

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 10, 2009

Tenue à :

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

le mercredi 10 juin 2009

APPEARANCES / COMPARUTIONS

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EXHIBITS / PIÈCES JUSTIFICATIVES

No.	Description	PAGE
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1 Ottawa, Ontario / Ottawa (Ontario)
2 --- Upon resuming on Wednesday, June 10, 2009
3 at 9:30 a.m. / L'audience reprend le mercredi
4 10 juin 2009 à 9 h 30

5 45552 COMMISSIONER OLIPHANT: Good morning,
6 counsel.

7 45553 Be seated, please.

8 45554 MR. BATTISTA: Good morning.

9 45555 COMMISSIONER OLIPHANT: I apologize
10 for the delay and I expect to receive an explanation
11 for it, because I was told at 9:30 the lawyers needed
12 five minutes, it's now almost 10 o'clock.

13 45556 Mr. Battista...?

14 45557 MR. BATTISTA: Yes.

15 45558 Well, firstly, I would like to
16 apologize for that, it was bad timing on our part.

17 45559 We have been trying to iron out some
18 issues among counsel and we have achieved quite a lot.
19 What we would require is an additional 10 minutes, if
20 that would be appropriate for you.

21 45560 I would ask you also to excuse my
22 colleagues who are not here, because they are in a
23 meeting in the back room.

24 45561 COMMISSIONER OLIPHANT: Well,
25 that's fine.

1 45562 Well, it's about two minutes
2 to 10:00.

3 45563 MR. BATTISTA: Yes.

4 45564 COMMISSIONER OLIPHANT: I'm going to
5 be back here at 10 minutes after 10:00 and I expect all
6 counsel to be present and ready to go at that time.

7 45565 MR. BATTISTA: We will be.

8 45566 COMMISSIONER OLIPHANT: Welcome back
9 from British Columbia, Mr. Vickery.

10 45567 MR. VICKERY: Thank you, sir.

11 45568 COMMISSIONER OLIPHANT: Ten minutes.

12 45569 MR. BATTISTA: Thank you.

13 --- Upon recessing at 9:58 a.m. / Suspension à 9 h 58
14 --- Upon resuming at 10:10 a.m. / Reprise à 10 h 10

15 45570 COMMISSIONER OLIPHANT: Good morning,
16 counsel.

17 45571 Be seated, please.

18 45572 Mr. Battista...?

19 45573 MR. BATTISTA: Good morning,
20 Mr. Commissioner.

21 45574 If I may, Mr. Wolson will be
22 addressing you shortly before the parties present their
23 arguments. There are just some housekeeping matters
24 that we would like to simply deal with.

25 45575 One is, we would file a document. It

1 was a Report by the Canada Revenue Agency pertaining to
2 the Voluntary Disclosures Program for the period
3 between 1993 and 2000.

4 45576 This is a document that was provided
5 to the parties in January. Part of this document was
6 already disclosed and is found in P-46 in the
7 Compendium of Documents that were filed by the
8 attorneys acting on behalf of Mr. Mulroney.

9 45577 So I would like to file that has an
10 Exhibit P-68, simply for completeness.

11 45578 COMMISSIONER OLIPHANT: Is it 68?
12 All right. That is going in by consent?

13 45579 MR. BATTISTA: Yes.

14 45580 COMMISSIONER OLIPHANT: I take it
15 that that may be what took the time this morning?

16 45581 MR. BATTISTA: In part, Your Honour.
17 There are other issues as well.

18 45582 COMMISSIONER OLIPHANT: All right.

19 45583 MR. BATTISTA: There is a second
20 point also.

21 45584 COMMISSIONER OLIPHANT: Just hang on
22 a second.

23 45585 MR. BATTISTA: Yes.

24 45586 COMMISSIONER OLIPHANT: The CRA
25 document, then, regarding Voluntary Disclosure by

1 consent will be received and marked as Exhibit P-68.

2 EXHIBIT NO. P-68: Document
3 entitled "Report by the Canada
4 Revenue Agency Pertaining to
5 the Voluntary Disclosures
6 Program for the period between
7 1993-2000"

8 45587 MR. BATTISTA: Yes.

9 45588 And there are two other issues,
10 Mr. Commissioner, simply for the record and to make
11 certain that there is no confusion or ambiguity in the
12 facts that were put before you.

13 45589 On the transcript of May 21, 2009,
14 page 4763, lines 14 to 18, the witness -- and I believe
15 it was Ms Sauv e -- was asked about the approach to
16 waiving interest in voluntary tax disclosure issues.
17 The witness responded that in 2008 the policy had
18 changed.

19 45590 If you will recall, the witness was
20 explaining that people who were dealing with the
21 voluntary tax disclosure issues at that time did not
22 have discretion to apply reasonable interest and so
23 therefore they had a policy of determining which years
24 would be taxed for that purpose and she said that in
25 2008 the policy changed.

1 45591 In fact it was in 2002. It does
2 not affect in any way, shape or form any
3 consideration in this matter, but it's simply to
4 set the record straight.

5 45592 COMMISSIONER OLIPHANT: Thank you.

6 45593 MR. BATTISTA: And the last point,
7 again to set the record straight, it's a clarification
8 regarding voluntary disclosures and investigations that
9 people who were proposing voluntary disclosures may
10 have been subject to.

11 45594 So simply for clarification -- and we
12 have agreed with all the parties on this -- the
13 clarification is the following:

14 "During the period 1993 to 2000
15 a voluntary disclosure would be
16 treated as such by the Revenue
17 Agency if the taxpayer
18 submitting the disclosure was
19 not under an investigation by
20 the Revenue Canada authorities
21 in matters under its
22 jurisdiction or other
23 investigative authorities in
24 relation to taxation issues."

25 (As read)

1 45595 So those are the points and this
2 disagreement can be supported by the documents that are
3 found in P-68, some of which were also found in, as I
4 said before, P-46, in the information circular of the
5 tax department of the time.

6 45596 So those were my points and I will
7 now leave this for Mr. Wolson.

8 45597 COMMISSIONER OLIPHANT: Thank you,
9 Mr. Battista.

10 45598 Mr. Wolson...?

11 OPENING REMARKS: BY MR. WOLSON /
12 REMARQUES D'OUVERTURE : PAR Me WOLSON

13 45599 MR. WOLSON: Good morning, sir.

14 45600 In speaking with counsel they expect
15 to be in the range of an hour, perhaps a wee bit
16 longer. It would be convenient if you were to hear
17 each submission, then take a break. We would hear two
18 submissions in the morning, break over the noon hour,
19 and Mr. Pratte would make his submission this
20 afternoon. He expects to be in the range of an hour.

21 45601 As you know, Commission counsel is
22 not making a submission on the facts in Phase I, but I
23 do wish to make some comments which I will put on the
24 record now.

25 45602 Mr. Commissioner, we started this

1 inquiry in Phase I on the 30th March of this year. We
2 had a brief recess after two days of evidence,
3 commenced after some holidays and a few days of
4 preparation time. We commenced again on the 14th of
5 April and we finished the evidence on May 21st.

6 45603 There have been other federal
7 inquiries, although not many, that have finished in
8 a timely way. The fact that this inquiry has done so
9 in my view speaks volumes of counsel involved in this
10 inquiry. I am grateful to my friends for their
11 professionalism, their abilities which have been
12 showcased during this inquiry.

13 45604 I refer to my friends Mr. Pratte and
14 Mr. Yarosky and their team on behalf of Mr. Mulroney;
15 Mr. Vickery, Paul Vickery and his team, on behalf of
16 the Attorney General for Canada; Mr. Auger and
17 sometimes a team on behalf of Mr. Schreiber; and
18 Mr. Houston of course who has represented his client at
19 this inquiry.

20 45605 If these lawyers are a credit to
21 their profession and their respective clients. They
22 are everything good about this legal profession. I can
23 say without exception it has been a pleasure to have
24 worked with them throughout the past number of months
25 and I thank them.

1 45606 I next want to focus on the media.

2 This, of course being a public inquiry, the media has
3 been an important part of the inquiry. I thank them
4 for their respectful approach and their professional
5 approach, for their courtesy to counsel and for the
6 fine work that they have done.

7 45607 I next refer to our staff, both here
8 and at our Commission office, to the clerks, to the
9 security, to the people responsible for handling the
10 materials which have been, as you know, voluminous, for
11 their help in every respect. They have been invaluable
12 and I thank them on behalf of counsel for their help
13 over the past number of months.

14 45608 Lastly, but very importantly in my
15 view, my colleagues, Commission counsel, whose work has
16 been exceptional.

17 45609 I refer first to junior counsel,
18 Myriam Corbeil, Sarah Wolson, Peter Edgett and Martin
19 Lapner. These lawyers have worked tirelessly, often
20 seven days a week and long hours. I can tell you that
21 there are many nights when I left the office when they
22 turned out the lights, the building did, and counsel
23 were still working with their desk lamps. Their work
24 has been critical in every aspect of the preparation of
25 the evidence for this inquiry and I am indebted to the

1 four young lawyers who, in my view, have done an
2 incredible job.

3 45610 Then my co-counsel, Nancy Brooks,
4 Even Roitenberg and Guiseppa Battista. They are not
5 just exceptional lawyers in their own right, but their
6 hard work and dedication, their professionalism and
7 their friendship has been absolutely invaluable to me.
8 I thank them and I can say without question that
9 everything good about this inquiry is as a result of
10 their involvement and the involvement of counsel for
11 the various parties.

12 45611 I wanted to make that statement
13 because it's likely that we won't meet again on Phase I
14 and, with that said, you can now hear submissions.

15 45612 I think Mr. Auger will commence and
16 you will hear his submission.

17 45613 I can also advise all counsel
18 that they should know that you have read all of
19 the materials and they needn't concern themselves
20 about that.

21 45614 Thank you.

22 45615 COMMISSIONER OLIPHANT: Thank you,
23 Mr. Wolson.

24 45616 I will have some comments to
25 make on Part 1, but I will defer those until all

1 counsel have had an opportunity to make their
2 respective submissions.

3 45617 So, Mr. Auger, if you are ready to
4 proceed, please come forward.

5 --- Pause

6 45618 MR. AUGER: Good morning,
7 Mr. Commissioner.

8 45619 Thank you very much.

9 45620 Just as an introductory housekeeping
10 matter, I have filed a written argument, as you know,
11 and there are two paragraphs, paragraph 121 and
12 paragraph 122 that I wish to withdraw at this point. I
13 won't be advancing the argument set out in those two
14 paragraphs and I will simply file an amended written
15 brief omitting those two paragraphs.

16 45621 COMMISSIONER OLIPHANT: All right.
17 Paragraphs 121 in 122?

18 45622 MR. AUGER: That's correct.

19 45623 COMMISSIONER OLIPHANT: Thank you.

20 --- Pause

21 45624 COMMISSIONER OLIPHANT: Please
22 proceed.

23 ARGUMENT: BY MR. AUGER /

24 PLAIDOIRIE : PAR Me AUGER

25 45625 MR. AUGER: Thank you very much.

1 45626 My submissions, Mr. Commissioner, are
2 divided into two main parts largely focusing on
3 credibility issues. The first part will deal with the
4 credibility of Mr. Mulroney and I will provide some
5 examples from the evidence as it touches upon the main
6 issues in this inquiry.

7 45627 The second part of my submissions I
8 will deal with the credibility of Mr. Schreiber as it
9 relates to some of the key issues in this inquiry.

10 45628 Part 1, dealing with the credibility
11 of Mr. Mulroney's testimony, it's our submission that
12 Mr. Mulroney's evidence on the key issues in this
13 inquiry is unsupported by any credible independent
14 witnesses or corroborating documents. His evidence is
15 replete with internal inconsistencies and half-truths.

16 45629 It's our position that one would have
17 thought that given what Mr. Mulroney was facing in this
18 inquiry he would have presented to this Commission
19 every relevant witness, every relevant document or any
20 other evidence to support his story and it's our
21 submission that this did not happen.

22 45630 For the most part, we are left
23 with Mr. Mulroney's word on the key issues of this
24 inquiry. Mr. Mulroney's word alone cannot be accepted
25 to answer the very important questions in this

1 Commission of Inquiry. Mr. Mulroney's story lacks
2 everyday common sense based on everyday life
3 experience.

4 45631 One good example of that, in our
5 submission, is when asked by Mr. Wolson the simple
6 question of why he didn't put the cash in the bank,
7 it's our submission that his answer was non-responsive
8 and he simply said that he brought it home and he
9 left it there. A circular answer with no logical
10 commonsense explanation for keeping hundreds of
11 thousands of dollars in a safe for almost seven years
12 rather than simply putting it in a bank to earn
13 interest like every other person does.

14 45632 That was one simple question and
15 still to this day no real answer.

16 45633 And it was a simple question that he
17 would have expected to have been asked. In our
18 submission, this speaks volumes about Mr. Mulroney's
19 overall credibility and his version of the events
20 before this Commission of Inquiry.

21 45634 Mr. Mulroney was the last key
22 witness in this Commission. That gave him the
23 benefit of hearing all witnesses testifying in
24 advance of his testimony. He had the advantage of
25 giving his position for the first time when he

1 appeared in person on May 12th.

2 45635 He had the benefit of hearing
3 Mr. Schreiber's evidence in advance and he had the
4 benefit of speaking to Mr. Doucet about the evidence.
5 We know from Mr. Doucet's testimony that he and
6 Mr. Mulroney compared their stories to Mr. Schreiber's
7 testimony.

8 45636 Every other witness cooperated with
9 Commission counsel and provided a pre-hearing interview
10 or will-say in advance. Mr. Mulroney did not do so.

11 45637 I want to deal with the 1996
12 examination before plea in Montréal briefly. My
13 written submissions deal with it in more detail, but in
14 our submission this is a very important issue because
15 Mr. Mulroney was under oath at the time in 1996.

16 45638 Mr. Mulroney told this Commission he
17 didn't answer certain questions in his 1996 examination
18 directly because he wasn't asked and because he was
19 told to not volunteer information.

20 45639 However, a careful review of the
21 transcript and the cross-examination here by
22 Mr. Wolson shows clearly that Mr. Mulroney volunteered
23 all kinds of information in his 1996 examination where
24 it suited him.

25 45640 He couldn't have volunteered more

1 information without getting any closer to the fact that
2 he was hired and paid by Mr. Schreiber. However, he
3 never disclosed the truth about his retainer and
4 payment from Mr. Schreiber to Mr. Sheppard.

5 45641 A good example of that is when he
6 volunteered that Mr. Schreiber was retained by Marc
7 Lalonde for Bear Head and he failed to disclose that
8 he, too, was hired by Mr. Schreiber and received cash
9 payments.

10 45642 Mr. Mulroney's testimony, therefore,
11 before this Commission under oath must be considered
12 with great caution given what we now know about his
13 previous testimony under oath in 1996.

14 45643 Looking at Mr. Mulroney's testimony
15 in his 1996 lawsuit that resulted in getting a
16 \$2 million settlement and, given what we now know,
17 there is a concern about taxpayers getting that
18 \$2 million returned.

19 45644 Mr. Mulroney also had the tendency to
20 minimize the importance of documents that contradicted
21 his evidence. For example, when confronted with the
22 mandate sheet which contradicted his evidence in part,
23 Mr. Mulroney testified that it was not meaningful to
24 him because he had already undertaken to sever his
25 relationship with Mr. Schreiber.

1 45645 In our submission, severing his
2 relationship with Mr. Schreiber has nothing to do
3 with whether or not the mandate document was accurate
4 or meaningful.

5 45646 Also, when confronted with Luc
6 Lavoie's e-mail to Mr. Champion-Smith which totally
7 contradicts Mr. Mulroney's story, he attempts to
8 minimize it by saying Mr. Lavoie typed it while in a
9 park in Europe.

10 45647 Moving to the issue of work in China,
11 Russia or France, Mr. Mulroney did not provide one
12 document or piece of independent credible evidence to
13 support his story of discussions of Thyssen equipment
14 in China, Russia or France.

15 45648 What is worse, in our submission, is
16 that Mr. Mulroney is completely contradicted by other
17 credible independent evidence.

18 45649 Perhaps one of the best examples of
19 that is Mr. Fred Bild's testimony. In our submission,
20 he contradicts Mr. Mulroney. Mr. Bild was very
21 credible and showed no bias for or against any party in
22 this proceeding. Mr. Bild was present for most of the
23 meetings in China and recalls no discussions about
24 Mr. Mulroney's P5 concept.

25 45650 Mr. Mulroney's testimony about

1 working in China, Russia and France is contradicted by
2 his own spokesperson Luc Lavoie. Only weeks before
3 Mr. Mulroney testify at the Ethics Committee, Luc
4 Lavoie confirmed that the money was to get
5 Mr. Mulroney's help in building a light armoured troop
6 carrier factory for Thyssen in Montréal and to launch a
7 chain of pasta restaurants in North America.
8 Mr. Lavoie, you will recall, went on in that e-mail and
9 confirmed that all of those facts are totally true.

10 45651 Mr. Mulroney never mentioned
11 China, Russia or France to Mr. Kaplan, who he had
12 numerous interviews with, his long-term friend Patrick
13 MacAdam, or even Fred Doucet until finally at The
14 Pierre Hotel meeting.

15 45652 Mr. Mulroney never mentioned China,
16 Russia or France to his own client Mr. Schreiber, who
17 was paying the expenses and the retainer, until months
18 after the trips occurred.

19 45653 Mr. Mulroney spent a lot of time
20 testifying about his standardization of equipment
21 concept and his P5 concept. However, at the same time
22 he made a peculiar admission to the effect that it
23 wasn't a great idea or it wasn't a good idea. That's
24 notable, because although it wasn't a good idea he
25 took it upon himself, without the consent of

1 Mr. Schreiber, to speak about the concept to prominent
2 powerful world leaders.

3 45654 It is difficult to reconcile his
4 admission that it wasn't the greatest idea with what he
5 says he did and the fact that he charged Mr. Schreiber,
6 on his evidence, \$225,000 for his time and expenses.

7 45655 Why would Mr. Mulroney risk his
8 international reputation for an idea that wasn't, on
9 his own admission, such a great idea. Again, a story
10 which lacks commonsense and lacks a ring of truth.

11 45656 Mr. Mulroney asks that you not
12 draw an adverse inference from the fact that President
13 Yeltsin and others he met are now deceased.

14 45657 Perhaps you wouldn't draw an adverse
15 inference from that fact alone, in fairness, however in
16 our submission you can certainly draw an adverse
17 inference from the fact that there were other people
18 who Mr. Mulroney says were present for the discussions,
19 but Mr. Mulroney never presented or named in his
20 evidence before this Commission.

21 45658 For example, Mr. Mulroney testified
22 that on his China trip he sat next to Mr. Ronji at a
23 dinner banquet for four hours. Mr. Mulroney testified
24 that he sat on the immediate left of Mr. Ronji and his
25 principal client was on Mr. Ronji's right. Mr.

1 Mulroney's concept was discussed during that dinner.

2 45659 This Commission heard no evidence
3 from Mr. Mulroney disclosing the name of that business
4 associate that sat next to Mr. Ronji. There was no
5 evidence about efforts made by Mr. Mulroney to have
6 that business associate confirm those discussions with
7 Mr. Ronji at the dinner. Presumably that witness could
8 have been presented to this Commission, but was not.

9 45660 Mr. Mulroney testified that President
10 Yeltsin's Chief of Staff was present for meetings in
11 Russia in 1994 when he presented his concept. That,
12 too, would have been beneficial, to have President
13 Yeltsin's Chief of Staff confirm the discussions.

14 45661 Moving to the Harrington Lake
15 meeting, Mr. Commissioner, Mr. Mulroney's written
16 submissions argue that Mr. Schreiber's allegations have
17 been proven false.

18 45662 The fact of the matter, certainly in
19 relation to the Harrington Lake meeting, is that
20 Mr. Mulroney actually agreed with much of
21 Mr. Schreiber's testimony.

22 45663 In relation to the Harrington
23 meeting, Mr. Mulroney agreed that all but one subject
24 matter was discussed. He agreed that numerous topics
25 were discussed, including Kim Campbell winning the next

1 election, German reunification, Mr. Mulroney's plans
2 for the future, Mr. Schreiber wanting to be in touch
3 given Mr. Mulroney's international contacts, Mr.
4 Mulroney being sorry that the Bear Head Project did not
5 succeed.

6 45664 However, given all of that, he denies
7 that anything was discussed about being hired to
8 promote Bear Head in Montreal.

9 45665 You listened to and assessed Mr.
10 Schreiber's evidence carefully. Mr. Schreiber was
11 obviously a persistent person in his drive and
12 determination for the Bear Head Project. That lasted
13 for many years, and, in our submission, it is extremely
14 unlikely that Mr. Schreiber would not have raised the
15 subject of Mr. Mulroney's involvement at Harrington
16 Lake on June 23rd.

