2007. We can turn up the letter. It  
8 is at P-7, Binder 4.

9 43317 THE RIGHT HON. BRIAN MULRONEY: This  
10 one here?

11 43318 MR. AUGER: Tab 38.

12 --- Pause

13 43319 THE RIGHT HON. BRIAN MULRONEY: Yes,  
14 sir.

15 43320 MR. AUGER: I referred this letter to  
16 you earlier. This was Mr. Schreiber's first demand for  
17 the return of the \$300,000 in cash; correct?

18 43321 THE RIGHT HON. BRIAN MULRONEY: I  
19 believe so, yes.

20 43322 MR. AUGER: I have referred you to  
21 some of the first page already.

22 43323 If I can ask you to turn to page 2,  
23 the second paragraph, Mr. Schreiber writes:

24 "The fact is you did nothing.

25 You even ignored my letters and

1 refused to meet with Elmer and  
2 Mike to discuss the Pasta  
3 obesity fighting program for  
4 children."

5 43324 That is what Mr. Schreiber wrote you  
6 on February 20, 2007?

7 43325 THE RIGHT HON. BRIAN MULRONEY: Yes,  
8 sir.

9 43326 MR. AUGER: You didn't reply in your  
10 own letter to Mr. Schreiber or call him about this  
11 letter?

12 43327 THE RIGHT HON. BRIAN MULRONEY: No.

13 43328 MR. AUGER: You didn't write to him  
14 or say to him what are you talking about, I worked for  
15 this \$300,000, remind him of the trips abroad.

16 43329 You didn't do that?

17 43330 THE RIGHT HON. BRIAN MULRONEY: No.

18 43331 You have to remember, Mr. Auger,  
19 that -- I believe this was in 2007.

20 43332 In 2004 Mr. Schreiber wrote to me,  
21 the same Mr. Schreiber, saying that -- and I'm  
22 paraphrasing because I don't have it in front of me;  
23 saying that my speech at Ronald Reagan's funeral was  
24 the greatest ever and he wanted to congratulate me, so  
25 proud to be associated with me.

1 43333 A few days later I get a letter from  
2 him saying that -- and I'm quoting him. My legendary  
3 modesty prevents me, sir, from reading the entire thing  
4 into the record, but he said that I was going to get  
5 the Nobel Peace Prize for the work that I would do in  
6 terms of promoting the anti-obesity pasta matters, and  
7 he asked for my assistance in contacting Bill and  
8 Melinda Gates for the foundation work in that regard.  
9 That was in 2004.

10 43334 In 2006 he writes me a letter saying:  
11 You were the best advocate that I could ever have  
12 hired. You did terrific work for me and I'm proud to  
13 have been associated with you.

14 43335 And then in 2007, as the noose begins  
15 to tighten around his neck in respect of extradition,  
16 the mood changes and the letters change, as you can  
17 see.

18 43336 And this, as you know, two  
19 thousand -- this is 2007?

20 43337 MR. AUGER: Correct.

21 43338 THE RIGHT HON. BRIAN MULRONEY: Yeah,  
22 a few months later, he writes me the letter of  
23 blackmail and extortion that has been presented to the  
24 Commission, where he is threatening me with activities  
25 unless I intervene in his extradition matter.



1 43339 And that was an absolute nonstarter  
2 in any way, that I would intervene with the Minister of  
3 Justice or the Prime Minister or anyone else.

4 43340 MR. AUGER: I think you testified  
5 about that last week.

6 43341 THE RIGHT HON. BRIAN MULRONEY: Yes.  
7 So I am just trying to put the letter that you have  
8 called my attention to in context.

9 43342 I didn't respond to this. You would  
10 have had to have been pretty naïve not to understand  
11 the evolution of what Mr. Schreiber was doing. His  
12 entire efforts were concentrated on avoiding  
13 extradition, which, as you know, sir, we have already  
14 talked -- this is what gave rise a few months later to  
15 the false affidavit on November 7th.

16 43343 MR. AUGER: So if we can come back to  
17 the letter that I am referring to, February 20, 2007,  
18 Mr. Schreiber in the last paragraph threatens to sue  
19 you if he doesn't receive the return of the money.

20 43344 THE RIGHT HON. BRIAN MULRONEY: That  
21 is right. He asked for \$485,000:  
22 "... no later than March 5,  
23 2007, after which I will  
24 commence a civil lawsuit against  
25 you immediately."

1 43345 Which he did and which lawsuit was  
2 dismissed in Ontario.

3 43346 MR. AUGER: There was nothing -- your  
4 evidence is there was nothing improper about any of  
5 your dealings or receipt of cash from Mr. Schreiber?

6 43347 THE RIGHT HON. BRIAN MULRONEY: That  
7 is right, sir.

8 43348 MR. AUGER: Nothing improper about  
9 any of your work.

10 43349 THE RIGHT HON. BRIAN MULRONEY: Yes.

11 43350 MR. AUGER: True?

12 43351 THE RIGHT HON. BRIAN MULRONEY:  
13 That's true, and Mr. Schreiber has so testified.

14 43352 MR. AUGER: Did you want him to sue  
15 you?

16 43353 THE RIGHT HON. BRIAN MULRONEY:  
17 Pardon me?

18 43354 MR. AUGER: Did you want him to sue  
19 you?

20 43355 THE RIGHT HON. BRIAN MULRONEY: Why  
21 would he sue me? He had --

22 43356 MR. AUGER: Well, he threatened to  
23 sue you on February 20th.

24 43357 THE RIGHT HON. BRIAN MULRONEY: Yes,  
25 but he had written to me a year or so earlier telling

1 me that I was the greatest thing since bottled beer and  
2 how honoured he was to have me as an advocate and a  
3 friend.

4 43358 MR. AUGER: Well, on February 20th he  
5 wanted his money back, alleging you did nothing, and  
6 threatened to sue you.

7 43359 My question is: Did you want him to  
8 sue you?

9 43360 THE RIGHT HON. BRIAN MULRONEY: No.  
10 I said I simply took this letter -- what I did with all  
11 the letters I received -- and simply sent them to my  
12 lawyers.

13 43361 I never acknowledged or responded to  
14 it. It's pretty clear to me where he was going.  
15 That's where we wound up.

16 43362 MR. AUGER: And you did not and your  
17 lawyers did not write to Mr. Schreiber and set out the  
18 work you did. That didn't occur?

19 43363 THE RIGHT HON. BRIAN MULRONEY: No.  
20 He had set out the work that I had done in his letters  
21 in regards to Bill Gates, his letters in regards to the  
22 fifth estate in 2006.

23 43364 He had set out in great detail what  
24 he considered the tremendous work that I had done for  
25 him. Now he --

1 43365 MR. AUGER: He didn't set out that  
2 you went to China and Russia or France on his behalf  
3 for the money.

4 43366 THE RIGHT HON. BRIAN MULRONEY: He  
5 may not have said that. He referred to the excellence  
6 of my services, and I think he also referred to that in  
7 the Globe and Mail articles of 2003.

8 43367 This was the first time, 13 or 14  
9 years after I had begun the services, provided him with  
10 the services -- that 15 years that he initiates this  
11 kind of action.

12 43368 So no, I didn't feel that it was  
13 appropriate to respond in any way.

14 43369 MR. AUGER: You have no document or  
15 information whatsoever that Mr. Schreiber ever said you  
16 went to China, Russia or France on his behalf?

17 43370 THE RIGHT HON. BRIAN MULRONEY: No, I  
18 don't have a document from him. He was told that on  
19 three occasions, but I don't have a document.

20 43371 MR. AUGER: And that's my question:  
21 Did you or your counsel ever advise Mr. Schreiber that  
22 this is nonsense. Mr. Mulroney doesn't owe you any  
23 money because he went to China, Russia and France and  
24 worked hard for the money.

25 43372 THE RIGHT HON. BRIAN MULRONEY: But

1 he knew that. He had been told that in Montréal and in  
2 New York when Mr. Doucet and I sat in his hotel suite  
3 and he was fully debriefed. He knew all of that.

4 43373 You would have to be -- you would  
5 have to be pretty naïve, sir, not to understand what  
6 was going on here.

7 43374 The key to understanding this are the  
8 extradition proceedings that are going along in  
9 parallel form, and as he got closer to a Supreme Court  
10 decision ordering him extradited, as the noose was  
11 tightening, he began a new strategy. And we saw the  
12 manner in which that strategy developed on the 7th of  
13 November 2007 when, as I say, he filed a false  
14 affidavit which involved Prime Minister Harper and  
15 myself, trying to get the attention necessary to get an  
16 inquiry called.

17 43375 MR. AUGER: Did you or your counsel  
18 file a defence in the Ontario action describing your  
19 work in China, Russia or France?

20 43376 THE RIGHT HON. BRIAN MULRONEY: I  
21 haven't seen the defence, but we filed a defence that  
22 was sufficiently persuasive that the Supreme Court of  
23 Ontario dismissed Mr. Schreiber's action.

24 43377 MR. AUGER: Does that document set  
25 out that you travelled to China, Russia or France?

1 43378 THE RIGHT HON. BRIAN MULRONEY: I  
2 have no idea. You would have to consult the court  
3 documents. I don't have them here.

4 43379 MR. AUGER: But you are saying such a  
5 court document exists that you travelled to China,  
6 Russia and France?

7 43380 THE RIGHT HON. BRIAN MULRONEY:  
8 That's not what I said, sir.

9 43381 MR. AUGER: That's what I'm asking  
10 you.

11 43382 THE RIGHT HON. BRIAN MULRONEY: I  
12 said that the documents were clearly sufficiently  
13 persuasive for the Supreme Court of Ontario to cause  
14 them to dismiss Mr. Schreiber's actions.

15 43383 COMMISSIONER OLIPHANT: Hold on just  
16 for a second.

17 43384 Mr. Mulroney, I'm not challenging  
18 what you just said, but are you sure that a Statement  
19 of Defence was filed in the Ontario Superior Court?

20 43385 I ask that because very often filing  
21 a Statement of Defence means that you are agreeing to  
22 the jurisdiction of the court unless you make it clear  
23 that that isn't so.

24 43386 THE RIGHT HON. BRIAN MULRONEY: Mr.  
25 Commissioner, that is an extremely incisive

1 observation, because my recollection is simply that  
2 there was a jurisdictional question.

3 43387 COMMISSIONER OLIPHANT: Well, that  
4 was the purpose of your motion.

5 43388 THE RIGHT HON. BRIAN MULRONEY: That  
6 is exactly right, and I think my counsel told me that  
7 to supply anything other than a challenge to the  
8 jurisdiction would bring us into --

9 43389 COMMISSIONER OLIPHANT: Obtain to the  
10 jurisdiction of the court.

11 43390 THE RIGHT HON. BRIAN MULRONEY: --  
12 into the jurisdiction. Whereas we contended that it  
13 was inappropriate for him to bring the action in  
14 Ontario, that it should be brought in Québec.

15 43391 COMMISSIONER OLIPHANT: So you  
16 brought the motion.

17 43392 THE RIGHT HON. BRIAN MULRONEY: So we  
18 brought the motion and we won the motion.

19 43393 COMMISSIONER OLIPHANT: But did you  
20 file a Statement of Defence? I would think you didn't.  
21 You said you did, but I would be surprised.

22 43394 THE RIGHT HON. BRIAN MULRONEY: I  
23 don't -- well, let me withdraw that.

24 43395 MR. AUGER: To be fair to  
25 Mr. Mulroney -- and I have spoken to Mr. Pratte -- it

1 is my understanding that no defence was filed and  
2 perhaps, Commissioner, your intervention was helpful on  
3 that point.

4 43396 THE RIGHT HON. BRIAN MULRONEY: I  
5 just know there was a contestation of some kind in the  
6 Supreme Court of Ontario and that Mr. Schreiber's  
7 Statement of Claim was dismissed.

8 43397 MR. AUGER: When was the first time  
9 you publicly took the -- advanced the position that you  
10 worked for the money by travelling to China, France or  
11 Russia?

12 43398 THE RIGHT HON. BRIAN MULRONEY: I  
13 suppose when I -- when I shared that information with  
14 Mr. Schreiber in one of our meetings.

15 43399 MR. AUGER: Well, that wasn't a  
16 public meeting.

17 43400 COMMISSIONER OLIPHANT: The question  
18 was when did you make it public that you did this?

19 43401 THE RIGHT HON. BRIAN MULRONEY: Oh, I  
20 didn't know that I, My Lord, was under any obligation  
21 to make anything public.

22 43402 COMMISSIONER OLIPHANT: Nobody  
23 suggested that.

24 43403 When did you first make a public  
25 statement about your work for Mr. Schreiber, the trips?



1 43404 THE RIGHT HON. BRIAN MULRONEY: I'm  
2 sorry --

3 43405 COMMISSIONER OLIPHANT: Was it at the  
4 Ethics Committee? I don't know.

5 43406 THE RIGHT HON. BRIAN MULRONEY: I  
6 can't remember, but I certainly did at the Ethics  
7 Committee. There may have been an earlier moment,  
8 perhaps -- no, the Ethics Committee would have come  
9 before the Québec action, I think.

10 43407 I think that was it. Perhaps it was  
11 the Ethics Committee, sir.

12 43408 MR. AUGER: Just a small point on  
13 Harrington Lake.

14 43409 The Commissioner has heard evidence  
15 about transportation to and from Harrington Lake.

16 43410 Are you able to assist on whether or  
17 not -- obviously there would have been a vehicle for  
18 your exclusive use as Prime Minister at the time?

19 43411 THE RIGHT HON. BRIAN MULRONEY: Yes,  
20 yes.

21 43412 MR. AUGER: Your family was residing  
22 with you at Harrington Lake in June of '93?

23 43413 THE RIGHT HON. BRIAN MULRONEY: Yes,  
24 and they were there that day.

25 43414 MR. AUGER: Would there have been

1 another vehicle or limousine for your family's use on  
2 the premises at the time?

3 43415 THE RIGHT HON. BRIAN MULRONEY: There  
4 was an RCMP station quite close to the principal  
5 residence at Harrington Lake, and the RCMP would rotate  
6 through that and they had vehicles indeed at the time.

7 43416 I don't know if they were -- what was  
8 there then, but they certainly had vehicles at all  
9 times.

10 43417 MR. AUGER: Which would make sense,  
11 because obviously if you are travelling to another  
12 place and your family was going to a different place,  
13 they had use of another limousine.

14 43418 THE RIGHT HON. BRIAN MULRONEY: Yes.  
15 The government, Mr. Commissioner, decides that there is  
16 a special detail for the children and for my wife, as  
17 Prime Minister Harper would have now, and so each of  
18 these details has a vehicle and officers who are  
19 assigned to it.

20 43419 MR. AUGER: I want to move to the  
21 Savoy meeting, just to position you.

22 43420 At the time of that meeting with  
23 Mr. Schreiber -- and that was in 1998 as I understand  
24 the evidence -- your civil lawsuit in Montréal was  
25 settled.

1 43421 THE RIGHT HON. BRIAN MULRONEY:  
2 That's right.

3 43422 MR. AUGER: However, the RCMP  
4 criminal investigation was continuing.

5 43423 THE RIGHT HON. BRIAN MULRONEY: Yes,  
6 sir.

7 43424 MR. AUGER: And you knew that at the  
8 time?

9 43425 THE RIGHT HON. BRIAN MULRONEY: Yes.

10 43426 MR. AUGER: As I understood your  
11 evidence last Wednesday, you talked about two subjects  
12 at the Savoy.

13 43427 THE RIGHT HON. BRIAN MULRONEY: May I  
14 have the --

15 43428 MR. AUGER: Certainly. I will give  
16 you the page reference that I have.

17 43429 It is Wednesday, May 13th.

18 43430 THE RIGHT HON. BRIAN MULRONEY: Let  
19 me just put this away, if I may.

20 43431 MR. AUGER: Certainly.

21 --- Pause

22 43432 THE RIGHT HON. BRIAN MULRONEY:  
23 Thanks. Yes, sir. What page, sir?

24 43433 MR. AUGER: Page 3727. And I will  
25 certainly give you an opportunity to review it.

1 43434 THE RIGHT HON. BRIAN MULRONEY: 3727,  
2 yes.

3 43435 MR. AUGER: Right. As I understand  
4 the gist of your evidence, there were two subjects that  
5 were discussed. One was Airbus; true?

6 43436 THE RIGHT HON. BRIAN MULRONEY: One  
7 was the -- yes, the trauma that we had both gone  
8 through on that, yes.

9 43437 MR. AUGER: Right. So that was one  
10 subject area.

11 43438 THE RIGHT HON. BRIAN MULRONEY: Yes,  
12 sir.

13 43439 MR. AUGER: And as I understand it,  
14 the other subject area that you say Mr. Schreiber was  
15 preoccupied about was pasta.

16 43440 THE RIGHT HON. BRIAN MULRONEY: He  
17 was enthused by the anti-obesity pasta product and  
18 machines.

19 43441 MR. AUGER: Did that take over the  
20 meeting?

21 43442 THE RIGHT HON. BRIAN MULRONEY: Well,  
22 not completely. We had the meeting as I have described  
23 it.

24 43443 You see, I was not aware then that  
25 Thyssen had severed their relationship with

1 Mr. Schreiber in late 1995 or 1996. I was not aware  
2 because he didn't tell me at the time.

3 43444 And so when he arrived, he was on  
4 this new item, very enthusiastic about it, very  
5 knowledgeable about it, and thought there was a great  
6 future in it. That took up a large part of our time.

7 43445 As I say, he never came back to the  
8 other stuff, and I realize now that the reason was that  
9 Thyssen had severed their relationship with him, but he  
10 didn't convey that to me.

11 43446 MR. AUGER: Right. So Thyssen and  
12 Bear Head were not discussed at The Savoy Hotel  
13 meeting.

14 43447 THE RIGHT HON. BRIAN MULRONEY:  
15 That's right.

16 43448 MR. AUGER: So two subjects, one was  
17 Airbus and one was pasta.

18 43449 True?

19 43450 THE RIGHT HON. BRIAN MULRONEY:  
20 That's right.

21 43451 MR. AUGER: You called the meeting.  
22 You had asked for the meeting.

23 43452 THE RIGHT HON. BRIAN MULRONEY: I  
24 didn't call any meeting. I had my office tell Mr.  
25 Schreiber, who had moved to Switzerland from Germany --

1 I didn't know the reasons why, but he had moved to  
2 Switzerland -- simply to say that Mr. Mulroney is going  
3 to be in Switzerland on other business. If you are  
4 free in Zurich on such-and-such a day, he would be  
5 happy to have you for lunch.

6 43453 That was all.

7 43454 MR. AUGER: So you initiated the  
8 meeting.

9 43455 THE RIGHT HON. BRIAN MULRONEY: I  
10 think that's probably fair, yes.

11 43456 We had been, as I say, objective  
12 allies in this battle against the government for all of  
13 those years, and he was the one who had alerted me,  
14 originally, to the problem.

15 43457 So, yeah.

16 43458 MR. AUGER: So, obviously, when you  
17 took that initiative, you had in your mind that the  
18 subject matter you were going to discuss was Airbus.

19 43459 THE RIGHT HON. BRIAN MULRONEY: No,  
20 there was no subject matter that I was going to  
21 discuss, it was a courtesy call.

22 43460 This man had called me and alerted me  
23 to what was happening in the Airbus matter. In the two  
24 years or so that followed, he and his good counsel,  
25 Robert Hladun, kept me posted. They would call me,

1           they would call my wife, to let us know what the  
2           developments were.

3   43461                    We didn't have a clue about many of  
4           the things that were going on in Switzerland. He was  
5           good enough to keep us posted, and I appreciated that.

6   43462                    The explosion of Airbus paralyzed us  
7           all. I had not realized, sir, that in that same  
8           timeframe he was encountering serious legal challenges  
9           in Germany and Switzerland. I didn't know that. All I  
10          knew at the time was that this was a gentleman with  
11          whom I had been on friendly terms.

12   43463                   And I had not been to Switzerland. I  
13          had not seen him since 1994, and I thought it would be  
14          a courteous thing to do, simply to invite him for  
15          lunch. That's all.

