

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

Monday, May 4, 2009

Tenue à :

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

le lundi 4 mai 2009

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TABLE OF CONTENTS / TABLE DES MATIÈRES

	PAGE
Hearing commences at 9:30 a.m. / L'audience débute à 9 h 30	2677
Sworn: Luc Lavoie Assermenté: Luc Lavoie	2677
Examination by Mr. Battista / interrogatoire par Me Battista	2678
Recess taken at 10:50 a.m. / Suspension à 10 h 50 Hearing resumes at 11:15 a.m. / Reprise à 11 h 15	2751
Examination by Mr. Grondin / interrogatoire par Me Grondin Examination by Mr. Battista / interrogatoire par Me Battista	2764 2787
Recess taken at 12:09 p.m. / Suspension à 12 h 09 Hearing resumes at 1:30 p.m. / Reprise à 13 h 30	2801
Affirmed: The Honourable Elmer MacKay Déclararion solennelle: L'honorable Elmer MacKay	2802
Examination by Mr. Roitenberg / interrogatoire par Me Roitenberg	2803
Recess taken at 2:50 p.m. / Suspension à 14 h 50 Hearing resumes at 3:10 p.m. / Reprise à 15 h 10	2860
Examination by Mr. Auger / interrogatoire par Me Auger	2913
Hearing adjourns at 4:20 p.m. / L'audience est ajournée à 16 h 20	2922

EXHIBITS / PIÈCES JUSTIFICATIVES

No.	Description	PAGE
P-35	Cahier de documents au soutien du témoignage de monsieur Lavoie	2678
H	Résumé de l'entrevue de monsieur Lavoie November 2, 1990	2678
P-36	Transcript of a press conference	2764
P-37	Binder entitled "Documents in Support of The Honourable Elmer MacKay's Testimony"	2810

1 Ottawa, Ontario / Ottawa (Ontario)
2 --- Upon resuming on Monday, May 4, 2009 at 9:30 a.m. /
3 L'audience reprend le lundi 4 mai 2009 à 9 h 35
4 27267 COMMISSIONER OLIPHANT: Good morning,
5 counsel. Be seated, please.
6 27268 Mr. Lavoie...
7 27269 MR. LAVOIE: Good morning.
8 27270 MR. BATTISTA: Mr. Commissioner, Mr.
9 Lavoie wishes to be sworn in on the Bible.
10 27271 COMMISSIONER OLIPHANT: Yes, the
11 Bible, please.
12 SWORN: LUC LAVOIE
13 ASSERMENTÉ: LUC LAVOIE
14 27272 COMMISSIONER OLIPHANT: Thank you.
15 27273 MR. GRONDIN: So, Mr. Commissioner, I
16 would like to first submit the binder of documents in
17 support of Mr. Lavoie's testimony as an exhibit.
18 27274 I believe that we are up to exhibit
19 P-35?
20 27275 COMMISSIONER OLIPHANT: Thirty-five,
21 is that right...? Yes?
22 27276 Mr. Vickery, no problem?
23 27277 Mr. VICKERY: (Off microphone).
24 27278 COMMISSIONER OLIPHANT: Mr. Houston?
25 27279 MR. HOUSTON: (Off microphone).

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1 27280 COMMISSIONER OLIPHANT: Mr. Auger?
2 27281 MR. AUGER: (Off microphone).
3 27282 COMMISSIONER OLIPHANT: Yes.
4 EXHIBIT NO. P-35: Binder of
5 documents in support of Mr.
6 Lavoie's testimony.
7 27283 MR. BATTISTA: And I would also like
8 to submit, as an exhibit for identification purposes,
9 the summary of the interview of Mr. Lavoie under
10 number "H".
11 27284 COMMISSIONER OLIPHANT: Again? No
12 problem?
13 27285 Exhibit "H"...
14 EXHIBIT NO. H: Summary of Mr.
15 Lavoie's interview.
16 27286 MR. BATTISTA: That's fine.
17 EXAMINATION: LUC LAVOIE BY MR. BATTISTA
18 INTERROGATOIRE: LUC LAVOIE PAR Me BATTISTA
19 27287 MR. BATTISTA: So, good morning, Mr.
20 Lavoie.
21 27288 MR. LAVOIE: Good morning.
22 27289 MR. BATTISTA: So, now, to start I
23 will begin with a little introduction of your C.V.
24 27290 So, you had a career as a journalist
25 from 1976 to 1986, is that right?

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1 27291 MR. LAVOIE: Yes.

2 27292 MR. BATTISTA: You were a
3 correspondent with the Canadian Press and the TVA
4 network?

5 27293 MR. LAVOIE: Yes.

6 27294 MR. BATTISTA: You also collaborated
7 with other news media, including L'actualité, CTV,
8 Global, CNN, Le Soir de Bruxelles, as well?

9 27295 MR. LAVOIE: Yes.

10 27296 MR. BATTISTA: You were also elected
11 president of the Canadian Parliamentary Press Gallery,
12 is that correct...?