17 45666 Similarly, it is unlikely that Mr.
18 Mulroney would have refused to discuss the subject at
19 Harrington Lake when he had willingly discussed it only
20 20 days earlier, on June 3rd.

21 45667 Mr. Mulroney's characterization of
22 the Harrington Lake meeting as a courtesy call to say
23 goodbye is another example of Mr. Mulroney's attempts
24 to mischaracterize or downplay his relationship with
25 Mr. Schreiber.

1 45668 Mr. Mulroney and Mr. Schreiber had
2 just met on June 3rd, 20 days earlier, and even had a
3 photograph taken.

4 45669 There was no need to usher Mr.
5 Schreiber up to Harrington Lake to only say goodbye in
6 person at the Prime Minister's summer residence on June
7 23rd.

8 45670 As Mr. Schreiber testified, it was
9 not a farewell courtesy visit, "I had just met with him
10 on June 3rd, and could have met with him through Doucet
11 whenever I wanted."

12 45671 Mr. Mulroney testified that while he
13 was Prime Minister he found time to see "hundreds of
14 Schreibers."

15 45672 A review of Mr. Mulroney's calendar
16 for June 1993 shows that he didn't meet with any other
17 Schreibers. His calendar for June 1993 shows that he
18 was busy meeting with prominent world leaders and
19 personalities, including President Bill Clinton, Larry
20 King, the Governor General and Senator LeBreton.

21 45673 It is simply not credible, in our
22 submission, that Mr. Mulroney would meet Mr. Schreiber
23 during that busy month to only say goodbye.

24 45674 Mr. Mulroney referred to Harrington
25 Lake as a courtesy call. That was the first courtesy

1 call. Mr. Mulroney then referred to The Savoy meeting
2 as another courtesy call.

3 45675 Although Mr. Mulroney testified that
4 he never initiated a meeting with Mr. Schreiber in his
5 life, he later agreed that he initiated The Savoy Hotel
6 meeting, because he had asked his assistant to make
7 arrangements to meet Mr. Schreiber at The Savoy Hotel
8 in 1998.

9 45676 The setting, the timing and
10 circumstances of this meeting suggest that it was a
11 meeting of great importance to Mr. Mulroney. Although
12 asked directly, Mr. Mulroney never explained why he was
13 having lunch in a room of a hotel as opposed to in the
14 restaurant. This question was asked at page 3726 of
15 the transcript, and Mr. Mulroney's lengthy reply was
16 not responsive to this simple question.

17 45677 Although Mr. Mulroney agreed that he
18 initiated The Savoy meeting, he denied that there was
19 any subject matter that he wanted to discuss.

20 45678 He then agreed that the only two
21 subjects discussed at The Savoy meeting were Airbus and
22 pasta. Bear Head and Thyssen were not discussed.

23 45679 Mr. Mulroney testified that Mr.
24 Schreiber was preoccupied with the subject of pasta,
25 and that Mr. Mulroney did not introduce the subject of

1 pasta. In our submission, the only logical conclusion
2 to be drawn is that Mr. Mulroney wanted to meet with
3 Mr. Schreiber in order to discuss Airbus privately.

4 45680 Mr. Schreiber testified and swore in
5 his November 7th affidavit that Mr. Mulroney was
6 concerned about issues relating to the payment of
7 money.

8 45681 Given all of these suspicious
9 circumstances, Mr. Mulroney simply minimized and
10 characterized The Savoy Hotel meeting as a courtesy
11 call.

12 45682 What evidence Mr. Mulroney didn't
13 give to this Commission is just as important as what
14 evidence he did give. It is important to look at what
15 he did not say and what evidence he did not produce.

16 45683 Question 9 of your Terms of Reference
17 asks: Why were the payments made and accepted in cash?

18 45684 In our submission, Mr. Mulroney never
19 really answered why he took cash. Rather, he deflected
20 this by repeating that it was an error, or a mistake
21 which he regrets. He never really answered why he
22 accepted cash.

23 45685 He should have had an answer to this
24 question. He knew it would have been asked because it
25 was in your Terms of Reference.

1 45686 Even if he was mistaken or in error
2 when he accepted cash, he never explained why he didn't
3 simply deposit it in a bank account and create his own
4 record.

5 45687 Again, Mr. Wolson asked the simple
6 question, "Why didn't you put it in the bank?" Mr.
7 Mulroney's reply was, "Well, I brought it home and left
8 it there."

9 45688 Again, in our submission, that misses
10 the point and misses the question.

11 45689 That doesn't explain why he didn't
12 put it in the bank or simply buy a savings bond or
13 stocks or some other common way that everyday people
14 deal with their own earnings.

15 45690 Mr. Schreiber had nothing to do with
16 how Mr. Mulroney ultimately handled the cash that was
17 given over.

18 45691 The fact that Mr. Mulroney says he
19 regrets taking the cash, and it was a mistake, does not
20 help this Commission. Saying sorry now doesn't give
21 him a benefit, it doesn't forgive the inconsistencies,
22 it doesn't forgive that he waited for seven years to
23 state his story publicly, and it doesn't forgive that
24 there is no credible confirming witnesses or documents.

25 45692 Mr. Doucet was the main witness that

1 Mr. Mulroney would argue supports at least some of his
2 evidence. In our submission, great caution must be
3 exercised before accepting any of Mr. Doucet's
4 testimony before this Commission.

5 45693 Mr. Doucet is clearly biased in
6 favour of Mr. Mulroney. There is no dispute that they
7 were the best of friends for decades.

8 45694 It is remarkable how much Mr. Doucet
9 said he could not recall, not on minor details, but on
10 very significant events and documents. Two examples of
11 Mr. Doucet's claim of a lack of memory are striking.

12 45695 First, Mr. Doucet's testimony that he
13 did not remember the \$90,000 invoice and cheque defies
14 common sense and must be disbelieved. This \$90,000
15 payment likely exceeded any amount of Mr. Doucet's
16 previous annual salary in government, and was
17 apparently his first payment in private practice.

18 45696 Ninety thousand dollars in 1988
19 dollars was a very large sum of money for an upstart,
20 one-person lobbying company, and could not have been
21 forgotten.

22 45697 Second, Mr. Doucet insisted that he
23 did not recall three letters sent to Mr. Schreiber
24 relating to the delivery of 34 Airbus airplanes in
25 1993. This testimony, too, can't be believed.

1 45698 Mr. Doucet was a lifelong friend of
2 Mr. Mulroney's. They stuck together through good times
3 and bad, and given the impact of the Airbus allegations
4 on Mr. Mulroney, and presumably Mr. Doucet, it is not
5 credible that Mr. Doucet did not remember anything
6 about these letters.

7 45699 There is evidence that Mr. Doucet got
8 paid for getting the Understanding in Principle signed
9 by Perrin Beatty. The evidence was clear that Mr.
10 Doucet left government on August 16th, 1988, and that
11 the Understanding in Principle was signed 16 weeks
12 later.

13 45700 Although confronted with this
14 evidence and diary entries of meetings with Lowell
15 Murray and Perrin Beatty, Mr. Doucet denied any
16 recollection of those events. He denied any
17 involvement in having the Understanding in Principle
18 signed.

19 45701 Senator Lowell Murray was most
20 helpful on this issue. He was a credible and
21 cooperative witness, and contrasts sharply with a not
22 credible and not helpful witness like Mr. Doucet.

23 45702 Mr. Murray even located and produced
24 his own handwritten notes to corroborate his testimony.

25 45703 Mr. Murray confirmed that he received

1 numerous calls and strong indications from Mr. Doucet
2 that Prime Minister Mulroney strongly endorsed the
3 Thyssen project, and that Senator Murray should speak
4 to Perrin Beatty about getting the job done.

5 45704 I will move to the second part of my
6 submissions, Mr. Commissioner, dealing with the
7 credibility of Mr. Schreiber's testimony. In our
8 submission, Mr. Schreiber was direct and truthful with
9 this Commission, even if at times it did not make him
10 look good.

11 45705 He seldom, if at all, said that he
12 didn't recall events. He was open with this Commission
13 about his entire previous relationship with Mr.
14 Mulroney.

15 45706 It was suggested in cross-examination
16 that Mr. Schreiber did not reveal his relationship with
17 Mr. Mulroney during his Eurocopter testimony. However,
18 he did confirm before you that in Eurocopter he had
19 said to the prosecutor that the whole world knows about
20 his relationship.

21 45707 Mr. Schreiber made it clear in
22 Eurocopter and before you in his testimony that he
23 never tried to hide his relationship with Mr. Mulroney,
24 and a read of his November 7th affidavit fully
25 discloses his relationship with Mr. Mulroney.

1 45708 Mr. Mulroney alleged that Mr.
2 Schreiber had sworn the November affidavit in order to
3 delay his extradition and to secure a public inquiry.
4 In our submission, a review of the court proceedings in
5 the extradition case over the last ten years makes it
6 clear that Mr. Schreiber did not need a public inquiry
7 in order to delay his extradition, and even now he has
8 further legitimate arguments before the Minister of
9 Justice and the courts.

10 45709 Both Mr. Mulroney and Mr. Schreiber
11 wanted a public inquiry. It was Mr. Mulroney who made
12 public statements about wanting a public inquiry. And,
13 in our submission, it is disingenuous for Mr. Mulroney
14 to now say that this inquiry was only Mr. Schreiber's
15 tactic of delaying extradition.

16 45710 We also know from the evidence that
17 Mr. Schreiber's November 7th affidavit was filed in
18 order to respond to Mr. Mulroney's motion to have Mr.
19 Schreiber's lawsuit dismissed in Ontario.

20 45711 The timing of Mr. Schreiber's
21 arrangements for funding is important in answering some
22 of the key issues in this inquiry. In our submission,
23 common sense would suggest that Mr. Schreiber would not
24 have arrived at Mirabel with \$100,000 in cash in an
25 envelope for a retainer for Mr. Mulroney if there had

1 not been a previous agreement to hire Mr. Mulroney.

2 45712 Mr. Schreiber testified that he and
3 Mr. Mulroney did not discuss money at Harrington Lake.
4 If he was fabricating about the Harrington Lake
5 discussions, it would have been easy to fabricate about
6 discussing money.

7 45713 Mr. Schreiber could have easily added
8 this to his version of the events, and it would have
9 helped his story. He didn't do that, and that is a
10 badge of his honesty and truthfulness.

11 45714 Mr. Schreiber told the truth on key
12 issues, even when it would have been easy to not tell
13 the truth.

14 45715 Arguably, Mr. Schreiber's version of
15 the events is even against his own interest. To admit
16 that he hired a prime minister at a meeting at
17 Harrington Lake was not without risk, and not without
18 potential downside for Mr. Schreiber.

19 45716 It would have been just as easy for
20 Mr. Schreiber to be dishonest about this fact, but he
21 wasn't, he was completely honest and he told the truth.

22 45717 There is even documentary evidence in
23 Fred Doucet's notes that Mr. Schreiber stated clearly
24 that he was not going to commit perjury. That is in
25 the January 11th, 2000 notes of Mr. Doucet that were

1 filed.

2 45718 This, too, is another badge of Mr.
3 Schreiber's credibility and his unwillingness to
4 fabricate stories in order to bolster his own version
5 of the events or to help someone else.

6 45719 Obviously, the amount of cash is in
7 dispute before this inquiry. Mr. Schreiber produced
8 documents in the form of bank records, which
9 corroborate his testimony that he gave Mr. Mulroney
10 \$100,000 on three separate occasions.

11 45720 Navigant Consulting reviewed those
12 bank records and produced a report confirming that cash
13 withdrawals were made in close proximity to the dates
14 that Mr. Schreiber testified he gave the cash to Mr.
15 Mulroney.

16 45721 On November 22nd, 2007, again only
17 days before the commencement of the Ethics Committee
18 proceedings, Luc Lavoie told the media that Mr.
19 Mulroney received \$100,000 a year. This, too,
20 corroborated Mr. Schreiber's testimony.

21 45722 In an e-mail dated November 5th,
22 2007, Mr. Lavoie confirmed to Mr. Champion-Smith of the
23 Toronto Star that the \$300,000 retainer was received by
24 Mr. Mulroney.

25 45723 On the question of the amount of

1 money that Mr. Mulroney received, it is our submission
2 that Mr. Schreiber should be believed, and that the
3 amount was \$300,000.

4 45724 Moving briefly to the mandate sheet,
5 Mr. Schreiber ultimately denied putting any of the
6 handwriting on the mandate sheet. This testimony is
7 consistent with Mr. Schreiber's testimony that he never
8 discussed with Mr. Doucet the language in the mandate
9 sheet which referred to a watching brief and travelling
10 abroad.

11 45725 Mr. Schreiber testified that he took
12 the blank sheet and gave it to his counsel.

13 45726 Mr. Schreiber explained that it was
14 not his habit to go to the doorman when he can have an
15 agreement with the boss. Mr. Schreiber's evidence on
16 this point is also logical and consistent with the
17 evidence that Mr. Schreiber had direct access to Mr.
18 Mulroney before, during and after his time as prime
19 minister.

20 45727 Mr. Schreiber's testimony about not
21 making agreements through Mr. Doucet is also consistent
22 with all of the evidence about Mr. Schreiber's
23 unrelenting drive and determination to deal directly
24 with the decision-makers at the top.

25 45728 Overall, Mr. Schreiber's position is

1 that he and Thyssen were betrayed and misled by Mr.
2 Mulroney while he was prime minister. Mr. Schreiber
3 maintains to this day that he was misled by Mr.
4 Mulroney after he left office, and that Mr. Mulroney
5 did nothing for the money he was paid.

6 45729 Finally, in our submission, you don't
7 have to take Mr. Schreiber's word for the evidence on
8 the key issues in this inquiry; Mr. Schreiber's oral
9 testimony was supported by other credible witnesses and
10 documents produced by himself and others.

11 45730 Mr. Schreiber produced hundreds of
12 documents, dating back to the 1980s. He did not redact
13 or delete any portion of any document.

14 45731 When asked in his testimony about his
15 documents, Mr. Schreiber testified that he didn't want
16 to raise any suspicion at all, he wanted to be
17 absolutely open to the Commission, and he wanted to
18 support the work of the Commission.

19 45732 In our submission, his actions show
20 that he was true to his word, he was completely open,
21 cooperative and truthful to this Commission.

22 45733 Mr. Schreiber conveys his sincere
23 gratitude for the good work of this Commission.

24 45734 Subject to any questions,
25 Commissioner, those are my submissions.

1 45735 COMMISSIONER OLIPHANT: I have no
2 questions. Thank you very much for your submissions,
3 Mr. Auger.

4 45736 We will be taking a break now, I
5 understand.

6 45737 MR. WOLSON: Yes, that is what
7 counsel had suggested.

8 45738 COMMISSIONER OLIPHANT: Is 15 minutes
9 sufficient, or do we need 45?
10 --- Laughter / Rires

11 45739 MR. WOLSON: I am under fire and I
12 have hardly started.
13 45740 Fifteen minutes, on the dot.

14 45741 COMMISSIONER OLIPHANT: All right, we
15 will break for 15 minutes.
16 --- Upon recessing at 10:50 a.m. / Suspension à 10 h 50
17 --- Upon resuming at 11:12 a.m. / Reprise à 11 h 12

18 45742 COMMISSIONER OLIPHANT: Be seated,
19 please.

20 45743 Mr. Houston, good morning.

21 ARGUMENT: BY MR. HOUSTON /
22 PLAIDOIRIE: PAR Me HOUSTON

23 45744 MR. HOUSTON: Good morning,
24 Commissioner.

25 45745 Commissioner, in the course of my

1 submissions, I will be referring to the compendium, the
2 booklet of some of the documents, perhaps two or three
3 dozen -- I have lost count -- probably 10,000 pages of
4 documents.

5 45746 That's it, sir.

6 45747 The other document that I will be
7 referring to is the Navigant Report, which is P-40. I
8 asked the Registrar to put it in front of you, and I
9 think you should have it there.

10 45748 COMMISSIONER OLIPHANT: Yes, I have
11 it. Thank you.

12 45749 MR. HOUSTON: Very briefly, sir, by
13 way of overview, I will address the obvious close
14 relationship between Mr. Mulroney and Mr. Doucet that
15 began over 50 years ago at school, to talk briefly
16 about his role with Mr. Mulroney, starting in 1983, and
17 the agreement with the Government of Canada in August
18 of 1988.

19 45750 In the document brief there are the
20 documents referable to the lobbyist registration, which
21 took place in the fall of 1989, subject to the
22 legislation, which I will briefly look to.

23 45751 I will discuss the Understanding in
24 Principle, and allude to the evidence with respect to
25 the execution of the document, in particular, by Perrin

1 Beatty.

2 45752 I would pause at this point to note,
3 sir, that in my friend Mr. Auger's comments, he
4 referred to the evidence of Senator Murray. I will
5 specifically refer to the evidence of the individual in
6 question, namely, Mr. Beatty himself, the evidence of
7 Mr. Schreiber, and the evidence of my client.

8 45753 I will touch on the issue with
9 respect to the cheques and the invoices of October and
10 November of 1988, and in that regard I will refer to
11 some of the material in the Navigant Report.

12 45754 I will then probably quickly jump to
13 1993-94, touch on the role that Mr. Doucet played in
14 the meetings that took place between Mr. Mulroney and
15 Mr. Schreiber on three separate occasions; and then
16 deal with the events of the fall of 1999 leading up to
17 the mandate document and we will address comments with
18 respect to it.

19 45755 May I, at the outset, echo the
20 comments of my friend Mr. Wolson, it is a pleasure
21 working with counsel that have appeared before you in
22 this matter.

23 45756 Mr. Doucet, as we have heard, is a
24 Cape Bretoner by birth. He went to school at
25 St. Francis Xavier where he met Mr. Mulroney. I will

1 refer to him as a cheerleader for Cape Breton. There
2 is no dispute at all, sir, that he was enthusiastic
3 about a project that could result in a significant
4 number of jobs, we have heard 500, perhaps more.

5 45757 When he first heard of the Bear Head
6 Project is, I suggest on the evidence, uncertain.

7 45758 By 1983 he was of course working in
8 the office of then Leader of the Opposition,
9 Mr. Mulroney. When Mr. Mulroney was elected with his
10 party and became the Prime Minister, Mr. Doucet served
11 in the role of Senior Advisor. He has advised us that
12 during the period of time he was Senior Advisor he
13 would attend with senior people in Mr. Mulroney's
14 office, including Charles McMillan, an economist, and
15 various matters and projects would be discussed.

16 45759 I suggest, sir, although uncertain --
17 and I will touch on Mr. Doucet's memory in a moment --
18 it is conceivable that during one of those meetings the
19 Bear Head Project first came to his attention.

20 45760 It is also important I submit, sir,
21 to note this: We know that by 1985-86 the company
22 known as GCI, Government Consultants Inc., became
23 lobbyists or began to work as lobbyists for
24 Mr. Schreiber's project.

25 45761 The principals of that company at

1 that time, Frank Moores, deceased; Gary Ouellet,
2 deceased; and Fred Doucet's older brother Gerald, who
3 unfortunately is not well. They were working on the
4 project, as I say again, from approximately 1985
5 through to the fall of 1988 when the document that we
6 have spent time on in this matter was executed, the
7 document that I will touch on in a moment.

8 45762 Brother Gerald, I suggest to you,
9 sir, it is conceivable, could very well have discussed
10 with brother Fred the project that was so important to
11 the Cape Bretoners.

12 45763 My friend, Mr. Auger, refers to the
13 evidence of Senator Lowell Murray. He did provide to
14 us information and evidence and reference to his notes.

15 45764 Yes, there were discussions by phone.
16 They were not numerous, as my friend Mr. Auger
17 suggests, but there were discussions and, in
18 particular, you have before you the notes taken by
19 Senator Murray in July of 1987, shortly after he,
20 Senator Murray, was appointed as the first Minister
21 of ACOA.

22 45765 He was, as Mr. Roitenberg described,
23 well informed. I suggest to you, sir, that it is not
24 unreasonable that he would have been well informed
25 about a project that was important to him and other

1 Cape Bretoners.

2 45766 Aside from the fact that he was, to
3 use my terminology, a cheerleader, there is no evidence
4 that he had any other role to play up to 1988.

5 45767 We have heard that he had a very
6 important role in the office of the Department of
7 Foreign Affairs, or External Affairs it then was,
8 coordinating the conferences that took place in
9 1987-1988, the Francophonie, the Commonwealth and the
10 G7, as it then was.

11 45768 In addition to his busy schedule at
12 that time, we have heard that in April of 1988 he
13 underwent surgery for a heart condition. In his
14 testimony, sir, there was reference to the fact that
15 subsequent to that he has had memory problems.

