

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, June 3, 2009

Tenue à :

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

le mercredi 3 juin 2009

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1 Ottawa, Ontario / Ottawa (Ontario)
2 --- Upon resuming on Wednesday, June 3, 2009
3 at 9:35 a.m. / L'audience reprend le mercredi
4 3 juin 2009 à 9 h 35
5 45335 COMMISSIONER OLIPHANT: Good morning,
6 counsel. Be seated, please.
7 45336 Mr. Roitenberg, good morning.
8 45337 MR. ROITENBERG: Good morning,
9 Mr. Commissioner.
10 45338 We are back before you and we had
11 hoped this morning that we would have Mr. Schreiber
12 back so that we could conclude with him present our
13 examination of him. You will recall that we had stood
14 down Commission counsel's ability to re-examine
15 Mr. Schreiber on the financial matters arising from the
16 testimony of Mr. Whitla from Navigant.
17 45339 Mr. Schreiber, I am advised by his
18 counsel, is still virtually housebound as he recovers
19 from his surgery. He has yet to resume normal
20 activities. He has a follow-up appointment with his
21 doctor a couple of weeks hence and will not be back,
22 much to his and our regret.
23 45340 I can tell you, though, that we
24 needn't keep the re-examination of him in abeyance. We
25 will have no further questions of Mr. Schreiber and he

1 can be discharged from his testimony as of now.

2 45341 COMMISSIONER OLIPHANT: All right.

3 That's fine.

4 45342 Mr. Schreiber will be excused, then,
5 from giving any further evidence on Part I of the
6 inquiry.

7 45343 MR. ROITENBERG: That bit of
8 housekeeping being taken care of, there are a number of
9 other matters to address.

10 45344 There are currently five pieces of
11 material that have been filed as exhibits for
12 identification that should be entered in the cause.

13 45345 The first you will recall, Exhibit
14 "B" for identification, was the transcripts of
15 Mr. Mulroney's examination before plea back in 1996.
16 The first of those transcripts pertaining to April 17,
17 1996 was entered as Exhibit 48 in the cause and we
18 neglected to enter the April 19th transcript as part of
19 Exhibit 48.

20 45346 I ask that that be done.

21 45347 COMMISSIONER OLIPHANT: I'm sorry.

22 So you have one day in as Exhibit 48?

23 45348 MR. ROITENBERG: Yes.

24 45349 COMMISSIONER OLIPHANT: For the 17th
25 of April, yes.

1 45350 MR. ROITENBERG: I asked that April
2 the 19th --

3 45351 COMMISSIONER OLIPHANT: What are you
4 asking now, for the 18th?

5 45352 MR. ROITENBERG: April the 19th --

6 45353 COMMISSIONER OLIPHANT: Okay.

7 45354 MR. ROITENBERG: -- which was the
8 second day of his testimony.

9 45355 COMMISSIONER OLIPHANT: All right.
10 45356 Do I take it that all of these are
11 going in my consent, counsel?

12 45357 MR. PRATTE: You do, Mr.
13 Commissioner.

14 45358 COMMISSIONER OLIPHANT: Thank you.
15 All right. Everybody agrees?

16 45359 MR. AUGER: Yes.

17 45360 COMMISSIONER OLIPHANT: Thanks very
18 much.

19 45361 All right. The April 19th
20 transcript, then, for the examination will be received
21 and marked as part of Exhibit 48.

22 EXHIBIT NO. P-48: Transcript of
23 Brian Mulroney's Examination on
24 Discovery dated April 17, 1996
25 and April 19, 1996

1 45362 MR. ROITENBERG: Thank you. And
2 there are four other exhibits for identification that
3 should be entered as exhibits in the cause, and I
4 believe this is by the consent of all parties.

5 45363 Exhibit "A" for identification was
6 the Eurocopter transcript --

7 45364 COMMISSIONER OLIPHANT: Yes.

8 45365 MR. ROITENBERG: -- from the
9 Preliminary Inquiry as it pertained to the testimony of
10 Mr. Schreiber.

11 45366 That should become an exhibit as
12 well.

13 45367 COMMISSIONER OLIPHANT: I believe
14 that will be received and marked as Exhibit P-62.

15 45368 All right. Exhibit "A", then, for
16 identification will be received and marked as Exhibit
17 P-62.