16   43464                   MR. AUGER: Another courtesy call.

17   43465                   This is the second courtesy call?

18   43466                   COMMISSIONER OLIPHANT: I think Mr.  
19          Auger is referring to the meeting at Harrington Lake.

20   43467                   THE RIGHT HON. BRIAN MULRONEY: Yeah,  
21          the meeting that he requested at Harrington Lake.

22   43468                   COMMISSIONER OLIPHANT: You described  
23          it as a courtesy call by Mr. Schreiber upon you --

24   43469                   THE RIGHT HON. BRIAN MULRONEY: Yeah,  
25          to say goodbye.

1 43470 MR. AUGER: If I could ask you to  
2 turn up Binder 2, please, P-44, at Tab 112.  
3 43471 This is, again, the affidavit of Mr.  
4 Schreiber --  
5 43472 THE RIGHT HON. BRIAN MULRONEY:  
6 Excuse me just one second, please.  
7 43473 MR. AUGER: Certainly.  
8 43474 THE RIGHT HON. BRIAN MULRONEY: Yes,  
9 sir.  
10 43475 MR. AUGER: Could you please go to  
11 page 6, paragraph 27 --  
12 43476 THE RIGHT HON. BRIAN MULRONEY: Yes.  
13 43477 MR. AUGER: Paragraph 27 reads -- and  
14 this is Mr. Schreiber's evidence in the affidavit:  
15 "Then at the request of Mr.  
16 Mulroney..."  
17 43478 You agree with that?  
18 43479 THE RIGHT HON. BRIAN MULRONEY:  
19 Paragraph No. 27?  
20 43480 MR. AUGER: Yes.  
21 43481 THE RIGHT HON. BRIAN MULRONEY: Yes,  
22 I am looking at it now.  
23 43482 MR. AUGER: And I have just read the  
24 first part --  
25 43483 THE RIGHT HON. BRIAN MULRONEY: Yeah.



1 43484 MR. AUGER: -- and I will continue,  
2 but, "Then at the request of Mr. Mulroney," it reads.  
3 43485 Do you agree with that?  
4 43486 THE RIGHT HON. BRIAN MULRONEY:  
5 That's right, yes.  
6 43487 MR. AUGER:  
7 "...I agreed to meet him on or  
8 about February 2, 1998 at the  
9 Hotel Savoy in Zurich,  
10 Switzerland (the 'Savoy  
11 Meeting'). During the Savoy  
12 Meeting Mr. Mulroney and I  
13 discussed Mr. Mulroney's  
14 personal concerns regarding  
15 evidence of any payments made to  
16 him. I informed Mr. Mulroney  
17 about statements made by Mr.  
18 Frank Moores and Mr. Gary  
19 Ouellet regarding The Government  
20 Business Consulting Group  
21 Incorporated ('GCI') business  
22 affairs and the earlier request  
23 made by Mr. Fred Doucet to  
24 transfer funds from GCI to Mr.  
25 Mulroney's lawyer in Geneva

1 related to the Airbus deal. The  
2 Ontario corporate profile report  
3 for GCI is attached as Exhibit  
4 '9'."

5 43488 Did I read that correctly?

6 43489 THE RIGHT HON. BRIAN MULRONEY: Yes,  
7 sir.

8 43490 MR. AUGER: Were any parts of that  
9 discussed at The Savoy meeting?

10 43491 THE RIGHT HON. BRIAN MULRONEY: No.

11 43492 MR. AUGER: And your evidence is that  
12 Mr. Schreiber completely fabricated that evidence?

13 43493 THE RIGHT HON. BRIAN MULRONEY: Well,  
14 you can draw your own conclusion. It wasn't discussed,  
15 including what he says here, "requests made by Mr. Fred  
16 Doucet to transfer funds from GCI to Mr. Mulroney's  
17 lawyer in Geneva related to the Airbus deal."

18 43494 I never had a lawyer in Geneva, and  
19 don't.

20 43495 So this, as you will, I think,  
21 acknowledge, sir -- this is nestled among a series of  
22 falsehoods in the affidavit that have been exposed here  
23 by Mr. Wolson and Mr. Pratte. So you ought not to be  
24 surprised to find another one there.

25 43496 MR. AUGER: At the Mirabel meeting,

1           when Mr. Schreiber, according to your evidence, raised  
2           the mandate -- and I will give you the page reference  
3           that I am referring to, sir. It's May 12, 2009, page  
4           3559.

5   43497                           THE RIGHT HON. BRIAN MULRONEY: What  
6           is the page number, sir?

7   43498                           MR. AUGER: Page 3559.

8   43499                           THE RIGHT HON. BRIAN MULRONEY: Yes,  
9           sir.

10   43500                           MR. AUGER: We don't need to read the  
11           entire page, I just want to focus on -- let's start at  
12           line 4. This is your answer, Mr. Mulroney.

13                                   "...I was looking at those  
14                                   documents there, and he asked me  
15                                   whether I thought that I could  
16                                   help him internationally in  
17                                   that.

18                                   And I said yes, I think this  
19                                   is something that I can usefully  
20                                   do. It is quite up my alley. I  
21                                   think it is something that I can  
22                                   do.

23                                   And he got up. We were  
24                                   seated in one corner of the  
25                                   room. He got up and he went to

1 a sofa not far away and he  
2 opened his briefcase and he came  
3 back and he had a legal sized  
4 envelope, and he gave me the  
5 envelope and he said here is the  
6 first payment on the retainer."  
7 43501 That was your evidence, Mr. Mulroney?  
8 43502 THE RIGHT HON. BRIAN MULRONEY: Yes,  
9 sir.  
10 43503 MR. AUGER: And you remember that as  
11 you are here today, that you responded, "...I think  
12 this is something that I can usefully do. It is quite  
13 up my alley."  
14 43504 THE RIGHT HON. BRIAN MULRONEY: Yes,  
15 the international services.  
16 43505 MR. AUGER: You didn't pause to ask  
17 Mr. Schreiber whether you were to sell equipment?  
18 43506 You didn't ask about that?  
19 43507 THE RIGHT HON. BRIAN MULRONEY: No,  
20 as I have indicated to you, and to the Commissioner, he  
21 gave me -- I think he has testified that he asked me  
22 for very little, and he gave me few instructions.  
23 43508 And I developed the concept myself, a  
24 few days later, after it was suggested to me by some of  
25 the documents that he conveyed to me that night,

1           namely, the vehicles painted in white, with the big  
2           United Nations markings on them.

3   43509                   As I have indicated to Mr. Wolson,  
4           when I got to sit down and take a look at it sometime  
5           later, it occurred to me that the concept which I tried  
6           to promote, ultimately -- you know, took effect.

7   43510                   There were no instructions about  
8           anything specific. In fact, in fairness to him, this  
9           idea came from me. It was a concept where I am saying:  
10          How can I usefully help this guy?

11   43511                  MR. AUGER: That's how I understood  
12          your evidence, is that, days later, back at the  
13          cottage, you were reviewing the brochures --

14   43512                  Correct?

15   43513                  THE RIGHT HON. BRIAN MULRONEY:  
16          That's right.

17   43514                  MR. AUGER: -- and you saw the UN  
18          insignia on the equipment.

19   43515                  THE RIGHT HON. BRIAN MULRONEY: Yes.

20   43516                  MR. AUGER: And the light went on,  
21          and you thought: Well, I have some knowledge of the  
22          UN, you put one and one together, and you had your  
23          concept.

24   43517                  True?

25   43518                  THE RIGHT HON. BRIAN MULRONEY: I

1 think, basically, yes.

2 43519 I certainly thought that I should  
3 work at it. I thought it might be helpful, and it  
4 might turn out to be a fruitful idea.

5 43520 MR. AUGER: Which you hadn't come to  
6 until days later.

7 43521 You didn't know what you were going  
8 to do at the Mirabel meeting.

9 43522 THE RIGHT HON. BRIAN MULRONEY: That  
10 is right. All I knew was that he wanted to retain -- I  
11 was told by Mr. Doucet that he wanted to retain my  
12 services in some international area, which was  
13 completely consistent with what he had said leaving  
14 Harrington Lake, that "because of the excellence of  
15 your international contacts and friends you have around  
16 the world -- "

17 43523 And that was in reference to the  
18 German reunification question.

19 43524 It was perfectly consistent  
20 throughout.

21 43525 That's how this happened.

22 43526 MR. AUGER: But before you say that  
23 this is something you can usefully do, it's right up  
24 your alley, do you ask Mr. Schreiber where would the  
25 product come from?

1 43527 THE RIGHT HON. BRIAN MULRONEY: I  
2 don't think we had that discussion at that time, no.

3 43528 MR. AUGER: Do you ask for any  
4 information or update on a plant that would produce the  
5 product?

6 43529 THE RIGHT HON. BRIAN MULRONEY: No.  
7 In fact, he surprised me when I subsequently found out  
8 that he had had a meeting, the day before, with some  
9 ministers in Ms Campbell's government and, I think, the  
10 Government of Quebec. Or, there was a meeting  
11 somewhere, and he didn't tell me about it. He never  
12 said a word.

13 43530 COMMISSIONER OLIPHANT: Are you  
14 speaking about the meeting with Messrs. Corbeil and  
15 Charest?

16 43531 THE RIGHT HON. BRIAN MULRONEY:  
17 That's right, Mr. Commissioner.

18 43532 He never said a word to me about it.

19 43533 MR. AUGER: You, in your evidence,  
20 said to the effect that when you were at The Pierre  
21 Hotel meeting, you would very much like to go over and  
22 talk to the Secretary General and begin the process.

23 43534 THE RIGHT HON. BRIAN MULRONEY: No, I  
24 did not. I said quite the contrary, that I had --

25 43535 Unless you have a contrary view

1           there, what I said was -- what I certainly intended to  
2           say, when Mr. Doucet was with me, was that when we got  
3           through with meeting with and consulting with the  
4           members of the P5, and I had better backup information,  
5           I hoped to go and see the Secretary General and see  
6           what he thought of the idea, and whether we could get  
7           him to begin the process of taking it to the membership  
8           of the P5.

9   43536                   MR. AUGER:   That's what would make  
10           sense, right, because at The Pierre Hotel meeting, it  
11           would be premature to do that.

12   43537                   THE RIGHT HON. BRIAN MULRONEY:   Yes,  
13           it would.

14   43538                   MR. AUGER:   If I could ask you to go  
15           to the May 13th transcript, please, at page 3625 --

16   43539                   THE RIGHT HON. BRIAN MULRONEY:   What  
17           page, sir?

18   43540                   MR. AUGER:   Page 3625.

19   43541                   Mr. Pratte is asking you questions  
20           about The Pierre Hotel meeting before the  
21           Commissioner --

22   43542                   THE RIGHT HON. BRIAN MULRONEY:   Yes.

23   43543                   MR. AUGER:   -- and you give this  
24           answer on page 3625, starting at line 2:

25                           "Mr. Doucet is sitting next to



1 me, immediately, and Mr.  
2 Schreiber is across the floor,  
3 in a chair.

4 When I finished talking  
5 about the United Nations and the  
6 Security Council, I said to him  
7 because that side of The Pierre  
8 leads out into Central Park,  
9 really, and I kind of moved  
10 toward the window motioned  
11 toward the window and said,  
12 'When I am through with this,  
13 what I would very much like to  
14 do is go over to the East River  
15 here and talk to the Secretary  
16 General and begin the process of  
17 seeing if he would carry this  
18 forward to the Security Council  
19 for me.'

20 That was the manner -- and  
21 he said, 'I think that's a great  
22 idea.'

23 That's the way I think that  
24 conversation ended."

25 43544

That was your testimony?

1 43545 THE RIGHT HON. BRIAN MULRONEY: Yes,  
2 sir.

3 43546 MR. AUGER: So my simple question is,  
4 did that occur? Did you make those efforts to attend  
5 that meeting with the Secretary General?

6 43547 THE RIGHT HON. BRIAN MULRONEY: No, I  
7 didn't, because as I testified in what you have just  
8 read, "When I am through with this, what I would very  
9 much like to do is" to go over to the East River and  
10 visit with the Secretary General.

11 43548 What happened immediately -- not  
12 immediately, in 1995, as you know, I had not visited  
13 with President Clinton or with either Prime Minister  
14 Major or Tony Blair at the time, so I had not completed  
15 my own roundup, and we got blown up by the Airbus --  
16 the false Airbus affair in 1995. This was in December  
17 1994. And we were all out of business, pretty well,  
18 for three years.

19 43549 MR. AUGER: But as of the date of The  
20 Pierre Hotel meeting, you had already acquired  
21 President Yeltsin's support?

22 43550 THE RIGHT HON. BRIAN MULRONEY: Yes.

23 43551 I had visited with three of the five,  
24 and I was going to visit with the other two in 1995,  
25 after The Pierre meeting, and we know what happened.

1 43552 MR. AUGER: Could I ask you, please,  
2 to turn up P-35. This is the Luc Lavoie binder.

3 43553 THE RIGHT HON. BRIAN MULRONEY: Yes,  
4 sir.

5 43554 MR. AUGER: The Commissioner has  
6 heard evidence that Luc Lavoie was a representative of  
7 yours for a number of years.

8 43555 THE RIGHT HON. BRIAN MULRONEY: He  
9 was.

10 43556 MR. AUGER: And was obviously  
11 authorized by you to make representations to the public  
12 about you.

13 43557 THE RIGHT HON. BRIAN MULRONEY: Well,  
14 as a general rule, I think I can say yes to that, but  
15 he was really so good at what he did, and he knew me  
16 well, and oftentimes, as he said publicly, he would  
17 take calls from people without consulting with me. He  
18 felt that he knew me well enough to do that, and so did  
19 I, but from time to time, not being au courant of the  
20 latest things that might have happened, he might have  
21 made a comment from time to time that I wouldn't have.

22 43558 But Luc was a great, and is a great  
23 talent. He worked with me for many years, and tried to  
24 help me a great deal, and did, in fact, help me and my  
25 family a great deal.

1 43559 MR. AUGER: He was so good at his job  
2 that there was one comment that he made to the public  
3 that could have been interpreted to be on your behalf,  
4 where he referred to Mr. Schreiber as a liar.

5 43560 Obviously you are aware of that.

6 43561 THE RIGHT HON. BRIAN MULRONEY: Yes,  
7 I am.

8 43562 MR. AUGER: In his professionalism,  
9 he ultimately retracted that comment and indicated that  
10 he was not authorized by you to make that  
11 representation.

12 43563 True?

13 43564 THE RIGHT HON. BRIAN MULRONEY: I  
14 believe that's true, yes.

15 43565 MR. AUGER: That was important to  
16 you, obviously, that the record be set straight that  
17 you hadn't authorized that.

18 43566 THE RIGHT HON. BRIAN MULRONEY: That  
19 is right.

20 43567 MR. AUGER: That was the one instance  
21 where Mr. Lavoie corrected statements that he had made  
22 on your behalf.

23 43568 THE RIGHT HON. BRIAN MULRONEY: He  
24 wasn't making it on my behalf, he said that.

25 43569 MR. AUGER: Were there any other

1 instances that you are aware of where Mr. Lavoie had  
2 made a public statement in relation to you and  
3 thereafter retracted it as wrong?

4 43570 THE RIGHT HON. BRIAN MULRONEY: It's  
5 possible. As I indicated, he was taking telephone  
6 calls from, literally, hundreds -- or dozens of people  
7 on a regular basis. He was trying to, as I say, be  
8 helpful to me. He has a very good memory. He is a  
9 remarkably talented -- as you saw, Mr. Commissioner, a  
10 remarkably talented man.

11 43571 And at a given point in time, when he  
12 became Executive Vice-President of Quebecor in  
13 Montreal, he was helping me out, without compensation  
14 or anything. He was doing it on his own time, to try  
15 and be helpful when people would call him up, because  
16 they were used to calling him up.

17 43572 I think he has said on occasion that  
18 he unintentionally misspoke because, either he didn't  
19 have the information, or what have you. It's not  
20 surprising, given the hundreds and hundreds of calls  
21 that he would have gotten about various things.

22 43573 MR. AUGER: Could I ask you to turn  
23 up Tab 18, please, in the Luc Lavoie binder, P-35.

24 43574 THE RIGHT HON. BRIAN MULRONEY: Yes,  
25 sir.

1 43575 MR. AUGER: This is a press article  
2 dated November 22nd, 2007. I would ask you to turn to  
3 the second page, and if we could just focus right in on  
4 what Mr. Lavoie is reported to have said, the easiest  
5 way to do it would be the fourth full paragraph from  
6 the bottom.

7 43576 THE RIGHT HON. BRIAN MULRONEY: From  
8 the bottom.

9 43577 MR. AUGER: "Mr. Lavoie said Mr.  
10 Schreiber..."

11 43578 Do you see that?

12 43579 THE RIGHT HON. BRIAN MULRONEY: Yes.

13 43580 MR. AUGER:  
14 "Mr. Lavoie said Mr. Schreiber  
15 met Mr. Mulroney at the Chateau  
16 Mirabel to pitch a job to the  
17 former prime minister as a  
18 consultant on projects with an  
19 'international dimension' --  
20 including a military vehicle  
21 plant in Montreal and a pasta  
22 business."

23 43581 Let me stop there.

24 43582 I take it, given your evidence, that  
25 you would agree that -- or your evidence would be that

1           that statement by Mr. Lavoie is wrong.

2   43583                   THE RIGHT HON. BRIAN MULRONEY:  I  
3           would say that it's fully accurate, until the end of  
4           the word "dimension".  The rest is not accurate, as he  
5           has acknowledged, I believe.

6   43584                   MR. AUGER:  Right.  Your position is,  
7           "including a military vehicle plant in Montreal" --  
8           your position is that you were never retained to do  
9           that.

10   43585                  THE RIGHT HON. BRIAN MULRONEY:  That  
11           is right, and Mr. Schreiber, who apparently had a  
12           meeting on precisely this point the day before he met  
13           me at Mirabel, did not tell me about it.

14   43586                  MR. AUGER:  Then, if we could go to  
15           the last paragraph, in quotes it says:  
16                            "'Then he said "I would give you  
17                            "\$100,000 a year" and then he  
18                            pulled out an envelope with  
19                            "\$100,000, and Mr. Mulroney said  
20                            "what is that?"  He said, "Well,  
21                            I want to pay you in cash."  So  
22                            Mr. Mulroney asked a few  
23                            questions.  "Why would you do  
24                            this in cash?" and all that,'  
25                            Mr. Lavoie said.  'Mr. Mulroney

1 admits today that he made a  
2 colossal mistake.'"  
3 43587 Mr. Lavoie doesn't refer to \$75,000  
4 as the amount of the retainer.  
5 43588 True?  
6 43589 THE RIGHT HON. BRIAN MULRONEY: Not  
7 in this, no.  
8 43590 MR. AUGER: If I could ask you to  
9 turn to Tab 20, in the same binder -- November 22nd,  
10 2007.  
11 43591 Again, from the bottom of the page,  
12 Mr. Mulroney, the fifth paragraph, it reads:  
13 "Lavoie said the money was a  
14 \$100,000-a-year retainer to  
15 Mulroney for consulting on a  
16 military vehicle plant in  
17 Montreal and a pasta business."  
18 43592 That statement, too, according to  
19 your evidence, is wrong?  
20 43593 THE RIGHT HON. BRIAN MULRONEY:  
21 That's not a statement. That's not a quote, it's a  
22 lift from the one that you previously gave me. There  
23 is no quote here.  
24 43594 MR. AUGER: I didn't suggest it was a  
25 quote, but it is reported that Mr. Lavoie said that.



1 43595 THE RIGHT HON. BRIAN MULRONEY: It's  
2 a repeat of what he said earlier, and I gave you my  
3 reaction to it.

4 43596 MR. AUGER: There is no reference in  
5 what I just read to you about international work.

6 43597 THE RIGHT HON. BRIAN MULRONEY:  
7 That's true, and I told you that in the previous quote  
8 the word "dimension" concluded the accurate part of the  
9 statement.