16 45769 I can advise you, sir, that medical
17 literature supports the fact that individuals who have
18 serious heart conditions do indeed have, as referred to
19 in the literature, cognitive impairment, memory
20 problems subsequent to serious heart conditions.
21 Indeed, literature that I have read suggests the memory
22 problem could be as significant as four times what an
23 average individual normally deals with with memory.

24 45770 COMMISSIONER OLIPHANT: Is that
25 evidence before the Commission?

1 45771 MR. HOUSTON: There is no evidence of
2 that, sir.

3 45772 COMMISSIONER OLIPHANT: Okay.

4 45773 MR. HOUSTON: I'm simply indicating
5 to you by way of material that I have read.

6 45774 The evidence that is before you is
7 that of Mr. Doucet himself, who testifies that
8 certainly he does have memory problems. And there was
9 a great deal of attention focused on that earlier in
10 these proceedings, I will only touch on it very briefly
11 in a few moments further.

12 45775 In August of 1988 Mr. Doucet entered
13 into the agreement with the Government of Canada
14 Treasury Board, and I have reproduced, simply for ease
15 of reference, sir, at Tab 2 of the materials the letter
16 signed by Mr. Kingsley wherein as effective the 16th of
17 August 1988 Mr. Doucet left the Government of Canada.

18 45776 I have also set out, sir, in the next
19 tab the Summary of Interview which is now evidence
20 before you of the interview of Jean-Pierre Kingsley.
21 It is a brief note. It is there for ease of reference.

22 45777 I will simply allude to the paragraph
23 at the bottom of the first page wherein he advises,
24 first off, that there was no input of any kind by
25 Mr. Mulroney.

1 45778 The last full paragraph page 1:
2 "Mr. Kingsley advised that
3 Mr. Doucet requested the waiver
4 of the limitation period under
5 the Code. Mr. Kingsley stated
6 that he had negotiated other
7 agreements which included a
8 similar waiver."
9 45779 He goes on to note the reasons why he
10 agreed to it and, in particular, the fact that
11 everything appeared to be consistent with the pattern
12 of other individuals who had requested such a waiver,
13 and he concludes with this statement. This, with
14 respect, is the only evidence before you on this point.
15 "Mr. Kingsley stated that he
16 was comfortable that all
17 appropriate procedures and
18 ethical considerations were
19 taken into account. He would
20 not have recommended the
21 Agreement be approved had this
22 not been the case."
23 45780 That is the evidence with respect to
24 the departure, if I may refer again to that terminology
25 by Mr. Doucet from Government Service.

1 45781 It is my submission, sir, the
2 evidence is clear that he did not meet Karlheinz
3 Schreiber until 1988. His evidence is -- that is the
4 evidence of Mr. Doucet -- that it was the fall of 1988.

5 45782 Mr. Schreiber himself was somewhat
6 vague on the point, but there is, I submit, a
7 significant document and that is that the first tab. I
8 have simply extracted from Mr. Schreiber's diary
9 entries. His telephone diary, 1988 is the first time
10 we see Fred Doucet -- his name is spelled incorrectly.
11 It's at the bottom of the page on the left-hand side.
12 And of significance, sir, is the fact that we see above
13 this references to his brother Gerry and numbers for
14 Gerald in Nova Scotia and Gerald Doucet here in Ottawa.

15 45783 The matter is to be contrasted to the
16 entries we see for 1989, the next document. Fred
17 Doucet now appears chronologically, or I should say
18 alphabetically, right after brother Gerald's name. He
19 has now telephone numbers, contact information for Fred
20 Doucet and I submit, sir, that is consistent with the
21 information that I submit is before you, and that is
22 that the first contact, the first time that they meet
23 is in the fall of 1988, at which time Mr. Doucet enters
24 into an agreement with Mr. Schreiber.

25 45784 I have produced, sir, at Tab No. 4

1 the Lobbyists Registration documents that are executed
2 by Mr. Doucet for two companies, one Bear Head
3 Industries and, two, Bitucan.

4 45785 And I pause to note this, sir. In
5 the evidence of Mr. Schreiber there is reference to the
6 fact that Bitucan had an agreement with Thyssen. In
7 his written submissions Mr. Auger makes reference to
8 the fact why Bitucan? Because Bitucan had an
9 arrangement, as Mr. Schreiber himself says, with the
10 Thyssen operation in Germany.

11 45786 The documents are registered, as
12 indicated, in October of 1989 and that is consistent
13 with the legislation then in force, sir. I have
14 reproduced at Tab 5 the Lobbyists Registration Act
15 which has gone through amendments, in particular in
16 2006, which are obviously not relevant.

17 45787 The only point I make, and for your
18 information, sir, is the last page, page 14, there is
19 reference to the fact that the Act came into force on
20 the 30th day of September 1989.

21 45788 Do you see that, sir?

22 45789 Mr. Doucet was registered and worked
23 as a lobbyist for Bitucan and Bear Head in the fall of
24 1989 and subsequent thereto.

25 45790 The Understanding in Principle. That

1 is set out as the next tab in the Compendium and I wish
2 now to touch on the evidence with respect to the
3 signature of Perrin Beatty.

4 45791 Mr. Doucet himself denies that he had
5 any role to play in obtaining the signature of Perrin
6 Beatty on the document.

7 45792 Mr. Schreiber himself is, at best,
8 vague on what information that he has with respect to
9 how Mr. Beatty's signature appears on the document. I
10 will briefly allude to the evidence given by him --
11 that is by Schreiber -- on the 17th of April 2009 in
12 cross-examination, beginning on page 1069, starting at
13 the top of the page.

14 45793 Do you remember saying:
15 "We needed Fred to get the
16 document signed by DND."

17 45794 And I go down the page, I
18 specifically asked this question to Mr. Schreiber:

19 "Did you speak to him..."

20 45795 That is Mr. Beatty:

21 "Did you speak to him about
22 Mr. Beatty?"

23 45796 I'm sorry, that is referring
24 to Doucet.

25 "No, perhaps not, because this

1 was all done by Frank Moores
2 from GCI.

3 MR. HOUSTON: Well, you are fond
4 of quoting the late Frank
5 Moores. I want to talk about
6 Mr. Beatty and Mr. Doucet.

7 Did you speak to Mr. Beatty
8 directly?

9 MR. SCHREIBER: No, not on this
10 occasion.

11 MR. HOUSTON: You have told the
12 Commission that Mr. Doucet was
13 paid \$90,000 to secure the
14 signature of Mr. Beatty.

15 MR. SCHREIBER: That's correct.

16 MR. HOUSTON: That's what you
17 said, sir, but I'm going to
18 suggest to you that you made it
19 up. It's not true.

20 MR. SCHREIBER: Well --

21 MR. HOUSTON: Do you have any
22 evidence of that, sir?

23 MR. SCHREIBER: Well,
24 everybody --

25 MR. HOUSTON: We know about the

1 payment. I will come to that.
2 MR. SCHREIBER: Everybody got
3 paid as a success fee and Fred
4 Doucet got his part. This was a
5 decision from Frank Moores, not
6 mine. It was his money.
7 MR. HOUSTON: Did you have any
8 information, apart from the late
9 Frank Moores, that Mr. Doucet
10 had anything to do with
11 obtaining the signature on the
12 document by Mr. Beatty?
13 Anything?
14 MR. SCHREIBER: I don't think
15 so."
16 45797 As I indicated in my examination of
17 Mr. Schreiber, he is very fond of quoting the late
18 Frank Moores about this and other matters.
19 45798 I turn now, sir, to the evidence of
20 Mr. Beatty himself. He was, I submit, sir, very clear
21 that he had a number of reservations about the document
22 which first came to his attention probably sometime in
23 '87 and certainly by 1988.
24 45799 He gave evidence before you clearly
25 to the effect that he insisted upon, and in fact the

1 document was amended to satisfy him that there was no
2 commitment on the part of the Government of Canada
3 referable to this project. Then and only then did he
4 agreed to sign the document.

5 45800 It is my submission, sir, that his
6 evidence is crystal clear that no one influenced him to
7 place his signature on the document.

8 45801 Insofar as discussions with any of
9 the principals of GCI, his evidence was he recalls no
10 such discussion.

11 45802 Insofar as his evidence with respect
12 to any discussions with Mr. Fred Doucet, he indicates:
13 I probably did discuss some things with Fred, as he
14 called him, from time to time, but the only clear
15 evidence or recollection I have is that Fred called me
16 to thank me for the excellent care he had received at
17 the National Defence Medical Centre where his surgery
18 was performed.

19 45803 Mr. Auger suggests that
20 Mr. Schreiber's testimony on the execution of the
21 document by Mr. Beatty is corroborated. There is no
22 evidence at all, sir, I submit, that my client had
23 anything to do with Perrin Beatty signing the document
24 in question.

25 45804 Before turning to the \$710,000

1 invoice and the payments that were made in November of
2 1988, I wish to briefly allude to these factors.

3 45805 In his testimony Mr. Schreiber
4 advises us that he was the sole shareholder, he
5 thought, of Bitucan. He qualified it to the extent
6 that perhaps someone, he couldn't remember whom or who
7 might have had 10 percent.

8 45806 The Bear Head Industries Company, on
9 the other hand, was apparently held -- at least the
10 shares of it -- by Thyssen. The evidence I suggest to
11 you, sir, is probably not clear on that point. It's
12 certainly far from clear what the shareholdings were of
13 Mr. Schreiber himself in that company.

14 45807 I refer you also to one other
15 company, IAL, International Aircraft Leasing. In his
16 testimony before you under questions by Mr. Wolson he
17 advised that he had an "association" with IAL.

18 45808 On the 17th April, on page 1058, I
19 specifically asked him: Did you have an interest in
20 IAL? And his answer was: Not at all.

21 45809 Now, in the document that I'm going
22 to look to in a moment, sir, namely the Navigant
23 Report, there is clear information that IAL had a
24 number of bank accounts which were either controlled by
25 or influenced by, to the extent that arrangements were

1 made on his say-so, to transfer hundreds of thousands
2 and in fact millions of dollars, and yet Mr. Schreiber
3 tells us he had no interest in IAL.

4 45810 The Navigant report identifies over
5 three dozen bank accounts and, as Mr. Wolson pointed
6 out in examination of Mr. Schreiber, we don't have all
7 of them.

8 45811 It is, I suggest, sir, obvious that
9 it is more than unusual that any individual, no matter
10 how many corporate interest he would have, would have
11 an interest in as many bank accounts as this man
12 apparently had and/or controlled.

13 45812 Bitucan had two bank accounts
14 apparently, one at a branch of the Bank of Montréal in
15 Calgary and another at a branch of the Bank of Nova
16 Scotia in Calgary. We have bank records for the Bank
17 of Nova Scotia from March of 1989 for the next four or
18 five years.

19 45813 On the other hand, the key account,
20 the account on which these cheques are drawn, namely
21 the Bank of Montréal, the only, "bank records" we have
22 are copies of the face of five cheques. We have the
23 invoices, they are obviously not bank records. There
24 are no other records of the Bank of Montréal available.

25 45814 Bitucan had two bank accounts, as

1 identified by the Navigant people. Notwithstanding the
2 existence of over three dozen accounts it would appear
3 that there was no account, at least no account
4 identified in the name of Bear Head Industries.

5 45815 The \$710,000 invoice that is set out
6 at Tab 7 dated October 20th, 1988. The Understanding
7 in Principle of course was executed in September of
8 that year.

9 45816 The invoice is Bitucan invoicing
10 Merkur Handels. Mr. Schreiber admits that he gave the
11 instructions to prepare the invoice. But again, as I
12 have indicated to you, as he is fond of doing, it was
13 all Moores' idea.

14 45817 The invoice of course refers to a
15 project in Indonesia and you yourself when he was on
16 the stand in inquired why Indonesia. The only
17 information we have been provided is he said something
18 about that he was a friend of President Habib. What
19 that has to do with why the document was prepared in
20 the way that it is, that's the best we have.

21 45818 There were five invoices then sent
22 out and they are set out at Tab 8, four in the amount
23 of \$90,000, one by my client, three other invoices, one
24 by the late Frank Moores, one by the late Gary Ouellet
25 in Lemoine Investments, and a third account by Doucet &

1 Associates, the law firm of brother Gerald, each in the
2 amount of \$90,000.

3 45819 It is true my client has no
4 recollection of that account and no recollection of the
5 cheque. He has stated to you that his practice was to
6 request -- and he did in fact obtain -- retainers. He
7 talked about retainerships was the standard practice --
8 his standard practice from the time he began in effect
9 to hold out his name and to hang up the shingle in the
10 fall of 1988.

11 45820 In the submissions of Mr. Auger on
12 behalf of Mr. Schreiber, there is reference to the fact
13 this was probably his first payment.

14 45821 I simply point out, sir, the document
15 that we do have, the invoice from Mr. Doucet is invoice
16 No. 119. There is no evidence before you as to whether
17 he started at 100 or whether he started at 1, but it is
18 highly improbable I suggest that the first invoice
19 would be numbered 119.

20 45822 I will just touch on it, sir. The
21 invoices are before you, you have heard the evidence of
22 Mr. Doucet. His invoice reads "Re: Professional
23 Services". The invoice of the other three refers to
24 "services rendered".

25 45823 We have of course, in addition to

1 the four cheques of \$90,000, the invoice for
2 \$250,000 for GCI.

3 45824 The evidence I suggest, sir, on
4 behalf of Mr. Schreiber with respect to why these
5 cheques were paid is, at best, confusing. Initially in
6 examination by Mr. Wolson he referred to it all as
7 "success fees". He then "water that down" to some
8 extent by referring to the fact that in response to a
9 question by you near the end of his testimony that
10 Thyssen received very little in exchange for these
11 significant payments, admittedly significant payments.

12 45825 Then he began to talk about the fact
13 that the GCI people had been working without payment
14 for three or four years, that in fact they had achieved
15 success in the Province of Nova Scotia, land had been
16 dedicated for the potential project. There was
17 discussion about infrastructure being arranged.

18 45826 And then he talked about the fact
19 that we had the assurance from Mr. Mulroney the project
20 would go ahead. Other than that bald assertion by him
21 there is absolutely no evidence of that aspect of it.
22 However, he does talk about the work that GCI had done.
23 The payment is there, Mr. Doucet does not recall it.

24 45827 Now, my learned friend Mr. Auger
25 referred to the fact that Mr. Schreiber demonstrated an

1 unwillingness to fabricate stories. A direct quote.

2 45828 In my material I have set out at Tab
3 No. 9 the letter that he addresses to Paul Szabo, M.P.,
4 then Chair of the Standing Committee on Access to
5 Information, Privacy and Ethics, dated March 3rd, 2008.

6 45829 On page 2 this individual that
7 "doesn't fabricate stories" says this:

8 "On October 20, 1988 Thyssen
9 Industrie AG paid \$ 2 Million
10 success fee concerning the
11 UNDERSTANDING IN PRINCIPLE to
12 IAL, in trust for GCI (see
13 corroborating document
14 attached)."

15 45830 I just pause to note, sir, the
16 document in question is set out -- in my index I have
17 it for you. The whole document -- I have just simply
18 reproduced the letter.

19 45831 The corroborating document is the
20 invoice from IAL to Thyssen dated October 4, 1988. It
21 is at P-7, Book 1, Tab 34. That is the "corroborating
22 document".

23 45832 But then he says this --

24 45833 COMMISSIONER OLIPHANT: I'm sorry,
25 what was the tab again?

1 45834 MR. HOUSTON: It's P-7, Book 1,
2 Tab 34. That is the letter that he sends to Szabo,
3 together with all the corroborating or the backup
4 documents.

5 45835 I say again, sir, just for ease of
6 reference and for time, the only other document that I
7 could see that is a "corroborating document" is the
8 invoice which is in the material.

9 45836 He then says -- and he bolds the
10 print:

11 "This \$2 million was divided
12 amongst Mr. Mulroney and his
13 friends as follows:

14 "On November 2, 1988 GCI (Frank
15 Moores) deposited \$ 500 000.00
16 to the Swiss bank account,
17 Codename 'Frankfurt' concerning
18 the Thyssen Bear Head project
19 and the Right Honourable Brian
20 Mulroney. Mr. Mulroney would
21 know that this money was marked
22 for him (corroborating bank
23 document attached)."

24 45837 Again the "corroborating bank
25 document attached" would appear to be the transfer

1 documents referable to the \$2 million which I will
2 touch on in just a moment in the Navigant material.

3 45838 Then he goes on to note:

4 "Mr. Mulroney would know that
5 this money was marked for him
6 (corroborating bank document
7 attached)."

8 45839 There is no such corroborating bank
9 document that in any way corroborates that Mr. Mulroney
10 would know the money was marked for him.

11 45840 Then he outlines the cheques.

12 45841 Navigant produced the report near the
13 back of the report, sir, Chart "H" for "Harvey".

14 45842 Now again, this man that never
15 fabricate stories tells the Chair of the Ethics
16 Committee that Frank Moores deposited the money.

17 45843 At the top left-hand corner we see a
18 reference to Thyssen Industries, three payments are
19 identified, one for 1.466 million deutsche marks,
20 approximately \$1 million Canadian goes into one bank
21 account in Liechtenstein. Two other payments,
22 including the \$2 million payment and another
23 \$1.9 million that goes into another bank account in
24 Liechtenstein. October 1988.

25 45844 \$2 million is then transferred into

1 an account in the name of Kensington in Liechtenstein.
2 Within a very short period of time the \$2 million
3 transferred into the Kensington account is then
4 transferred into a number of other accounts.

5 45845 Just looking at it from the left-hand
6 side, one account in the amount of \$500,000 in the name
7 of Mr. Schreiber. To the best of my review of the
8 documents, sir, there is no reference to that account
9 in the material of Navigant. Two payments of
10 \$1.1 million into an IAL account; another two payments
11 of \$231,000 into another account in Liechtenstein; and
12 \$150,000 unknown.

13 45846 I pause to note that the 18679 IAL
14 account is the base account, I will call it, through
15 which Mr. Schreiber, who had no interest in the
16 company, flowed significant funds.

17 45847 Out of that account there is a
18 reference to a payment or a withdrawal December 5, 1988
19 in Swiss francs. That would appear to be, sir, the
20 money that was paid to Mr. Haastert.

21 45848 \$500,000 is transferred into IAL
22 account Frankfurt on the 31st of October 1988 and
23 \$100,000 transferred into Bitucan.

24 45849 I pause again to note, sir, in my
25 cross-examination of him I asked: The invoice was

1 \$710,000, we can account for \$610,000 referable to the
2 four cheques of \$90,000 plus one of \$250,000. Where is
3 the other \$100,000, Mr. Schreiber? He didn't know. It
4 went to his company's account in Calgary.

5 45850 Now, this is the reconstruction by
6 the Navigant individuals of the flow of funds, but
7 according to Mr. Schreiber it was Frank Moores that
8 deposited the money into the Frankfurt account.

9 45851 The Chart "B", sir, near the start of
10 the charts --

11 --- Pause

12 45852 MR. HOUSTON: Do you have that,
13 Mr. Commissioner?

14 45853 COMMISSIONER OLIPHANT: Yes, I
15 have it.

16 45854 MR. HOUSTON: This chart is the chart
17 prepared by Navigant from the period from October '88
18 to January 1990 and the two matters I wish to refer to,
19 there is a deposit into this account that we have just
20 looked at of \$500,000 on the 31st of October 1988 and,
21 according to the chart, on exactly the same day
22 \$610,000 is transferred to Bitucan. Not \$500,000,
23 \$610,000.

24 45855 There is no explanation why we
25 transfer \$500,000 from the IAL account into Frankfurt

1 rather than \$610,000, but with respect, sir, the
2 evidence I suggest is crystal clear, that the
3 individual who orchestrated all of this was Karlheinz
4 Schreiber. It had nothing to do with Frank Moores in
5 the sense of being the individual who controlled the
6 flow of funds.

7 45856 And just briefly, again alluding to
8 the letter to Mr. Szabo, he talked about the fact that
9 \$2 million was divided among Mr. Mulroney and his
10 friends. He accounts for \$610,000, omitting to make
11 any reference to what happened to the other
12 \$1.4 million almost.

13 45857 He not only "fabricates stories", he
14 exaggerates.

15 45858 Bluntly, sir, the letter to Mr. Szabo
16 is absurd, to suggest that Mr. Moores was the one who
17 deposited the money.

18 45859 Just on this point, talking about
19 bank accounts, perhaps in my naive fashion I always
20 understood that the purpose of numbered accounts was to
21 achieve anonymity, and yet we have, again orchestrated
22 entirely by Mr. Schreiber, bank accounts such as the
23 one we have just seen with a codename "Frankfurt". We
24 also have a bank account with a codename Britan.