18 EXHIBIT NO. P-62: Eurocopter
19 transcripts from a Preliminary
20 Inquiry pertaining to the
21 testimony of Mr. Karlheinz
22 Schreiber (previously Exhibit
23 "A" for identification)

24 45369 MR. ROITENBERG: Exhibit "E" for
25 identification was the summary of the interview with

1 William Kaplan.

2 45370 That should become our next exhibit.

3 45371 COMMISSIONER OLIPHANT: All right

4 then. The summary of the interview with William
5 Kaplan, presently Exhibit "E" for identification, will
6 be received and marked as Exhibit P-63.

7 EXHIBIT NO. P-63: Summary of
8 notes of interview of William
9 Kaplan, conducted on March 3,
10 2009 by Mr. Wolson and Ms Brooks
11 (previously Exhibit "E" for
12 identification)

13 45372 MR. ROITENBERG: Exhibit "F" for
14 identification was the transcript of the interview with
15 Mr. Fred Doucet, if that could be entered as the next
16 exhibit, please.

17 45373 COMMISSIONER OLIPHANT: The
18 transcript of the interview with Mr. Doucet, presently
19 Exhibit "F" for identification, will be received and
20 marked as Exhibit P-64.

21 EXHIBIT NO. P-64: Binder
22 containing "Interview of Mr.
23 Fred Doucet" held Tuesday, March
24 10, 2009 by Mr. Wolson
25 (previously Exhibit "F" for

1 identification)

2 45374 MR. ROITENBERG: Finally, the summary
3 of the interview of Luc Lavoie. There is a copy of the
4 summary in French and a copy of the summary in English,
5 if they could together make up the next exhibit.

6 45375 COMMISSIONER OLIPHANT: The summary
7 of the interview with Monsieur Lavoie in both official
8 languages, presently Exhibit "H" for identification,
9 will be received and marked as Exhibit P-65.

10 EXHIBIT NO. P-65: Résumé de
11 l'entrevue de monsieur Lavoie
12 November 2, 1990 / Summary of
13 interview with Mr. Luc Lavoie in
14 both official languages
15 (previously Exhibit "H" for
16 identification)

17 45376 MR. ROITENBERG: Thank you.

18 45377 If we could then mark as Exhibit P-66
19 an Agreed Statement of Facts with signed agreement by
20 Commission counsel and counsel for the Attorney General
21 for Canada. The entry of the exhibit is with the
22 concurrence of all parties.

23 45378 What the Agreed Statement of Facts
24 sets out is that there are no RCMP records available to
25 show that RCMP officers accompanied Mr. Mulroney in a

1 couple of instances.

2 45379 Commission counsel puts this forward
3 for the Commission not to challenge in any way
4 Mr. Mulroney's assertion that RCMP officers accompanied
5 him but to show that there seems to be no record left
6 in existence with the RCMP to that effect, one way or
7 the other.

8 45380 COMMISSIONER OLIPHANT: You say "no
9 record left". That implies that at one time there was
10 a record. Is that the fact?

11 45381 MR. ROITENBERG: We are unclear as to
12 the fact that one existed. We know one doesn't exist
13 presently.

14 45382 COMMISSIONER OLIPHANT: All right.
15 45383 That Agreed Statement of Facts, then,
16 will be received and marked as Exhibit P-66.

17 EXHIBIT NO. P-66: Agreed
18 Statement of Facts with signed
19 Agreement by Commission counsel
20 and counsel for the Attorney
21 General for Canada

22 45384 MR. ROITENBERG: And the last item to
23 be entered as an exhibit before you is an interview of
24 Stanley Hartt.

25 45385 You will recall that Mr. Hartt for a

1 time was Chief of Staff in the Prime Minister's Office.
2 Mr. Hartt was interviewed by Commission counsel on May
3 5, 2009.

4 45386 All parties have a copy of the
5 interview transcript and all have consented to the
6 transcript becoming an exhibit before you in these
7 proceedings.

8 45387 COMMISSIONER OLIPHANT: All right,
9 then. The transcript of the interview with Mr. Hartt
10 will be received and marked as Exhibit P-67.