10 43598 MR. AUGER: Did you tell Mr. Lavoie  
11 in 2007 that the retainer was \$75,000 per year?

12 43599 THE RIGHT HON. BRIAN MULRONEY: At a  
13 given point in time I did tell him, yes.

14 43600 MR. AUGER: Could I ask you, please,  
15 to turn up P-46. This is the grey Cerlox-bound volume.

16 43601 THE RIGHT HON. BRIAN MULRONEY: What  
17 tab, sir?

18 43602 MR. AUGER: It's the last tab, 26,  
19 and the easiest way would be to go to the very back of  
20 the book, and it's the second-last page in the book.

21 43603 THE RIGHT HON. BRIAN MULRONEY: Tab  
22 26, yes.

23 43604 MR. AUGER: If you go right to the  
24 end, right to the back of the book, there are two pages  
25 at the end, and it's the second-last page.

1 43605 COMMISSIONER OLIPHANT: The fax  
2 transmission sheet from Ogilvy Renault?

3 43606 MR. AUGER: No, Mr. Commissioner, the  
4 document that I have is a Revenue Canada voluntary  
5 disclosure document, at the second-last page.

6 43607 It is past the last green sheet.

7 43608 COMMISSIONER OLIPHANT: I'm sorry, my  
8 exhibit must be configured a little bit differently  
9 from what you have.

10 43609 The last document that I have in  
11 Exhibit P-46 is a fax transmission sheet from Ogilvy  
12 Renault, and it really consists -- it's a transmission  
13 sheet and a confirmation sheet.

14 43610 MR. AUGER: Is that the first page,  
15 Mr. Commissioner, at Tab 26?

16 43611 COMMISSIONER OLIPHANT: It's the last  
17 two pages.

18 --- Pause

19 43612 COMMISSIONER OLIPHANT: I have it  
20 now, thanks.

21 43613 I have a different book, and it's now  
22 correct, the one I have.

23 43614 MR. AUGER: Thank you, Commissioner.

24 43615 Do you have that page, Mr. Mulroney,  
25 that is entitled, "Revenue Canada Taxation -- Subject:

1 Voluntary Disclosures"?

2 43616 THE RIGHT HON. BRIAN MULRONEY: Yes,  
3 I do. October 23, 1992.

4 43617 MR. AUGER: Correct.

5 43618 Paragraph No. 1 reads:

6 "To promote voluntary compliance  
7 with Canada's tax laws, the  
8 Department encourages taxpayers,  
9 both individuals and  
10 corporations, to come forward  
11 and correct deficiencies in  
12 their past tax affairs."

13 43619 Do you see that?

14 43620 THE RIGHT HON. BRIAN MULRONEY: I do.

15 43621 MR. AUGER: Obviously, this is not  
16 the first time that you have reviewed this document.

17 43622 THE RIGHT HON. BRIAN MULRONEY: It  
18 is.

19 43623 MR. AUGER: It is the first time.

20 43624 THE RIGHT HON. BRIAN MULRONEY:  
21 Absolutely.

22 43625 MR. AUGER: You have told the  
23 Commissioner --

24 43626 THE RIGHT HON. BRIAN MULRONEY: The  
25 first time I have seen it.

1 43627 MR. AUGER: You have told the  
2 Commissioner that the cash from Mr. Schreiber was a  
3 retainer or an advance.

4 43628 True?

5 43629 THE RIGHT HON. BRIAN MULRONEY: That  
6 is right, that's the way it was put to me.

7 43630 MR. AUGER: And did not become income  
8 until, I think you said, late 1999, by your decision.

9 43631 THE RIGHT HON. BRIAN MULRONEY: That  
10 is right.

11 43632 MR. AUGER: So there was no  
12 irregularity about that, it was brought into income in  
13 the normal course.

14 43633 THE RIGHT HON. BRIAN MULRONEY: In my  
15 judgment, that is right. That was my understanding of  
16 the retainer provisions. I indicated to Mr. Wolson I  
17 am not a tax lawyer or a tax accountant. This is what  
18 I believe to be the case and I acted accordingly.

19 43634 MR. AUGER: Sorry, I think Mr. Wolson  
20 is just asking if you could keep your voice up.

21 43635 THE RIGHT HON. BRIAN MULRONEY:  
22 Sorry.

23 43636 MR. AUGER: You will agree with me  
24 that according to your own evidence, there was no  
25 deficiency in your tax affairs?

1 43637 THE RIGHT HON. BRIAN MULRONEY: That  
2 is in my judgment, yes.

3 43638 MR. AUGER: Are you able to tell the  
4 Commissioner why this was under the voluntary  
5 disclosure?

6 43639 And we have the document, number  
7 85-1R2.

8 43640 THE RIGHT HON. BRIAN MULRONEY: M'hm.

9 43641 MR. AUGER: And I appreciate you are  
10 not a tax lawyer. Are you able to tell the  
11 Commissioner why, if it normally became income in 1999,  
12 why you didn't just add it to your tax return --

13 43642 THE RIGHT HON. BRIAN MULRONEY: I --  
14 I --

15 43643 MR. AUGER: Let me finish the  
16 question.

17 43644 Add it to your normal tax return in  
18 2000, like any other person does reporting income?

19 43645 THE RIGHT HON. BRIAN MULRONEY: I  
20 can't answer that, because I gave it to my tax advisers  
21 and asked them to resolve the matter.

22 43646 The only question that I asked and  
23 wanted to be assured of, was that by then selecting a  
24 vehicle of the voluntary disclosure, it connoted no  
25 culpability of any kind on my behalf. And I was given

1           that assurance.

2   43647                   MR. AUGER:  We know from the  
3           documents from Ogilvy Renault there was at least one  
4           meeting with your counsel and Revenue Canada.

5   43648                   Maybe you don't know the answer to  
6           this, but is it possible that Revenue Canada advised  
7           you, through your counsel, that there was an  
8           irregularity and there was a deficiency and you had to  
9           go under the voluntary disclosure program?

10  43649                   THE RIGHT HON. BRIAN MULRONEY:  
11           You're right, I had no idea of that and was not told.  
12           I have no idea who met with whom.

13  43650                   I was told the contrary, by the way,  
14           by my advisers.

15  43651                   MR. AUGER:  Was there any corporate  
16           tax claimed or paid?

17  43652                   THE RIGHT HON. BRIAN MULRONEY:  I  
18           don't know.

19  43653                   MR. AUGER:  I know that there are  
20           documents -- and we will get to them -- for Cansult,  
21           which was your corporation that you established; true?

22  43654                   THE RIGHT HON. BRIAN MULRONEY:  
23           Cansult was, yes.

24  43655                   MR. AUGER:  Was there any corporate  
25           tax filings in relation to this cash from

1 Mr. Schreiber?

2 43656 THE RIGHT HON. BRIAN MULRONEY: I  
3 don't know the answer to that question, but I would  
4 doubt it.

5 43657 MR. AUGER: My impression of your  
6 evidence and the documents is that you brought the  
7 \$225,000 into personal income.

8 43658 THE RIGHT HON. BRIAN MULRONEY: That  
9 is right.

10 --- Pause

11 43659 MR. AUGER: If I can ask you to  
12 please go to P-44, this is Binder 2.

13 43660 THE RIGHT HON. BRIAN MULRONEY: Yes.

14 43661 MR. AUGER: Tab 124, please. Just to  
15 assist you, this is back to the Ogilvy Renault tax  
16 documents, or tax letters.

17 43662 The last page in Tab 124 --

18 43663 THE RIGHT HON. BRIAN MULRONEY:  
19 Excuse me, just one second, please.

20 43664 MR. AUGER: Certainly.

21 43665 THE RIGHT HON. BRIAN MULRONEY: Tab  
22 124?

23 43666 MR. AUGER: Yes.

24 43667 THE RIGHT HON. BRIAN MULRONEY: Yes,  
25 sir.

1 43668 MR. AUGER: The last page in that tab  
2 is the second page of the February 2, 2000 letter -- I  
3 should go back to the first page to be fair to you.  
4 43669 It says at the end of the last  
5 paragraph:  
6 "The parties agree on the  
7 following".  
8 43670 Do you see that?  
9 43671 THE RIGHT HON. BRIAN MULRONEY: In  
10 this...?  
11 43672 MR. AUGER: It starts:  
12 "This constitutes an agreement  
13 between the taxpayer..."  
14 43673 THE RIGHT HON. BRIAN MULRONEY: Yes.  
15 43674 MR. AUGER:  
16 "... involved in the  
17 aforementioned voluntary  
18 disclosure..."  
19 43675 THE RIGHT HON. BRIAN MULRONEY:  
20 Yes...?  
21 43676 MR. AUGER: And then it says:  
22 "The parties agree on the  
23 following"  
24 43677 And it sets out the agreement.  
25 43678 THE RIGHT HON. BRIAN MULRONEY:



1           That's right.

2   43679                   MR. AUGER:   The final agreement.

3   43680                   THE RIGHT HON. BRIAN MULRONEY:  It  
4           appears so, yes.

5   43681                   MR. AUGER:   The next page, at  
6           paragraph a) says:

7                           "The taxpayer will file an  
8                           application for an amended  
9                           return correcting the amounts  
10                          entered in his returns for 1996,  
11                          1997 and 1998 to add \$37,500 for  
12                          each of these years.  Those  
13                          amounts will be assessed with  
14                          interest..."

15   43682                   Do you see that?

16   43683                   THE RIGHT HON. BRIAN MULRONEY:  Yes.

17   43684                   MR. AUGER:   My question is:  Why  
18           would you pay interest if the government was never  
19           entitled to that income tax prior to 1999?

20   43685                   THE RIGHT HON. BRIAN MULRONEY:  I  
21           don't know the answer to that.  As I indicated, I  
22           conveyed the problem to my tax advisers.  They resolved  
23           it with the two governments.  I was not consulted.

24   43686                   I had full confidence in Mr. Lefebvre  
25           and his people.  I was not consulted in any way.

1 43687 In fact, I don't remember seeing  
2 these documents, these letters from Mr. Lefebvre until  
3 either the Parliamentary Committee or this Commission.  
4 That is the first I believe I ever saw them.

5 43688 I was simply told at the end that the  
6 matter has been amicably resolved with the Government  
7 of Canada and the Government of Québec, and there are  
8 amounts that are owing and cheques should be issued  
9 right away. That's what happened.

10 43689 MR. AUGER: Just on this second page  
11 it says:

12 "If this agreement is  
13 acceptable, we ask that you  
14 return a copy of this letter,  
15 duly signed. The name of the  
16 taxpayer will be disclosed to  
17 you next week."

18 43690 The Commission has the signed letter,  
19 signed I believe by Mr. Lefebvre. The French letter  
20 was the original.

21 43691 Do you remember that?

22 43692 THE RIGHT HON. BRIAN MULRONEY: I  
23 would -- no, I haven't seen it, but I would think so,  
24 yeah. It was done in -- I believe that all of the  
25 communications and the conversations in this regard,

1 the negotiations, I should say, would have been largely  
2 in French.

3 43693 MR. AUGER: But surely Mr. Lefebvre,  
4 after this process and meetings and letters with  
5 Revenue Canada, on or about February 2nd would have  
6 said: Mr. Mulroney, I have it all sorted out. We have  
7 an agreement. Can I have your permission to sign off.

8 43694 THE RIGHT HON. BRIAN MULRONEY: No,  
9 he didn't. He called me and I was out of the country.  
10 And he called me and reached me and said pursuant to  
11 your original instructions, this matter has been  
12 resolved and there are amounts to be paid.

13 43695 He gave them to me and I spoke to  
14 either my senior assistant, Madame Francine Collins,  
15 and asked her to convey this to my accountants, or I  
16 spoke to the accountants myself. I can't remember  
17 which, but that is the way it went.

18 43696 MR. AUGER: Mr. Commissioner, I see  
19 that it is five to 1:00. I am happy to continue. I am  
20 in your hands and I suppose, through you,  
21 Mr. Mulroney's preference as to whether or not we take  
22 a short break.

23 43697 I know that Mr. Mulroney is anxious  
24 to conclude and I am happy to do that.

25 43698 My proposal would be a short 10 or

1 15-minute break. I could review my last few points and  
2 do my best to conclude in another half hour,  
3 approximately.

4 43699 COMMISSIONER OLIPHANT: It is five to  
5 1:00 and we got started a little bit late today because  
6 I guess there was some meetings with counsel, of which  
7 I am not aware.

8 43700 People are going to have to eat and I  
9 am a little concerned with people that might have  
10 health problems that require them to eat.

11 43701 How do you feel about that proposal,  
12 Mr. Mulroney?

13 43702 THE RIGHT HON. BRIAN MULRONEY: I  
14 would be fine with it, sir: a 15-minute break and then  
15 go on for another half hour to allow him to conclude.

16 43703 COMMISSIONER OLIPHANT: All right.

17 43704 Is that okay with all counsel?

18 43705 Mr. Pratte, I take it that it is okay  
19 with you.

20 43706 MR. PRATTE: I think it has to be,  
21 sir.

22 43707 COMMISSIONER OLIPHANT: I am not  
23 suggesting it has to be, but your --

24 43708 MR. PRATTE: No, no.

25 43709 COMMISSIONER OLIPHANT: I know what

1           you mean.

2   43710                   I see Mr. Vickery isn't here today.

3   43711                   MR. LANDRY: Yes, he is going to be

4           back. We are okay with that, Mr. Commissioner.

5   43712                   COMMISSIONER OLIPHANT: Okay.

6   43713                   Mr. Houston...?

7   43714                   MR. YAROSKY: He is off having lunch.

8           --- Laughter / Rires

9   43715                   COMMISSIONER OLIPHANT: Mr.

10          Houston...?

11   43716                   MR. HOUSTON: That's fine, sir.

12   43717                   COMMISSIONER OLIPHANT: You are fine.

13   43718                   Mr. Wolson...?

14   43719                   MR. WOLSON: I am going to suggest

15          that we take a half an hour, then we can get a quick

16          bite to eat and come back and finish up.

17   43720                   COMMISSIONER OLIPHANT: All right.

18          Well, I am bound.

19   43721                   We will break for half an hour and

20          come back at 1:30. Grab a quick bite and then you are

21          on your way.

22          --- Upon recessing at 12:55 p.m. / Suspension à 12 h 55

23          --- Upon resuming at 1:45 p.m. / Reprise à 13 h 45

24   43722                   COMMISSIONER OLIPHANT: Be seated,

25          please.

1 43723 Mr. Auger, I need not remind you, but  
2 I will, of something I said yesterday, and that is that  
3 you should feel free to take whatever time you need to  
4 complete fully your cross-examination of Mr. Mulroney.  
5 Okay?

6 43724 MR. AUGER: Thank you very much.

7 43725 Mr. Mulroney, you had advised the  
8 Commission earlier in your evidence that you were  
9 representing two clients in China.

10 43726 Am I right about that?

11 43727 THE RIGHT HON. BRIAN MULRONEY:  
12 Three.

13 43728 MR. AUGER: Mr. Schreiber and two  
14 others?

15 43729 THE RIGHT HON. BRIAN MULRONEY:  
16 That's right.

17 43730 MR. AUGER: And indeed the China trip  
18 was booked prior to your Mirabel meeting?

19 43731 THE RIGHT HON. BRIAN MULRONEY: I  
20 believe so, or just contemporaneously.

21 43732 MR. AUGER: And so obviously you were  
22 originally intending to represent the two other clients  
23 on the trip to China?

24 43733 THE RIGHT HON. BRIAN MULRONEY:  
25 That's right.

1 43734 MR. AUGER: And that this additional  
2 retainer for Mr. Schreiber was really an added-on  
3 component for that trip?

4 43735 THE RIGHT HON. BRIAN MULRONEY: Yes.  
5 I added it on myself.

6 43736 MR. AUGER: Right.

7 43737 THE RIGHT HON. BRIAN MULRONEY: I  
8 wasn't asked to, yes.

9 43738 MR. AUGER: Right. That you had come  
10 up with your concept at the cottage after meeting at  
11 Mirabel?

12 43739 THE RIGHT HON. BRIAN MULRONEY: Yes,  
13 sir.

14 43740 MR. AUGER: And in fact, as I  
15 understand your evidence, you didn't consult with  
16 Mr. Schreiber about presenting your concept in China  
17 prior to going to China?

18 43741 THE RIGHT HON. BRIAN MULRONEY: That  
19 is right.

20 43742 MR. AUGER: In fact, on that evidence  
21 Mr. Schreiber didn't even know that you were going to  
22 be representing him in China?

23 43743 THE RIGHT HON. BRIAN MULRONEY: I  
24 don't know that, but if you say so it's okay with me.

25 43744 MR. AUGER: Well, from your own

1 memory, you didn't tell him?

2 43745 THE RIGHT HON. BRIAN MULRONEY: No.  
3 I have said that.

4 43746 MR. AUGER: The trip to China, I take  
5 it that those expenses and that booking -- and I don't  
6 need to get into the confidentiality of your other  
7 clients, but that those expenses were paid by your  
8 other clients?

9 43747 THE RIGHT HON. BRIAN MULRONEY: I  
10 would have to go back and try and reconstruct that, but  
11 certainly an appropriate part, yes.

12 43748 MR. AUGER: Well, when you booked the  
13 trip it was on behalf of those two other clients?

14 43749 THE RIGHT HON. BRIAN MULRONEY:  
15 That's right, yeah.

16 43750 MR. AUGER: And as a matter of common  
17 sense, those two clients paid the expenses?

18 43751 THE RIGHT HON. BRIAN MULRONEY: I  
19 think that's basically right, until I thought that I  
20 could be helpful to Mr. Schreiber. And I felt then  
21 that it was appropriate that he -- that he have a  
22 modest share of the expenses, which I hasten to add, to  
23 underline for you, I never claimed on my income tax.

24 43752 I declared -- I never claimed any  
25 expenses.



1 43753 MR. AUGER: I understood that from  
2 your evidence yesterday.

3 43754 THE RIGHT HON. BRIAN MULRONEY: Yes.

4 43755 MR. AUGER: Back to my question about  
5 the expenses, I think you had characterized them as  
6 modest expenses.

7 43756 Am I right that it was approximately  
8 \$12,000 attributable --

9 43757 THE RIGHT HON. BRIAN MULRONEY: I  
10 think something in the neighbourhood, yes.

11 43758 MR. AUGER: -- for the trip to China?

12 43759 THE RIGHT HON. BRIAN MULRONEY: That  
13 is right.

14 43760 MR. AUGER: And a total overall for  
15 all trips, approximately \$45,000?

16 43761 THE RIGHT HON. BRIAN MULRONEY: I  
17 believe that's right.

18 43762 MR. AUGER: How did you attribute  
19 \$12,000 to Mr. Schreiber with respect to the China  
20 trip?

21 43763 THE RIGHT HON. BRIAN MULRONEY: I  
22 would have to reconstruct that. I can't remember, but  
23 it was, I thought, fairly done at the time. I had the  
24 notations and the expenses in that regard and.

25 43764 And as I say, they were not retained

1 ultimately because I never claimed any expenses at all.

2 43765 MR. AUGER: But your evidence is --  
3 aside from tax issues, your evidence is that  
4 Mr. Schreiber paid for at least \$12,000 of your  
5 expenses in China?

6 43766 THE RIGHT HON. BRIAN MULRONEY: As it  
7 turns out, no, he didn't, as it turns out, because it  
8 was all taken in as income and tax paid on it.

9 43767 MR. AUGER: Well, you treated it as  
10 income to Revenue Canada.

11 43768 THE RIGHT HON. BRIAN MULRONEY:  
12 That's right.

13 --- Pause

14 43769 MR. AUGER: When you were on the trip  
15 to China, did you advise those officials that you spoke  
16 to that you were representing Mr. Schreiber?

17 43770 THE RIGHT HON. BRIAN MULRONEY: No.  
18 I have explained to you on a number of occasions that I  
19 had developed the concept, and the object of the  
20 exercise was to ascertain, as best I could, the Chinese  
21 government position in regard to the United Nations,  
22 this concept, their interest in it, the advice they  
23 could give me, the council they might give me,  
24 ultimately, I hoped, the help they could give me.