25 45860 But inconsistent with the fact that

1 we are going to have codenames is the fact that he also
2 opens another account under rubrik Marc on the 21st of
3 September 1993 into which flows \$500,000 Canadian.
4 There is absolutely no explanation why he did that.
5 And he establishes another account under rubric Fred,
6 referring to Marc Lalonde, because that is what he --
7 his name is, given name, and Fred Doucet. There is no
8 explanation why he did that.

9 45861 Why does he have assumed names or
10 codenames with respect to some of the accounts, but
11 then has other accounts with the given names of Marc
12 and Fred.

13 45862 Before I leave this point there is
14 another, I suggest, completely unexplained aspect of
15 his banking. The account Britan, into which he
16 transfers \$500,000 and from which he claims he withdrew
17 the funds that he paid to Mr. Mulroney, had in it
18 \$210,000 -- actually 212,000 in mid-December 1994 and
19 he establishes another account in the name of codename
20 Britan. No explanation for it. Completely without
21 explanation as to why he is doing this, other than
22 perhaps, sir, I suggest there is at least an inference
23 that could be drawn that he is attempting to draw a
24 phoney trail.

25 45863 Before I leave the Navigant

1 material I wish to refer to what is Schedule No. 17,
2 just talking briefly about cash. It's right before
3 the charts.

4 45864 The Navigant people tell us the
5 analysis of accounts indicate that over a 5 to 6 year
6 period -- and they emphasize this because it is
7 repeated on both page 1 and page 2 -- the "Known Cash
8 Withdrawals" -- that in that period of time he withdrew
9 \$1,356,000 Canadian in cash; 3.7 million in Swiss
10 francs; and 3.8 million in German deutsche marks.

11 45865 His evidence is that it is from the
12 Britan account he withdrew the cash that he gave to
13 Mr. Mulroney. We know that because he tells us that.
14 He tells us also that when he withdrew the cash in July
15 of 1993 in Switzerland he went back to Germany and put
16 it away somewhere until he journeyed here to Canada and
17 met Mr. Mulroney at Mirabel one month later.

18 45866 To, I suggest, sir, raise serious
19 questions about the credibility of anything he says
20 about cash and the source of the cash I refer to page 2
21 to the withdrawals on the 11th -- I'm sorry, on the 3rd
22 day of November 1993, six weeks before he meets
23 Mr. Mulroney in Montréal.

24 45867 On that day, in addition to
25 withdrawing 96,000 in Swiss francs and 200,000 in

1 deutsche marks, he withdraws \$200,000 Canadian from
2 three separate accounts, including, admittedly, Britan.
3 He tells us again, I go back to Germany I stick the
4 money somewhere.

5 45868 COMMISSIONER OLIPHANT: Did you say
6 November 11th?

7 45869 MR HOUSTON: I'm sorry, sir, I said
8 November 11th, it's November the 3rd.

9 45870 He takes \$200,000 in cash and goes
10 back to Germany again, he says, I stick it somewhere,
11 perhaps in a safe, and I know which dollars I gave to
12 Mr. Mulroney six weeks later.

13 45871 That, sir, is not credible I suggest.

14 45872 Then of course we have the two
15 withdrawals of \$50,000 in 1994. In his statement there
16 is reference to -- the statement that has now been
17 filed before you there is reference to the fact that he
18 withdrew 50 at one point because he had thought of
19 sending this money with some other person and then he
20 decided against it. That's why he withdrew the \$50,000
21 on the 21st of July 1994, some five months before the
22 meeting down in New York.

23 45873 He was, I submit, sir, awash in cash
24 and to suggest that you could have any comfort in
25 accepting his evidence that the source of all this cash

1 was one account, I submit, sir, you cannot.

2 45874 Mr. Doucet then worked for

3 Mr. Schreiber over a period of a number of years.

4 There is some discrepancy in the evidence between the
5 two which I suggest is of no consequence whether it
6 began in '88, whether it lasted to '93, '94 or '95, the
7 latter being the version of Mr. Schreiber. There is no
8 question he was working with him and worked closely
9 with him for four or five year period beginning in the
10 late '80s through the early '90s.

11 45875 I turn now to August of 1993, the
12 meeting at Mirabel.

13 45876 It is the evidence of Mr. Doucet that
14 Mr. Schreiber requests that he, Doucet, contact
15 Mr. Mulroney to determine if the two of them can get
16 together and Mr. Doucet in fact agrees that he played
17 that role.

18 45877 There is a significant difference,
19 however, in the evidence of the two, namely Mr. Doucet
20 and Mr. Schreiber, as to what was said, if anything.

21 45878 According to Mr. Schreiber, he told
22 Mr. Doucet nothing about the purpose of the meeting.

23 45879 Mr. Doucet, on the other hand,
24 indicates that he recalls that Mr. Schreiber indicated
25 to him that he wished to discuss with Mr. Mulroney

1 whether he could assist him internationally.

2 45880 It is not plausible I suggest to you,
3 sir, that Mr. Schreiber would go through, as he calls
4 him, the doorman, to arrange to meet with Mr. Mulroney
5 and tell him absolutely nothing about why he wishes to
6 see him, and yet that is the evidence of this
7 "truthful" witness.

8 45881 It is important also to note, sir,
9 that the day before the meeting at Mirabel Mr. Doucet
10 was with Mr. Schreiber at a meeting involving Ministers
11 Charest and Corbeil. That was on his mind. He was
12 aware of the discussions re Montréal. As indicated
13 that material filed by my friend Mr. Pratte on behalf
14 of Mr. Mulroney, there was no reference in the
15 discussion between Mr. Mulroney and Mr. Schreiber the
16 next day about that meeting.

17 45882 The parties met, they met again in
18 December of 1993. There is no dispute that
19 Mr. Schreiber gave to Mr. Mulroney two payments of cash
20 in those two meetings. There is obviously a dispute on
21 the amount.

22 45883 Then I turn to late 1994.

23 45884 Again the evidence of the truthful
24 witnesses is that he contacted Mr. Doucet and his
25 evidence is to the effect that he, Schreiber -- this is

1 actually question 12035:

2 "That I come to New York, and
3 whether Mr. Mulroney is there,
4 and if Mr. Mulroney wants to see
5 me, I am at that day in New
6 York, and if Mr. Mulroney wants
7 to come, it would be fine."

8 45885 His testimony was that he gave
9 Mr. Doucet no other information. He indicated in
10 particular he gave him no information about the
11 surprise for Elmer MacKay and his new bride. And he is
12 adamant in his testimony that Mr. Doucet was uninvited
13 and unexpected.

14 45886 I have included in the material
15 extracts from his diary which were put in as a separate
16 Exhibit P-13. This is the diary of Mr. Schreiber
17 himself which records a number of conversations,
18 including two on November the 19th and November the
19 23rd that refer to "Fred" and "New York" -- or, more
20 accurately, "NY".

21 45887 We have on the 11th of November a
22 reference to "Doucet", telephone number "Brian"; on the
23 17th of November there is reference to "Frank/Fred NY";
24 on the 18th "Doucet". I understand that is the German
25 short form for "meeting, New York".

1 45888 There is a reference also to Greg
2 Alford on the 21st and the evidence is that Alford
3 attended down in New York City for this meeting of the
4 Atlantic Bridge.

5 45889 There is also a reference on the
6 23rd of November "Doucet" New York, or "NY". However,
7 Mr. Schreiber is adamant Doucet is uninvited and
8 unexpected.

9 45890 I have also reproduced, sir, the
10 material that is sent by Mr. Doucet to Mr. Mulroney's
11 office, and that is the next tab. The cover sheet
12 addressed to Francine, his assistant, and it refers to
13 the fact:

14 "Could you kindly put this into
15 Mr. Mulroney's file for our New
16 York meeting."

17 45891 This material includes not only the
18 White Paper that Mr. Alford talked about, but the draft
19 letter for Jürgen Massmann to send off to David
20 Collenette, then Minister of National Defence.

21 45892 They arrive in New York, that is
22 Mr. Mulroney and Mr. Doucet, there is a meeting in a
23 hotel room at The Pierre Hotel. Mr. Doucet sits
24 through the whole meeting. There is no dispute on
25 that. It is curious I suggest, sir, that since my

1 client arrives uninvited and unexpected there is no
2 suggestion on the part of Mr. Schreiber apparently,
3 "Excuse me, Fred, but get out of here, this is not your
4 business." He sits through the meeting.

5 45893 Mr. Doucet indicates to you, sir,
6 that he recalls during the meeting Mr. Mulroney gave to
7 Mr. Schreiber a report, he talked about trips to China,
8 to Russia, to France. He says he recalls specifically
9 reference to the P5 or the Permanent 5, the Security
10 Council to the United Nations.

11 45894 Mr. Schreiber of course has a
12 different version of what was discussed or not
13 discussed at that meeting. The evidence of Mr. Doucet
14 is before you.

15 45895 The events from 1994 to 1999 of
16 course included the delivery of the Letter of Request
17 and the situation that led to Mr. Mulroney's lawsuit.
18 You have heard submissions from Mr. Auger and
19 undoubtedly you will hear further submissions on that
20 point from Mr. Pratte. I will simply move to the fall
21 of 1999.

22 45896 I may indicate to you for timing
23 purposes, sir, I would anticipate I would be
24 finished within the next 10 to 15 minutes, probably
25 closer to 10.

1 45897 In the fall of 1999 Fred Doucet
2 listens and watches a program on The Fifth Estate. In
3 his examination by Mr. Wolson he referred to the fact
4 that he was concerned at that point, given the events
5 that had unfolded between '94 and 1999 referable to the
6 Airbus matter, that Mr. Schreiber was "getting too
7 close to the media".

8 45898 Although, as Mr. Wolson points out,
9 Schreiber, in the interview, refuses to answer any
10 questions by Linden MacIntyre, in the course of
11 MacIntyre's comments there is significant evidence or
12 information I suggest that would have caused Mr. Doucet
13 concern, because MacIntyre refers to the fact that "we
14 have seen bank accounts. We have seen personal diary
15 entries". There is a reference to the Britan account;
16 there is a reference to \$500,000; there is a reference
17 to rubrik Fred, \$30,000. MacIntyre, as I recalled it,
18 referred to it I think by the terminology "the paltry
19 sum of \$30,000".

20 45899 The detail of that information I
21 suggest would obviously cause Mr. Doucet to wonder
22 where the CBC people receive this much information from
23 the personal diaries of Karlheinz Schreiber.

24 45900 He writes the memo to himself,
25 which is included in the material, in which he, in

1 that memo, outlines his recollection of the meeting
2 that took place at The Pierre Hotel in New York five
3 years before that.

4 45901 We have heard evidence that he met
5 with Mr. Doucet -- Mr. Doucet and Mr. Schreiber at
6 Mr. Doucet's home on the 26th of December 1999 and in
7 The Royal York Hotel on the 11th of January 2000. At
8 those meetings they discussed a number of matters.

9 45902 In each instance following the
10 meetings Mr. Doucet made notes, the notes are before
11 you. I have not reproduced them. They are in the
12 material at least twice, perhaps three times. In those
13 notes Mr. Doucet writes what he recalls was discussed
14 an hour before that with Mr. Schreiber with respect to
15 the arrangements that had been in place for a number of
16 years between Mr. Schreiber and Mr. Mulroney.

17 45903 Which leads to February 2000. On the
18 4th of February 2000 Mr. Schreiber meets Mr. Doucet at
19 the office of Mr. Doucet here in Ottawa. Prior to the
20 meeting Mr. Doucet had prepared the mandate document.
21 I will refer to it, it's at Tab 13 of the materials I
22 put together, sir.

23 45904 On his own Mr. Doucet determined he
24 should, to use his terminology, memorialize what he
25 understood to be the agreement between his long-time

1 friend Mr. Mulroney and an individual with whom he had
2 a business relationship over a number of years.

3 45905 The document is in the wording we see
4 it. It perhaps could have been more tightly drafted,
5 whatever, it is in the wording, as I say again, as we
6 see it and in the documentation that is before you.

7 45906 My friend Mr. Auger, and properly so,
8 cross-examined Mr. Doucet and reached a point where he
9 was, I suggest, parsing the documents to emphasize that
10 the fact we see "including travelling abroad" as
11 opposed to "exclusively travelling abroad".

12 45907 Mr. Doucet is clear that he and
13 Karlheinz Schreiber are seated in his boardroom and
14 with the two of them there the document that we see
15 with the handwriting on it is completed. The date,
16 February 4th, 2000; the fiscal years are written by
17 Fred Doucet; A, B, C we see in a blank; and then there
18 is a reference to \$250,000. Mr. Doucet is adamant that
19 he asked Mr. Schreiber what was the number. What was
20 the amount of the fees? The fee to cover services and
21 expenses, as it is set out, he states that that is the
22 number given to him by Karlheinz Schreiber.

23 45908 Now, of course, Mr. Schreiber -- and
24 I will come to this in a moment -- denies that. But I
25 ask parenthetically, sir, why would Doucet write down

1 that number unless it was given to him by the source he
2 states, namely Karlheinz Schreiber?

3 45909 Mr. Doucet then advises that he
4 writes out underneath the \$250,000 figure:

5 "Bayerische or whatever other
6 companies I name".

7 45910 That's his handwriting.

8 45911 Underneath that we see "Bayerische
9 Bitumen Chemie", and then "Chemie" is repeated in
10 larger letters, "Kautering" and "Bitucan Calgary".

11 45912 The handwriting "Bayerische Bitumen
12 Chemie" and "Chemie" repeated, "Kautering" and "Bitucan
13 Calgary" is the handwriting of Karlheinz Schreiber.
14 The balance of the handwriting on the document is that
15 of Mr. Doucet.

16 45913 Before you initially Mr. Schreiber
17 indicated he has no idea how his handwriting got on the
18 document. Then we heard about the miracle. It's a
19 miracle. He then, at the end of his testimony --

20 45914 COMMISSIONER OLIPHANT: That sounds
21 like a song to me.

22 45915 MR. HOUSTON: I beg your pardon?

23 45916 COMMISSIONER OLIPHANT: That sounds
24 like the title of a song.

25 45917 MR. HOUSTON: Well, it could be.

1 45918 MR. PRATTE: Don't encourage him.

2 --- Laughter / Rires

3 45919 MR. HOUSTON: I could go much longer
4 if you want, Mr. Commissioner, but maybe rather than
5 singing I will try to complete my submissions.

6 45920 He then of course, near the end of
7 his testimony: I deny I wrote it on there.

8 45921 My friend Mr. Auger suggests that
9 that is believable evidence.

10 45922 In addition to the evidence of
11 Mr. Doucet and evidence of Mr. Schreiber himself that
12 the handwriting is his, we have the document
13 examination by the investigator hired by the
14 Commission. That is the next tab.

15 45923 Point No. 1:

16 "With respect to the handwritten
17 notations on the first document
18 submitted, examination has
19 revealed that these notations
20 exhibit all signs of having been
21 produced naturally and free from
22 conscious execution. There is
23 no evidence of the writings
24 having been traced, or otherwise
25 drawn upon the document. This

1 observation stands for all the
2 handwriting appearing on this
3 document."

4 45924 And at point 4:

5 "There is no evidence to
6 suggest insertions to the
7 document text."

8 45925 It is clear, corroborative evidence
9 of Mr. Doucet's version that the document was written
10 in the presence of the two of them by both Mr. Doucet
11 and Mr. Schreiber adding his words, and yet this
12 truthful witness comes to us and says: I deny I put
13 that on that document.

14 45926 What he does is, he takes a copy of
15 the typewritten version -- which by the way there is no
16 evidence at any time that when he is discussing it --
17 he agrees he discusses it with Mr. Doucet, there is no
18 evidence that he took a pen and scratched through the
19 document or ripped it up or even suggested that's
20 preposterous. Instead, he takes the document, he
21 states that he delivers it to his counsel and, to the
22 best of my knowledge, sir, the next time we see this
23 document that Mr. Schreiber has had since February of
24 2000 is when it appears in the Affidavit of November
25 2007, which is at P-7, Book 2.

1 45927 The paragraph reads that in
2 early 2000:
3 "... Mr. Doucet presented to
4 me a draft document that
5 Mr. Mulroney requested I sign
6 in order to confirm the terms
7 of our Agreement. A draft ...
8 is attached hereto as
9 Exhibit '12'."

10 45928 There is nothing in the affidavit
11 suggesting that this is a complete fabrication on the
12 part of Mr. Doucet. He attaches it as an exhibit,
13 suggesting that Mr. Doucet had asked him to sign it,
14 which of course is not Mr. Doucet's testimony.

15 45929 His evidence with respect to the
16 mandate document alone, sir, I suggest ought to cause
17 great concern on your part as to whether or not this
18 man can be believed.

19 45930 I close with this comment: It is
20 suggested that the friends of 50-plus years, namely
21 Messrs. Mulroney and Doucet, should not have spoken
22 about this matter while it was ongoing. Mr. Auger
23 goes so far as to suggest that there is "a real risk
24 of collusion on evidence or evidence tampering or
25 tailoring".

1 45931 It is, I suggest, sir, the most
2 plausible thing that these two individuals, lifelong
3 friends caught in this matter, would be discussing
4 something that has been in the public domain now for
5 weeks and indeed months. To suggest there was anything
6 improper about that I submit is not a submission that
7 you should consider. It is reasonable that these two
8 friends would do that.

9 45932 I have done what I said I was going
10 to do, sir, and finished within 10 minutes. Those are
11 my comments.

12 45933 Thank you very much,
13 Mr. Commissioner.

14 45934 COMMISSIONER OLIPHANT: Thank you
15 very much, Mr. Houston. I have no questions of you.

16 45935 Thank you.

17 45936 MR. HOUSTON: Thank you.

18 45937 MR. PRATTE: I take it that we
19 are now at the position where we will break for a
20 bite to eat and I'm just wondering what you would
21 like for time.

22 45938 Mr. Pratte, I would be interested in
23 hearing from you on this, because you are next at bat.

24 45939 MR, WOLSON: I should point out that
25 Mr. Vickery, on behalf of the Attorney General is not

1 making submissions.

2 45940 COMMISSIONER OLIPHANT: Thank you.

3 45941 MR. WOLSON: So there is one

4 submission left and that is Mr. Pratte's.

5 45942 COMMISSIONER OLIPHANT: Yes. I had

6 understood that to be the case, but thank you for

7 reminding me.

8 45943 Mr. Pratte, what kind of time would

9 you like?

10 45944 MR. PRATTE: Actually,

11 Mr. Commissioner, I am totally in your hands. We will

12 break for the lunch break, but I don't need more time

13 than the usual lunch break. We can resume at 1:30 if

14 you like, or 2 o'clock. I am totally indifferent.

15 45945 COMMISSIONER OLIPHANT: You tell

16 me, because I will do whatever you would like to do

17 on this.

18 45946 MR. PRATTE: Well, let's say 1:30.

19 I'm fine at 1:30.

20 45947 COMMISSIONER OLIPHANT: 1:30, okay.

21 45948 We will adjourn until 1:30 for lunch.

22 45949 Thank you. Good afternoon.

23 --- Upon recessing at 12:18 p.m. / Suspension 12 h 18

24 --- Upon resuming at 1:35 p.m. / Reprise à 13 h 35

25 45950 COMMISSIONER OLIPHANT: Good

1 afternoon. Be seated, please.

2 45951 Mr. Pratte...

3 ARGUMENT: BY MR. PRATTE /

4 PLAIDOIRIE: PAR Me PRATTE

5 45952 MR. PRATTE: Thank you, Mr.

6 Commissioner. Before I begin, I just want to make sure

7 that you were handed up the slim compendium of

8 documents.

9 45953 COMMISSIONER OLIPHANT: I have it,
10 thank you.

11 45954 MR. PRATTE: I might refer to it as I
12 go along.

13 45955 Mr. Commissioner, let me start this
14 way. Human beings, all of them, all of us, are wont to
15 make prompt judgments about each other, often based on
16 preconceived views and an incomplete understanding and
17 consideration of all the relevant facts. We judge not
18 only politicians, but business people, celebrities,
19 athletes and so on, all kinds of people -- people we
20 know, people we don't know -- and sometimes we do that
21 very harshly.

22 45956 Perhaps in most circumstances these
23 snap judgments that we make about people don't matter.
24 Sometimes they do, when they are splashed all over the
25 media.

1 45957 I bring this up to contrast these
2 judgments that we make routinely with that which you,
3 as Commissioner, have to make in this inquiry.

4 45958 I know that you know all of this, Mr.
5 Commissioner, but since this is a public inquiry, I
6 would like to take a minute or two to bring us all on
7 the same page.