11 EXHIBIT NO. P-67: Interview of
12 Stanley Hartt by Commission
13 counsel on May 5, 2009

14 45388 MR. ROITENBERG: As we enter this as
15 an exhibit, Mr. Commissioner, it might be an opportune
16 moment to briefly address the topic of witness
17 interviews.

18 45389 All witnesses or potential witnesses
19 were offered the opportunity by Commission counsel to
20 be interviewed by Commission counsel and given a choice
21 as to whether that interview would be recorded and
22 transcribed or be summarized by counsel.

23 45390 This choice follows Rule 20 of the
24 Commission's Rules of Procedure and Practice. In some
25 instances, few instances, these interview transcripts

1 or summaries have been the subject of a consent filing
2 before you as an exhibit in the proceedings.

3 45391 In these instances this has been done
4 with the consent of the parties who have agreed that
5 the witnesses needn't be questioned further.

6 45392 At no time has this Commission taken
7 evidence in a fashion that was outside of the public's
8 view. All witnesses who have testified have done so in
9 an open and public forum.

10 45393 The filing of Mr. Hartt's interview
11 and that of The Honourable Jean Charest were not only
12 done with the consent of all parties but in accord with
13 the directions in our Terms of Reference which
14 encourage this Commission to operate in an efficient
15 and expedient manner. And the transcripts of those
16 interviews, like all exhibits, are now public
17 documents.

18 45394 So even though these witnesses have
19 not come and testified before you, the parties have
20 agreed that the subject matter and content of their
21 interview could be evidence before this Commission and
22 are now public documents. Even though when those
23 interviews occurred it wasn't intended that it would
24 substitute for their evidence, all parties have agreed
25 that it can and now does.

1 45395 COMMISSIONER OLIPHANT: All right.
2 Thank you.

3 45396 MR. ROITENBERG: With that being
4 said, I know there is a motion before you brought by
5 counsel for Mr. Schreiber, but in terms of the evidence
6 to be adduced on Phase I of this inquiry, that is the
7 evidence.
8 --- Pause

9 45397 COMMISSIONER OLIPHANT: All right.
10 Thank you very much.

11 45398 Mr. Auger, you have an application
12 before the Commission.

13 45399 MR. AUGER: Yes. Good morning, Mr.
14 Commissioner.

15 45400 COMMISSIONER OLIPHANT: Good morning.

16 45401 MR. AUGER: Thank you very much.

17 45402 COMMISSIONER OLIPHANT: Mr. Auger, I
18 just want to cover this off. You are prepared to
19 proceed today in the absence of your client, are you?

20 45403 MR. AUGER: Yes, thank you.

21 45404 COMMISSIONER OLIPHANT: All right.

22 45405 I have before me three documents with
23 respect to the application: the first being a Notice
24 of Application; the second being an Application Record;
25 and the third being a Reply filed by the Attorney

1 General of Canada in respect of the application.

2 45406 Do I have everything that I am meant
3 to have for the purposes of this application?

4 45407 MR. AUGER: You should also have,
5 Mr. Commissioner, a bound document entitled
6 Supplementary Application Record.

7 45408 COMMISSIONER OLIPHANT: Well, I don't
8 have it.

9 --- Pause

10 45409 COMMISSIONER OLIPHANT: All right. I
11 have just been handed the Supplementary Application
12 Record as well as a Motion Record filed by the Attorney
13 General of Canada.

14 45410 Does that complete the documents
15 then?

16 45411 MR. AUGER: There is one more
17 document, Mr. Commissioner, entitled a Notice of
18 Application for Judicial Review. I received this
19 yesterday afternoon and sent it by e-mail to my
20 friends.

21 45412 I have a copy -- thank you,
22 Mr. Roitenberg.

23 45413 COMMISSIONER OLIPHANT: Thank you.

24 45414 This is not an Application for
25 Judicial Review with respect to the Commission.

1 45415 MR. AUGER: Correct.

2 45416 COMMISSIONER OLIPHANT: Okay.

3 45417 MR. AUGER: And let me --

4 45418 COMMISSIONER OLIPHANT: My heart
5 stopped just for a moment there.

6 45419 MR. AUGER: Thank you, Commissioner.
7 45420 And in fact the Supplementary
8 Application Record which has just been handed to you is
9 really for the purpose of you having a full context.