25 43771 So we had those preliminary

1           conversations, as I have explained to you.

2   43772                   MR. AUGER:   So the answer to my  
3           question is that you did not use Karlheinz Schreiber's  
4           name on any of your trips?

5   43773                   THE RIGHT HON. BRIAN MULRONEY:   No,  
6           it would have been -- no I didn't.

7   43774                   MR. AUGER:   Did you at any time  
8           collect or charged GST in relation to your services for  
9           Mr. Schreiber?

10  43775                   THE RIGHT HON. BRIAN MULRONEY:   No, I  
11          didn't.   I didn't have to.

12  43776                   MR. AUGER:   Why not?

13  43777                   THE RIGHT HON. BRIAN MULRONEY:   They  
14          were international and the GST is a consumption tax  
15          that comes off at the border.

16  43778                   MR. AUGER:   Can I ask you to please  
17          go to P-44.   That's Binder 2.

18  43779                   THE RIGHT HON. BRIAN MULRONEY:   This  
19          one here?

20  43780                   MR. AUGER:   Yes, the large -- it is  
21          Tab 124, please.

22  43781                   THE RIGHT HON. BRIAN MULRONEY:   Yes.

23  43782                   MR. AUGER:   We are back to the Ogilvy  
24          Renault letters.

25  43783                   THE RIGHT HON. BRIAN MULRONEY:   Yes.

1 --- Pause

2 43784 MR. AUGER: Four pages in is the  
3 January 27, 2000 letter.

4 43785 THE RIGHT HON. BRIAN MULRONEY: Yes.

5 43786 MR. AUGER: The second page of that  
6 letter, Mr. Mulroney, paragraph 3:

7 "Given the complete agreement  
8 that these amounts be treated as  
9 revenue accounts, the name of  
10 the payer will not be  
11 disclosed."

12 43787 Do you see that?

13 43788 THE RIGHT HON. BRIAN MULRONEY: Yes,  
14 I do. Yes.

15 43789 MR. AUGER: Just to complete the  
16 point, if I can ask you to go over in that tab three  
17 more pages to the February 2nd letter which sets out  
18 the final agreement, similar language at paragraph 4,  
19 last sentence:

20 "The name of the payer will not  
21 have to be disclosed as part of  
22 this disclosure."

23 43790 Do you see that?

24 43791 THE RIGHT HON. BRIAN MULRONEY: Yes.

25 43792 MR. AUGER: And you will accept that

1           that was a component of the agreement that  
2           Mr. Schreiber's name not be disclosed as the person  
3           that gave you the cash?

4   43793                    THE RIGHT HON. BRIAN MULRONEY:  I  
5           accept that it is in this letter, yes.  It is here.

6   43794                    MR. AUGER:  And are you prepared  
7           to -- did you know at the time that that was a  
8           component of the agreement?

9   43795                    THE RIGHT HON. BRIAN MULRONEY:  No, I  
10          did not.

11   43796                   MR. AUGER:  Did you ask that  
12          Mr. Schreiber's name not be disclosed to Revenue  
13          Canada?

14   43797                   THE RIGHT HON. BRIAN MULRONEY:  No, I  
15          did not.

16   43798                   MR. AUGER:  And the chronology and  
17          the context as February 2000, and that is before  
18          Mr. Kaplan's November 2003 article, obviously.

19   43799                   THE RIGHT HON. BRIAN MULRONEY:  I  
20          don't know.  What is that again?

21   43800                   MR. AUGER:  I was just simply setting  
22          out the timeframe to be fair to you, this letter  
23          February 2, 2000 --

24   43801                   THE RIGHT HON. BRIAN MULRONEY:  Yes.

25   43802                   MR. AUGER:  -- predates Mr. Kaplan's

1 2003 article.

2 43803 THE RIGHT HON. BRIAN MULRONEY:

3 Obviously.

4 43804 MR. AUGER: And I take it, given that

5 evidence, that it is your evidence that Mr. Lefebvre

6 incorporated that as part of the agreement on his own

7 volition?

8 43805 THE RIGHT HON. BRIAN MULRONEY: I

9 assume so.

10 43806 MR. AUGER: Was Mr. Schreiber your

11 first client for your consulting business after you

12 left office?

13 43807 THE RIGHT HON. BRIAN MULRONEY: I

14 believe so, certainly one of the first.

15 43808 MR. AUGER: And obviously you

16 incorporated your Cansult Corporation in anticipation

17 of work for Mr. Schreiber.

18 43809 THE RIGHT HON. BRIAN MULRONEY: No,

19 not in anticipation for work for Mr. Schreiber; in

20 anticipation, in the hope of work ultimately.

21 43810 MR. AUGER: And the first client of

22 Cansult was Mr. Schreiber and, according to your

23 evidence, that commenced in August of '93.

24 43811 THE RIGHT HON. BRIAN MULRONEY: It

25 wasn't the first client of Cansult. It was the first

1 client of Brian Mulroney.

2 43812 MR. AUGER: Well, that is a good  
3 point. Was Cansult established in relation to any work  
4 by Mr. Schreiber --

5 43813 THE RIGHT HON. BRIAN MULRONEY: No.

6 43814 MR. AUGER: -- by you for  
7 Mr. Schreiber?

8 43815 THE RIGHT HON. BRIAN MULRONEY: No.

9 43816 MR. AUGER: So we should understand  
10 that Cansult is completely and separate from any of  
11 your dealings with Mr. Schreiber?

12 43817 THE RIGHT HON. BRIAN MULRONEY:  
13 Pretty well, yes.

14 43818 I am not aware of any tie-in.

15 --- Pause

16 43819 MR. AUGER: At the Queen Elizabeth  
17 Hotel you had a meeting with Mr. Schreiber and you have  
18 testified about that at length.

19 43820 I just want to pick up on one point:  
20 that you had said that Mr. Schreiber was unenthusiastic  
21 and appeared not interested in your work in China.

22 43821 THE RIGHT HON. BRIAN MULRONEY: Well,  
23 relative to his great enthusiasm for the new Liberal  
24 government at the time.

25 43822 I think I had said that he had, in my

1 judgment, he had fallen in love with the Liberals,  
2 principally Andre Ouellet and Marc Lalonde, Mr. Ouellet  
3 being the Senior Cabinet Minister for Montréal. He was  
4 very enthusiastic about them. I thought considerably  
5 less so about anything that I was working on at the  
6 time.

7 43823 MR. AUGER: And that was an  
8 impression that you had, that he was not overly  
9 enthusiastic, and I think your evidence was that kind  
10 of surprised you, that Mr. Schreiber wasn't  
11 enthusiastic.

12 43824 THE RIGHT HON. BRIAN MULRONEY: Well,  
13 I didn't say he wasn't enthusiastic. I said he was  
14 less enthusiastic than he was for his new-found  
15 political friends. But that's not surprising. The  
16 government had just been formed and he was introduced  
17 to some of the high-ranking people in the government,  
18 and so that wasn't a great surprise to me.

19 43825 MR. AUGER: But what is surprising, I  
20 would suggest, is that he gave you another envelope of,  
21 you say, \$75,000.

22 43826 THE RIGHT HON. BRIAN MULRONEY: Yes,  
23 in the coffee shop.

24 43827 MR. AUGER: That impression of his  
25 less than overly enthusiastic, did you follow up and



1 say: Mr. Schreiber, are you sure that this is  
2 something that you want me to continue with?

3 43828 THE RIGHT HON. BRIAN MULRONEY: Oh,  
4 of course not. I knew what was going on. He was  
5 trying to get along with the new government and I  
6 suppose he had hopes that something might materialize  
7 from that.

8 43829 I think he has told the Commission  
9 that he had said that he knew that I couldn't do  
10 anything at the time, and all he told me was, you know,  
11 please keep on going in this area.

12 43830 I can understand why. I think he  
13 told the Commission that had he managed to land this  
14 kind of thing and get this kind of impact  
15 internationally, he stood to make in excess of  
16 \$1.6 billion, I thought. So this was a big deal for  
17 him.

18 43831 But at that particular time, a few  
19 days after the new Canadian government had been formed,  
20 his enthusiasm was more for that than the international  
21 profile.

22 --- Pause

23 43832 MR. AUGER: And you were confident  
24 enough, given that exchange, to take the cash and  
25 continue with your work?

1 43833 THE RIGHT HON. BRIAN MULRONEY: He  
2 said this is the second payment on your retainer, yes.

3 43834 MR. AUGER: The genesis of your  
4 concept originated from your review of the UN insignia  
5 on the brochures?

6 43835 THE RIGHT HON. BRIAN MULRONEY: No.  
7 The genesis of it resulted from my experience as Prime  
8 Minister in dealing with NATO and its new requirements  
9 and the attempts to -- the thought that went into  
10 standardizing procurement and acquisitions of all kinds  
11 for use in deployment by NATO.

12 43836 And I thought that these same  
13 principles would apply, or could apply, to the  
14 peacekeeping initiatives of the United Nations in which  
15 Canada had played such a prominent role over so many  
16 years.

17 43837 MR. AUGER: But the link to  
18 Mr. Schreiber -- or to put it this way: The light went  
19 on for you that you could assist Mr. Schreiber when you  
20 saw the brochures back at the cottage.

21 43838 THE RIGHT HON. BRIAN MULRONEY: Yes,  
22 I was looking for a way that, as I say, for me to be  
23 useful to him in an immediate way and the coincidence  
24 of him handing me these quite impressive merchandising  
25 brochures, in colour, with the vehicles painted in

1 white, with the big United Nations logo, and the  
2 coincidence of that with my impending trip to China, a  
3 member of the P5 and, as I say, it occurred to me this  
4 might be a useful way to begin constructive work on his  
5 behalf.

6 43839 MR. AUGER: Did you make any of your  
7 own inquiries to verify the UN insignia on the  
8 brochures or any of the other information on the  
9 material that prompted you to undertake this work?

10 43840 THE RIGHT HON. BRIAN MULRONEY: No.  
11 He gave me the documentation and I looked at it. I  
12 studied it, and it just occurred to me that this might  
13 be a very good way to begin to see how I could be  
14 useful.

15 43841 MR. AUGER: You have explained your  
16 trips and why the work did not continue. I take it  
17 that you have no correspondence or follow-up letters or  
18 courtesy thank you letters to any of the officials that  
19 you met with about your concept?

20 43842 THE RIGHT HON. BRIAN MULRONEY: I  
21 don't know. That would be a long time ago. I don't  
22 know. Perhaps.

23 43843 MR. AUGER: There may be documents?

24 43844 THE RIGHT HON. BRIAN MULRONEY: I  
25 don't know, but it seems to me that we were asked to

1 supply the documents to the Commission and we supplied,  
2 I think, everything we have.

3 43845 MR. AUGER: And so then the answer to  
4 my question is there are no follow-up letters or  
5 exchanges with any of these foreign officials from or  
6 to you?

7 43846 THE RIGHT HON. BRIAN MULRONEY: Look,  
8 it's possible, but not that I can remember, not that  
9 I'm aware of.

10 43847 MR. AUGER: And not that you have  
11 kept.

12 43848 THE RIGHT HON. BRIAN MULRONEY: Well,  
13 I'm not sure about that. It could very well be that  
14 there are some somewhere, but I just -- you know, in  
15 the normal course of events when you travel, you do  
16 with heads of government what you do with members of  
17 your family or other people. If they have been kind to  
18 you, you write notes and letters of thanks, and so on,  
19 and I certainly did that on a regular basis.

20 43849 So I'm sure there must be something  
21 somewhere, but I would imagine fairly polite and fairly  
22 innocuous.

23 43850 MR. AUGER: Anything referring to  
24 your concept that you presented to these various  
25 officials?

1 43851 THE RIGHT HON. BRIAN MULRONEY: I  
2 don't think you put much of that in a thank you letter.

3 43852 MR. AUGER: You returned from your  
4 Russia trip at the end of August of 1994; correct?

5 43853 THE RIGHT HON. BRIAN MULRONEY: I  
6 believe so, yes.

7 43854 MR. AUGER: But you don't report to  
8 Mr. Schreiber in relation to that trip until the Pierre  
9 Hotel?

10 43855 THE RIGHT HON. BRIAN MULRONEY: I  
11 think I discussed it with Mr. Doucet, but the final  
12 detailed report came at the Pierre Hotel, that's right.

13 43856 Remember, Mr. Schreiber has testified  
14 before you that he didn't want or didn't ask me for  
15 reports and that he was counting on the meetings we had  
16 for that, which is what we did in New York.

17 43857 MR. AUGER: And just so I'm clear,  
18 your evidence is you reported to Mr. Doucet on your  
19 Russia trip before Pierre Hotel?

20 43858 THE RIGHT HON. BRIAN MULRONEY: I  
21 believe that's the case, yes.

22 43859 MR. AUGER: But not to Mr. Schreiber  
23 directly?

24 43860 THE RIGHT HON. BRIAN MULRONEY: No.  
25 I have testified to that, yes.

1 43861 MR. AUGER: Can I ask you to, in Book  
2 2, P-44, go to Tab 111?  
3 --- Pause

4 43862 MR. AUGER: This is an e-mail, dated  
5 November 5, 2007, from Luc Lavoie to Francine Collins.  
6 43863 Do you see that?

7 43864 THE RIGHT HON. BRIAN MULRONEY: Yes.  
8 43865 MR. AUGER: The part that I want to  
9 take you to is on the second page where Mr. Lavoie is  
10 reporting to Mr. Champion-Smith.

11 43866 THE RIGHT HON. BRIAN MULRONEY: And  
12 who is Mr. Champion-Smith?

13 43867 MR. AUGER: If you look at the bottom  
14 of page 2, you will see "Champion-Smith, Bruce", and it  
15 says "@thestar.ca".

16 43868 THE RIGHT HON. BRIAN MULRONEY: I see  
17 "Champion-Smith, Bruce", yes.

18 43869 MR. AUGER: My question refers -- I  
19 want to direct you to --

20 43870 THE RIGHT HON. BRIAN MULRONEY: I'm  
21 sorry, you said he was reporting to Mr. Champion-Smith?  
22 Did I miss --

23 43871 COMMISSIONER OLIPHANT: It would  
24 appear to be an e-mail message from Mr. Lavoie to  
25 Mr. Champion-Smith, and it would appear that

1           Mr. Champion-Smith is employed at The Star, I assume The  
2           Toronto Star --

3   43872                   THE RIGHT HON. BRIAN MULRONEY:  Oh, I  
4           see.

5   43873                   COMMISSIONER OLIPHANT:  -- in some  
6           capacity or another.

7   43874                   THE RIGHT HON. BRIAN MULRONEY:  Okay.

8   43875                   MR. AUGER:  On the second page, the  
9           first full sentence, Mr. Lavoie is reporting on events  
10          relating to you.

11   43876                   If I can just ask you to go to the  
12          sixth line down, it starts:

13                            "As to the question that is  
14                            often asked..."

15   43877                   Do you see that?

16   43878                   THE RIGHT HON. BRIAN MULRONEY:  I'm  
17          sorry, line 6 down?

18   43879                   MR. AUGER:  Yes.

19   43880                   THE RIGHT HON. BRIAN MULRONEY:  From  
20          the top?

21   43881                   MR. AUGER:  It says -- the line 6  
22          down says "the Airbus transaction".  In the first full  
23          paragraph.

24   43882                   THE RIGHT HON. BRIAN MULRONEY:  Yes.  
25          The paragraph that begins "You say that Mr.

1 Mulroney..."?  
2 43883 MR. AUGER: Exactly.  
3 43884 THE RIGHT HON. BRIAN MULRONEY: All  
4 right.  
5 43885 MR. AUGER: And then if you go six  
6 lines down "the Airbus transaction".  
7 43886 THE RIGHT HON. BRIAN MULRONEY: Yes.  
8 43887 MR. AUGER: Okay.  
9 43888 THE RIGHT HON. BRIAN MULRONEY:  
10 "This retainer was paid..."  
11 43889 Yes.  
12 "... after Mr. Mulroney left  
13 office..."  
14 43890 MR. AUGER: Exactly.  
15 43891 THE RIGHT HON. BRIAN MULRONEY:  
16 "... and was in no way connected  
17 with the Airbus transaction."  
18 43892 MR. AUGER: Exactly.  
19 43893 THE RIGHT HON. BRIAN MULRONEY: M'hm.  
20 43894 MR. AUGER: And then it reads:  
21 "As to the question that is  
22 often asked 'What was the  
23 \$300,000 for'?, the answer is  
24 very simple. You will find it  
25 in the transcript of the



1 testimony under oath of  
2 Karlheinz Schreiber in the  
3 Eurocopter trial (part of the  
4 public record) and in a lot more  
5 details in the Statement of  
6 Claim and sworn Affidavit filed  
7 by Karlheinz Schreiber in the  
8 litigation he undertook this  
9 year against Mr. Mulroney. The  
10 litigation has to do with  
11 whether or not the services he  
12 paid for were rendered and the  
13 Court has yet to hear the case.  
14 However at the Statement of  
15 Claim is very clear; the money  
16 was to get Mr. Mulroney's help  
17 in building a Light Armoured  
18 Troop Carrier factory for  
19 Thyssen, a major German  
20 Corporation, in the region of  
21 Montreal and to launch a chain  
22 of pasta restaurants in North  
23 America."

24 43895

Did I read that correctly?

25 43896

THE RIGHT HON. BRIAN MULRONEY: Yes.

1 43897 MR. AUGER: Are you familiar with  
2 this e-mail?

3 43898 THE RIGHT HON. BRIAN MULRONEY: No,  
4 I'm not. I'm seeing it for the first time.

5 43899 MR. AUGER: Because to be fair to  
6 you, it says on the first page, from Luc Lavoie to  
7 Campion-Smith, Bruce.

8 43900 THE RIGHT HON. BRIAN MULRONEY: M'hm.

9 43901 MR. AUGER: And then it appears to be  
10 forwarded to Francine Collins. And that's your  
11 assistant?

12 43902 THE RIGHT HON. BRIAN MULRONEY:  
13 That's right.

14 43903 MR. AUGER: And your evidence is you  
15 did not receive this e-mail in November 2007?

16 43904 THE RIGHT HON. BRIAN MULRONEY: That  
17 is right.

18 43905 MR. AUGER: And I take it, if this  
19 wasn't the first time today that you saw that  
20 representation, you would have corrected it?

21 43906 THE RIGHT HON. BRIAN MULRONEY: It is  
22 the first time I have seen it, and my understanding of  
23 this was that Mr. -- having subsequently inquired,  
24 Mr. Lavoie was on holiday in Europe I believe with his  
25 daughter and he had received some kind of communication

1 from I suppose this gentleman here, Mr. Champion-Smith.

2 43907 And Mr. Lavoie sat down in a public  
3 park in Paris and, using his BlackBerry, with no notes  
4 or no consultation with anybody or anything, batted off  
5 this long note to Mr. Champion-Smith.

6 43908 As Mr. Lavoie has said, and I have  
7 confirmed to you, at the time, if you look at the  
8 dates, he was employed by Quebecor as Executive  
9 Vice-President. That was his job.

10 43909 He was simply on holiday trying to do  
11 me a favour, I suppose, with no prior consultation with  
12 me in this regard, as he has said.

13 43910 So I am seeing it for the first time  
14 and all I can tell you -- I would like to look at it  
15 more carefully, but all I can tell you is that that is  
16 the little I know about it; that he was trying to be  
17 helpful to Mr. Smith and he wrote this from a public  
18 park in Paris on a weekend apparently.

19 43911 MR. AUGER: And upon you studying it  
20 today, you would agree that it contradicts your  
21 evidence.

22 43912 THE RIGHT HON. BRIAN MULRONEY: I  
23 haven't studied it today.

24 43913 MR. AUGER: Well, you have just  
25 reviewed it with me.

1 43914 THE RIGHT HON. BRIAN MULRONEY: No, I  
2 did not. I reviewed one paragraph with you.

3 43915 MR. AUGER: Right. The paragraph  
4 that we have reviewed you would agree contradicts your  
5 evidence.

6 43916 THE RIGHT HON. BRIAN MULRONEY: I  
7 have said no such thing, sir.