8 45959 Although you act here as a
9 commissioner, and technically not as a judge, it is
10 obvious that you were picked for this job, in large
11 part, because, as a very experienced judge, you
12 understand fully the fairness that a legal process such
13 as this requires.

14 45960 And you and your counsel have proven
15 this throughout these proceedings, which have been run,
16 I may say, with exquisite fairness. I say this without
17 fear of being charged of obsequiousness, I am merely
18 stating a self-evident proposition.

19 45961 Your judgment -- your report, but in
20 effect the judgment in the form of a report -- abides
21 by a different set of rules than that which we allow
22 ourselves to live with when we criticize or judge,
23 because it is a fundamental tenet of our legal system
24 that a judgment or a report that receives any form of
25 legal sanction, even if only declaratory, must abide by

1 this special code, the first element of which is, of
2 course, as you know, that bias, either actual or
3 apparent, cannot play any role in that kind of
4 judgment; and secondly, that a commissioner's ultimate
5 report must be based solely on the evidence that has
6 been adduced before him or her; and finally, that his
7 or her conclusions must be reached with due
8 consideration and appropriate deliberations.

9 45962 Why do we have those rules to govern
10 these kinds of legal processes? It is because, as a
11 society, we agree that such a process is the best way
12 to ensure that, ultimately, fairness is done. We need
13 that kind of rigour.

14 45963 And this kind of fairness is
15 absolutely critical when what is "on trial" is not just
16 a traffic infraction, or a breach of contract, although
17 it is obviously important there, but it is particularly
18 important when it is a reputation that is at stake,
19 particularly when that reputation is that of a person
20 of such prominence, who has been involved in the past
21 in a lot of key political events, some of which were
22 controversial, and about whom it is difficult not to
23 have some preconceived view, whether favourable or
24 unfavourable.

25 45964 When we have a public inquiry like

1 this, it is also special in this way. It is the only
2 legal-type process that is televised where we have a
3 trial-type process.

4 45965 Of course, we have the hearings of
5 the Supreme Court of Canada, but they are usually not
6 televised live. This is.

7 45966 As a result of this -- and that is
8 the goal -- millions of citizens have direct access to
9 your proceedings.

10 45967 How do we react to that? Well, we
11 tune in, we tune out, we read headlines, or we hear
12 from our friends and our co-workers. What happens,
13 effectively, is that our minds are being made up. We
14 form an impression, often indelible, of a person's
15 actions or character, and we judge them, and sometimes
16 we dismiss them and we move on as auditors, as
17 watchers, unconcerned that the judgments we made may
18 have been wrong or too severe, which is the same,
19 wrong.

20 45968 But you are bound, as you know --
21 again, I know you know this -- by a different code, and
22 that is the reason why, unlike a reporter, you don't
23 comment on the evidence as it goes along. A reporter
24 has to. And unlike an editorialist or a feature
25 writer, you don't publish your report the minute after

1 the main witness has left the stand, you need time to
2 deliberate, to hear argument.

3 45969 That is also why I am addressing you
4 now. Even though some pundits have dismissed and
5 condemned Mr. Mulroney, I know that you take this
6 process seriously, but I want to invite others to
7 understand what is happening. And maybe I won't change
8 many minds of others, who have already made up their
9 minds, but I would like them to put themselves for a
10 minute in Mr. Mulroney's place and ask themselves: If
11 my reputation were on trial, would I not like
12 everybody, not only the judge but everybody, to pause
13 for one minute, take a breath, and ensure that I be
14 judge objectively, and with due deliberation?

15 45970 So perhaps people will have the
16 patience to wait for your report before they close
17 their minds on this issue.

18 45971 Before I turn to some of the key
19 factual matters that I want to deal with, sir, I want
20 to say a few words about the genesis of this inquiry.

21 45972 It was triggered by Mr. Schreiber's
22 sensational November 7th affidavit, a document, which I
23 say without fear of being contradicted, was
24 demonstrated to be a litany of falsehoods and
25 exaggerations, designed with a single purpose in mind,

1 which was to extend Mr. Schreiber's checkout time from
2 Canada.

3 45973 Mr. Auger says that that affidavit
4 was only there to respond to Mr. Mulroney's motion on
5 the jurisdictional issue. Well, really. Really.

6 45974 So why did Mr. Schreiber, 14 years
7 after the payments were made, lard his affidavit with a
8 whole concoction of false assertions, for the most
9 part -- for the most part -- totally irrelevant to the
10 jurisdictional issue?

11 45975 To take a tiny example, the lunch
12 which cost 2,000 Swiss francs.

13 45976 Why did he cooperate with the media
14 and some opposition politicians in planning the public
15 release of the affidavit?

16 45977 Because, having failed in his prior
17 calls for a public inquiry, where he was saying, "I am
18 the only victim here of the Canadian justice system,"
19 he landed on a new strategy, as the noose had tightened
20 around his head, and said, "The way I am going to
21 succeed in this is by putting former Prime Minister
22 Mulroney in the heart of a big scandal, because he was
23 engaged and in what effectively was corruption when he
24 was prime minister."

25 45978 That was his strategy. That is the

1 purpose of this affidavit.

2 45979 But at the end of the day, as our
3 detailed brief proves -- and I will go through some of
4 these facts in a moment -- the allegations that he made
5 in his affidavit, and then tried to amplify in the
6 March 3rd, 2008 letter, which Mr. Houston referred to,
7 alleging illegal wrongdoing while Mr. Mulroney was
8 prime minister -- none of these allegations have proven
9 true. None of these allegations of wrongdoing while he
10 was prime minister have proven true.

11 45980 To the contrary, it has been shown
12 that the payments that Mr. Mulroney received from Mr.
13 Schreiber, after he left office, had nothing to do with
14 past services. In other words, they were not a
15 kickback to while he was in office; nothing to do with
16 that.

17 45981 I will demonstrate that the payments
18 had all to do with future services, after he left
19 office, related to international assistance on the
20 world stage.

21 45982 As a result, some have complained
22 that this inquiry was of limited value because we
23 learned nothing new. Seduced by Mr. Schreiber, who
24 many times promised various scandals, including at the
25 doors of this hearing room, seven scandals wrapped in

1 one, they expected earth-shattering revelations to
2 unfold, some criminality to finally prove true the myth
3 around Mr. Mulroney's former government. Well, they
4 were disappointed.

5 45983 And it is interesting to note that
6 the main purveyors of this canard over the years were
7 never called to testify.

8 45984 But the test of the usefulness of
9 this inquiry is not whether or not it brought out new
10 revelations of criminality. Indeed, in this, as well
11 as in all other respects, this inquiry stands as a
12 model for future inquiries. It did not allow itself to
13 be in any way influenced by TV ratings, so that it had
14 to find new "revelations" to titillate, or to pursue
15 evidence not only where it might lead, but where it
16 might mislead. It did not allow itself to do that. In
17 fact, it did the opposite. On a number of occasions
18 Commission Counsel, in order to deflect and put to rest
19 and quell rumours, for example, that the money may have
20 been related to the Airbus matter, explicitly called
21 evidence to show that that was not so.

22 45985 It has been clearly established by
23 the evidence in this inquiry, notwithstanding -- and I
24 say this with admiration -- extremely competent
25 Commission Counsel, who have reviewed thousands of

1 documents, have interviewed dozens of witnesses, have
2 had very broad, and used broad subpoena powers, and
3 travelled abroad when it was necessary -- they found no
4 link whatsoever between the payments and anything that
5 Mr. Mulroney might have done before.

6 45986 Now, I say, despite the fact that no
7 corruption was found, we shouldn't deplore that as if
8 it were a tragedy, we should celebrate it.

9 45987 That being said, Mr. Mulroney has
10 acknowledged that, as a former public office holder, he
11 did not handle the private commercial transaction that
12 he made with Mr. Schreiber after he left office
13 appropriately -- and that is the matter of public
14 interest that you were essentially called to
15 investigate -- in that his failure to properly document
16 the transaction at that time raised reasonable
17 suspicions as to its true nature.

18 45988 I will deal at the end of my
19 submissions with the significance of this error and how
20 it should be assessed.

21 45989 Let me turn now to four factual areas
22 that I would like to cover.

23 45990 Firstly, the handling of the Bear
24 Head Project while Mr. Mulroney was prime minister.

25 45991 Secondly, the Harrington Lake

1 meeting.

2 45992 Thirdly, the nature of the commercial
3 transaction with Mr. Schreiber, and Mr. Mulroney's
4 handling of it after he left office.

5 45993 And fourthly, the issue of disclosure
6 of these private dealings, including the issue of the
7 Examination on Discovery.

8 45994 Mr. Commissioner, one opening comment
9 before I embark on these factual points. Mr. Auger
10 started his remarks to you by making points about
11 credibility and corroboration. I will give you
12 concrete examples of this as we go along, but let me
13 say this. On key points -- for example, when the
14 agreement was made, and the nature of the agreement
15 between Messrs. Schreiber and Mulroney -- Mr. Auger
16 says that there is really no corroboration from Mr.
17 Mulroney's version of events.

18 45995 Let's talk about corroboration. The
19 best corroboration comes from Mr. Schreiber himself,
20 both by documents and his evidence in Eurocopter, which
21 Mr. Auger embraces, where, as I will show you, the
22 evidence of Mr. Mulroney totally coincides with what
23 Mr. Schreiber himself said before he developed a motive
24 to distort the facts.

25 45996 And talk about corroboration, when we

1 talk about the document, the mandate, that was
2 corroboration when forensic evidence was called to
3 prove that it was Mr. Schreiber's writing, and that the
4 document, in particular, had not been tampered with.
5 That's corroboration.

6 45997 To say it's a miracle is the
7 antithesis of corroboration.

8 45998 So I say that there is a lot of
9 evidence to corroborate Mr. Mulroney's version of
10 events, as we will see as we go along.

11 45999 Briefly, in terms of the handling of
12 the project while he was prime minister, there are six
13 or seven factual points there.

14 46000 First of all, when Mr. Mulroney
15 became prime minister in 1984, it is beyond dispute
16 that he had no business, political or social
17 relationship with Mr. Schreiber. The contrary
18 impression is solely the result of the fantasies woven
19 into the November 7th affidavit.

20 46001 Two, Mr. Mulroney, the evidence has
21 shown conclusively, had virtually nothing to do with
22 the Understanding in Principle, except to ensure that
23 it would create no legal obligations.

24 46002 You will remember, that is the
25 business of referring this matter to Deputy Minister of

1 Justice Iacobucci.

2 46003 Three, Mr. Mulroney knew nothing
3 about the payments generated by the Understanding in
4 Principle for Mr. Schreiber or to other persons.

5 46004 As I have said already, these monies
6 have clearly nothing to do with anything that Mr.
7 Mulroney might have done in respect of Bear Head.

8 46005 Five, it is categorically false, as
9 Mr. Schreiber had asserted in his May 3rd letter, that
10 a \$500,000 sum had been set aside for him -- for Mr.
11 Mulroney -- in the Frankfurt account in or about 1988,
12 and that this was used five years later as the source
13 of the cash payments to Mr. Mulroney. The Navigant
14 Report demonstrated that.

15 46006 Six, the only motivation that Mr.
16 Mulroney had in allowing the government to entertain
17 the project was to consider the economic advantages for
18 the maritime region, and later East Montreal.

19 46007 Seven -- I want to deal now with the
20 so-called unusual access that Mr. Schreiber is said to
21 have had during the period that Mr. Mulroney was prime
22 minister.

23 46008 We deal in our written brief with the
24 meetings, and so on. I won't repeat that, but I want
25 to address a point that was made by Mr. Auger in his

1 brief, at page 4, under the rubric "Contact while Mr.
2 Mulroney was PM," or prime minister.

3 46009 I would invite you, Mr. Commissioner,
4 to turn to Tab 1 of the compendium. At paragraph 10,
5 page 5 of Mr. Auger's submissions, he says, in that
6 section of "Contact while Mr. Mulroney was PM", that
7 some 44 calls took place during that period while he
8 was prime minister.

9 46010 If you look at tab 1, you will see
10 that not a single alleged call made by Mr. Schreiber
11 occurred while he was in office, not one.

12 46011 Forty-one of 44 are made after the
13 Letter of Request is delivered in November 1995.

14 46012 And you will remember that Mr.
15 Mulroney explained to you that they had a lot of
16 communication thereafter.

17 46013 So it is not only a wild exaggeration
18 to say that there were any telephonic contact between
19 the two, there were none, based on the evidence that at
20 least Mr. Auger relied on.

21 46014 But let me make the key point here.
22 Whatever contact there was during that period of time,
23 whatever the number of meetings, it had no effect --
24 deleterious effect -- other than to ensure that the
25 project was properly evaluated.

1 46015 Mr. Mulroney never had the project
2 approved. In fact, he declared it dead. And Mr.
3 Schreiber never got a cent of public money as a result
4 of his efforts during the period when Mr. Mulroney was
5 prime minister.

6 46016 Therefore, when you boil it down to
7 its essence, during the time that Mr. Mulroney was
8 prime minister, absolutely nothing was done which would
9 have been in violation of any statute or guideline --
10 ethical guideline -- in terms of dealing with such
11 matters, or such projects, during the time that Mr.
12 Mulroney was prime minister.

13 46017 Now we are at the tail-end of his
14 prime ministership, and I want to turn to the second
15 topic, the meeting at Harrington Lake of June 23rd,
16 1993.

17 46018 Before we get there, I want to say
18 one thing about the June 3rd, 1993 meeting that Mr.
19 Auger raised.

20 46019 You will recall, when he examined his
21 own client, that he had him say, if you review the
22 transcript, in an extraordinarily suggestive line of
23 questioning, that the dialogue about the mandate
24 started at the June 3rd meeting, a meeting at which, in
25 addition to Mr. Schreiber, you would find that Mr.

1 MacLaughlin, Mr. Mulroney's chief of staff, was there,
2 and Mr. Doucet as well.

3 46020 Not only was this statement elicited
4 through a very suggestive line of examination, this
5 version that the mandate started to be talked about on
6 June 3rd is nowhere to be found in either of the
7 lawsuits, that is, the Ontario version of the lawsuits,
8 or the Quebec lawsuit, or even in the November 7th
9 affidavit. The first time it was proffered was in
10 answer to Mr. Auger's questions. It wasn't even
11 alluded to in the examination by Mr. Wolson or myself.

12 46021 That should cast extraordinarily
13 serious doubt as to the plausibility that the
14 discussion about a possible mandate started there.

15 46022 Secondly, it is preposterous to
16 suggest that it could have started in the presence of
17 Messrs. MacLaughlin and Doucet. Mr. Schreiber said
18 that even when he asked for a meeting to be organized
19 for Mirabel, he wouldn't say anything to the doorman,
20 and now he is actually beginning the discussion on June
21 3rd with Mr. Doucet sitting there and Mr. MacLaughlin?
22 Come on.

23 46023 Let's move to Harrington Lake. I
24 think I can say, again without fear of being
25 contradicted, that Mr. Schreiber's version of what

1 happened, or when it happened, in terms of the making
2 of the contract and its nature, fluctuated, to put it
3 mildly, over time.

4 46024 But one thing is crystal clear, and
5 it is this, that his first version is found in
6 Eurocopter testimony in 2004, and I would invite you,
7 Mr. Commissioner, to look at Tabs 2 and 3. As we say
8 in the written brief, at that point in time, no one has
9 identified any reason why Mr. Schreiber would not have
10 been truthful in Eurocopter, and you will see that he
11 then validates this evidence several times.

12 46025 If you look to Tab 2 -- I think it is
13 page 111. It is a bit difficult to read. It's at the
14 top.

15 46026 Because I am not taking you to -- the
16 first page under the tab refers to 111. In the
17 middle -- and I trust we underlined it --

18 46027 COMMISSIONER OLIPHANT: It is
19 probably the part highlighted in yellow in the copy I
20 have.

21 46028 MR. PRATTE: Yes, sir.

22 46029 There is a discussion as to whether
23 or not Mr. Schreiber might have hired someone from
24 government after they left office, and Mr. Schreiber
25 says:

1 "I wonder why you don't simply
2 say whether Brian Mulroney was
3 engaged and hired by me after he
4 was Prime Minister of Canada.
5 The whole world knows it. Why
6 do you go around? Just simply
7 ask straightforward
8 questions..."

9 46030 And then if you look to Tab 3,
10 page 59, towards the bottom of the page:

11 "Have you subsequently hired any
12 elected government officials who
13 were part of the government,
14 elected government officials who
15 were part of the government
16 between '85 to '93, and you
17 subsequently hired them?

18 A. No, not -- not between.
19 In '93.

20 Q. In '93?

21 A. Yes."

22 46031 And then he says it's maybe late
23 in December.

24 46032 Then he talks about, on page 60:

25 "Was there any discussions

1 respecting this hiring before
2 January of 1994?
3 A. No. And, yeah, in '93,
4 perhaps. But I'm not too
5 convinced whether that was --
6 this particular case, you ask me
7 whether I did. I had many
8 things in mind, and I told you,
9 I wanted to hire Mr. Mulroney
10 for Thyssen to be doing the same
11 thing he's doing now, and it
12 would have been a nice thing to
13 have a previous Canadian Prime
14 Minister on a peacekeeping track
15 for Thyssen products."
16 46033 Then if you flip over Mr. Bernstein,
17 the prosecutor, says on page 61:
18 "These thoughts or this idea
19 that you had, this plan..."
20 46034 That he has just described:
21 "... what time are we talking
22 about?
23 A. After Mr. Mulroney has left
24 government.
25 Q. After he had ceased -- after

1 he had stepped down as Prime
2 Minister?

3 A. Yes."

4 46035 The purpose I will come to, but the
5 timing is clear.

6 46036 But that's not all. If you then go
7 to Tab 4, we are now in 2006 and this is the e-mail
8 that Mr. MacKay drafted and he explained to you how
9 that occurred. It was not urged on him by
10 Mr. Mulroney, Mr. MacKay decided to draft it to assist
11 Mr. Schreiber in writing some letter to Mr. Mulroney.

12 46037 The key thing there, sir, is
13 Mr. MacKay testified that as to the facts included in
14 that letter he received those facts from his very good
15 friend Mr. Schreiber.

16 46038 So in that e-mail in 2006, based on
17 information provided to him by Mr. Schreiber, we see in
18 the third paragraph:

19 "May I state for the record,
20 that my testimony under oath in
21 prior legal proceedings is the
22 only correct description of our
23 business arrangement, that is to
24 say, you..."

25 46039 Mr. Mulroney:

1 "... after returning to private
2 life, at my request, agreed to
3 advise and consult with me in
4 certain business affairs."

5 46040 Then in the letter he actually wrote
6 and signed in the next tab, Tab 5, Mr. Schreiber, in
7 the third paragraph, repeats the language suggested by
8 Mr. MacKay, but that information had come from
9 Schreiber. I won't repeat that, but that's verbatim.
10 And then he adds, just in case there is any doubt:

11 "I still believe that my
12 statements in the book 'The
13 Secret Trial,' together with my
14 testimony under oath at the
15 Eurocopter trial and my
16 statements to Bob Fife, have
17 made it crystal clear what my
18 position is."

19 "The discussion and financial
20 arrangements between you and me
21 about future industrial projects
22 have been correct, private and
23 nobody's business. You were the
24 best advocate I could have
25 retained."

1 46041 So then we have Mr. Schreiber doing
2 two things (a) repeating that he retained Mr. Mulroney
3 after he left office; and validating the truth of his
4 Eurocopter testimony. If that's not corroboration I
5 don't know what is.

6 46042 COMMISSIONER OLIPHANT: Can you
7 corroborate yourself?

8 46043 MR. PRATTE: If there are only two
9 people there -- in the context of this inquiry, sir, in
10 this argument, the issue is Mr. Auger says
11 Mr. Mulroney's version can't be believed, but surely
12 the person against whom it's in the interest of making
13 that statement who says at that point in 2004 that is
14 the truth.

15 46044 COMMISSIONER OLIPHANT: Your argument
16 is that Mr. Schreiber in evidence sworn has
17 corroborated what Mr. Mulroney said here and that that
18 is even backed up by the e-mail and the letter to which
19 you have just referred?

20 46045 MR. PRATTE: That's right, there are
21 two people to a transaction, the timing is at issue,
22 the purpose is at issue. Mr. Schreiber is now saying
23 it's totally different than what he said at the time.
24 Those statements then become statements against his
25 interest and therefore they have to be taken to be the

1 most truthful and credible.

2 46046 Now, I want to talk about for a
3 moment this business now of the Agreement in Principle.

4 46047 Mr. Auger says well, it's a badge of
5 Mr. Schreiber's credibility that he didn't go all the
6 way in Harrington Lake, he just talked about an
7 Agreement in Principle. They didn't talk about money,
8 they didn't talk about details of the contracts. He
9 could have lied even more.