13 27297 MR. LAVOIE: Yes.

14 27298 MR. BATTISTA: ...during those years?

15 27299 MR. LAVOIE: Twice, yes.

16 27300 MR. BATTISTA: After that, you worked
17 for Minister Marcel Masse?

18 27301 MR. LAVOIE: Yes.

19 27302 MR. BATTISTA: Is it Masse or Massé?
20 Pardon me.

21 27303 MR. LAVOIE: Masse.

22 27304 MR. BATTISTA: Masse.
23 Chief of Staff, while he was Minister
24 of Energy, Mines and Resources, is that right?

25 27306 MR. LAVOIE: That's correct.

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1 27307 MR. BATTISTA: And you were chief of
2 staff of the Secretary of State when he held that
3 position as well?

4 27308 MR. LAVOIE: Excuse me?

5 27309 MR. BATTISTA: ...staff. Chief of
6 staff of the Secretary of State, when he held that
7 position?

8 27310 MR. LAVOIE: Yes. On an acting
9 basis, yes.

10 27311 MR. BATTISTA: You also worked for
11 the Prime Minister's Office, when Mr. Mulroney was
12 Prime Minister?

13 27312 MR. LAVOIE: Yes.

14 27313 MR. BATTISTA: You joined the Prime
15 Minister's Office in January 1988 and you remained
16 there until 1991?

17 27314 MR. LAVOIE: Until July '91, as a
18 matter of fact.

19 27315 MR. BATTISTA: July '91, thank you.

20 27316 And you held the position of Deputy
21 Chief of Staff of Canada's Prime Minister?

22 27317 MR. LAVOIE: Exactly, yes.

23 27318 MR. BATTISTA: After leaving the
24 Prime Minister's Office, you held the position of
25 Canada's Commissioner General at the Seville World

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1 Exposition in Spain?

2 27319 MR. LAVOIE: Yes.

3 27320 MR. BATTISTA: After that, you

4 entered the private sector with NATIONAL, a public

5 relations firm, where you were executive vice-president

6 from 1991 to 2000 in Ottawa, and then in Montreal?

7 27321 MR. LAVOIE: That's correct.

8 27322 MR. BATTISTA: You're back in the

9 journalist's life these days?

10 27323 MR. LAVOIE: "In a manner of speaking

11 "(laughter).

12 27324 MR. BATTISTA: I want to ask you a

13 few questions regarding the years that you spent in the

14 Prime Minister's Office.

15 27325 Can you tell us about your years and

16 your duties and tasks when you were there between 1988

17 and 1991?

18 27326 MR. LAVOIE: Well, at the beginning,

19 when I started with the Prime Minister's Office in

20 January '88, I had the title of "senior advisor"

21 communications. It was a job that was not clearly

22 defined, but it consisted of supporting the Prime

23 Minister's communication activities.

24 27327 But very soon thereafter, the Prime

25 Minister called the Canadian ambassador, Mr. Bouchard,

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1 back from Paris to appoint him Secretary of State. And
2 he delegated me to Mr. Bouchard to become his chief of
3 staff on an acting basis, a position that I held, I
4 would say, from April -- in fact, I remember that it
5 was the Easter weekend, it must have been April -- '88
6 to September 1 '88.

7 27328 So, I was holding down both
8 positions. I was still with Mr. Mulroney's office, I
9 still had an office, and I was also the chief of staff
10 of the Secretary of State, Mr. Bouchard.

11 27329 Afterwards, I returned to the Prime
12 Minister's Office, still in the same position.

13 27330 And the election campaign was
14 started, October 1 '88, the election that took place
15 November 21, '88 and it was in January '89 that I was
16 first appointed tour and special events director for
17 the Prime Minister. And I would say that a year later,
18 around January '90, I was appointed deputy chief of
19 staff, in charge of operations.

20 27331 Operations, that obviously involves
21 travel, tours, major international trips, the Prime
22 Minister's Office's correspondence unit, translation
23 bureaus, liaison with security, transport and logistics
24 departments. And as well, in a way, a position of...
25 it was a rather senior position after all, in the Prime

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1 Minister's entourage.

2 27332 So I was involved in the operations
3 committee of the Prime Minister's Office and involved
4 in various matters on an ad hoc basis, when I was asked
5 to do so. There you go!

6 27333 MR. BATTISTA: When you say that you
7 were involved in various matters on an ad hoc basis,
8 what do you mean by that?

9 27334 MR. LAVOIE: When, on occasion, a
10 matter was deemed to require involvement of the Prime
11 Minister's Office and when I was, in the opinion of
12 those who entrusted me with the assignment, the right
13 person to do the work, I was the one who would receive
14 the assignment.

15 27335 Was it sometimes because they wanted
16 a particular issue to make faster progress? Was it
17 because they wanted to convince those responsible for
18 caucus organization that they wished to... I don't
19 know, that ... well, here is one example.