8 43917 MR. AUGER: You don't agree with  
9 that?

10 43918 THE RIGHT HON. BRIAN MULRONEY: No, I  
11 had said no such thing. If I am going to review this,  
12 if you would like me to review it, I am going to review  
13 the whole thing and then I would be happy to answer any  
14 questions you have.

15 43919 MR. AUGER: The statement --

16 43920 THE RIGHT HON. BRIAN MULRONEY: This  
17 appears to be a two-page document. You have taken part  
18 of a paragraph out and asked me to listen to you read  
19 it. I confirmed that you read it faithfully and  
20 nothing else.

21 43921 MR. AUGER: The last sentence that I  
22 read to you:  
23 "... the money was to get Mr.  
24 Mulroney's help in building a  
25 Light Armoured Troop Carrier

1 factory for Thyssen..."

2 43922 Does that contradict your position or  
3 not?

4 43923 THE RIGHT HON. BRIAN MULRONEY: It  
5 doesn't contradict my position. That sentence that you  
6 have just read is inaccurate, unintentionally  
7 inaccurate by Mr. Lavoie.

8 43924 But I think he and I have explained  
9 to you the circumstances of how these things come  
10 about.

11 43925 COMMISSIONER OLIPHANT: Mr. Mulroney,  
12 I'm not sure if you understand the question or not.

13 43926 Mr. Lavoie is telling  
14 Mr. Champion-Smith here that you were paid the \$300,000  
15 for your:  
16 "... help in building a Light  
17 Armoured Troop Carrier factory  
18 for Thyssen, a major German  
19 Corporation, in the region of  
20 Montreal ..."

21 43927 You don't agree with that statement?

22 43928 THE RIGHT HON. BRIAN MULRONEY: No,  
23 of course not.

24 43929 COMMISSIONER OLIPHANT: Well, that  
25 was the question that Mr. Auger asked.

1 43930 THE RIGHT HON. BRIAN MULRONEY: Well,  
2 I didn't --

3 43931 COMMISSIONER OLIPHANT: You didn't  
4 understand what he was asking.

5 43932 THE RIGHT HON. BRIAN MULRONEY: I  
6 didn't understand.

7 43933 COMMISSIONER OLIPHANT: Fair enough.

8 43934 THE RIGHT HON. BRIAN MULRONEY: I  
9 thought that he was asking the question, My Lord, about  
10 the entire document, which I had not read.

11 43935 COMMISSIONER OLIPHANT: I thought  
12 there was a misunderstanding.

13 43936 THE RIGHT HON. BRIAN MULRONEY: Yes.

14 43937 COMMISSIONER OLIPHANT: I hope I have  
15 clarified it.

16 43938 MR. AUGER: Thank you for clarifying  
17 that.

18 43939 THE RIGHT HON. BRIAN MULRONEY: Oh,  
19 absolutely. I think Luc Lavoie would so acknowledge,  
20 sure.

21 43940 COMMISSIONER OLIPHANT: The thing  
22 that I am concerned about what this -- and I am seeing  
23 this for the first time -- is that having said that,  
24 and you disagree that it is correct, Mr. Lavoie, if you  
25 go down just five lines up from the very bottom of that

1 page, says:

2 "I know all these facts to be  
3 totally true."

4 43941 THE RIGHT HON. BRIAN MULRONEY: I  
5 certainly believe -- I'm sure he believed them to be  
6 totally true.

7 43942 COMMISSIONER OLIPHANT: Okay.

8 43943 THE RIGHT HON. BRIAN MULRONEY: But  
9 that statement that we have talked about is inaccurate.

10 43944 COMMISSIONER OLIPHANT: Okay, that's  
11 fine.

12 43945 MR. AUGER: And just to finish the  
13 point -- and you can take your time and review the two  
14 pages -- I think upon a further review you will be able  
15 to confirm that there is no mention of China, Russia or  
16 France.

17 43946 THE RIGHT HON. BRIAN MULRONEY: If  
18 you say so, I will accept your word for that,  
19 obviously.

20 43947 MR. AUGER: Well, certainly in terms  
21 of the paragraph that we were studying, there is no  
22 reference to China, Russia or France?

23 43948 THE RIGHT HON. BRIAN MULRONEY: M'hm.

24 43949 Did there have to be? I don't know  
25 the context of the communication from Mr. Campion to

1 Mr. Lavoie, what questions were asked.

2 43950 All I have heard about this is  
3 exactly what I have told you: that he was on holiday in  
4 France. He got a communication from somebody and he  
5 sat down in the park and batted this out on his  
6 BlackBerry. That's all.

7 43951 I was not consulted before or after  
8 on it, but I certainly admire his memory in trying to  
9 get all of this down by himself with no reference to  
10 documents or computers or background information. He  
11 just went ahead and tried to be of service to  
12 Mr. Champion.

13 43952 MR. AUGER: Well, according to the  
14 document this is November 5, 2007. Do you see that?

15 43953 THE RIGHT HON. BRIAN MULRONEY: Yes,  
16 I do. Yes.

17 43954 MR. AUGER: Hadn't Mr. Lavoie been  
18 working with you intensely for many, many months, if  
19 not years?

20 43955 THE RIGHT HON. BRIAN MULRONEY: No.  
21 He was working for Quebecor at the time. He had worked  
22 for me directly -- well, first of all, he had worked  
23 for me in office, of course. He was my Deputy Chief of  
24 Staff and then he was appointed Commissioner General of  
25 the International Exhibition in Spain for the



1 Government of Canada. Then he came back, I believe  
2 worked as Deputy Chief again and then went to National  
3 Public Relations where he worked for me directly in the  
4 original Airbus controversy.

5 43956 After that he was hired by Quebecor  
6 Incorporated as Executive Vice-President, and so he was  
7 a permanent employee of Quebecor at the time and tried  
8 to help me from time to time in his spare time.

9 43957 MR. AUGER: As your spokesperson?

10 43958 THE RIGHT HON. BRIAN MULRONEY: Yes.  
11 He was good enough to answer questions and what -- I  
12 didn't have a spokesperson or public relations firm or  
13 anything. He was doing it out of the goodness of his  
14 heart.

15 43959 MR. AUGER: I just want to go back  
16 very briefly to the Savoy meeting.

17 43960 THE RIGHT HON. BRIAN MULRONEY: Yes,  
18 sir.

19 43961 MR. AUGER: You had told the  
20 Commissioner it was a courtesy call. As I understood  
21 your evidence on May 13th -- and I am happy to give you  
22 the page reference. It is 3727.

23 43962 THE RIGHT HON. BRIAN MULRONEY: 3727?

24 43963 MR. AUGER: Correct.

25 --- Pause

1 43964 THE RIGHT HON. BRIAN MULRONEY: Yes,  
2 sir.

3 43965 MR. AUGER: At the bottom of the  
4 page, Mr. Mulroney, line 23 -- well, let me back up to  
5 Mr. Pratte's question, line 21:  
6 "Did Mr. Schreiber tell you why  
7 he was in Switzerland at the  
8 time?  
9 THE RIGHT HON. BRIAN MULRONEY:  
10 No, he did not. I really was  
11 surprised. I thought we would  
12 locate him in Germany, but he  
13 turned out to have told Francine  
14 he was in Switzerland."  
15 43966 Did I read that accurately?

16 43967 THE RIGHT HON. BRIAN MULRONEY: Yes,  
17 sir.

18 43968 MR. AUGER: So my only point is that  
19 when you first got the idea to contact Mr. Schreiber  
20 for the courtesy call, you believed he was in Germany.

21 43969 THE RIGHT HON. BRIAN MULRONEY: I  
22 believed so, yes.

23 43970 MR. AUGER: And with that belief you  
24 would hope that he would travel from Germany to Zürich  
25 to meet with you?

- 1 43971 THE RIGHT HON. BRIAN MULRONEY: No.  
2 I was going to Frankfurt the next day.
- 3 43972 MR. AUGER: And so as it turned out,  
4 you learned through Francine that Mr. Schreiber was in  
5 fact in Switzerland?
- 6 43973 THE RIGHT HON. BRIAN MULRONEY:  
7 That's right.
- 8 43974 MR. AUGER: And you altered your  
9 itinerary to go to Zürich?
- 10 43975 THE RIGHT HON. BRIAN MULRONEY: No, I  
11 did not. I kept on with exactly the same schedule that  
12 I had laid out. I went from Montréal to Zürich, drove  
13 to Klosters, had meetings with Mr. Munk in Klosters,  
14 came back to Zürich, got on the plane as scheduled from  
15 Zürich and went to Frankfurt. From Frankfurt I went to  
16 Rome, and from Rome I believe to Paris and Paris home.
- 17 43976 MR. AUGER: Thank you, Mr. Mulroney.  
18 Those are my questions.
- 19 43977 Thank you, Mr. Commissioner.
- 20 43978 THE RIGHT HON. BRIAN MULRONEY: Thank  
21 you, sir.
- 22 43979 COMMISSIONER OLIPHANT: Mr. Mulroney,  
23 I have a couple of questions that I would like to ask  
24 you just before we excuse you.
- 25 43980 This morning when you were responding

1 to questions asked of you by Mr. Auger, he asked you  
2 about sending an invoice to Mr. Schreiber and you said  
3 that you didn't send an invoice because Mr. Schreiber  
4 didn't ask for one.

5 43981 Do you recall saying that, sir?

6 43982 THE RIGHT HON. BRIAN MULRONEY:

7 That's right.

8 43983 COMMISSIONER OLIPHANT: And then you  
9 said: On this kind of business I only send invoices  
10 when the client asks.

11 43984 What did you mean? Do you recall  
12 saying that?

13 43985 THE RIGHT HON. BRIAN MULRONEY: Yes,  
14 I do, sir.

15 43986 COMMISSIONER OLIPHANT: What did you  
16 mean by "on this kind of business"?

17 43987 THE RIGHT HON. BRIAN MULRONEY: Well,  
18 international consulting with kind of an open-ended  
19 arrangement, where part of the reason from time to time  
20 where the client wishes to retain your services to make  
21 certain that you don't represent someone else, and that  
22 you can be helpful in a given area. He wants to retain  
23 exclusivity of your services.

24 43988 COMMISSIONER OLIPHANT: Okay, that is  
25 the purpose of a retainer.

1 43989 THE RIGHT HON. BRIAN MULRONEY: Yes.

2 43990 COMMISSIONER OLIPHANT: But once you  
3 have provided services, are you saying that you don't  
4 send an invoice so that you can take the money from the  
5 retainer into income?

6 43991 THE RIGHT HON. BRIAN MULRONEY: In  
7 all cases since, it has been with publicly traded  
8 corporations and they have their own --

9 43992 COMMISSIONER OLIPHANT: Well,  
10 publicly traded or not, would you not send an invoice  
11 to indicate --

12 43993 THE RIGHT HON. BRIAN MULRONEY: Oh,  
13 yes.

14 43994 COMMISSIONER OLIPHANT: -- to the  
15 client that it is no longer the retainer but now income  
16 in your hands?

17 43995 THE RIGHT HON. BRIAN MULRONEY: Yes,  
18 you could do that, sir.

19 43996 COMMISSIONER OLIPHANT: So this was  
20 the first time --

21 43997 THE RIGHT HON. BRIAN MULRONEY: Yes.

22 43998 COMMISSIONER OLIPHANT: -- and maybe  
23 the only time that you didn't send invoices.

24 43999 THE RIGHT HON. BRIAN MULRONEY: You  
25 are right on both.

1 44000 COMMISSIONER OLIPHANT: Would it be  
2 the only time that you haven't sent invoices, to the  
3 best of your recollection?

4 44001 THE RIGHT HON. BRIAN MULRONEY: That  
5 would have been infrequent, yes.

6 44002 COMMISSIONER OLIPHANT: Okay.

7 44003 You also said something that I might  
8 be mistaken, but I think I learned for the first time  
9 when I heard you say it, and that was that in 1995  
10 Thyssen terminated its contract, if you will, with  
11 Mr. Schreiber.

12 44004 THE RIGHT HON. BRIAN MULRONEY: So I  
13 was informed.

14 44005 COMMISSIONER OLIPHANT: Who told you  
15 that, sir?

16 44006 THE RIGHT HON. BRIAN MULRONEY: I  
17 can't remember, but it was fairly recent. I may have  
18 learned it from some of the testimony or some comments  
19 made, but I was informed that in late 1995, I believe,  
20 that Mr. Schreiber -- and I suppose his attorney could  
21 correct me on this.

22 44007 But I was told that his arrangement  
23 with Thyssen was severed at their instigation sometime  
24 in late 1995 or early 1996.

25 44008 COMMISSIONER OLIPHANT: So you heard

1           that, but you are not sure of the source?

2   44009                   THE RIGHT HON. BRIAN MULRONEY:  I am  
3           not sure of the source --

4   44010                   COMMISSIONER OLIPHANT:  Okay.

5   44011                   THE RIGHT HON. BRIAN MULRONEY:  --  
6           but I believe I heard it either in testimony or  
7           comment.

8   44012                   COMMISSIONER OLIPHANT:  Okay.  Well,  
9           if it is in the evidence, I will find it.

10  44013                   THE RIGHT HON. BRIAN MULRONEY:  
11          Perhaps, in fairness, perhaps --

12  44014                   COMMISSIONER OLIPHANT:  Well, let me  
13          say, just to be upfront with you, that I spoke to my  
14          counsel and they didn't recall having heard it either.  
15          So I'm not sure.

16  44015                   THE RIGHT HON. BRIAN MULRONEY:  I  
17          guess Mr. Auger might be able to indicate to you, sir,  
18          if --

19  44016                   COMMISSIONER OLIPHANT:  Well, he is  
20          not here to answer the questions.

21  44017                   THE RIGHT HON. BRIAN MULRONEY:  Yes.

22  44018                   COMMISSIONER OLIPHANT:  You think you  
23          heard it somewhere --

24  44019                   THE RIGHT HON. BRIAN MULRONEY:  I did  
25          indeed.

1 44020 COMMISSIONER OLIPHANT: -- but you  
2 are not sure where.

3 44021 THE RIGHT HON. BRIAN MULRONEY: I  
4 certainly heard it in the operations of this  
5 Commission.

6 44022 COMMISSIONER OLIPHANT: All right.

7 44023 Mr. Mulroney, you have been on the  
8 stand for I think the longest of any witness I have  
9 either been involved in as a lawyer or in 24 years as a  
10 judge.

11 44024 Let me say that before I was aware  
12 that I was going to become involved in this, as  
13 interested as I am in current affairs, I watched the  
14 proceedings of the Ethics Committee and I refrained  
15 carefully from commenting on what I thought of those  
16 proceedings, being a student of due process and  
17 fairness within that type of setting.

18 44025 But I want to assure myself before  
19 you leave, sir, that you feel, despite probing  
20 questions that may have been asked, that you leave here  
21 feeling that you have been treated fairly and with  
22 respect.

23 44026 THE RIGHT HON. BRIAN MULRONEY: I  
24 think precisely that, Mr. Commissioner. Both you and  
25 Mr. Wolson and his colleagues, and other members of the



1 group, have treated me very fairly and with great  
2 respect. And the probing questions I thought were  
3 appropriate and didn't either bother me or offend me in  
4 any way.

5 44027 COMMISSIONER OLIPHANT: All right.

6 44028 THE RIGHT HON. BRIAN MULRONEY: So  
7 the answer to the question is very much in the  
8 affirmative.

9 44029 And I thank you, sir, for your  
10 kindness.

11 44030 COMMISSIONER OLIPHANT: Thank you.

12 44031 Mr. Wolson...?

13 44032 MR. WOLSON: You would normally have  
14 asked, after having asked some questions yourself,  
15 whether other counsel had any questions which had  
16 arisen from your questions, (a).

17 44033 And (b) you might have asked whether  
18 or not other counsel have questions --

19 44034 COMMISSIONER OLIPHANT: Thank you.

20 44035 MR. WOLSON: -- generally and then  
21 there is the issue of re-examination.

22 44036 I don't have any questions on  
23 re-examination, I should tell you.

24 44037 COMMISSIONER OLIPHANT: All right.

25 44038 MR. WOLSON: But there is a room full

1 of lawyers and you know that they may see things  
2 differently.

3 44039 COMMISSIONER OLIPHANT: I am very  
4 well aware of that, Mr. Wolson.

5 44040 Mr. Pratte...?

6 44041 MR. PRATTE: Having heard Mr. Wolson  
7 saying he has no re-examination, I am sure not going to  
8 ask any questions that might provoke any.

9 --- Laughter / Rires

10 44042 COMMISSIONER OLIPHANT: Thank you.

11 44043 I hope that all other counsel bear in  
12 mind what you have just heard from Mr. Pratte.

13 44044 Mr. Vickery...?

14 44045 MR. VICKERY: No, I have no  
15 questions. Thank you.

16 44046 COMMISSIONER OLIPHANT: All right.

17 44047 Mr. Houston...?

18 44048 MR. HOUSTON: About three hours, sir.  
19 No, nothing. Thank you.

20 44050 COMMISSIONER OLIPHANT: All right.

21 44051 Mr. Auger, any questions arising out  
22 of my questions?

23 44052 MR. AUGER: No, thank you.

24 44053 COMMISSIONER OLIPHANT: All right.

25 Thank you.

1 44054 Is there any reason then why we can't  
2 excuse Mr. Mulroney at this time?

3 44055 MR. WOLSON: No, there is no reason  
4 at all.

5 44056 And we could perhaps take a break  
6 before the next witness?

7 44057 COMMISSIONER OLIPHANT: We shall.

8 44058 For those that might be interested in  
9 staying, the next witness is a witness from Canada  
10 Revenue Agency?

11 44059 MR. WOLSON: Wayne Adams from Canada  
12 Revenue, yes.

13 44060 COMMISSIONER OLIPHANT: Wayne Adams,  
14 Canada Revenue.

15 44061 Well, Mr. Mulroney, I am going to  
16 excuse you at this time and I thank you for coming to  
17 provide assistance to the Commission.

18 44062 We will take a recess now for 15  
19 minutes.

20 44063 THE RIGHT HON. BRIAN MULRONEY: Thank  
21 you, Mr. Commissioner.

22 44064 COMMISSIONER OLIPHANT: Good luck,  
23 sir.

24 44065 THE RIGHT HON. BRIAN MULRONEY: Thank  
25 you.

1 --- Upon recessing at 2:30 p.m. / Suspension à 14 h 30  
2 --- Upon resuming at 2:55 p.m. / Reprise à 14 h 55  
3 44066 COMMISSIONER OLIPHANT: Be seated,  
4 please.  
5 44067 Mr. Battista...  
6 44068 MR. BATTISTA: Good afternoon,  
7 Commissioner. We have Mr. Wayne Adams, and I believe  
8 that he will be sworn.  
9 44069 COMMISSIONER OLIPHANT: All right.  
10 44070 Good afternoon, Mr. Adams. Could I  
11 ask you to stand and take the Bible in your right hand,  
12 please, sir.  
13 SWORN: WAYNE ADAMS /  
14 ASSERMENTÉ: WAYNE ADAMS  
15 44071 COMMISSIONER OLIPHANT: Thank you.  
16 Be seated, please, sir.  
17 44072 MR. BATTISTA: Mr. Commissioner, we  
18 have just heard from Mr. Mulroney, who testified the  
19 longest before you, and I hope that I will be the one  
20 to question a witness for the shortest time before you,  
21 with the next witness.  
22 44073 I have no book to produce for the  
23 witness, but I believe that my colleagues will be  
24 producing a book for questioning this witness.  
25 44074 MR. GRONDIN: I am sorry, Mr.

1 Battista, I just wanted to point out that to my right  
2 is Maître Ryan, a tax lawyer who is assisting us.

3 44075 COMMISSIONER OLIPHANT: Good  
4 afternoon.

5 44076 MR. GRONDIN: The nameplate is still  
6 Harvey Yarosky, but...

7 44077 MR. YAROSKY: I did suddenly get  
8 taller and younger.  
9 --- Laughter / Rires

10 44078 COMMISSIONER OLIPHANT: Thank you.  
11 44079 Please proceed, Mr. Battista.