10 46048 Well, there is a much simpler
11 explanation for why he is reduced to having the
12 so-called Agreement in Principle being struck at
13 Harrington Lake.

14 46049 By the time we come to these
15 hearings, Mr. Commissioner, Mr. Schreiber is
16 confronted with two totally contradictory versions of
17 his story, the one we have just been through, that is
18 the one he said at Eurocopter and validated
19 subsequently; and the one in the Ontario action he had
20 taken in April of 2007.

21 46050 I won't take you to that, but I will
22 give you the references. If you look at the Ontario
23 action, it is P-9, Tab 42, paragraph 5 in particular.

24 46051 In the affidavit, November 7th
25 affidavit, which is P-7, Binder #3, Tab 21,

1 paragraphs 15 to 16 -- and then in the Québec action
2 paragraphs 5 and 7 in particular, and the Québec action
3 is Exhibit P-9, Tab 44 -- you cannot read those
4 documents without understanding that what he argued in
5 these actions in his affidavit was that there was a
6 complete contract made at Harrington Lake. That's what
7 he's suing on. That's the only way that the Ontario
8 Courts could have jurisdiction is if there was a
9 completed contract, not some Agreement in Principle,
10 which expression is never used in those documents.

11 46052 So he was caught between the
12 action and the affidavit that talked about a
13 completed agreement and saying in Eurocopter there is
14 nothing there. So what did he come up with, something
15 somewhat in between, an Agreement in Principle.

16 46053 That is not a badge of honour, that
17 was the only way he could try to weasel through these
18 contradictions.

19 46054 The most that happened at Harrington
20 Lake is what Mr. Mulroney told happened. Upon leaving
21 he said: When you are back in Montréal maybe we could
22 work together. And from that seed he planted upon his
23 departure he now seeks to harvest an Agreement in
24 Principle, totally typical of his modus operandi, as we
25 later learned. One example, the Royal York meeting,

1 taking from an incident that is meaningless and giving
2 it a real meaning.

3 46055 So I say, sir, that at Harrington
4 Lake no agreement based on the logic and reliable
5 evidence was struck. And it would be preposterous on
6 its face, apart from the evidence for Mr. Mulroney, two
7 days before he leaves office to violate express
8 provisions of his Code of Conduct.

9 46056 Now let me deal with the third
10 aspect, the nature of the commercial transaction and
11 how Mr. Mulroney handled it after he left office.

12 46057 The first point, opening point, why
13 would Mr. Mulroney agree to meet Mr. Schreiber? That
14 was intimated in particular by Commission counsel's
15 examination. Why would you agree to meet with somebody
16 like that? I think the question was put: You had
17 exquisite judgement, how did you not see who you were
18 dealing with?

19 46058 Well, who was Mr. Mulroney dealing
20 with, as far as he knew, in August 1993?

21 46059 Mr. Schreiber was the Chairman of the
22 subsidiary of a world-renowned company, he was
23 recommended highly by two of his close friends,
24 including a Minister of the Crown, Mr. MacKay.

25 46060 Mr. Mulroney was totally unaware

1 of Mr. Schreiber's propensity to exaggerate as he
2 hadn't seen the various letters that had been sent to
3 his office.

4 46061 And most important -- maybe not most
5 important, but certainly equally important --
6 Mr. Schreiber had been associated during the time that
7 Mr. Mulroney was Prime Minister with a legitimate
8 project. Yes, there were contentious factions in the
9 government, some proponents of the project and others
10 not, but it was not, on its face -- it was far from
11 being a ridiculous project. In fact, the project,
12 albeit in various iterations, was entertained by the
13 subsequent government for a full two years under the
14 driving force of Mr. Lalonde.

15 46062 So that's basically what Mr. Mulroney
16 knew about Mr. Schreiber. There were no alarm bells to
17 be rang.

18 46063 And to those who say how can you see
19 that Schreiber was not up to any good, well, I say
20 this: Where were all these farsighted people in 2007
21 when to a great fanfare Mr. Schreiber was freed from
22 jail to tell us about some great scandal. He conned
23 the Ethics Committee, he conned the media, he conned us
24 all really at that time, in 2007. Well, Mr. Mulroney
25 didn't know that. He didn't know the guy was going to

1 be arrested on tax and fraud charges six years later.

2 46064 Now let me turn to the purpose of
3 the agreement.

4 46065 In essence the two versions are
5 relatively simple. Mr. Schreiber says I wanted to hire
6 him to do domestic lobbying. Here -- it started with
7 Kim Campbell but now he has shifted it to Québec, but I
8 will let that pass -- basically domestic lobbying. Mr.
9 Mulroney says no, I had an international mandate.

10 46066 So let's look at some of the key
11 points of evidence.

12 46067 Firstly, the notion that Mr. Mulroney
13 could suddenly, having been unable to bring the
14 project, while he was Prime Minister, to fruition could
15 do that better after he left office strikes one as
16 slightly implausible to begin with.

17 46068 Secondly, while Mr. Schreiber said
18 that he had hired Mr. Mulroney effectively to try to
19 lobby Miss Campbell, she came here and told you she had
20 no communication with Mr. Mulroney at all.

21 46069 Thirdly, Mr. Schreiber wrote to
22 Mr. MacEachen in 1994 saying that he believed, that is
23 Schreiber believed, in the summer of 1993, before he
24 meets Mr. Mulroney, that he thought the Conservatives
25 would lose, Ms Campbell would lose, and yet he made the

1 first payment with that expectation. And after he made
2 the other two payments he knew the Conservatives had
3 lost power.

4 46070 So under Mr. Schreiber's own logic
5 for this agreement it doesn't stand to any scrutiny.

6 46071 Fourthly, and I won't repeat -- I
7 have taken you to these passages, but the Eurocopter
8 testimony shows that it was on the international scene
9 that he wanted Mr. Mulroney.

10 46072 And he also said that to Mr. Kaplan.
11 That you would find, Mr. Commissioner at P-25, Tab 14,
12 interviews of notes of an interview between
13 Mr. Schreiber and Kaplan. So again, it's March 31,
14 2004, Notes of the Interview, Mr. Commissioner, P-25,
15 Tab 14, in which the following is recorded:

16 "The previous Prime Minister of
17 Canada, namely Mulroney, in my
18 opinion would have been a good
19 representative of Thyssen. A
20 value added representative to
21 support the sale of peacekeeping
22 and an environmental protection
23 equipment out of Canada. I am
24 aware..."

25 46073 Says Mr. Schreiber:

1 "... that many of the companies
2 that Brian Mulroney is involved
3 with today have similar reasons
4 for employing him. After
5 Mr. Mulroney left office he
6 was looking for clients to
7 generate income..."

8 46074 So yet another passage that confirms
9 not only what he wanted them for, but the timing of it.

10 46075 These facts again are confirmed in
11 the two documents we have looked at, the 2006 e-mails
12 and the letter itself.

13 46076 But also admitted to tell you,
14 Mr. Commissioner, there is an affidavit of March 2007.
15 I will find the exhibit number and give it to you in a
16 moment, if Mr. Hughes can tell me what it is. I just
17 don't have it in my notes. But in that affidavit which
18 was filed in Federal Court, at paragraphs 35 and 36
19 Mr. Schreiber says that the truthfulness of his
20 evidence in Eurocopter was confirmed by Justice
21 Belanger in the preliminary because there had been a
22 motion to have him declared as a hostile witness.
23 Justice Belanger denied the motion and said I have
24 looked at the evidence and I find that he gave truthful
25 and candid answers in Eurocopter.

1 46077 Another point, Mr. Commissioner, to
2 corroborate Mr. Mulroney's evidence as to the purpose
3 of the mandate is that it was totally logical that
4 Mr. Schreiber should be interested on international
5 market. You heard a lot of evidence that he had a huge
6 financial stake, but that project depended -- or his
7 stake depended on a huge export market developing. So
8 the logic that he would try to get Mr. Mulroney to
9 assist on the international front is inescapable.

10 46078 But let me say also perhaps most
11 damaging to Mr. Schreiber's version of the nature of
12 the mandate is the lengths to which he went to
13 disassociate himself with the mandate prepared by
14 Mr. Doucet. That mandate, that draft mandate, that
15 draft document, cannot be reconciled as Mr. Schreiber's
16 version before you that this was for domestic lobby.
17 It is only consistent with retaining Mr. Mulroney to do
18 work on the international front, in particular in
19 relation to peacekeeping vehicles.

20 46079 The truth of that, the truth that
21 they cannot be reconciled and that Mr. Schreiber knows
22 it is that he maintained steadfastly that the writing
23 on the document was not put there, it was not there.
24 He called it a miracle. Even when you invited him to
25 recant effectively or reconsider his answer he

1 maintained it was a miracle.

2 46080 Why? Because he knows that that
3 document with his writing on it is a complete
4 contradiction of his now version of the -- of his
5 current version of the mandate, i.e. domestic lobbying.

6 46081 By the by, the March 3rd affidavit in
7 Federal Court is P-9, Tab 17.

8 46082 So you have all the evidence --

9 46083 COMMISSIONER OLIPHANT: I'm sorry,
10 the tab number again?

11 46084 MR. PRATTE: It's Tab 17. P-9,
12 Mr. Commissioner, Tab 17.

13 46085 COMMISSIONER OLIPHANT: All right.

14 46086 MR. PRATTE: I want to say a few
15 words about the terms or the conditions of the mandate.

16 46087 It's clear that the mandate was
17 pretty vague. Mr. Mulroney explained that. He was
18 asked to assist Mr. Schreiber with his international
19 business interests and the only one that was mentioned
20 in '93 was really the peacekeeping vehicle's. He
21 called it, Mr. Mulroney did -- although he said
22 Mr. Schreiber never used those terms, he said I
23 interpreted as a watching brief.

24 46088 Mr. Mulroney explained to you how
25 having received these colour pamphlets from

1 Mr. Schreiber he developed this idea of seeing whether
2 or not he might ultimately interest the United Nations
3 in the standardization of the peacekeeping programs.
4 You have heard a lot of evidence proving that this was
5 an idea that had been discussed at least that NATO, and
6 it certainly was consistent, as I have already said,
7 with Mr. Schreiber's own economic interests.

8 46089 It was consistent with the
9 standardization imperative or desirability and it was
10 consistent with Mr. Mulroney's own very keen interest
11 in United Nations and role he played and prominence as
12 a leader in the world and the United Nations.

13 46090 Now, Mr. Auger tried to attack
14 Mr. Mulroney's credibility on this by saying
15 Mr. Mulroney even admitted, himself admitted that that
16 was not a good idea. He said that at least once, if
17 not twice, trying to effectively undermine this as kind
18 of a silly concept.

19 46091 If you look at the evidence at
20 page 3594 of the transcript -- I'm sorry,
21 Mr. Commissioner, I can't -- oh yes, it's the May 13
22 transcript, page 3594 -- Mr. Mulroney said this in
23 describing this concept to me:

24 "That was my concept."

25 46092 Talking about the P5 concept:

1 "That's what I was trying to do.
2 I don't know -- I don't think it
3 was the greatest idea in the
4 world, but it was one that I
5 thought might advance
6 Mr. Schreiber's company's
7 corporate interests."

8 46093 To derive from that Mr. Mulroney said
9 it was not a good concept is a bit of a stretch,
10 particularly when he then said to Mr. Wolson,
11 Mr. Mulroney did, at page 4131, May 15:

12 "This was a concept that I was
13 developing, and I thought it was
14 a pretty good one."

15 46094 Mr. Mulroney was just simply saying
16 maybe there are better ideas out there, but he cannot
17 be taken or understood to have said or admitted that
18 this was not a good concept.

19 --- Pause

20 46095 MR. PRATTE: In terms of the relative
21 vagueness of the mandate, we all agree that no specific
22 time limits were put on it -- in fact, Mr. Schreiber
23 waited 14 years to sue on this contract -- and that
24 there were no reports or invoices ever required by
25 Mr. Schreiber.

1 46096 Now, in terms of whether or not the
2 services were actually rendered I say this to begin
3 with: It seems implausible that if you hired
4 Mr. Mulroney in '93 to perform effectively domestic
5 lobbying while Mr. Schreiber is still involved in this
6 project -- which ends in 1995, when the project dies
7 but he is also removed as Chairman of Thyssen Bear
8 Head -- if that is what Mr. Mulroney was hired to do,
9 to help Mr. Schreiber for, he would then wait 13,
10 14 years to sue on the breach of contract. It just
11 doesn't ring true.

12 46097 It's much more logical to conclude
13 that Mr. Mulroney actually did what he had been asked
14 to do and that he was, as Mr. Schreiber said in 2006,
15 the best advocate that he could have retained. And
16 indeed he was. Who else could have opened doors at the
17 very highest levels of the world leaders than
18 Mr. Mulroney. He did not need to be a technical expert
19 to do that any more than one needs to be an expert in
20 nuclear proliferation and to ultimately make the
21 decisions in those respects. He just needed to open
22 the door to his concept and he was ideally placed to do
23 that worldwide.

24 46098 The fact that it was done informally
25 during private discussions shouldn't surprise anybody.

1 Why would anybody with direct access to the top
2 decision-makers go, at the very inception of the idea,
3 through the bureaucracy, before you had even had a
4 chance to put the concept directly to the person who
5 might ultimately decide? Why would you just take that
6 risk that the bureaucracy might oppose it? Leaders and
7 former leaders, they deal with one another directly.
8 They don't go through intermediaries.

9 46099 And the reasonableness of that
10 approach was proven in effect by what former Ambassador
11 Bild told you. He said if we had known anything about
12 this it would have rung bells and we would have all
13 scurried about to study this because this could be a
14 very controversial notion, apart from the fact that, if
15 you read his evidence carefully -- and certainly his
16 comments to the Globe and Mail in the article of a year
17 or so ago, he misunderstood the concept, it was not to
18 sell arms to China directly, but apart from that if you
19 wanted, on behalf of a private client, to raise an idea
20 directly with a world leader, the last thing you would
21 do if you wanted to keep it private and low key would
22 be to alert the Canadian Embassy.

23 46100 As for the fact that Mr. Mulroney did
24 not specifically discuss the nature of his work with
25 Messrs. Lavoie and Kaplan in terms in particular --

1 it's not that he didn't raise the issue of an
2 international mandate, it's that he didn't describe to
3 them that he went to China or France -- there is no
4 evidence that Mr. Mulroney routinely discussed the
5 business of his clients, the detailed business of his
6 clients with anybody.

7 46101 In fact, Mr. Auger is a bit
8 inconsistent here because he takes us to task for
9 insisting that we should redact the names of the other
10 business people who went on the trip. By the way,
11 redaction he never opposed. Anyone had an
12 opportunity to object to these redactions and he never
13 objected to it.

14 46102 Moreover, Mr. Schreiber again is in a
15 funny position to criticize Mr. Mulroney for not
16 broadcasting the detail of his private dealings with
17 Mr. Schreiber when Mr. Schreiber himself said I
18 wouldn't have talked to anybody about it and I wouldn't
19 even have talked to Fred Doucet.

20 46103 So it doesn't make sense to criticize
21 Mr. Mulroney for doing the same thing.

22 46104 I don't think I can say much more
23 than what we said in our brief in terms of the fact
24 that the people Mr. Mulroney talked to didn't come
25 to testify.

1 46105 Yes, most of them are dead. There is
2 nothing I can do about that. They have reached the
3 pinnacle of their careers at an age and now you have to
4 add 15 years to them; life is a fragile commodity.

5 46106 In terms of the amounts paid, the
6 actual amounts that were exchanged, I say -- although
7 you have to make a finding in this I guess,
8 Mr. Commissioner, in your report -- that that really is
9 more of an issue between the two, the exact amount that
10 was paid, although Mr. Schreiber, who sued for the
11 amounts, lost his suit, at least it was thrown out
12 because of being out of jurisdiction in Ontario and
13 then abandoned in Québec.

14 46107 But it is not true to say that there
15 is overwhelming evidence to suggest -- to corroborate
16 Mr. Schreiber's version that it was \$300,000 that he
17 paid Mr. Mulroney.

18 46108 First of all, on average I think the
19 forensic accountant said that he held the cash a month
20 or month and a half before he dispersed them. A lot
21 can happen in a month and a month and a half. Indeed,
22 one of the payments, I think the last one that was paid
23 in 1994, half of that apparently would have been
24 withdrawn in July or four months before he handed them
25 over. A lot can happen in that time period.

1 46109 The forensic accountants conceded
2 that they could not show necessarily, because there had
3 been a withdrawal from the so-called Britan account,
4 that it necessarily was that money that was used to pay
5 Mr. Mulroney. So that the amounts themselves that were
6 withdrawn don't prove anything.

7 46110 In fact, Mr. Schreiber himself told
8 Peter Mansbridge on December 15, 2007 -- at P-21, or
9 another reference is P-7, Binder 3, Tab 22 -- he said,
10 and I quote:

11 "If he ..."

12 46111 Mr. Mulroney:
13 "... would not have said that he
14 received the money, I could not
15 have proven that he received the
16 money." (As read)

17 46112 So it is conceding that the way
18 he was doing it there is no way -- just because
19 Mr. Schreiber says I gave them \$300,000, it's
20 that amount.

21 46113 Mr. Mulroney declared \$225,000 in a
22 voluntary disclosure, about which I will have something
23 to say in a moment. There is really no logical reason
24 why, without going into details, given the amounts of
25 money that he was earning at the time he would have not

1 declared the higher amount had that been the case.

2 46114 Mr. Schreiber himself, on the
3 totality of the evidence, said to Mr. Doucet \$250,000.
4 That is the amount that's written on the document.
5 Mr. Doucet said that amount came from Mr. Schreiber.

6 46115 Now, Mr. Auger says: Well, look,
7 Luc Lavoie said it was \$300,000. Well, Mr. Lavoie
8 explained the circumstances in which he wrote that
9 e-mail. He had no documents at his proposal, had not
10 spoken to Mr. Mulroney at all, and he didn't care so
11 much about the amounts as to respond to the Airbus
12 story that there was some connection.

13 46116 He also explained to you in very
14 clear terms that correcting the amounts wouldn't
15 have changed the basic story here. You remember
16 that testimony, where he said: Look, we will just
17 make another story if I find out that it was the
18 wrong amount.

19 46117 But more important, Mr. Mulroney, in
20 2004 -- sorry, 2002 or 03, but this is before
21 Mr. Kaplan published his article of November 10th --
22 disputed explicitly the \$300,000. He said it was
23 significantly less than that.

24 46118 So you have from Mr. Mulroney's own
25 mouth -- forget the other people who may have

1 speculated as to the exact amount -- that he does not
2 agree that it was \$300,000.

3 46119 In those circumstances,
4 Mr. Commissioner, I invite you to conclude that the
5 overwhelming weight of the evidence suggests that the
6 amount exchanged was \$225,000.

7 46120 Now I would like to deal with the
8 form and the handling of the transaction.

9 46121 Again I say Mr. Mulroney has
10 acknowledged that his accepting compensation in cash
11 and failing to keep adequate records was inappropriate.
12 It created a suspicion in the minds of reasonable
13 people that the transaction may not have been what it
14 purported to be.

15 46122 Now, we know, based on the facts I
16 have just outlined, that in substance that suspicion
17 was not warranted, but nevertheless it should not have
18 been created.

19 46123 But there is no reason to make this
20 mistake, this error, this lapse in judgement more
21 sinister than it was by saying: Well, it was all
22 done in hotel rooms and so forth and so on. That is a
23 bit of a gloss that imputes sinister motives that
24 weren't there.

25 46124 If you take every one of those

1 meetings, Mr. Mulroney goes there not expecting any
2 money and he returns with an envelope on his lap with
3 two RCMP officers. If you really want to hide
4 something, at least you put in your pocket.

5 46125 At the Queen E. Hotel, he goes there
6 and gets an envelope in the presence of all sorts of
7 other customers. And if you don't think Mr. Mulroney
8 is recognized when he goes around, well, I think you
9 could take judicial notice of the fact, particularly in
10 '93 right after he has left office, it would be
11 impossible to go --

12 46126 COMMISSIONER OLIPHANT: I don't have
13 to take judicial notice.

14 46127 I have been hanging around with Mr.
15 Wolson on the street. He is recognized by everyone.
16 --- Laughter / Rires

17 46128 MR. PRATTE: And so he should be.
18 And so he shouldn't be. God knows he deserves to be.

19 46129 And at the Pierre Hotel of course
20 Mr. Doucet was there, too. So I'm not trying to say
21 that -- because we have the knowledge -- I have
22 acknowledged that it was inappropriate, but it may not
23 be more sinister than it was.

24 46130 I want to deal for a moment, sir,
25 with the income tax treatment.