10 45421 In my submission (a) the
11 Supplementary Application Record is not material to my
12 motion and indeed the Notice of Application for
13 Judicial Review itself is not material. I really
14 wanted you, Mr. Commissioner, to have the complete
15 picture in relation to the current status of
16 Mr. Schreiber's extradition proceedings.

17 45422 The Supplementary Application Record
18 simply sets out a number of letters from Mr. Greenspan
19 to the Minister of Justice raising two new legal
20 arguments.

21 45423 COMMISSIONER OLIPHANT: All right.
22 45424 So help me out here because I have
23 just received these documents.

24 45425 It would appear that Mr. Greenspan
25 has filed an application, as of yesterday, in the Court

1 of Appeal of Ontario naming the Minister of Justice as
2 the respondent and it is an application whereby
3 Mr. Schreiber is seeking an order to quash the Order of
4 Surrender or, in the alternative, to amend that Order
5 of Surrender and ruling as well that the failure of the
6 Minister of Justice to respond to certain submissions
7 may amount to a rejection of the applicant's
8 submission.

9 45426 Basically it would appear as if
10 Mr. Schreiber's application has to do with an attempt
11 on his part to quash the order that would permit his
12 removal from Canada.

13 45427 MR. AUGER: Correct.

14 45428 COMMISSIONER OLIPHANT: Okay. Well,
15 that can be dealt with in the proper forum, but I
16 appreciate having that before me.

17 45429 You say that the Supplementary
18 Application Record really just fills in perhaps blank
19 spaces with respect to the matter now before the
20 Commission?

21 45430 MR. AUGER: The Supplementary
22 Application Record, Mr. Commissioner, really relates to
23 Mr. Schreiber's two new extradition arguments advanced
24 to the Minister of Justice --

25 45431 COMMISSIONER OLIPHANT: Yes.

1 45432 MR. AUGER: -- which are really the
2 foundation of the new judicial review before the Court
3 of Appeal.

4 45433 COMMISSIONER OLIPHANT: Okay. But
5 that is what I'm saying. They have more to do with the
6 matter that is now before the Ontario Court of Appeal.

7 45434 Is there a date set for the hearing
8 of that, or no?

9 45435 MR. AUGER: I believe not.

10 45436 COMMISSIONER OLIPHANT: No, okay.

11 45437 MR. AUGER: It was just filed
12 yesterday, Mr. Commissioner.

13 45438 COMMISSIONER OLIPHANT: Yes, okay.

14 45439 MR. AUGER: So that is right, it is
15 really not material to my motion.

16 45440 COMMISSIONER OLIPHANT: But it just
17 completes the record.

18 45441 MR. AUGER: I wanted you to have a
19 full understanding and not have been left out of what
20 is currently happening in relation to those
21 proceedings.

22 MOTION / REQUÊTE

23 45442 MR. AUGER: So if I can now turn to
24 what I am asking for you to consider today,
25 Mr. Commissioner, is really for an order or direction,

1 or at the very least a recommendation, that
2 Mr. Schreiber remain in Ottawa until the end of Part II
3 for the purpose of instructing counsel.

4 45443 The reason for this request is that
5 Mr. Schreiber is subject to a Surrender Order that has
6 been made in his extradition matter.

7 45444 As you well know, the Minister of
8 Justice has the authority to execute or postpone the
9 execution of the Surrender Order. Mr. Greenspan has
10 made a number of requests to the Minister asking that
11 Mr. Schreiber not be surrendered before the end of Part
12 II or before final submissions are made in Part I.

13 45445 If I can ask you briefly, in the
14 Application Record, the one with five tabs -- at Tab 1,
15 just a very brief history, Mr. Commissioner.

16 45446 On March 3rd, the Minister of
17 Justice, following Mr. Greenspan's request, the last
18 paragraph, the Minister of Justice wrote:

19 "Accordingly I agree that
20 subject to any change in
21 circumstances, Mr. Schreiber
22 will not be surrendered until he
23 has testified before the
24 inquiry." (As read)

25 45447 Of course that day has now come.

1 45448 COMMISSIONER OLIPHANT: That seems to
2 be the theme in each of the letters that the Minister
3 of Justice sent to Mr. Greenspan.

4 45449 MR. AUGER: Precisely.