12 44080 MR. BATTISTA: Mr. Commissioner, Mr.  
13 Adams will be testifying to explain sections of the  
14 Income Tax Act that relate to general obligations that  
15 are applicable to persons rendering services on  
16 retainers.

17 EXAMINATION: WAYNE ADAMS BY MR. BATTISTA /  
18 INTERROGATOIRE: WAYNE ADAMS PAR Me BATTISTA

19 44081 MR. BATTISTA: Mr. Adams, I will ask  
20 you general questions, and I will not ask you to  
21 comment on any of the facts that have been put before  
22 the Commissioner in relation to tax matters.

23 44082 Maybe, if we can begin, you could  
24 tell us what your background is, your education and  
25 your training.

1 44083 MR. ADAMS: I have a Bachelor of  
2 Mathematics from the University of Waterloo, and a  
3 specialization in Accounting, and I have worked at the  
4 Canada Revenue Agency for my whole career, 32 years.

5 44084 Currently I am the Director General  
6 of Income Tax Rulings, which is a program where tax  
7 lawyers and accountants with the CRA analyze business  
8 transactions and interpret the law for the purposes of  
9 giving direction, either to companies on how to file  
10 their tax returns, or our own officials on how to  
11 audit, assess, or make decisions related to litigation.

12 44085 MR. BATTISTA: So, basically, you are  
13 familiar with the relevant sections of the Act, and  
14 also their applications at the CRA.

15 44086 MR. ADAMS: Yes, sir.

16 44087 MR. BATTISTA: Now, I am going to ask  
17 you some very specific questions, and I have some very  
18 short questions, very much to the point.

19 44088 When a sum of money is received as a  
20 retainer for services to be rendered, what section of  
21 the Income Tax Act comes into play, and when does the  
22 obligation to report the money as income arise?

23 44089 MR. ADAMS: First of all, the Income  
24 Tax Act, as passed by Parliament, sets out in section 9  
25 that income from business is computed based on its

1 profit, and that is largely an accounting  
2 determination, applying Generally Accepted Commercial  
3 Principles.

4 44090 In addition to that profit  
5 calculation, paragraph 12(1)(a) of the Act was added by  
6 Parliament to include in income any amounts received on  
7 account of services to be rendered, including services  
8 that might be rendered after the end of the year. And  
9 in situations where amounts have been received related  
10 to services to be rendered after the end of the year,  
11 the business is allowed a deduction. It is referred to  
12 in the Act as a reserve, under paragraph 20(1)(m) -- to  
13 claim a deduction, or a reserve, related to the value  
14 of the services to be provided after the end of the  
15 year.

16 44091 MR. BATTISTA: What reporting  
17 obligations would arise if some services were rendered  
18 the year the money was received, while other services  
19 remained to be rendered?

20 44092 You will explain that people would  
21 declare, and then make a reserve. Correct?

22 44093 MR. ADAMS: Yes. Essentially, if the  
23 contract had been partially fulfilled, then the value  
24 of the services to be rendered after the end of the  
25 year may be a lesser amount than the amount of the

1 funds initially advanced.

2 44094 It isn't only based on funds advanced  
3 that the business may be taxable, they are also taxable  
4 on services that they may have invoiced throughout the  
5 year. They would be referred to as accounts  
6 receivable.

7 44095 MR. BATTISTA: Just so we understand,  
8 a person receives a retainer, and no services are  
9 rendered the year the retainer is received. What would  
10 you expect to occur?

11 44096 MR. ADAMS: There would be no net  
12 inclusion in income as a result of that.

13 44097 MR. BATTISTA: Can you elaborate?  
14 There would be no net inclusion, what does that mean?

15 44098 A person receives a retainer in Year  
16 X, for example, and does not render any services in  
17 that year.

18 44099 MR. ADAMS: Right.

19 44100 MR. BATTISTA: What would they do on  
20 their income tax declaration?

21 44101 MR. ADAMS: It is not an explicit  
22 line that is on the tax return. This is all the way  
23 one calculates their business for the purposes of  
24 including, on a single line item, income from business.

25 44102 It would be kind of an addition to



1 the profit otherwise computed, and then a deduction of  
2 the same amount. So kind of an inclusion, and then the  
3 same amount would be taken out.

4 44103 MR. BATTISTA: If we take an example,  
5 if I receive \$1,000 as a retainer this year, I would  
6 put it in my income declaration, but I would also  
7 include a reserve for that amount.

8 44104 MR. ADAMS: That's correct.

9 44105 MR. BATTISTA: In other words, my net  
10 would be that there is no income from that \$1,000  
11 retainer. Correct?

12 44106 MR. ADAMS: That's correct.

13 44107 MR. BATTISTA: Now, my question to  
14 you is, what obligations would arise if services were  
15 rendered the year that the money was received, while  
16 other services remained to be rendered?

17 44108 MR. ADAMS: Well, as I say, I believe  
18 the calculation would be that the amount of the  
19 retainer would be brought into income, assuming that  
20 represented what was largely the agreed upon price for  
21 the services that were to be provided.

22 44109 And at the end of the year, when you  
23 compute your reserve for services to be provided after  
24 the end of the year, if that amount was less than the  
25 amount initially received, then there would be an

1 inclusion of the difference.

2 44110 MR. BATTISTA: Okay. So if we take  
3 my example of \$1,000, if in the year the person  
4 receives the money -- \$1,000 -- and they do \$100 worth  
5 of work, what would happen?

6 44111 MR. ADAMS: The individual would be  
7 entitled to claim a reserve of \$900, being the  
8 remaining services to be offered. So he would have a  
9 net inclusion of \$100.

10 44112 MR. BATTISTA: Now, that's income.  
11 What would occur in terms of expenses to earn that  
12 income?

13 44113 MR. ADAMS: Well, your expenses that  
14 are related to your income earning operation, when they  
15 are directly attributed to that, then that would be a  
16 further reduction to your amount related to that  
17 particular relationship.

18 44114 MR. BATTISTA: Okay. Then the person  
19 who would declare the retainer would subtract the  
20 income earned from the retainer?

21 44115 MR. ADAMS: Well, that's more of a --  
22 that would be the reserve --

23 44116 No, you subtract off the services  
24 left to be provided, and you would have an income  
25 inclusion of, in your case, \$100. And if you had

1 expenses related to that of \$50, they would be  
2 deductible.

3 44117 MR. BATTISTA: They would be  
4 deductible from the \$100 that was earned.

5 44118 MR. ADAMS: Yes.

6 44119 MR. BATTISTA: And there would be a  
7 \$900 reserve for future services. Correct?

8 44120 MR. ADAMS: Yes.

9 44121 MR. BATTISTA: What would the  
10 reporting obligations be if no services were rendered  
11 for several years after the reception of a retainer?

12 44122 MR. ADAMS: If no services -- I mean,  
13 it calls upon the service provider, as well as the  
14 customer, to make a clear determination of what it is  
15 that the contractual relationship expects.

16 44123 If there have been no services after  
17 a certain number of years, I guess one wonders, are  
18 there really determinable or definable services to be  
19 provided. I mean, that would go into the analysis of  
20 either the tax advisor assisting the business person  
21 preparing the return, or the tax auditor in looking at  
22 it -- are there really services to be provided after  
23 the end of the year, and if there aren't, it's quite  
24 possible, at some point in time, that there is no  
25 reserve available, and there would need to be income

1 recognition, unless those funds were returned to the  
2 customer.

3 44124 MR. BATTISTA: Okay. But if over,  
4 for example, several years no services are rendered, or  
5 if services may be rendered in future years, what would  
6 the person do in terms of declarations annually?

7 44125 MR. ADAMS: If that happened to be  
8 the fact situation, I think that there would be a  
9 continued deferral of income recognition, because the  
10 reserve mechanism requires you, in the second year, to  
11 kind of add back the reserve that is claimed, and at  
12 the end of the year claim a new reserve.

13 44126 And if this was consistently \$1,000  
14 each year, there would be no net inclusion.

15 44127 But, as I say, I think that in  
16 analyzing the contract, is it more that it relates more  
17 to an availability fee, as opposed to just specific  
18 services to be provided, and one might conclude that it  
19 was income either at the year received or some period  
20 after that, when the continued calculation of the  
21 reserve wasn't really related to identifiable services  
22 expected to be rendered.

23 44128 MR. BATTISTA: Does sending an  
24 invoice have an impact on the reporting obligations?

25 44129 In other words, when does one have to

1 report anything for tax purposes when we are speaking  
2 of a retainer?

3 44130 MR. ADAMS: Well, I mean, it really  
4 isn't confined or unique to a retainer.

5 44131 The provision next to the provision  
6 that deals with amounts received in advance of services  
7 talks about accounts receivable in the billing process,  
8 and talks -- you know, accounts receivable have to be  
9 included in income as well, when billed, or at an  
10 earlier point in time, if the delay in billing is  
11 unreasonable.

12 44132 The obligation to report relates to  
13 the realization. The invoicing is really just evidence  
14 that passes between the two parties, but is not the  
15 determining factor in computing income for tax  
16 purposes.

17 44133 MR. BATTISTA: If I can translate  
18 what you just said, what that means is that, when  
19 someone actually earns the money, whether the money has  
20 been invoiced or not, whether the work has been  
21 invoiced or not, the reporting obligations would then  
22 apply.

23 44134 Is that a correct resumé of what you  
24 have just said?

25 44135 MR. ADAMS: That's correct.

1 44136                   There is an exception for certain  
2           professional business that can make a work in progress  
3           election to be exempted from that, but, generally, that  
4           is the rule as I have described it to you.

5 44137                   MR. BATTISTA:  Now, when a retainer  
6           in relation to services rendered over several years is  
7           brought to an end in a particular year, how is one  
8           expected to report the income?

9 44138                   MR. ADAMS:  If it is brought to an  
10          end because the services have finally been rendered, or  
11          the contract has been fulfilled, any residual amount  
12          that hadn't yet been realized for income purposes would  
13          then have to be realized.

14 44139                   Otherwise, I think we would look to  
15          see whether the funds were actually returned to the  
16          customer.

17 44140                   MR. BATTISTA:  Okay.  So what you are  
18          basically saying is that, with the reserve provision, a  
19          person declares income -- for example, in my example of  
20          \$1,000, a person who declares \$100 of income may deduct  
21          some expenses from that \$100.

22 44141                   You are nodding.  Is that correct?

23 44142                   MR. ADAMS:  That's correct.

24 44143                   MR. BATTISTA:  Then they would add a  
25          reserve of \$900 on their income tax report.  The

1 following year, if no services are rendered, they would  
2 report \$900 as a retainer still in their possession,  
3 and they would deduct a reserve of \$900?

4 44144 MR. ADAMS: Yes.

5 44145 MR. BATTISTA: Then, in the final  
6 year, when the service is fully rendered, they would  
7 report the earning of the \$900, or whatever amount was  
8 remaining in reserve.

9 44146 MR. ADAMS: That's correct.

10 44147 MR. BATTISTA: And the deductions for  
11 expenses would be taken from the income declared.

12 44148 MR. ADAMS: Yes.

13 44149 MR. BATTISTA: Let me just check  
14 something here.

15 --- Pause

16 44150 MR. BATTISTA: That's it for me.

17 44151 COMMISSIONER OLIPHANT:  
18 Congratulations, Mr. Battista, I think you did it.

19 --- Laughter / Rires

20 44152 COMMISSIONER OLIPHANT: Mr.  
21 Grondin...

22 EXAMINATION: WAYNE ADAMS BY MR. GRONDIN /

23 INTERROGATOIRE: WAYNE ADAMS PAR Me GRONDIN

24 44153 MR. GRONDIN: Good afternoon, Mr.  
25 Commissioner.

1 44154 Mr. Adams, first of all, as alluded  
2 to by my colleague Mr. Battista, I have some documents  
3 that I would like to file, as is my habit when I stand  
4 up.

5 44155 I actually have a booklet, which I  
6 believe you have on your desk, Mr. Commissioner, and I  
7 believe that the next exhibit is P-52.

8 44156 I don't know if it's by consent --

9 44157 COMMISSIONER OLIPHANT: I take it  
10 that this is going in by consent, Mr. Vickery?

11 44158 MR. VICKERY: Subject to determining  
12 the use that my friend will make of it, yes. I have no  
13 objection at this point.

14 44159 COMMISSIONER OLIPHANT: No objection.  
15 44160 Mr. Houston...

16 44161 MR. HOUSTON: No objection, sir.  
17 Thanks.

18 44162 COMMISSIONER OLIPHANT: Mr. Auger...

19 44163 MR. AUGER: No objection,  
20 Commissioner.

21 44164 COMMISSIONER OLIPHANT: No objection,  
22 Mr. Battista?

23 44165 MR. BATTISTA: No, sir.

24 44166 COMMISSIONER OLIPHANT: All right,  
25 then, the Cerlox-bound document entitled "Documents in



1 Support of the Cross-Examination of Wayne Adams, Canada  
2 Revenue Agency," will be received and marked as Exhibit  
3 P-52.

4 EXHIBIT NO. P-52: Document  
5 entitled, "Documents in Support  
6 of the Cross-Examination of  
7 Wayne Adams, Canada Revenue  
8 Agency"

9 44167 MR. GRONDIN: Thank you.

10 44168 There are also, within the booklet,  
11 two loose documents that I think we should mark as  
12 exhibits separately.

13 44169 COMMISSIONER OLIPHANT: All right. I  
14 will quickly canvass counsel.

15 44170 There is a document called "Analysis/  
16 Commentary", from Canada Tax Service, which looks to be  
17 a publication of McCarthy Tétrault, and there is an  
18 article called, "The Taxation of Prepaid Income," by  
19 Joseph Frankovic.

20 44171 MR. GRONDIN: That's it, yes.

21 44172 COMMISSIONER OLIPHANT: Are these  
22 going in by consent, counsel?

23 44173 MR. VICKERY: Mr. Commissioner,  
24 again, I have no difficulty with their being filed as  
25 being what they are represented to be, subject to

1           whatever use my friend may intend to make of them.

2   44174                   COMMISSIONER OLIPHANT:  That can be  
3           the subject of comment later on, if need be.

4   44175                   MR. VICKERY:  Yes.

5   44176                   COMMISSIONER OLIPHANT:  Mr.  
6           Houston...

7   44177                   MR. HOUSTON:  No problem, sir.  Thank  
8           you.

9   44178                   COMMISSIONER OLIPHANT:  Mr. Auger...

10  44179                   MR. AUGER:  No objection, sir.

11  44180                   COMMISSIONER OLIPHANT:  All right.

12           Then the McCarthy Tétrault document,  
13           "Analysis/Commentary" on section 12(1)(a) and (b), will  
14           be received and marked as Exhibit P-53.

15                           EXHIBIT NO. P-53:  Document  
16                           entitled "Analysis/Commentary --  
17                           Canada Tax Service -- McCarthy  
18                           Tétrault, Analysis, 12(1)(a),  
19                           (b) "

20  44181                   COMMISSIONER OLIPHANT:  The article  
21           entitled "The Taxation of Prepaid Income" will be  
22           received and marked as Exhibit P-54.

23                           EXHIBIT NO. P-54:  Article  
24                           entitled "The Taxation of  
25                           Prepaid Income", by Joseph

1 Frankovic

2 44182 MR. GRONDIN: Good afternoon, Mr.  
3 Adams.

4 44183 MR. ADAMS: Good afternoon.

5 44184 MR. GRONDIN: You just described to  
6 us --

7 44185 First of all, Mr. Commissioner,  
8 before I ask questions, I would like to make a proviso  
9 to this cross-examination. It is still under the same  
10 umbrella as described by my colleague Maître Pratte  
11 yesterday, that the purpose of this Commission is not  
12 to assess tax compliance. So it is done under the  
13 reserve of that objection, if my colleague called it as  
14 such.

15 44186 Also, there is the fact that Mr.  
16 Adams is sort of testifying as an expert in law, which  
17 generally is not the case, but, nonetheless, I will  
18 have some clarification to ask of Mr. Adams; not that I  
19 question his qualifications at all. That's not the  
20 point, but I just wanted to make those clarifications,  
21 sir.

22 44187 You explained the basic mechanism of  
23 section 12(1)(a) and 20(1)(m) that apply to advances on  
24 services to be rendered. Correct?

25 44188 MR. ADAMS: Yes, sir.

- 1 44189 MR. GRONDIN: To your knowledge, are  
2 there exceptions to the application of those provisions  
3 that we just referred to?
- 4 44190 MR. ADAMS: I don't know that there  
5 are exceptions, per se. We have a bulletin that was  
6 published, which you have included in your documents  
7 here, that relates to lawyers' trust funds and  
8 disbursements from trust funds, that talks about  
9 amounts received and held in trust by a lawyer in the  
10 practice of law.
- 11 44191 We do not consider those amounts to  
12 be amounts received by the lawyer on account of  
13 services to be rendered. Therefore, they are not  
14 included in income under 12(1)(a).
- 15 44192 MR. GRONDIN: Okay. Since you  
16 referred to documents that have been tabled under the  
17 booklet that was just filed into evidence, I will refer  
18 to it.
- 19 44193 I would ask you to look, sir, at Tab  
20 4.
- 21 44194 MR. ADAMS: Yes, sir.
- 22 44195 MR. GRONDIN: This is a document  
23 entitled, "Technical Interpretation", with a number,  
24 dated February 12, 1998.
- 25 44196 MR. ADAMS: Yes.

- 1 44197 MR. GRONDIN: Is it fair to say, Mr.  
2 Adams, that technical interpretations are opinions  
3 given by the Canada Revenue Agency on various tax  
4 issues, which can be published at times, like this one?
- 5 44198 MR. ADAMS: Yes, sir.
- 6 44199 MR. GRONDIN: I understand that, to  
7 give an opinion on a certain matter, the CRA is  
8 provided with a fact pattern, and they will give an  
9 opinion as to the application of some provisions of the  
10 Income Tax Act.
- 11 44200 Correct?
- 12 44201 MR. ADAMS: That's correct.
- 13 44202 MR. GRONDIN: In this case, the 1998  
14 technical interpretation by the CRA -- if you look at  
15 page 2, very briefly -- and I will summarize the fact  
16 pattern.
- 17 44203 In this case it was a deposit of 90  
18 percent of the sale price that had been given as an  
19 advance, but the funds would only belong to the vendor  
20 after the purchaser had accepted the machine, following  
21 its instalment.
- 22 44204 Is that a fair summary of the fact  
23 pattern?
- 24 44205 MR. ADAMS: Well, yes. I mean, I  
25 think what they describe is that this is a relatively

1 new or innovative machine, that it requires substantial  
2 customization, training, and that there is even a  
3 potential failure rate that would allow the purchaser  
4 to decline acceptance, and it would revert to the  
5 vendor.

6 44206 MR. GRONDIN: But to sort of  
7 guarantee the performance of the obligation, there was  
8 an advance of 90 percent as a deposit, and the next 10  
9 percent would be payable when the purchaser would  
10 indicate that he was satisfied with the instalment of  
11 the machine.

12 44207 Or, if he was not, 100 percent could  
13 be refundable.

14 44208 Is that correct?

15 44209 MR. ADAMS: The amount was fully  
16 refundable if the customer declined acceptance, yes.

17 44210 MR. GRONDIN: Okay. Going back to  
18 the first page, Mr. Adams, under the summary, we see  
19 that the provisions in question for the technical  
20 interpretation were 12(1)(a) and 20(1)(m), the very  
21 provisions that we are talking about now, and the issue  
22 was: revenue recognition timing where an amount is  
23 paid as a deposit.

24 44211 I draw your attention to the heading,  
25 "Reasons". Under that heading it reads:

1 "When an amount is paid as a  
2 deposit, it cannot be regarded  
3 as profit or gain to the holder  
4 until the circumstances under  
5 which it may be retained by him  
6 to his own use have arisen and,  
7 until such time, it is not  
8 taxable income in his hands, for  
9 it lacks the essential quality  
10 of income, namely that the  
11 recipient should have an  
12 absolute right to it and be  
13 under no restriction,  
14 contractual or otherwise, as to  
15 its disposition, use or  
16 enjoyment."