1 46131 Mr. Mulroney has explained that he
2 did not declare the compensation paid to him
3 contemporaneously with the receipt of the monies. And
4 you stated in your ruling and clarification that you
5 don't have a mandate nor do you intend to apply in any
6 way the Income Tax Act.

7 46132 I won't repeat in any details the
8 various submissions I have made and objections we
9 registered. It may be difficult to draw the line
10 between looking at appropriateness and compliance.

11 46133 But that being said, Mr. Mulroney was
12 perhaps incorrect in treating the monies as a retainer,
13 but there is no evidence to suggest that he used the
14 money, other than for expenses, that he used the
15 balance of the money until he declared it.

16 46134 And that is consistent with a genuine
17 retainer. He stated he had this understanding based on
18 the general understanding of tax law as applied to
19 lawyers and he effectively extrapolated from that to
20 this business retainer, consultancy.

21 46135 And it's true, based on the CRA
22 evidence, that the rules for non-lawyers are different,
23 although when you boil them down to their essence you
24 can still have a retainer, you have to take a reserve,
25 and so forth, but you can still have a retainer and no

1 tax need be paid unless the money is actually earned in
2 the year in which it's received.

3 46136 But more than that, there is also the
4 legitimate debate in the literature as to whether even
5 a reserve needs to be taken.

6 46137 So, as I say, Mr. Commissioner,
7 Mr. Mulroney said and explained to you: Well, I treat
8 it as a retainer. If we had a big tax debate maybe
9 someone would say well, you were wrong, but I'm not
10 sure that -- I don't think we are here to do that. His
11 evidence, in my respectful submission, is logical.
12 Maybe he was honestly mistaken or maybe the lack of
13 documentation in the end to prove that he had a
14 retainer made it appropriate to resort to a voluntary
15 disclosure. Both are valid reasons to so resort.

16 46138 And that then resulted in bringing
17 finality to the satisfaction of the competent tax
18 authorities of both jurisdictions.

19 46139 In this regard, there is no basis for
20 believing that Mr. Mulroney got preferential treatment
21 from the tax authorities. They had no idea who they
22 were dealing with., they simply applied a practice that
23 was prevalent in Québec at the time.

24 46140 Now, why did he handle the
25 transaction the way he did?

1 46141 Some consider -- and Mr. Auger is one
2 of them -- that he didn't give a satisfactory or real
3 explanation as to why he dealt with Mr. Schreiber in
4 cash and failed to keep proper documentation.

5 46142 Mr. Auger asked why did he accept the
6 cash? It's a bit rich -- no pun intended -- to come
7 from Mr. Schreiber's lawyer who was offering the cash,
8 but it is a legitimate question. Mr. Mulroney said it
9 was, the whole way I have treated this, a serious error
10 of judgement.

11 46143 And I say to you, Mr. Commissioner,
12 that by their nature errors of judgement are often
13 difficult to explain rationally. I will give you just
14 a couple of examples.

15 46144 How would a devoted family man
16 explain that he drove carelessly one day with his
17 children in the back and was involved in an accident
18 that injured them? How does one explain that to
19 oneself or others? There is no very good explanation.
20 It's not because the person is a bad person or not a
21 good father, it was a serious lapse in judgement.

22 46145 How did then Senator Obama, now
23 almost deified for his skills and his judgement, allow
24 himself to purchase land adjacent to the home of one
25 Tony Resco, a campaign contributor, a convicted felon

1 and a known shady character? Senator Obama couldn't
2 really explain it, he could only acknowledge his error
3 of judgement.

4 46146 So it is a legitimate question to say
5 why did you do it, but it's a legitimate response to
6 say: Look, it was an honest, serious answer I gave you
7 when I said it was an error in judgement and I say that
8 most of us who have committed errors of judgement from
9 time to time cannot explain them very well. We can
10 talk as long as we want, try to rationalize, we will
11 never really come to an adequate explanation. All we
12 can do is acknowledge it.

13 46147 Now I want to turn to the last topic
14 I want to cover, the fourth point, which is the issue
15 of the disclosure of the transaction.

16 46148 First, Mr. Commissioner, I want to
17 make this point: The focus of this inquiry, your
18 inquiry, is the nature of Mr. Schreiber's relationship
19 with Mr. Mulroney, if not after he left office on the
20 eve of his leaving office, and that is the issue of
21 Harrington Lake. But really that's what you are asked
22 to determine, what was their contractual arrangement
23 upon Mr. Mulroney's leaving office. That's the focus.
24 That's what we are concerned about. That's our frame
25 of mind.

1 46149 But the focus of the Airbus lawsuit
2 in which the examination -- in the context of which the
3 examination for discovery took place was entirely
4 different. It was entirely the relationship of
5 Schreiber with Mr. Mulroney when Mr. Mulroney was in
6 office, was Prime Minister.

7 46150 So just as a starting point in terms
8 of how we approach this, anyone from our perspective in
9 this inquiry looking at the '96 transcript to see
10 whether or not it reveals the entirety of the
11 relationship and in particular the relationship after
12 Mr. Mulroney left office is looking at the wrong place.

13 46151 Secondly, no one has or can challenge
14 the fact that in Québec from a legal point of view --
15 and I will talk about these so-called legal technical
16 rules -- an examination before plea is limited to the
17 four corners of the claim.

18 46152 Thirdly, no one has contested here
19 that Mr. Mulroney received the advice he would receive
20 from any competent counsel, which was not to volunteer
21 information that he was not specifically asked for.

22 46153 I will deal with the issue of the
23 ethical obligation at the end of my list here.

24 46154 Fourth, Mr. Mulroney -- and no one
25 contested that either -- was never asked about his

1 commercial relationship, or even his relationship,
2 using that word, after he left office. It was
3 suggested that maybe it was unfair. It was suggested
4 that maybe it was unfair to ask Mr. Sheppard to define
5 if there had been a commercial or some relationship,
6 business relationship after Mr. Mulroney left office.

7 46155 How could he know, I think the
8 question was put to him, that there was one unless
9 Mr. Mulroney told him.

10 46156 Well, with the greatest of respect,
11 there is a totally different approach to an examination
12 for discovery than a cross-examination where you are
13 stuck with the answers. On an examination for
14 discovery counsel is asking any possible question that
15 might be relevant to the claim and whether or not you
16 get the right answer does not hurt you in any way
17 because you control whether that is put in evidence
18 at trial.

19 46157 COMMISSIONER OLIPHANT: May I ask you
20 a question on this, because I know that you practice in
21 the Province of Québec.

22 46158 Where it's an examination before
23 plea, as you have said, the rules from La Cour
24 Supérieure say that the questions have to be within the
25 four corners of the Statement of Claim.

1 46159 MR. PRATTE: Where does it say that?
2 46160 COMMISSIONER OLIPHANT: In the rules.
3 46161 MR. PRATTE: It's in the
4 jurisprudence. It's universally acknowledged
5 that the --
6 46162 COMMISSIONER OLIPHANT: Okay. Well,
7 I know there is case law on it.
8 46163 MR. PRATTE: Yes.
9 46164 COMMISSIONER OLIPHANT: But what if
10 counsel permits a question that is outside the four
11 corners of the pleading, is there not an obligation on
12 the witness to tell the whole truth?
13 46165 MR. PRATTE: The question that was
14 asked, Mr. Commissioner, if you look at the -- there
15 are two prongs to answer your question.
16 46166 The question that was asked is: Did
17 you maintain contact with Mr. Schreiber? Before that
18 he had asked what is your relationship while he's Prime
19 Minister and before you were Prime Minister.
20 Mr. Mulroney said: Yes I did, once or twice. The
21 first point.
22 46167 Second point, when you read --
23 because your point is: Look, you answered questions
24 after you left office and you are saying that that
25 wasn't part of the lawsuit and you allow that question.

1 46168 If you read the transcript for
2 discovery carefully, number one, and in light of the
3 pleadings as particularized, because there was a
4 request for particulars, you will see that Mr. Sheppard
5 is most interested in the post-'95 period, after he was
6 Prime Minister -- while he is Prime Minister, but
7 mainly after Prime Minister, but after 1995. And when
8 they discussed '93 to '95 he says: Well, I'm not
9 really interested in that, I want to go to what
10 happened in 1995.

11 46169 Why that is, you will see that in the
12 pleading. In pleading there were requests for
13 particulars made because the -- about how the letter of
14 request became public. The Government of Canada was
15 concerned that the letter became public and therefore
16 the libel arose as a result of a leak that had been
17 provoked by Mr. Mulroney through Mr. Schreiber.

18 46170 In the pleading the only fact that's
19 relevant post-1993 is that question. And you will see
20 that that is why they are interested in the
21 relationship or the contacts that were maintained
22 post-1993, but in 1995. Because had they found out
23 that the leak had been provoked by Mr. -- then the
24 lawsuit was effectively over.

25 46171 So it's true that it transcended

1 1993, but that was allowable in respect of really
2 the context of post-1995 for the reasons I have just
3 given you.

4 46172 But let me make a different point,
5 Mr. Commissioner, or an additional point. To say
6 effectively: Look, the government was misled, in my
7 respectful submission, or may have been misled by this
8 incomplete answer ignores three points.

9 46173 First of all, the answer that was
10 given was true.

11 46174 Secondly, the right question never
12 was asked and it could have been asked, because this is
13 an examination of discovery, if they had been
14 interested in it. They weren't really interested in
15 the commercial or any commercial relationship after he
16 left office, they were only concerned about the
17 relationship in respect of the leaking of the document.

18 46175 But another point is that -- or two
19 more points on this and I will conclude my answer --
20 this evidence, Mr. Commissioner, in the context of this
21 lawsuit was not ultimately relevant to the issues. It
22 would not have assisted the Government of Canada one
23 iota in the defence of their libel action to know that
24 there was a commercial transaction that had nothing to
25 do with Airbus, which was what Mr. Mulroney knew.

1 46176 And finally, the Government of Canada
2 found out, at least in 2003, that there was this
3 transaction. Professor Johnston, in his report said
4 before the RCMP issued their letter closing their
5 investigation they had been made aware of the cash
6 payments; and of course there was the Kaplan article
7 on November 10, 2003 which revealed the transaction to
8 the public.

9 46177 Since that time the government
10 has not taken any steps to say: Well, we should undo
11 the settlement.

12 46178 So to say: Well, they were misled,
13 materially misled because you didn't give the complete
14 transaction in the context of that law suit --

15 46179 COMMISSIONER OLIPHANT: I wasn't
16 suggesting that the government was misled, Mr. Pratte,
17 I was just asking you a question on the jurisprudence,
18 whether when a question is asked that is outside --
19 I have a feeling I'm going to see Mr. Yarosky at the
20 podium.

21 46180 When a question is asked that's
22 outside the four corners and counsel allows the
23 witness to answer, is there not an obligation to tell
24 the whole truth?

25 46181 MR. PRATTE: Well, the whole truth

1 was told, Mr. Commissioner.

2 46182 COMMISSIONER OLIPHANT: Okay, that's
3 your position.

4 46183 MR. PRATTE: The question was --

5 46184 COMMISSIONER OLIPHANT: So that the
6 obligation is to tell the whole truth and you say
7 Mr. Mulroney did it.

8 46185 MR. PRATTE: And he did.

9 46186 COMMISSIONER OLIPHANT: Okay.

10 46187 MR. PRATTE: The question was -- the
11 only question on that point was: Did you maintain
12 contact? Answer: Yes, once or twice. And I will try
13 to maintain contact with Mr. --

14 46188 MR. YAROSKY: I'm not going to go to
15 the podium.

16 --- Off record discussion / Discussion hors dossier

17 46189 MR. PRATTE: The question that was
18 asked was not: Did you have a relationship, let alone
19 did you have a commercial relationship? Did you
20 maintain contact? Mr. Mulroney answered perfectly
21 truthfully: Once or twice we had meetings or these
22 conversations.

23 46190 It was: Did you maintain contact?
24 He didn't then ask -- well, but the question is: Did
25 you maintain contact? They didn't ask him: Did you

1 describe -- please describe your relationship.

2 46191 All he had to do, if there should
3 be any doubt about it, was to ask the same question he
4 had asked before: What was the nature of your
5 relationship?

6 46192 But in the context --

7 46193 COMMISSIONER OLIPHANT: So that we
8 are on the same -- just so that we are on the same
9 page, you answered in the affirmative to the question
10 that I asked, if there was an obligation on
11 Mr. Mulroney to tell the whole truth, despite the fact
12 that the question might have been outside the four
13 corners of the pleading, but that in fact his answer
14 was the whole truth.

15 46194 MR. PRATTE: To the question posed.

16 46195 COMMISSIONER OLIPHANT: Yes. Yes,
17 of course.

18 46196 MR. PRATTE: Had he been asked
19 the question --

20 46197 COMMISSIONER OLIPHANT: Okay.

21 46198 MR. PRATTE: -- and it had been
22 allowed: What is the nature of your relationship with
23 Mr. Schreiber after he left office, then he would have
24 had to say and we had a commercial relationship, even
25 though it wouldn't have been ultimately relevant.

1 46199 COMMISSIONER OLIPHANT: Okay.

2 46200 MR. PRATTE: But they didn't ask
3 that question.

4 46201 COMMISSIONER OLIPHANT: All right.

5 46202 MR. YAROSKY: I'm going to move back
6 to my seat.

7 46203 MR. PRATTE: Now, by the by,
8 Mr. Kaplan acknowledged that the right question was not
9 put and criticized the government lawyers for not
10 putting the right question and he said repeatedly in
11 his book and here that technically Mr. Mulroney was
12 correct in the way that he handled the question.

13 46204 But then he went on to say: But I
14 expect more of a former Prime Minister effectively. I
15 expect more of a former Prime Minister. I expect him
16 to volunteer information even if it hasn't been asked.

17 46205 And I say, Mr. Commissioner, in
18 respect of that that first of all Mr. Mulroney's
19 answers were totally proper to confine it to the
20 questions -- the answers to the questions asked as
21 asked and no more broadly and there is nothing
22 unusual in that. Every litigator -- I'm sorry, every
23 party in litigation in Québec and in the rest of the
24 provinces is advised to the same extent regardless of
25 the proceedings.

1 46206 And as to whether a former Prime
2 Minister has a higher obligation, we could debate
3 that theory for a long time, but in the context of
4 this particular proceeding, Mr. Commissioner, it is
5 surreal to ask Mr. Mulroney to volunteer information he
6 was not asked.

7 46207 In other words, to assume a broader
8 obligation, ethical obligation than that which befalls
9 any citizen, when in this context the government of his
10 own country had denied him the presumption of innocence
11 that is afforded all other citizens. It is surreal.

12 46208 The government accused him without an
13 iota of evidence of having committed crimes. They
14 didn't allege them, they said you did. And then he
15 went to them and he said: Well, just a minute, before
16 this becomes public you can ask me any questions, you
17 can look at all my documents. They turned him away.

18 46209 Then they said: Well, would you at
19 least change the letter? I'm not objecting to your
20 investigating my conduct, just say it's an allegation.
21 They said: No, no, we are not doing that either.

22 46210 In the context of that treatment from
23 the Government of Canada, to say that you would have a
24 higher obligation, effectively to turn the other cheek,
25 to do more than an ordinary citizen is called upon in

1 any litigation, even though you have been treated by
2 the other party as less than a regular citizen, is not
3 only old-fashioned, as Mr. Kaplan called it, it's
4 unprecedented. Thank God, hopefully no other Canadian
5 citizen will be put in that situation and it is totally
6 unjustified.

7 46211 So in respect of the transcript, the
8 questions as asked were answered truthfully, the right
9 question, if it was the right question, was chosen not
10 to be asked by competent counsel and, as I say, I think
11 it's understandable why they weren't interested in
12 that, they were interested in something else in '95.

13 46212 And there could not be a higher
14 obligation on Mr. Mulroney, at least in the
15 circumstances -- these extraordinary circumstances of
16 this case.

17 46213 I will deal briefly -- so that I can
18 move to my conclusion and not abuse my time too much --
19 with the other alleged failures to divulge the
20 transaction publicly.

21 46214 I will deal with the Doucet mandate
22 last, but just very briefly, Mr. Commissioner, when we
23 boil it down to its essence, having been seared by the
24 experience of Airbus and the speculation that continued
25 from time to time in the media it is, in my respectful

1 submission, totally understandable that Mr. Mulroney
2 should be very reticent in publicizing this
3 relationship, legitimate commercial private
4 relationship he had with Mr. Schreiber, though it was.

5 46215 He had been accused of doing
6 something corrupt when there was no evidence. To think
7 what could be done by some if they found out of this
8 legitimate transaction, you could just see immediately
9 that it may not have turned out the right way.

10 46216 So Mr. Mulroney, yes, for a time did
11 not want this to become public, but he did not engage
12 in the cover-up that Mr. Schreiber tried to allege,
13 particularly in his affidavit of 2007.

14 46217 In order to make that claim Mr.
15 Schreiber made all sorts of false claims in that
16 affidavit, like the fact that Mr. Mulroney's lawyer
17 had requested a false document a year before or
18 several months before Zürich. That was demonstrated to
19 be wrong.

20 46218 The fact alleging Mr. Mulroney flew
21 to Zürich simply to meet with Mr. Schreiber because he
22 was worried about the lack of documentation; that was
23 demonstrated to be wrong. Mr. Mulroney was there
24 another business.

25 46219 The fact that Mr. Mulroney was very

1 nervous, that was contradicted by Mr. Terrien but by
2 Mr. Schreiber himself, who later said in a letter to
3 Mr. Mulroney I thought when I left Zürich that you were
4 in very good shape. Not very consistent with someone
5 who is very nervous.

6 46220 Mr. Schreiber had it wrong when he
7 said that his lawyer had been told to write a false
8 document. Mr. Hladun explained to you that he had
9 never understood Mr. Mulroney's calls to be anything
10 but in respect of Airbus. He never asked him to deny
11 there was a commercial relationship.

12 46221 So this cover-up business involving
13 Mr. Schreiber or his allegations in my respectful
14 submission don't hold water at all.

15 46222 Now what about the Doucet mandate?

16 46223 In some of the particulars it's true
17 that the mandate doesn't totally accurately reflect
18 the relationship, but it is also clear that
19 Mr. Mulroney never asked for this document to be
20 prepared, although he was appreciative of Mr. Doucet's
21 efforts in this regard.

22 46224 And the fact that he had a relative
23 lack of interest is demonstrated by the fact he never
24 had a copy of the document, either the blank one or the
25 one with the writing on it, until the Ethics Committee

1 proceedings.

2 46225 But in essence the document did
3 reflect the fact that it was for an international
4 mandate and to say that he was involved in any -- in
5 any efforts to have to concoct a false document when
6 the document reflected essentially what the mandate was
7 in my respectful submission is without foundation.

8 --- Pause

9 46226 MR. PRATTE: So to conclude on the
10 facts, Mr. Commissioner, and then I will move
11 briefly -- if you can hold off breaking for another
12 10 minutes or so -- with my conclusions.

13 46227 COMMISSIONER OLIPHANT: Take the
14 time you need and if you need a break just let me know.
15 Okay?

16 46228 MR. PRATTE: I think you are more
17 likely -- you others are more likely to need the break
18 than me. I'm just fine. Thank you, sir.

19 46229 On the facts, Mr. Commissioner, in my
20 respectful submission our brief confirms what I
21 asserted at the outset, after all the smoke has
22 cleared, after you look at all the evidence in
23 accordance with the rules of these proceedings, there
24 is no evidence of substantial wrongdoing.

25 46230 There is an error of judgement,

1 though, in creating -- or the appearance because of the
2 inadequate documentation and Mr. Mulroney has
3 acknowledged that and I now want, in my conclusions, to
4 turn to my submission as to what you should do with
5 that error of judgement.

6 46231 I opened my submissions by telling --
7 not so much telling you, but through you stressing the
8 importance of what I might call procedural fairness,
9 how we come to make a judgement. I want to address in
10 the rest of the time allotted to me what I might call
11 substantive fairness because casual opinions also
12 differ from your report or your judgement in a
13 substantive way in the sense that you have to put
14 things in an overall context.

15 46232 The judgement you render has to be
16 proportionate to all the circumstances. It's a key
17 belief or foundation of our legal system that
18 everything we say demands content. I mean libel law
19 you don't interpret the words outside the context; we
20 interpret our general laws always in the general
21 context; we interpret the words found in statutes in
22 the general context of the law; findings of negligence
23 are made in the context of all the circumstances, and
24 so on.

25 46233 And context is particularly important

1 when reputation is at stake.

2 46234 I know, Mr. Commissioner, that you
3 can't find civil or criminal liability, but your
4 findings themselves, because of the very raison d'être
5 of a public inquiry, are its own sanction. They bear
6 directly on a person's reputation.