5 45450 COMMISSIONER OLIPHANT: That he would
6 remain -- I don't want to use the word undertaking, but
7 the understanding was that Mr. Schreiber would remain
8 in Canada until he had completed his testimony or
9 evidence.

10 45451 MR. AUGER: Precisely.

11 45452 COMMISSIONER OLIPHANT: Yes.

12 45453 MR. AUGER: Now, really obviously as
13 a practical matter, Mr. Schreiber has testified.

14 45454 COMMISSIONER OLIPHANT: Yes.

15 45455 MR. AUGER: So if I could ask you,
16 then, to move to Tab 4 in the same record,
17 Mr. Commissioner, Mr. Greenspan wrote on March 26,
18 2009 -- and this follows your ruling granting Mr.
19 Schreiber standing, full standing in Part II -- where
20 at paragraph 2 of the March 26th letter Mr. Greenspan
21 writes:

22 "Specifically I am writing to
23 you to request that you confirm
24 that Mr. Schreiber will remain
25 in Canada out of custody until

1 at least the end of Part II."

2 (As read)

3 45456 So obviously in terms of the
4 chronology that is where we are now today,
5 Mr. Commissioner.

6 45457 Just to finish the point, at Tab 5
7 the Minister of Justice writes, responding to
8 Mr. Greenspan -- and the Minister of Justice's letter
9 is dated April 16th -- and essentially the same
10 language in the last paragraph:

11 "Mr. Schreiber will not be
12 surrendered until after he has
13 testified before the inquiry."

14 (As read)

15 45458 So as of today that is the answer
16 that Mr. Greenspan has received in relation to his
17 request that Mr. Schreiber not be surrendered until the
18 conclusion of Part II.

19 45459 So the concern we have is whether or
20 not Mr. Schreiber will remain in Canada in order to
21 participate in Part II at this Commission through
22 counsel and indeed instruct counsel in connection with
23 final submissions for Part I.

24 45460 Let me concede upfront that this is
25 of course a novel request. I couldn't find any

1 authority directly on point that either confirms that
2 you do or you do not have the power to make the relief
3 sought.

4 45461 I have reviewed the Attorney
5 General's reply material that has been filed and let me
6 also concede upfront that I agree that your powers are
7 limited to the powers derived from the Inquiries Act
8 and therefore your Terms of Reference.

9 45462 COMMISSIONER OLIPHANT: Not to
10 mention the patent that was issued, which is the real
11 source of authority.

12 45463 MR. AUGER: Correct.

13 45464 And the second concession I can make,
14 Mr. Commissioner, is that as the Attorney General's
15 materials point out, it is the Minister's discretion
16 under the Extradition Act and that is a separate and
17 apart statutory power.

18 45465 But in my submission, that doesn't
19 end the analysis. I'm not asking you to in any way
20 step in the shoes of the Minister of Justice or assume
21 any powers or otherwise interfere with powers under the
22 Extradition Act. There is already a Surrender Order in
23 place and the Minister's powers to decide on that issue
24 are separate and apart.

25 45466 But in my submission it might be that

1 you could find that you have the authority to make the
2 relief sought in terms of paragraphs (d) and (c) of
3 your Terms of Reference, which in my submission give
4 you broad powers to adopt procedures and methods "for
5 the proper and efficient conduct of the inquiry".

6 45467 As you well know, that language is
7 quite broad. You had the power of course to grant
8 standing in this Commission and you did so in relation
9 to Mr. Schreiber and indeed in your ruling commented
10 that Mr. Schreiber should have full participation in
11 Part II.

12 45468 In my submission, the powers given to
13 you in paragraphs (d) and (c) of your Terms of
14 Reference are given to you to ensure that your work and
15 your mandate and your goals are fulfilled.

16 45469 As well, Mr. Schreiber is entitled to
17 a right of procedural fairness and natural justice, and
18 in my submission that can only be achieved by his
19 participation through counsel in making final
20 submissions on Part I and indeed full participation, as
21 you ordered, in Part II.

22 45470 In your own ruling, Mr. Commissioner,
23 in granting full standing for Part II, at paragraph 5
24 you did say that Mr. Schreiber "ought to be granted
25 full standing as a party to Part II so that he can

1 fully participate with respect to the Policy Review".