17 44212 Then it refers to the Robertson  
18 matter.

19 44213 Have I read that correctly, sir?

20 44214 MR. ADAMS: Yes, sir.

21 44215 MR. GRONDIN: So that was the summary  
22 of the position taken by the CRA in 1998 on that issue.

23 44216 MR. ADAMS: Yes.

24 44217 MR. GRONDIN: And within the brackets  
25 it refers to the Robertson case, a 1944 decision by the

1           Exchequer Court, which is a basic and famous decision  
2           on the quality of income test.

3   44218                    Would you agree, sir?

4   44219                    MR. ADAMS: Did you say 1944?

5   44220                    MR. GRONDIN: Yes.

6   44221                    MR. ADAMS: Yes, that's correct.

7   44222                    MR. GRONDIN: Since we have referred  
8           to the Robertson decision, I want to draw your  
9           attention to another exhibit, P-54, which is the text  
10          by Joseph Frankovic, entitled "The Taxation of Prepaid  
11          Income", and I want to draw your attention to pages 34  
12          and 35, where the ratio decidendi of the Robertson case  
13          is reproduced.

14   44223                    If you go to the last paragraph of  
15          page 34 of Exhibit P-54, under the heading, "The  
16          Judicial Development of the Quality-of-Income  
17          Requirement" -- I will read it to you. It says:

18                            "The quality-of-income concept  
19                            originated in the Robertson  
20                            case..."

21   44224                    -- the one we just talked about:

22                            "...where Thorson, J of the  
23                            Exchequer Court laid down the  
24                            following test to determine  
25                            whether amounts received by a



1 taxpayer should be included in  
2 income..."

3 44225 And then the ratio of the decision:  
4 "Did such amounts have, at the  
5 time of their receipt, or  
6 acquire, during the year of  
7 their receipt, the quality of  
8 income, to use the phrase of Mr.  
9 Justice Brandeis in Brown v.  
10 Helvering...."

11 44226 -- I spare you the reference:  
12 "In my judgment, the language  
13 used by him, to which I have  
14 already referred, lays down an  
15 important test as to whether an  
16 amount received by a taxpayer  
17 has the quality of income."

18 44227 He continues:  
19 "Is his right to it absolute and  
20 under no restriction,  
21 contractual or otherwise, as to  
22 its disposition, use or  
23 enjoyment? To put it in another  
24 way, can an amount in a  
25 taxpayer's hands be regarded as

1 an item of profit or gain from  
2 his business, as long as he  
3 holds it subject to specific and  
4 unfulfilled conditions and his  
5 right to retain it and apply it  
6 to his own use has not yet  
7 accrued, and may never accrue?"

8 44228 When the CRA took the position it  
9 took in '98, it based itself on the Robertson decision,  
10 and that is the very case that I have read you an  
11 excerpt from.

12 44229 Is that correct?

13 44230 MR. ADAMS: That is correct, sir, but  
14 I think it is important that we are aware that the  
15 measures in 12(1)(a) and 20(1)(m) were introduced by  
16 Parliament after the Robertson decision.

17 44231 The Robertson decision stood at a  
18 time when, essentially, the predecessor to section 9  
19 only existed, and it was quite possible that the Court,  
20 in Robertson, essentially found that the conclusion of  
21 gross income earned with no reserve was an unreasonable  
22 result, and developed the criteria of quality of  
23 income.

24 44232 But I don't know that you can dispute  
25 the fact that 12(1)(a), bringing the amounts --

1 advances into income, post-dates the Robertson  
2 decision.

3 44233 MR. GRONDIN: Yes, I grant you that,  
4 sir, and we will address that text in more detail later  
5 on.

6 44234 But I just wanted to point out that,  
7 nonetheless, in 1998 -- and that was 54 years after the  
8 Robertson case -- to take a position, the CRA referred  
9 to the Robertson case when asked about whether an  
10 advance in certain circumstances could be considered as  
11 income under section 12(1)(a), and a reserve could be  
12 taken under 20(1)(m).

13 44235 Actually, I bring your attention to  
14 the third page, which is the last page of that  
15 document, where the CRA further explains its position.

16 44236 I would refer you to the two first  
17 paragraphs of the last page. They say:

18 "The Courts have considered  
19 paragraph 12(1)(a) of the ITA  
20 with respect to the issue of  
21 whether amounts received by  
22 taxpayers on account of goods  
23 sold have the quality of income.  
24 In this respect, they have held  
25 that deposits that are

1                   contingently received are not to  
2                   be included in the computation  
3                   of the business income of a  
4                   taxpayer. The test in this  
5                   respect is whether the funds  
6                   have become the absolute  
7                   property of the vendor. In  
8                   other words, where a taxpayer  
9                   holds funds subject to specific  
10                  and unfulfilled conditions and  
11                  the taxpayer's right to retain  
12                  and apply them to his or her own  
13                  use has not yet accrued, the  
14                  amounts so held are not to be  
15                  included into income."

16   44237                   That, again, is based on the same  
17                  notions that we have seen in the Robertson case.

18   44238                   I draw your attention now to the next  
19                  paragraph, which says:

20                                 "The facts that you disclosed in  
21                                 your letter appear to indicate  
22                                 that the amounts received by the  
23                                 taxpayer do not have the quality  
24                                 of income..."

25   44239                   -- again, the same test:

1 "...in that, if the purchaser  
2 does not accept the product, the  
3 vendor is obligated to refund  
4 the amounts received from the  
5 purchaser. Accordingly, in our  
6 view, the amounts received by  
7 the vendor would not have to be  
8 included in income under  
9 paragraph 12(1)(a) of the ITA.  
10 Hence, subsection 20(1)(m) of  
11 the ITA would not apply."

12 44240 Have I read that correctly, sir?

13 44241 MR. ADAMS: You have read it  
14 correctly, yes.

15 44242 MR. GRONDIN: And you do not dispute  
16 that this interpretation bulletin was published by the  
17 CRA in 1998.

18 44243 MR. ADAMS: Well, this isn't an  
19 interpretation bulletin. The term we use is that this  
20 is a technical opinion, which was released by a service  
21 of -- a piece of communication between ourselves and  
22 the particular requester here.

23 44244 This is somewhat unique to its facts,  
24 and I don't think that can be overlooked.

25 44245 But you do know that our

1           interpretation bulletin is much more generic, and  
2           published with --

3   44246                    They have a somewhat different  
4           presentation. This is a little --

5   44247                    MR. GRONDIN: I am not attacking you,  
6           sir, I am just asking you whether --

7   44248                    MR. ADAMS: No, no, I am just  
8           explaining that this isn't a bulletin.

9   44249                    MR. GRONDIN: This was published in  
10          1998.

11   44250                    MR. ADAMS: Yes.

12   44251                    MR. GRONDIN: And you referred to the  
13          facts, that it's important to look at the facts,  
14          because you said that this interpretation was specific  
15          to the facts. So you would agree with me that the fact  
16          pattern -- different facts -- circumstances -- are  
17          important at times to take a position.

18   44252                    MR. ADAMS: They are.

19   44253                    MR. GRONDIN: During your testimony  
20          you also referred to an exception applicable to  
21          lawyers.

22   44254                    Actually, I first asked you a  
23          question about exceptions, and I would now draw your  
24          attention to Tab 6.

25   44255                    Actually, this is section 34. You

1 referred to it during your testimony when questioned by  
2 Mr. Battista.

3 44256 COMMISSIONER OLIPHANT: Mr. Grondin,  
4 explain to me what the provisions of section 34 have to  
5 do with what we are dealing with here.

6 44257 I thought Mr. Mulroney was not acting  
7 as a lawyer, but was acting as a business consultant.  
8 This section deals with lawyers, accountants, dentists,  
9 medical doctors, veterinarians and chiropractors.

10 44258 MR. GRONDIN: I will grant you that,  
11 sir.

12 44259 Two reasons, to answer your question.  
13 The witness referred to an exception -- or, I don't  
14 know if he called it an exception --

15 44260 COMMISSIONER OLIPHANT: He talked  
16 about lawyers' trust accounts being an exception.

17 44261 MR. GRONDIN: He did, but he referred  
18 to the fact that lawyers could not invoice their work  
19 in progress at the end of one year.

20 44262 And granted that Mr. Mulroney  
21 testified that he did not act as a lawyer in his  
22 mandate with Mr. Schreiber; however, he is a lawyer,  
23 and when he explained that he had certain basic  
24 principles in mind, that could have been -- you know,  
25 he is a lawyer, and that very knowledge is part of what

1 lawyers believe the income tax provides.

2 44263 I am just asking him, if it was in  
3 reference to section 34(a), when you testified that  
4 lawyers -- actually, not only lawyers, but other  
5 persons practising in professional practice, could  
6 decide not to invoice their work in progress at the end  
7 of each year.

8 44264 COMMISSIONER OLIPHANT: Just a  
9 minute, Mr. Adams.

10 44265 Mr. Battista...

11 44266 MR. BATTISTA: If I may, Mr. Adams,  
12 just before you answer...

13 44267 Commissioner, I understand that my  
14 colleague is in cross-examination and he is exploring  
15 different areas; however, I think your point is well  
16 taken, and it is an area that I did not cover with the  
17 witness intentionally.

18 44268 I understood the evidence to be that  
19 the work was not being done as a lawyer but as a  
20 consultant, and that none of the provisions of the Bar  
21 Act or any of the obligations that lawyers are required  
22 to follow were at issue here.

23 44269 This witness is, obviously, not being  
24 asked to comment on the specific facts of the case  
25 before you; however, in order to inform you, obviously,



1 background and context is important, and I would  
2 suggest, respectfully, that the context here is more in  
3 keeping with the practices of people involved in  
4 business, and not with obligations which lawyers or  
5 other professionals may have, who, in those  
6 circumstances, would be obliged to follow other  
7 provisions of other laws which are not at issue here.

8 44270 COMMISSIONER OLIPHANT: Thank you.

9 44271 Mr. Grondin, perhaps you can proceed,  
10 but do so bearing in mind my comments and those of Mr.  
11 Battista, please.

12 44272 MR. GRONDIN: Yes, I will.

13 --- Pause

14 44273 MR. GRONDIN: The fact that I am  
15 turning pages now, sir, means that I am taking your  
16 comments into account.

17 44274 So I will now refer you, Mr. Adams,  
18 to the text prepared by Mr. Frankovic that we referred  
19 to earlier. It is a text that was published in 2002  
20 entitled "The Taxation of Prepaid Income".

21 44275 Were you aware of the existence of  
22 this text, sir?

23 44276 MR. ADAMS: Yes, sir.

24 44277 MR. GRONDIN: Okay. I understand  
25 that Mr. Frankovic teaches tax law at Osgoode Hall.

1 44278 Is that correct?

2 44279 MR. ADAMS: That is correct.

3 44280 MR. GRONDIN: Again, my purpose here

4 is not to review the whole text with you, far from it,

5 but I just want to bring to your attention certain

6 excerpts of the text that illustrate that there is

7 still -- in 2002 when this author, actually according

8 to the opinion of that author, there is still

9 controversy about the application of 12(1)(a) and

10 20(1)(m) of the Income Tax Act, and I will bring your

11 attention to some excerpts.

12 44281 First of all, page 45, under the

13 heading "The Statutory Rules Governing the Taxation of

14 Prepaid Income, Inclusion and Deferral under Paragraphs

15 12(1)(a) and 20(1)(m)".

16 44282 It reads:

17 "The statutory scheme relating

18 to the taxation of prepayments,

19 deposits, and other unearned

20 amounts received by a taxpayer

21 appears..."

22 44283 Appears.

23 "... on its face, to be

24 straightforward and

25 uncontroversial."

1 44284 Please now look at page 46, the text  
2 where the author continues.

3 44285 The first -- the second paragraph,  
4 the one that begins by "It is not clear", it says:

5 "It is not clear whether a  
6 'security deposit' in respect of  
7 a purchase of goods or services  
8 is included in income under  
9 paragraph 12(1)(a).... As  
10 discussed earlier, some  
11 contracts will call for such a  
12 deposit as a way of guaranteeing  
13 the purchaser's commitments  
14 under the contract or at least  
15 affirming the purchaser's  
16 intentions to fulfill the terms  
17 of the contract."

18 44286 Further down the same page the author  
19 now refers to a decision by the Federal Court of  
20 Appeal:

21 "However, in the Imperial  
22 General Properties case..."

23 44287 That is a decision rendered in '85,  
24 by the way:

25 "... the Federal Court of Appeal

1 found that the predecessor to  
2 paragraph 12(1)(a) did not apply  
3 to a deposit received by the  
4 taxpayer from the prospective  
5 purchaser of some real estate  
6 from the taxpayer."

7 44288 If you go to the end of this  
8 paragraph, it summarizes the conclusions of that court:  
9 "The court went on to hold that  
10 the deposit should not be  
11 included in the taxpayer's  
12 profit in the year of receipt  
13 under general principles,  
14 because one of the conditions of  
15 the agreement remained  
16 unfulfilled as of the end of  
17 that year."

18 44289 So again, the author is summarizing a  
19 decision from the Federal Court of Appeal relating to  
20 contracts.

21 44290 Again, you will agree with me that it  
22 is important to look at the terms of the contracts,  
23 what was the agreement between the parties to make a  
24 determination under the Income Tax Act?

25 44291 MR. ADAMS: I would agree to look at

1           that.  But, I mean, these cases are also influenced by  
2           the facts in those particular cases.

3   44292                    There were unusual aspects to the  
4           Imperial General properties case.  You will recall that  
5           that is the case that two days before the end of the  
6           taxpayer's year end he sold a property to somewhere  
7           else where largely all of the aspects, the zoning and  
8           subdivision all had yet to be determined.

9   44293                    The purpose of him doing it that  
10          quickly was to have income so he could use up losses  
11          that were about to expire.  This was largely a tax  
12          avoidance scheme and the taxpayer was unsuccessful.  
13          But it may not influence subsequent cases quite as  
14          strongly as you could be suggesting.

15   44294                    I mean, some things are unique to  
16          their facts.

17   44295                    MR. GRONDIN:  I understand the facts  
18          are important and we will see that some authors do not  
19          agree with your last position, but that's not the  
20          point.

21   44296                    MR. ADAMS:  It wouldn't be the first  
22          time.

23   44297                    MR. GRONDIN:  Okay.  The next  
24          paragraph, sir, says:

25                                    "If a deposit is not included in

1 the year of receipt under  
2 paragraph 12(1)(a) ... it will  
3 be included in the computation  
4 of profit under section 9 ... if  
5 and when it attains the quality  
6 of income."

7 44298 If you go to the next page, 47:

8 "As discussed above, a deposit  
9 will attain the quality of  
10 income once any conditions  
11 precedent to the recipient's  
12 entitlement to the deposit have  
13 been fulfilled. Presumably, in  
14 most cases, this will occur when  
15 the subject property is  
16 delivered or the service is  
17 rendered -- in other words, when  
18 the deposit is in fact earned."

19 44299 If you go to the next paragraph, it  
20 says:

21 "The CCRA has taken the position  
22 that paragraph 12(1)(a) ...  
23 applies equally to prepayments  
24 and deposits. However, on one  
25 occasion, the CCRA stated that

1 deposits are not included under  
2 paragraph 12(1)(a) if they do  
3 not have the quality of income.  
4 Under this view, it appears that  
5 deposits and unearned receipts  
6 without the quality of income  
7 are not included in income under  
8 either section 9 ... or  
9 paragraph 12(1)(a)."

10 44300 Then if you go to the next paragraph,  
11 full paragraph under the heading:

12 "The Quality-of-Income  
13 Requirement Applied to the  
14 Statutory Scheme of Taxing  
15 Prepaid Income"

16 44301 The author goes on to say that there  
17 is another contentious issue.

18 44302 He says:

19 "An interesting and rather  
20 contentious issue is the  
21 applicability of the  
22 quality-of-income test to the  
23 unearned amounts described in  
24 paragraph 12(1)(a).... In the  
25 Robertson case, Thorson J held

1                                   that an unearned receipt would  
2                                   nonetheless be included in  
3                                   income if it exhibited the  
4                                   quality of income..."

5   44303                           Again you do not disagree that this  
6           author at least thinks -- and he wrote this text which  
7           is pretty detailed in 2002 and felt that the  
8           application and interpretation of sections 12(1)(a) and  
9           20(1)(m) could give rise to controversies and  
10          interpretations?

11   44304                           I draw your attention to the next  
12          page, sir.

13   44305                           COMMISSIONER OLIPHANT:  What is your  
14          question?  I'm not sure you got an answer.

15   44306                           MR. ADAMS:  I was formulating one,  
16          but --

17   44307                           COMMISSIONER OLIPHANT:  Well, take  
18          your time and Mr. Grondin will wait for your answer  
19          before he asks the next question.

20   44308                           MR. GRONDIN:  Of course.  Of course.

21   44309                           MR. ADAMS:  I think a lot of the  
22          examples that you are drawing attention to is the  
23          author is somewhat struggling with the concept more  
24          related to nine and if amounts are included by nine,  
25          section 9, that there may not even be a reserve after



1 the end of the year for unearned amounts, or at the end  
2 of the year. And that could result in injurious  
3 taxation or unfair taxation.

4 44310 I think that some of the points he  
5 just makes -- you know, it appears on the surface to be  
6 non-controversial, but some aspects creep in, whether  
7 it is the relationship between the parties or the  
8 complexity of the services or goods that are being  
9 delivered.

10 44311 But you know, I think we are just  
11 watching the author experience some angst as he is  
12 going through this, but I don't know that he comes  
13 clear with a firm opinion one way or the other.

14 44312 MR. GRONDIN: Well, we will get -- we  
15 are pretty close to the conclusions of the text. I  
16 just want to draw your attention to a few other  
17 excerpts.

18 44313 Page 48, sir, the second paragraph  
19 says:

20 "The above passage..."

21 44314 And we just left it. It was talking  
22 about the Robertson case:

23 "The above passage also clearly  
24 indicates that an unearned  
25 receipt that lacks the quality

1 of income should not be included  
2 in income. Accordingly, one  
3 might argue that only unearned  
4 receipts with the quality of  
5 income should be included under  
6 paragraph 12(1)(a).... Under  
7 this view, paragraph 12(1)(a)  
8 would apply to an amount  
9 received where the recipient's  
10 right to retain the unearned  
11 amount was absolute and, if  
12 subject to any condition,  
13 subject only to a conditional  
14 obligation to refund the  
15 amount."

16 44315 He then goes on to say, if you move  
17 to page 49, at the end of the second paragraph he sort  
18 of concludes.

19 44316 He says:

20 "On the basis of this  
21 interpretation, it appears that  
22 only prepaid income with the  
23 quality of income should be  
24 included under paragraph  
25 12(1)(a) (and presumably also

1 under section 9) and that  
2 prepaid income without the  
3 quality of income should not be  
4 included in income at all."

5 44317 And you were talking about his  
6 conclusions. I am now drawing your attention to pages  
7 60 and 61.

8 44318 COMMISSIONER OLIPHANT: Hang on a  
9 second, Mr. Grondin.

10 44319 MR. GRONDIN: Yes...?

11 44320 COMMISSIONER OLIPHANT: You read a  
12 paragraph from page 48 to the witness, and then you  
13 read part of a paragraph from page 49.

14 44321 Do you have a question that you want  
15 to ask the witness about what you have just read or do  
16 you just want to put evidence in by reading from the  
17 article, which I can read on my own?

18 44322 MR. GRONDIN: I understand that,  
19 Mr. Commissioner.

20 44323 Actually I thought, because it was  
21 the continuation of what had been said about the  
22 Robertson case by Thorson J. and I thought that he had  
23 already answered that.

24 44324 COMMISSIONER OLIPHANT: Do you have  
25 any questions you want to ask Mr. Adams about what you

1 read to him from page 48?

2 44325 MR. GRONDIN: Okay, I will, sir.

3 44326 You recognize with me that the  
4 author, based on the case I just referred to in the  
5 previous pages, believes that there is an argument to  
6 be made that 12(1)(a) in certain circumstances does not  
7 apply to a deposit or advances?