7 46235 It is said your judgement is only a
8 report, but in real life it's a judgement which will,
9 to a large extent, define a person's reputation which,
10 as the Supreme Court of Canada said, is the most
11 precious asset anyone has. With your words you will
12 paint a picture of Mr. Mulroney that Canadians will
13 have in their minds. And that's no exaggeration. This
14 is why it's so important that the picture not be
15 distorted by either an unfair process -- which
16 thankfully we certainly didn't have here -- but also
17 not taking into account all the relevant elements that
18 should be on the picture.

19 46236 The impact of a Commission's report
20 can be huge and that's real. I know what public
21 inquiry reports can do in real life to decent citizens,
22 even great servants of the state when they present an
23 unfair and complete picture. These people are
24 stigmatized, they have difficulty finding or keeping
25 jobs, they are insulted in hospitals and supermarkets.

1 You have to live this yourself or see people you love
2 live through it to know what it means in reality.

3 46237 And we must remember what reputation
4 means. It's reputation that gets us jobs, holds our
5 social circle together, keeps our family together.
6 Reputation is what allows us to look at ourselves in
7 the mirror.

8 46238 And I'm not talking about
9 popularity, I'm talking about reputations.
10 Reputation is the invaluable currency upon which
11 all human interaction is based. Nothing good is
12 possible without a good reputation.

13 46239 Now, I know this is a focused
14 inquiry, you have been asked to look at a specific
15 aspect, Mr. Commissioner, but while you come to your
16 conclusion in respect of those I say that they require
17 perspective, context and balance. We don't have
18 justice otherwise without those essential qualities.

19 46240 And the Supreme Court of Canada, when
20 it was underscoring in the Krever Inquiry case, among
21 others, the importance of fairness in Commissions of
22 Inquiry because of the possible injury to reputation
23 calls upon you to ensure that the full picture is
24 painted of the man so that should give the right
25 proportions, perspective and balance of all the

1 relevance elements.

2 46241 You can't of course simply paint over
3 the error to which Mr. Mulroney has admitted, but nor
4 can you simply leave the rest of the canvas blank
5 except for the error.

6 46242 So here are some key elements that I
7 say you should consider putting on that broad canvas.

8 46243 First, the error of judgement does
9 not involve any illegality or wrongdoing.

10 46244 Second, nothing that was led before
11 you suggests there was anything -- anything untoward,
12 improper or wrong done while he was Prime Minister.

13 46245 Third, without in any way denying
14 that this was a serious error of judgement, we also
15 should acknowledge that all of us, each and every one
16 of us I would venture to say in this room, has
17 committed an error from time to time, regardless of
18 what standard of conduct governed us, that we wouldn't
19 be proud of. So we should temper our condemnation
20 and remember that none of us is immune to those lapses
21 of judgement, for if they became widely known our
22 reputations, too, would suffer to a degree.

23 46246 Fourth, we should put that error
24 in the context of what Commissions of Inquiry usually
25 find. Usually what we find is that public funds have

1 been wasted and sometimes even stolen or that lives
2 have been put in danger by improper negligence or
3 gross misconduct.

4 46247 Well, we have none of that here.

5 Again, I'm not saying that post-employment conduct is
6 not important, but let's put it in the overall context
7 of what is typical in a Commission of Inquiry and it
8 doesn't come close to the scale of typical misconduct.

9 46248 Fifth, virtually all of us, we live
10 our lives with these errors and when we acknowledge
11 them, if we know them, we are privileged to have
12 to do it only toward our family members, maybe close
13 friends or maybe spiritual advisers, but not
14 Mr. Mulroney. He had the misfortune, through the
15 extraordinary circumstances that we know as a result of
16 Mr. Schreiber's use of this affidavit and the
17 proceedings for his own purposes, to have to explain
18 himself on the national stage. It's not easy to do.

19 --- Pause

20 46249 MR. PRATTE: Mr. Mulroney showed
21 courage in the way he handled the situation I submit.

22 46250 First, when Mr. Schreiber
23 threatened him with the blackmail letter, the late May
24 2007, with all these lies, unless Mr. Mulroney
25 intervened on his behalf to assist him in fighting his

1 extradition with the Prime Minister, Mr. Mulroney
2 turned him down flat. Didn't do anything. That, he
3 told you, would have been not only inappropriate, but
4 illegal. And he did that knowing that there was a
5 chance that what did ensue -- could ensue, of course he
6 knew, and what did come about.

7 46251 Well, first he was dragged through, I
8 have no qualms in saying, an absolute shameless process
9 before the Ethics Committee. What he told them there
10 in four hours of testimony is essentially the same as
11 he told you.

12 46252 And then of course he had to come
13 here. Now, fortunately this process was handled with,
14 as I said before, exquisite fairness, but it's still
15 not easy to sit for six days, long days of testimony
16 and through that he has testified candidly, albeit with
17 the occasional prolix answer. Well, I don't think you
18 would have believed you had the real Brian Mulroney in
19 front of you had there not been a couple of those, but
20 overall Mr. Commissioner he kept his composure. Thank
21 God he didn't lose his sense of humour and he didn't
22 lose his temper. He showed remarkable class.

23 46253 And let's be realistic here, how
24 comfortable would anyone be 70 years old, 16 years
25 after the fact, if you had to explain an error of

1 judgement on national television in the context of a
2 probing cross-examination -- and I say this with
3 equal admiration and affection -- by a probing
4 cross-examination by the indefatigable Mr. Wolson.

5 46254 If anyone thinks it's easy to
6 acknowledge a mistake, I say that for most of us it's
7 one of the most difficult things we have to do. Think
8 of how much more difficult it is to do it in a
9 cross-examination that is going to be replayed on
10 television, replayed and replayed, where every parcel
11 of your conduct, every raising of the eyebrow will be
12 examined and assessed on the next day.

13 46255 So one of the things,
14 Mr. Commissioner, you have to consider, is that through
15 it all Mr. Mulroney, having acknowledged his mistake,
16 faced it with class and equanimity.

17 46256 And for this error as well,
18 Mr. Commissioner, another fact you should consider is
19 that Mr. Mulroney has paid dearly, not only in what he
20 has had to go through, but he was immediately, based on
21 this false affidavit, excommunicated, declared persona
22 non grata by the Prime Minister who told his
23 government, Cabinet colleagues, members of the Party,
24 the Party Mr. Mulroney had worked for for over
25 50 years, that he had led for 10 years, that they

1 couldn't communicate with him.

2 46257 What message do you think that send
3 to the rest of Canadians about the credibility of
4 Mr. Schreiber's now demonstrably false allegations and
5 to the rest of the world? Again, so much for the
6 presumption of innocence.

7 46258 Now, the last issue of context I want
8 to bring to your attention, Mr. Commissioner, relates
9 to the media.

10 46259 I know, Mr. Commissioner, that
11 you can't dictate what the media will write about
12 these proceedings or your ultimate report, but there
13 are a couple of points that I would like to make that
14 are relevant to the context upon which your report
15 will ultimately fall and I would like to draw those
16 your attention.

17 46260 I, like Mr. Wolson, think the media
18 generally does -- and God knows we wouldn't have a
19 democracy without them -- and did a very good job in
20 this case, but there are instances that make me
21 register a note of caution. And I will come to why
22 that is so on this point in a moment.

23 46261 A couple of times, as you will
24 recall, Mr. Commissioner, Commission counsel and you,
25 in respect of the process, had to explain to make sure

1 there was no confusion as some had arisen in the media
2 that for example you weren't treating particular
3 witnesses preferentially by having their evidence taken
4 or filed by way of affidavit, or that when I examined
5 Mr. Mulroney first, ahead of Mr. Wolson, because there
6 had been some speculation that some special deal -- you
7 had to explain that just to clear the air.

8 46262 But also in substance there were
9 a couple of instances where statements were made
10 about the evidence which in my respectful submission
11 just make one concerned if things are not dealt
12 with appropriately.

13 46263 For example, when the Navigant
14 evidence was filed Mr. Wolson made crystal clear that
15 the evidence was not being adduced to show that
16 Mr. Mulroney was receiving Airbus money or because of
17 anything he had done for Airbus.

18 46264 He made that very clear, yet in one
19 newspaper the next day, a big headline, "Accountant
20 suggests Mulroney linked to Airbus money." A literal
21 truth, but a literal truth taken out of context is a
22 little less or a little more than a lie.

23 46265 The context of course is that the
24 money may have come from ultimately Airbus, but it had
25 nothing -- Mr. Mulroney didn't know what -- and there

1 was no allegation that he was getting it because he had
2 done anything in respect of Airbus.

3 46266 COMMISSIONER OLIPHANT: No. Part of
4 the problem there of course is that the journalist who
5 writes the story is not responsible for the headline.
6 That's done, as I understand it, in most cases by an
7 editor who reads the story and draws a conclusion.

8 46267 I'm not here to defend the media --

9 46268 MR. PRATTE: No, no.

10 46269 COMMISSIONER OLIPHANT: -- but I have
11 done quite a bit of work with media and --

12 46270 MR. PRATTE: I know you have,
13 Mr. Commissioner.

14 46271 COMMISSIONER OLIPHANT: -- and I
15 think that -- I think that the media would agree with
16 what I have just said. I have listened to journalists
17 complain about their editors who write the headlines
18 many times, believe me.

19 46272 MR. PRATTE: Similarly, in respect of
20 the RCMP Agreed Statement of Facts last week,
21 Commission counsel, I think it was Mr. Roitenberg, said
22 we are not leading this to contest Mr. Mulroney's
23 version that he was driven by two RCMP officers.
24 Headline, "RCMP Finds no Records to Back Mulroney
25 Testimony".

1 46273 And then in a weekly magazine a
2 couple of weeks ago it was suggested that there was not
3 a single piece of documentary evidence to back up
4 Mr. Mulroney story.

5 46274 Well, what about Mr. Schreiber's
6 letter to Mr. Mulroney in 2006; Mr. Schreiber's 2004
7 Eurocopter testimony; Mr. Greenspan's October '99
8 letter to the CBC; the export forecast; the handwritten
9 mandate, the mandate with the handwriting on it;
10 Mr. Schreiber's interview notes -- Mr. Kaplan's
11 interview notes.

12 46275 And then it was also suggested at the
13 end of this piece that, well, actually we don't really
14 know what this money was for and we will have to
15 continue the investigation, hinting effectively that
16 there might well be corruption here, we haven't found
17 it yet.

18 46276 Well, Mr. Commissioner with the
19 resources this Commission -- resources and competence
20 that this Commission had throughout there can be no
21 doubt that that suspicion is not warranted.

22 46277 So I only give you these examples,
23 Mr. Commissioner, to underscore this point: You, as a
24 very experienced a judge, you know the importance of
25 every word that you write in any judgements you write

1 and that's even more so, I would suggest to you, in a
2 Commission of Inquiry because of the attention that we
3 all have to it.

4 46278 And again, I know you can't dictate
5 how the editor or the journalist -- and even trying to
6 do their best, I'm simply trying to bring your
7 attention the fact that every word has to be weighed in
8 this peculiar context to ensure that at least all has
9 been done not to allow distortions to occur.

10 46279 It would be nothing short of tragic
11 and grossly unfair should Mr. Mulroney's error,
12 committed while he was in the private sector, after he
13 left office, involving no public funds, be allowed to
14 overwhelm and overshadow his signal accomplishments as
15 a former Prime Minister of Canada, whether that be free
16 trade or the environment and the acid rain treaty, his
17 leadership in the Mandela movement, to name just a few.

18 46280 Of course you will make the findings
19 you have to make, Mr. Commissioner, I know that, the
20 ones you deem appropriate, but I urge you to bring
21 balance and perspective, for it is no less an injustice
22 to judge any man too harshly than to find the innocent
23 guilty, no less unfair to treat even a serious error of
24 judgement as if it were a crime, and it offends no less
25 against fairness to allow that error to overshadow all

1 the public good done as it would be to ignore it
2 altogether.

3 46281 We could debate for a long time
4 whether or not we are entitled as citizens to ask so
5 much more of our elected representatives than we do
6 ourselves, and certainly whether we are entitled to ask
7 so much more of our former elected officials, but I say
8 we are not entitled to demand that their private lives,
9 after they have left office, attain such a level of
10 perfection that an error of judgement involving no
11 substantial wrongdoing will not be forgiven for what
12 it is. It's not a crime but a lapse of judgement whose
13 shadow should not eclipse the career of outstanding
14 public service.

15 46282 So let your report, Mr. Commissioner,
16 be the final chapter that finally puts to rest some of
17 these unfounded rumours that have unjustly and cruelly
18 plagued this man and his family. Let it be the one
19 source that historians and fair observers will turn to
20 as being the most balanced, the most fair and the most
21 authoritative.

22 46283 Again, you will make the findings you
23 have to make, but I urge you to put them in such a way
24 that their impact is proportionate to the error that
25 was acknowledged, and thus the public interest will

1 have been served by this, the Oliphant Inquiry, and
2 thus Mr. Mulroney can at last look to his future
3 knowing that he will no longer be haunted by the
4 spectre's of these insidious myths.

5 46284 I want to say thank you first of
6 all for your indulgence and the indulgence of all in
7 the room.

8 46285 As one friendly member of the media
9 will undoubtedly remind me, brevity is the soul of wit
10 so I can draw the conclusion that the converse implies
11 applies, but I would like to join my colleagues to
12 thank you, Mr. Commissioner. It has been a true
13 honour -- and I say this as I would were I under
14 oath -- to appear before you in the way you have run
15 this process.

16 46286 And I would like to congratulate my
17 colleagues, all of my colleagues, on every side,
18 Mr. Auger, Mr. Vickery and his team, Mr. Wolson, and
19 I'm sure I will be forgiven for in particular
20 underscoring the work that Mr. Wolson and his
21 colleagues have done, but perhaps even more important
22 the attitude that they have brought to this process.
23 People shouldn't assume that it is always like this.

24 46287 We have an adversarial system, but
25 the best will not -- and I don't include myself in that

1 by any stretch of the imagination, but the best will
2 not allow that system to skew the way they approach
3 their work and Mr. Wilson's team has abided by the
4 highest standards of ethics and competence.

5 46288 And one last word, families also
6 should be thanked of those who have participated in
7 this process, because although we don't realize it they
8 contribute a lot.

9 46289 Thank you, sir.

10 46290 COMMISSIONER OLIPHANT: Thank you
11 very much, Mr. Pratte.

12 46291 Well, this draws to a close Part 1 of
13 the inquiry and I can't help but note that we have
14 completed our work, except for the writing of the
15 report, exactly 2 days short of a year from the
16 granting of the Order in Council that gave this
17 Commission its mandate and I would like to make a few
18 remarks before we depart.

19 46292 The reason that I refer to the fact
20 that we completed our work here in such a timely way is
21 that at the outset almost no one, including the many
22 judges and retired judges to whom I spoke, judges and
23 retired judges who have been Commissioners of both
24 federal and provincial inquiries, thought it was
25 possible that we would complete our work when we said

1 we would, and we have done that.

2 46293 Part 1 consumed just under 30 days of
3 hearings, plus some submissions on procedural issues
4 that we had to deal with. We have heard the evidence
5 of some 30 witnesses. The evidence taken during the
6 course of Part 1 has been transcribed and it might be
7 of interest to know that those transcripts consist of
8 over 4,800 pages of evidence.

9 46294 While the record discloses that only
10 67 exhibits were filed, those exhibits comprise
11 thousands of pages of documents. I will be reading and
12 reviewing both the transcripts and the exhibits in the
13 course of writing the report that I must submit to
14 government by December the 31st of this year.

15 46295 Now, during the course of this
16 inquiry questions have been raised in the media as to
17 whether the inquiry was worth it. It is for others to
18 decide the answer to that question and perhaps they
19 should wait until the report is submitted.

20 46296 However, permit me to say this:
21 These proceedings have, in my view, brought to light in
22 a very public manner how the federal government works.
23 I gave an undertaking at the outset of this inquiry to
24 preside over Part 1 in a manner that was impartial and
25 fair to all concerned. I hope that I have achieved

1 that goal.

2 46297 I also said at the outset of Part 1
3 that to the extent possible I intended the hearings of
4 this inquiry to be open and public. Every witness
5 called to testify during the course of Part 1 did so in
6 public with the media present.

7 46298 It was important to me that the
8 public be given as much access as possible to the
9 work of the Commission. That's why we created a
10 website which gave the public access to the Terms of
11 Reference, the Rules of Procedure, the witness list,
12 all of my Rulings, the transcripts of evidence in both
13 official languages, and all of the exhibits that have
14 been filed with the Commission, as well as notices and
15 media releases.

16 46299 While the website permits the public
17 to have access to the work of the Commission, it is of
18 equal importance, I think, that the public be able to
19 know what is going on in the hearing room. That's why
20 at the outset back in October of 2008 when I made my
21 opening remarks when, applications for standing for
22 this part were made, that's why I welcomed the presence
23 of the media. The media represents the eyes and the
24 ears of the public and it lets the light shine on the
25 proceedings. As another judge once said about the work

1 of the media at inquiries, and I quote: "Sunlight is a
2 good disinfectant".

3 46300 In the case of this inquiry, the
4 media helped, I believe, to focus the attention of the
5 public on the issues. I commend and thank the members
6 of the media for the accurate manner in which they
7 reported the proceedings.

8 46301 I want to commend as well counsel
9 who appeared before me in Part 1.

10 46302 A week ago last Monday I found myself
11 in Victoria speaking to a group of 150 lawyers with the
12 Attorney General's Department in that province. The
13 subject of my presentation was ethics, civility and
14 professionalism and I want to tell you that during the
15 course of that presentation I was proud to speak of the
16 work that was done by counsel at this Commission. I
17 don't want to say I got into any detail on the inquiry,
18 but I spoke about the way in which counsel here have
19 handled themselves in this hearing room and in meetings
20 that have taken place over the past 12 months leading
21 up to the inquiry.

22 46303 It has been a privilege for me
23 to have counsel such as you appear before me. It is
24 due to your professional approach to some very
25 difficult issues that this inquiry has been run as

1 efficiently as it has and I thank each and every one of
2 you for your assistance.

3 46304 It would be remiss of me not to say a
4 word about the administrative personnel of the
5 Commission involved in this inquiry. They, too,
6 contributed to a large degree to the success that we
7 have enjoyed in completing this part of the inquiry
8 on time.

9 46305 I want to say a word as well about
10 our communications consultant, Barry McLoughlin, who
11 did an excellent job for the Commission in getting the
12 message out, assisting the media when they had
13 questions. His work I think contributed greatly to the
14 success of this Commission.

15 46306 I know you won't mind if I say a
16 special word about Commission counsel, led by
17 Mr. Wolson. I won't use any descriptions to describe
18 Mr. Wolson, the media have a whole pile of descriptions
19 that they use and I heard another one today from
20 Mr. Pratte.

21 46307 I knew at the outset before we
22 started to work on this that Mr. Wolson was one of
23 the best lawyers in the country and I think that
24 he has shown that and the rest of the country realizes
25 that now.

1 46308 My Commission counsel have spent
2 hundreds of hours preparing for and conducting Part 1
3 of the inquiry. Mr. Wolson talked this morning about
4 the hours that were put in by counsel. I want to
5 tell you a story about one of my lawyers who had to
6 go back to Winnipeg and return to Ottawa on a late
7 flight, got here at 11 o'clock, went to a restaurant
8 that was open late, had a sandwich, went to the office
9 until four o'clock in the morning, went to his hotel
10 room, had a couple of hours sleep and got up and came
11 to work here at the inquiry. That's the kind of
12 commitment that has been shown by Commission counsel,
13 of whom I am so proud.

14 46309 All that remains now so far as Part 1
15 is concerned is for me to write my report.

16 46310 At the outset, when I made my opening
17 remarks, I said that this isn't a trial, I cannot make
18 findings of criminal or civil liability, but I
19 recognize the damage that can be done to reputations
20 and that has been reiterated today by Mr. Pratte and
21 I can assure all present that I am very sensitive to
22 that and will take it into account in the writing of
23 my report.

24 46311 As you can imagine, writing the
25 report will be a mammoth task. I have to consider and

1 weigh the evidence of each witness. I am responsible
2 for making decisions as to the credibility of
3 witnesses. I have to put all of the evidence, whether
4 oral through the mouths of witnesses, or documentary
5 through the exhibits filed, under the microscope of
6 judicial scrutiny, and I conclude by assuring you that
7 this will be done.

8 46312 We will adjourn now.

9 46313 Thank you very much, counsel, for
10 your assistance. Good afternoon.

11 --- Whereupon the hearing adjourned at 3:30 p.m. /

12 L'audience est ajournée à 15 h 30

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

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

Lynda Johansson Jean Desaulniers

Monique Mahoney Sue Villeneuve