2 45471 At paragraph 7 you indicated that
3 Mr. Schreiber had satisfied you "that he does have a
4 particular perspective that may assist" you.

5 45472 In my respectful submission, if
6 Mr. Schreiber were not present for Part II in
7 accordance with your Order, that may very well
8 interfere with or frustrate your standing order.

9 45473 In my submission, if Mr. Schreiber
10 were not present to instruct counsel, there is a risk
11 that that could interfere with the integrity of the
12 good work and conclusions of this Commission, again
13 having regard to the principles of natural justice and
14 procedural fairness before this Commission.

15 45474 Minimally, the work of this
16 Commission could be deprived of the benefit of
17 Mr. Schreiber's input.

18 45475 Mr. Schreiber's extradition matter
19 has been outstanding for almost 10 years. In my
20 submission there would be no prejudice to the Minister
21 or the extradition party if Mr. Schreiber were present
22 to instruct counsel before this Commission.

23 45476 In my submission if the order,
24 direction or recommendation were made, it wouldn't
25 interfere with the discretion of the Minister.

1 45477 Arguably, given the more recent
2 material before you, if there is going to be ongoing
3 litigation in relation to the extradition matter, it is
4 reasonably anticipated that those litigation matters
5 would continue well after the conclusion of Part II.

6 45478 So for all of those reasons I am
7 asking you to consider making an order or direction
8 that Mr. Schreiber be present until the end of Part II
9 or, at the very least, your own recommendation that
10 Mr. Schreiber be present to instruct counsel to the end
11 of Part II.

12 45479 Subject to any questions you have
13 about that, Mr. Commissioner, those are my submissions
14 and I thank you for your time and consideration.

15 45480 COMMISSIONER OLIPHANT: No, that's
16 fine.

17 45481 Let me ask you this: I asked whether
18 you had obtained a date -- I say "you", I guess I mean
19 Mr. Greenspan had obtained a date -- from the Ontario
20 Court of Appeal and you said not yet. But is it
21 anticipated at all that in the face of the application
22 now made by Mr. Greenspan on behalf of Mr. Schreiber
23 for judicial review that he would ever be removed from
24 Canada pending the hearing of that application by the
25 Ontario Court of Appeal?

1 45482 MR. AUGER: Well, that is an
2 excellent question, Mr. Commissioner.

3 45483 As you may know, there is a provision
4 under the Extradition Act that speaks to a stay, and
5 arguably there could be a stay of the current Surrender
6 Order as I understand it. However --

7 45484 COMMISSIONER OLIPHANT: That would be
8 a stay by the Minister I assume, or by the court? I'm
9 not sure.

10 45485 MR. AUGER: I think the power of the
11 stay originates from the Extradition Act,
12 Mr. Commissioner, if such a Notice of Application for
13 Judicial Review is filed.

14 45486 However, as we stand here today, in
15 my submission we don't know what the Minister's
16 position is obviously in relation to that recently
17 filed Notice of Application for Judicial Review.

18 45487 For example, hypothetically the
19 Minister could seek to quash it. We just don't know.
20 And we have, as I understand it, no formal stay order.

21 45488 I don't know if that answers your
22 question, but I wanted to give you that current status
23 of the litigation so that obviously you are apprised of
24 what is happening at this point.

25 45489 But as I understand it, there is no

1 date for the judicial review and it is what it is as of
2 today's date.

3 45490 COMMISSIONER OLIPHANT: Okay. Is it
4 your intention, depending on the outcome of the
5 application that you have made before me, to use the
6 results of this application as evidence in the
7 Application for Judicial Review?

8 45491 MR. AUGER: I don't know the answer
9 to that, Mr. Commissioner.

10 45492 I think in fairness obviously
11 whatever your ruling is today, in favour or against, in
12 whole or in part, the relief sought, perhaps
13 Mr. Greenspan would have an obligation to put that
14 before the Court of Appeal.

15 45493 COMMISSIONER OLIPHANT: Okay. Thanks
16 very much, Mr. Auger.

17 45494 MR. AUGER: Thank you,
18 Mr. Commissioner.

19 45495 COMMISSIONER OLIPHANT: Mr.
20 Landry...?

21 45496 I take it that none of the other
22 parties wishes to make a submission on this
23 application.