8 44327 That is at least the author's  
9 position, understanding of the law.

10 44328 MR. ADAMS: Well, I don't know. I  
11 confess to not understanding that point of view,  
12 because he is citing a court case from 1944. After  
13 1944 Parliament enacts 12(1)(a) that says amounts  
14 received on account of services to be rendered at a  
15 later date must be included in income.

16 44329 If it is the author's view that  
17 before that provision was enacted then his conclusions  
18 about income recognition are sound, that might be fair.  
19 But I don't know how one would draw a conclusion from  
20 an earlier court case on how it influences subsequent  
21 legislation that is tabled and passed that seems to  
22 clearly contemplate capturing these amounts but also  
23 providing for a reserve.

24 44330 So I don't know what conclusion to  
25 draw, other than he has made a statement.

1 44331 MR. GRONDIN: And actually, sir --  
2 sorry. Sorry to have interrupted you.

3 44332 We will actually see in the next  
4 exhibit, P-53, that this whole issue is addressed by  
5 McCarthy Tétrault in their analysis, but I just want to  
6 finish.

7 44333 I only have two references to refer  
8 you to on that text and we are going to be done with  
9 Mr. Frankovic.

10 44334 So if you go back to -- we are now  
11 under the conclusions, and if you go back to page 60,  
12 and I think it has been highlighted near the bottom of  
13 the page.

14 44335 He is making the reassessment of all  
15 the issues raised in his text, but he says -- I am  
16 talking again about the applicability and  
17 interpretation of 12(1)(a) to prepaid income.

18 44336 He says:

19 "To complicate matters further,  
20 on the basis of the history of  
21 the enactment of the  
22 predecessors to paragraphs  
23 12(1)(a) and 20(1)(m), one could  
24 argue that prepaid income  
25 without the quality of income

1                                   should not be included in income  
2                                   under either section 9 or  
3                                   paragraph 12(1)(a)."

4   44337                           So again you recognize that the  
5                                   analysis of the law, the case law, by this author  
6                                   brings him to conclude that there is still an argument  
7                                   as to the interpretation of 12(1)(a) that is not  
8                                   settled yet?

9   44338                           MR. ADAMS: Well, clearly he thinks  
10                                   that, yes.

11   44339                           MR. GRONDIN: Okay. And if you look  
12                                   at the next page, 61, he says in the first full  
13                                   sentence:

14                                   "Some but not all of the  
15                                   foregoing issues could be  
16                                   resolved by the courts, although  
17                                   there is no indication that the  
18                                   courts will provide such  
19                                   resolution in the foreseeable  
20                                   future."

21   44340                           So again the conclusion -- and I  
22                                   grant you that it is the opinion of that author,  
23                                   Mr. Frankovic. But he is of the opinion that there are  
24                                   many, still in 2002, unsettled issues about the  
25                                   interpretation of section 12(1)(a) and section 20(1)(m)

1 of the Income Tax Act; correct?

2 44341 MR. ADAMS: I don't dispute he thinks  
3 that, no.

4 44342 MR. GRONDIN: And now just to bring  
5 your attention to the text that I referred to earlier,  
6 the McCarthy Tétrault analysis, were you aware of that  
7 analysis, sir?

8 44343 MR. ADAMS: I hadn't looked at it  
9 before I received the documents at lunch time, no, but  
10 it is a service that we subscribe to.

11 44344 MR. GRONDIN: Okay. It was published  
12 on taxnet.pro, I understand.

13 44345 And again, this analysis was  
14 published on November 30, 2005 and you will see that it  
15 echoes some of the concerns you raised about the  
16 Robertson case having been rendered prior to the  
17 enactment of some dispositions.

18 44346 I bring your attention to the second  
19 paragraph under the heading "Purpose".

20 44347 It says:

21 "Paragraphs 12(1)(a) and (b)  
22 represent an important and  
23 substantive departure from the  
24 case law in legislating with  
25 respect to the date on which an

1 amount received or receivable  
2 shall be deemed to acquire the  
3 character of 'income'."

4 44348 This is in essence what you told me  
5 in some of your earlier responses, answers; correct?  
6 Basically.

7 44349 MR. ADAMS: I believe so, yes.

8 44350 MR. GRONDIN: Okay. Then they refer  
9 to the ratio of the Robertson matter that I have  
10 already read into the record. I won't repeat it.

11 44351 And I bring your attention now to the  
12 following paragraph under the quotation.

13 44352 It says:

14 "Paragraphs 12(1)(a) and (b)  
15 answer this question in the  
16 affirmative."

17 44353 The question being the last one  
18 raised by Thorson J. in Robertson.

19 "To put it another way, can an  
20 amount in taxpayer's hands be  
21 regarded as an item of profit or  
22 gain from his business, as long  
23 as he holds it subject to  
24 specific and unfulfilled  
25 conditions and his right to



1 retain it and apply it to his  
2 own use has not yet accrued, and  
3 may never accrue?"

4 44354 So these authors from McCarthy  
5 Tétrault, a very serious law firm you will agree, they  
6 say you answer this question in the affirmative and  
7 they go on to say:

8 "By specific legislation amounts  
9 which might be excluded from  
10 income on the above principle  
11 are now included in income  
12 (subject always to the  
13 possibility that the taxpayer  
14 might be entitled to deduct a  
15 reserve under subsection 20(1)  
16 in respect of the unearned  
17 portion of such income)."

18 44355 This is what you explained in your  
19 testimony in-chief; correct?

20 44356 MR. ADAMS: Yes, sir.

21 44357 MR. GRONDIN: But it goes on to say:

22 "In practice, however, it is  
23 understood that receipts which  
24 are within the general  
25 contemplation of Robertson Ltd.

1 v. Minister of National Revenue  
2 and which can be said to have  
3 been more or less formally  
4 received in trust, will not be  
5 brought into charge by this  
6 provision."

7 44358 So once again, in 2005 you recognize  
8 that these authors of this text, despite the fact that  
9 the Robertson case was rendered in 1944, despite the  
10 fact that 12(1)(a) and 20(1)(m) were enacted, are  
11 nonetheless of the position that:

12 "In practice, however, it is  
13 understood that receipts which  
14 are within the general  
15 contemplation of ... Robertson  
16 ... and which can be said to  
17 have been more or less formally  
18 received in trust, will not be  
19 brought into charge by this  
20 provision."

21 44359 You recognize that such is their  
22 position?

23 44360 MR. ADAMS: Well, I have no idea  
24 where they draw that conclusion from.

25 44361 MR. GRONDIN: Okay.

1 44362 And in all fairness, if you go under  
2 the subsection "General Rule in Paragraph 12(1)(a)", it  
3 says:

4 "All amounts received in the  
5 year in the course of a business  
6 are now included in computing  
7 income tax for tax purposes even  
8 though conservative business and  
9 accounting practice might  
10 dictate deferment until a  
11 subsequent year. Specifically  
12 paragraph 12(1)(a) includes:..."

13 44363 I will bring your attention to  
14 paragraph 2:

15 "All amounts actually received  
16 which for any other reason are  
17 considered not to have been  
18 earned in the year of receipt.  
19 This would include payments  
20 which will belong to the  
21 recipient absolutely only upon  
22 the happening of some uncertain  
23 future event or upon the  
24 performance by the recipient of  
25 some stipulated thing, such as

1 payments for the warranty of  
2 merchandise sold."

3 44364 They go on to say:

4 "This provision appears to  
5 overrule the finding of the  
6 Exchequer Court in the case of  
7 Robertson Ltd. v. Minister of  
8 National Revenue ... which dealt  
9 with the question of including  
10 in income premium advances for  
11 employer's liability insurance  
12 in respect of contracts in  
13 respect of which the exact  
14 premium was not yet  
15 ascertainable."

16 44365 I will stop there.

17 44366 So you recognize that in this text,  
18 this McCarthy Tétrault analysis, the thing that section  
19 12(1)(a) appears to override the position that was  
20 established in the Robertson case; correct?

21 44367 MR. ADAMS: Well, I think they would  
22 say 12(1)(a) without the 20(1)(m) reserve might have  
23 overruled Robertson. But I think that it is also  
24 equally fair for them to conclude that 12(1)(a) and a  
25 20(1)(m) reserve gets to the exact same result as

1 Robertson.

2 44368 So I don't know what conclusion you  
3 are asking me to draw from that.

4 44369 MR. GRONDIN: Well, I was --

5 44370 MR. ADAMS: 12(1)(a) in isolation  
6 clearly would overrule -- and consciously by  
7 Parliament, when it tabled and passed it, would  
8 overrule one-half of the determination of Robertson  
9 Ltd.

10 44371 But given that Robertson Ltd.  
11 essentially really allowed the deferral of the one  
12 tranche of insurance commissions there that related to  
13 an experienced determination that could only determine  
14 after the fact, one might equally argue that 12(1)(a)  
15 and 20(1)(m) essentially codify for everyone to access  
16 the outcome that was in Robertson.

17 44372 MR. GRONDIN: Okay. I understand  
18 that this is your position, but if you go back to the  
19 excerpt I read you -- and again I'm not arguing with  
20 you -- I just want to point out that these authors say  
21 that the provision appears to overrule the case, but  
22 then they go on to say, where I stopped:

23 "However, this point was  
24 recently placed in some doubt by  
25 a unanimous judgment of the

1 Federal Court of Appeal in  
2 Imperial General Properties Ltd.  
3 v. R., [1985] ..."

4 44373 This is actually the same decision  
5 that was referred to by Mr. Frankovic in his text, the  
6 decision of the Federal Court of Appeal.

7 44374 So these authors in 2005 think that  
8 12(1)(a) overrides -- appears to override the Robertson  
9 ratio. However, they say that this 1985 decision by  
10 the Federal Court of Appeal put that very proposition  
11 into doubt; correct?

12 44375 MR. ADAMS: They say that, yes.

13 44376 MR. GRONDIN: Okay. I think my next  
14 comment will draw a smile on the Commissioner's face.

15 44377 I have no further questions.

16 44378 COMMISSIONER OLIPHANT: Thank you,  
17 Mr. Grondin.

18 44379 Mr. Vickery...?

19 44380 MR. VICKERY: Mr. Commissioner, since  
20 we act for the witness, I would ask that we be  
21 permitted to --

22 44381 COMMISSIONER OLIPHANT: That's fine.

23 44382 MR. VICKERY: Thank you.

24 44383 COMMISSIONER OLIPHANT: Mr.  
25 Houston...?

1 44384 MR. HOUSTON: No questions, sir.  
2 Thank you.

3 44385 COMMISSIONER OLIPHANT: Mr. Auger...?  
4 44386 MR. AUGER: Thank you, Commissioner.

5 EXAMINATION: WAYNE ADAMS BY MR. AUGER /  
6 INTERROGATOIRE : WAYNE ADAMS PAR Me AUGER

7 44387 MR. AUGER: Are you able to assist  
8 the Commissioner on requirements for a taxpayer to keep  
9 records?

10 44388 MR. ADAMS: Could you help me to  
11 understand? I mean, there is an ability in the Act, if  
12 someone is keeping inadequate books and records for, I  
13 believe a Director of a Tax Service Office to issue a  
14 requirement to keep proper books and records.

15 44389 It is usually something that is done  
16 after a determination that the records were inadequate  
17 for tax officials to verify income.

18 44390 MR. AUGER: What about records to  
19 justify expenses by an individual taxpayer?

20 44391 MR. ADAMS: You mean is there an  
21 obligation under the law?

22 44392 MR. AUGER: Right, under either the  
23 Income Tax Act or other authority, CRA?

24 44393 MR. ADAMS: I can't speak to other  
25 authorities.

1 44394 One is expected to produce books and  
2 records to allow departmental officials to review and  
3 verify amounts that are reported. If there is a lack  
4 of documentation, reasons for that could be considered  
5 or discussed.

6 44395 There is an obligation under the Act  
7 to make your books and records available for our  
8 officials to review them, and I guess they are expected  
9 to be of a certain level that would allow that to be  
10 done.

11 44396 MR. AUGER: In terms of justifying  
12 expenses, are you able to assist the Commissioner on  
13 whether there is a minimum time period for which a  
14 taxpayer is required to keep such documents?

15 44397 MR. ADAMS: There is provision in the  
16 law. I believe it suggests that you should keep  
17 records for six years. That would typically be the  
18 three years that would be open and three additional  
19 years.

20 44398 I think that is just -- and there may  
21 even be an opportunity to allow someone to request  
22 permission to destroy them earlier than that, but there  
23 are books and records requirements and retention  
24 periods defined in the Act.

25 44399 If you wanted, I could undertake to



1 report them back to the Court.

2 44400 COMMISSIONER OLIPHANT: A quick  
3 question. If the taxpayer isn't claiming expenses, you  
4 don't really care if there are documents are not, do  
5 you, if no claim for deduction for expenses is being  
6 advanced?

7 44401 MR. ADAMS: There really wouldn't be  
8 an inquiry about an unknown expense.

9 44402 COMMISSIONER OLIPHANT: Right.

10 44403 MR. AUGER: Thank you, Commissioner.

11 44404 Thank you, sir. Those are my  
12 questions.

13 44405 COMMISSIONER OLIPHANT: Mr.  
14 Vickery...?

15 44406 MR. VICKERY: Just one or two  
16 questions.

17 EXAMINATION: WAYNE ADAMS BY MR. VICKERY /

18 INTERROGATOIRE : WAYNE ADAMS PAR Me VICKERY

19 44407 MR. VICKERY: Mr. Adams, my friend  
20 took you to the McCarthy Tétrault analysis and put to  
21 you a proposition in relation to Imperial General  
22 properties, the Imperial General Properties case.

23 44408 It's at page 2 of the documents.

24 44409 MR. ADAMS: Yes.

25 44410 MR. VICKERY: Could you tell me, sir,

1           what is your understanding of the principle upon which  
2           the Imperial General Properties cases turns?

3   44411                   MR. ADAMS: Well, I had only had a  
4           chance to think about it today when it was identified  
5           as a highlighted point in the article. But, as I say,  
6           I was reading through it and the dispute was whether  
7           income had been realized in 1968 and would have been  
8           allowed to offset some losses that were being carried  
9           forward that were going to expire in that particular  
10          year or two years after the fact when it looks like a  
11          lot of the impediments to what might normally be a part  
12          of a real estate development transaction had largely  
13          materialized.

14   44412                   The debate was simply whether the  
15          \$70,000 in this particular case was income in 1968, the  
16          earlier period.

17   44413                   In this case the taxpayer was trying  
18          to argue that he had income earlier than what the  
19          department thought might have been his income earning  
20          period.

21   44414                   As I say, I think that the Court  
22          found against the taxpayer just because it was a very  
23          unusual set of factors and circumstances, and I think  
24          the Court was able to see what the taxpayer's objective  
25          was and to draw a conclusion.

1 44415 I mean sometimes you might say bad  
2 facts produce bad laws. I think this was an outcome  
3 that may stand for the idea that income isn't earned  
4 until a later date, but I think it is coloured by the  
5 facts that were considered by the Court in that case.

6 44416 MR. VICKERY: And is it fair for me  
7 to suggest that the outcome of the case would appear to  
8 be determined by the presence of specific conditions in  
9 the agreement of purchase and sale under consideration?

10 44417 MR. ADAMS: I think that had a large  
11 influence on the decision, yes.

12 44418 MR. VICKERY: Thank you.

13 44419 Those are my questions. Thank you.

14 44420 COMMISSIONER OLIPHANT: Thank you  
15 very much. Any redirect examination?

16 44421 MR. BATTISTA: Just two points,  
17 Commissioner, following what has been asked.

18 EXAMINATION: WAYNE ADAMS BY MR. BATTISTA /  
19 INTERROGATOIRE : WAYNE ADAMS PAR Me BATTISTA

20 44422 MR. BATTISTA: You have no formal  
21 legal training, I understand, Mr. Adams?

22 44423 MR. ADAMS: I work with lawyers.

23 44424 MR. BATTISTA: You work with lawyers.  
24 Poor you.

25 44425 But you are involved in the

1 application of the law and in understanding how it  
2 should be applied and followed.

3 44426 MR. ADAMS: Yes.

4 44427 MR. BATTISTA: Is that fair?

5 44428 MR. ADAMS: Yes.

6 44429 MR. BATTISTA: That I believe was it.

7 44430 The other point is, it has been sort  
8 of accepted by everyone, but it is something that I  
9 omitted to specifically state, but it is understood in  
10 the documents you received. What you explained in  
11 terms of the retainer provisions, they are provisions  
12 that were in application in the year 2000 and in the  
13 1990s as well?

14 44431 MR. ADAMS: The provisions in  
15 12(1)(a) and 20(1)(m) were unchanged during those  
16 years.

17 44432 MR. BATTISTA: Thank you.

18 44433 That's it for me.

19 44434 COMMISSIONER OLIPHANT: All right.

20 44435 MR. BATTISTA: Specifically '93?

21 44436 MR. ADAMS: Unchanged in that time.

22 44437 MR. BATTISTA: Okay. Thank you.

23 44438 COMMISSIONER OLIPHANT: I take it  
24 there is no reason why Mr. Adams can't be excused?

25 44439 Mr. Adams, I have listened carefully

1 to your evidence and I have drawn one conclusion from  
2 it, amongst others, and that is that I am very happy  
3 that I didn't do tax law.

4 44440 I want to thank you for coming. I  
5 understand that you have a plane to catch and I want to  
6 wish you a safe trip in excusing you, sir.

7 44441 MR. ADAMS: Thank you.

8 44442 COMMISSIONER OLIPHANT: Just before  
9 we leave for the day, are there any other witnesses for  
10 today?

11 44443 Ms Brooks...?

12 44444 MS BROOKS: Thank you, Commissioner.

13 44445 We have Salpie Stepanian, who will be  
14 here tomorrow to testify. We, counsel, would like to  
15 seek your permission to have an early end to the day  
16 today. We believe that with the three witnesses  
17 tomorrow, they can be completed in the morning.

18 44446 And Ms Stepanian -- I have spoken to  
19 her counsel -- can be here tomorrow, so we are  
20 suggesting to you that she be stood down until that  
21 time.

22 44447 COMMISSIONER OLIPHANT: Okay. So  
23 tomorrow then, as I understand it, we have two  
24 witnesses from the Prime Minister's Office, and another  
25 witness?

1 44448 MS BROOKS: No. We have Mr. Fred  
2 Bild, the former Ambassador to China.

3 44449 COMMISSIONER OLIPHANT: Oh, right.

4 44450 MS BROOKS: We have Ms Christiane  
5 Sauve, who is from CRA.

6 44451 COMMISSIONER OLIPHANT: Right.

7 44452 MS BROOKS: And we will have  
8 Ms Stepanian, who is from the PMO, on the  
9 correspondence piece.

10 44453 COMMISSIONER OLIPHANT: Okay. And  
11 you think that we will finish the evidence fully by  
12 lunchtime tomorrow?

13 44454 MS BROOKS: Yes.

14 44455 COMMISSIONER OLIPHANT: Well, all  
15 right then. I have no problem with stopping now.

16 44456 What about other counsel? Is that  
17 fine with everybody?

18 44457 I listened to Mr. Mulroney for six  
19 days and I find myself more tired listening to an hour  
20 and a half of tax law here.

21 44458 Thank you very much.

22 44459 MR. YAROSKY: Would you like us to  
23 bring him back?

24 44460 COMMISSIONER OLIPHANT: It is no  
25 comment on the witness whatsoever.

1 44461 Mr. Adams, thanks very much. You are  
2 free to leave.

3 44462 We will break off until 9:30 tomorrow  
4 morning.

5 --- Whereupon the hearing adjourned at 4:05 p.m.,  
6 to resume on Thursday, May 21, 2009 at 9:30 a.m. /  
7 L'audience est ajournée à 16 h 05, pour reprendre  
8 le jeudi 21 mai 2009 à 09 h 30

9

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

13

14 Nous certifions que ce qui précède est une  
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Lynda Johansson

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Jean Desaulniers

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Fiona Potvin

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Sue Villeneuve