24 45497 Mr. Pratte...?

25 45498 MR. PRATTE: No.

1 45499 COMMISSIONER OLIPHANT: Thank you.
2 45500 Mr. Houston...?
3 45501 MR. HOUSTON: I do not, sir. Thank
4 you.
5 45502 COMMISSIONER OLIPHANT: Okay, fine.
6 45503 Mr. Landry, I take it you are here in
7 the absence of Mr. Vickery.
8 45504 MR. LANDRY: Exactly, Mr.
9 Commissioner.
10 45505 COMMISSIONER OLIPHANT: Well, let me
11 say I have just returned from the West Coast where it
12 was plus 27 degrees yesterday. You may stay there
13 longer than shorter in light of that.
14 45506 MR. LANDRY: Don't tell me that.
15 45507 COMMISSIONER OLIPHANT: It was
16 beautiful out there.
17 45508 MR. LANDRY: Mr. Commissioner, hello,
18 good morning.
19 45509 We have heard the statements made by
20 Mr. Auger, and I do not intend, Mr. Commissioner, to
21 return to the arguments that were raised in our written
22 response which has been filed and which you have before
23 you. I would simply like to add, Mr. Commissioner, and
24 I will say this in English.
25 45510 While this Commission has no

1 jurisdiction, as we expressed it in our reply
2 submission, to issue the order sought by my friend,
3 Mr. Auger, I can assure you that the Minister of
4 Justice will continue to carefully weigh his
5 responsibility under the Extradition Act against the
6 important public interest served by this Commission of
7 Inquiry.

8 45511 COMMISSIONER OLIPHANT: Let me ask
9 you this, Mr. Landry. Is there any intention on the
10 part of the Minister to remove Mr. Schreiber before
11 this Commission concludes its work on Part II?

12 45512 MR. LANDRY: What I can tell you,
13 Mr. Commissioner, is that the Minister of Justice has
14 committed itself not to surrender Mr. Schreiber until
15 he has completed his testimony.

16 45513 COMMISSIONER OLIPHANT: I know that.
17 I have read all the letters.

18 45514 MR. LANDRY: Exactly. And he will
19 take into account that Mr. Schreiber has full standing
20 on Part II of this inquiry.

21 45515 But other than that --

22 45516 COMMISSIONER OLIPHANT: That is the
23 best answer you can give to my question?

24 45517 MR. LANDRY: That would be the best
25 answer.

1 45518 COMMISSIONER OLIPHANT: You can't
2 answer yes or no then?

3 45519 MR. LANDRY: No.

4 45520 COMMISSIONER OLIPHANT: Okay.

5 45521 MR. LANDRY: So basically,
6 Mr. Commissioner, that would be our submission --

7 45522 COMMISSIONER OLIPHANT: I have read
8 the --

9 45523 MR. LANDRY: -- subject to your
10 questions.

11 45524 COMMISSIONER OLIPHANT: That's fine.
12 Thank you.

13 --- Pause

14 45525 COMMISSIONER OLIPHANT: Mr.
15 Roitenberg...?

16 45526 MR. ROITENBERG: Mr. Commissioner, I
17 should indicate for the benefit of the record that
18 Commission counsel takes no position on this
19 application.

20 45527 COMMISSIONER OLIPHANT: Fine. Thank
21 you.

22 --- Pause

23 RULING / DÉCISION

24 45528 COMMISSIONER OLIPHANT: I have a
25 before me an application by Karlheinz Schreiber whereby

1 he seeks from this Commission an order, direction or
2 recommendation that he remain available in Ottawa to
3 attend the balance of Parts I and II of the work of
4 this Commission.

5 45529 He makes that application on the
6 basis that he does have status as a party with full
7 standing on both Parts I and II and wants to be
8 available in Canada for the purpose of instructing his
9 counsel with respect to final submissions to be made on
10 Part I and with respect to instructions to be provided
11 in terms of questions that may be asked by counsel
12 throughout the course of Part II.

13 45530 What has precipitated the application
14 is the position taken by the Minister of Justice
15 whereby the only undertaking, if I might use that term,
16 given was to agree on the part of the Minister not to
17 surrender Mr. Schreiber until he had completed giving
18 his evidence on Part I.

19 45531 It seems to me that while this
20 Commission has no jurisdiction or authority to make an
21 order to compel the Minister of Justice to permit
22 Mr. Schreiber to remain in Canada for the duration of
23 this Commission, that out of an abundance of fairness,
24 procedurally and in terms of natural justice, it would
25 be a travesty to remove Mr. Schreiber from Canada while

1 the Commission is still at work and has yet to commence
2 its work on Part II.

3 45532 Let it be said immediately that had I
4 not been convinced that Mr. Schreiber could make a
5 contribution to Part II, I would not have granted him
6 status as a party.

7 45533 We have a schedule to complete Part I
8 which includes final submissions by counsel on the 10th
9 and 11th of this month. Part II will commence on the
10 15th of June, go for three days that week and then move
11 over to either the 22nd or 23rd of June, which will
12 bring the work of the Commission to an end finally.

13 45534 Mr. Auger, who has laboured on his
14 own throughout the course of Part I, is entitled, I
15 think, to have Mr. Schreiber available to provide
16 instructions to him in respect of submissions to be
17 made on Mr. Schreiber's behalf on the 10th and/or 11th
18 of June and to instruct Mr. Auger in terms of
19 responding to submissions that might be made by other
20 counsel.

21 45535 Mr. Schreiber is entitled, in my
22 view, to be present in Canada to provide instructions
23 to Mr. Auger or any other counsel he might have indeed,
24 with respect to questions to be posed of various
25 experts who will be speaking during the course of the

1 four days that will be taken up with Part II.

2 45536 If he were to be removed from Canada,
3 the ability of Mr. Schreiber to communicate in a
4 meaningful way with his counsel would be diminished, if
5 not totally destroyed.

6 45537 So as I say, it seems to me that to
7 surrender Mr. Schreiber prior to the termination of the
8 work of the Commission, which is only three weeks down
9 the road in any event, would result, in my view, to a
10 travesty of justice and ought not to be endorsed by
11 anyone.

12 45538 Having said that I have no authority
13 to make an order compelling the Government of Canada to
14 permit Mr. Schreiber to remain in Canada until the work
15 of this Commission is completed, I say now without any
16 hesitation whatsoever that it is my hope, indeed my
17 expectation, that the Minister will see his way fit not
18 to surrender Mr. Schreiber until the work of the
19 Commission is completed, and that would be a
20 recommendation that I would make wholeheartedly to
21 Mr. Nicholson, the Minister of Justice.

22 45539 I hope, despite the fact that I am
23 not in a position to make an order because my
24 jurisdiction comes from statutes and from other
25 documents and it just isn't there -- I can't make an

1 order. But I would hope that the Minister will see fit
2 to accept the recommendation that I have made and to
3 allow Mr. Schreiber to remain in the country at least
4 until the work of the Commission is complete.

5 45540 That, then, is my ruling with respect
6 to Mr. Schreiber's application.

7 45541 Is there anything further for today,
8 Mr. Roitenberg?

9 45542 MR. ROITENBERG: There is not,
10 Mr. Commissioner.

11 45543 I suggest that we suspend for one
12 week's time until 9:30 on June 10th.

13 45544 COMMISSIONER OLIPHANT: All right, at
14 which time we will hear submissions from all counsel
15 with respect to Part I.

16 45545 Thank you very much, counsel. Good
17 morning.

18 45546 Mr. Pratte, did you have something to
19 say?

20 45547 MR. PRATTE: Not directly, sir. I
21 just wanted to maybe invite counsel to stay so we could
22 talk about the schedule of argument --

23 45548 COMMISSIONER OLIPHANT: Sure.

24 45549 MR. PRATTE: -- but you need not be
25 part of that. Thank you, Mr. Commissioner.

1 45550 COMMISSIONER OLIPHANT: Sure, that's
2 fine. I will just wait in my quarters upstairs.

3 45551 Thank you. Good morning.

4 --- Whereupon the hearing adjourned at 10:15 a.m.,
5 to resume on Wednesday, June 10, 2009 at 9:30 a.m./
6 L'audience est ajournée à 10 h 15, pour reprendre
7 le mercredi 10 juin 2009 à 9 h 30

8

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

12

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

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20 _____
Lynda Johansson

Jean Desaulniers

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Fiona Potvin