20 27336 They wanted a caucus meeting in the
21 summer and thought that it should be in one region
22 instead of another. It could have been any number of
23 things. Day-to-day life of a government is made up of
24 many, many, many events and actions.

25 27337 MR. BATTISTA: You used the

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1 expression "trouble fixer" or "troubleshooter," when we
2 met...

3 27338 MR. LAVOIE: Yes.

4 27339 MR. BATTISTA: ...what did you mean
5 by that?

6 27340 MR. LAVOIE: It means that when there
7 were problems that had to be solved, I was sometimes
8 called upon.

9 27341 MR. BATTISTA: OK. The Prime
10 Minister himself?

11 27342 MR. LAVOIE: The Prime Minister
12 himself or the chief of staff, who was my superior.

13 27343 MR. BATTISTA: OK.

14 27344 Were you involved in the Bear Head
15 file when you were in the Prime Minister's Office?

16 27345 MR. LAVOIE: No, not at all.

17 27346 MR. BATTISTA: Had you heard of it?

18 27347 MR. LAVOIE: Frankly, very, very,
19 very little. I would say that I heard about it in two
20 ways. First of all, because in a Prime Minister's
21 Office operations committee meeting that took place in
22 the morning, it was brought up that there was... that
23 there would be an event where there would be a signing.
24 And me, I didn't pay much attention to that, honestly.

25 27348 And I remember reading about it in

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1 the newspapers, but my... my... My knowledge of that
2 was extremely limited.

3 27349 MR. BATTISTA: OK.

4 27350 Did you know Mr. Schreiber when you
5 were with the Prime Minister's Office?

6 27351 MR. LAVOIE: No.

7 27352 MR. BATTISTA: Did you know Mr.
8 Doucet when you were with the Prime Minister's Office?

9 27353 MR. LAVOIE: Yes.

10 27354 MR. BATTISTA: What can you tell us
11 about him?

12 27355 MR. LAVOIE: Well, I met... I
13 believe that I met Mr. Doucet when I was still a
14 journalist and when he came to Parliament Hill as chief
15 of staff of the new leader of the opposition, Mr.
16 Mulroney.

17 27356 I barely knew him; I knew him
18 socially. I knew him because I would see him, because
19 we passed through the same corridors. So I knew him in
20 those circumstances.

21 27357 Then I met him (when I was still a
22 journalist) when he was with the Prime Minister's
23 Office, but again, we didn't associate with one other.

24 27358 And then when I was with the Prime
25 Minister's Office myself, he was already getting

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1 involved in... was preparing to leave to go work in the
2 organization of the three summits. There were three
3 summits taking place in Canada: Commonwealth,
4 Francophonie and G7, in a period of, if I remember
5 correctly, of about twelve months or perhaps less.

6 27359 So, I never really worked with him in
7 the Prime Minister's Office, no.

8 27360 MR. BATTISTA: OK. When you were
9 with the Prime Minister's Office, did you regularly
10 need to meet him or did he meet with the Prime Minister
11 regularly, to your knowledge?

12 27361 MR. LAVOIE: I didn't need to meet
13 him, no.

14 27362 Did he meet the Prime Minister...?
15 You know, the schedule... the Prime Minister's agenda
16 was coordinated through my office and the Prime
17 Minister's schedule was something that was rather
18 formal, rather strict, except for one period, which was
19 the period after Question Period, when Parliament was
20 in session, obviously, between 3 p.m. and 4 p.m., 4:15
21 p.m. more or less. That slot in his agenda was
22 generally left open because it was the time where there
23 would be all kinds of meetings, often very brief,
24 sometimes with visitors from his riding, sometimes with
25 people that other MPs would bring, sometimes with

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1 visiting students, sometimes, well...

2 27363 So that whole aspect, that would last
3 around an hour, an hour and fifteen minutes every day,
4 I had no control nor any knowledge and I wasn't
5 involved in how those things went, except if he called
6 on me for specific things.

7 27364 MR. BATTISTA: Who managed that time
8 slot, the hour and fifteen minutes?

9 27365 MR. LAVOIE: I would say that it was
10 the person with the title of "executive assistant."

11 27366 MR. BATTISTA: OK.

12 27367 MR. LAVOIE: There were various
13 people, who... There were various people who held that
14 position.

15 27368 MR. BATTISTA: OK.

16 27369 And during your mandate, do you
17 remember having organized or planned meetings between
18 Mr. Doucet and the Prime Minister? Do you have a
19 recollection of that?

20 27370 MR. LAVOIE: No, not at all.

21 27371 MR. BATTISTA: You were Mr.
22 Mulroney's spokesperson (if I can use that expression)
23 with varying intensity between the years 1995 to 2007,
24 is that correct?

25 27372 MR. LAVOIE: That's correct.

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1 27373 MR. BATTISTA: There were years where
2 it can be said that you devoted a good deal of your
3 energy to this. This was full-time work for you,
4 particularly between the years 1995 and 1997, is that
5 so?

6 27374 MR. LAVOIE: That's correct, yes.

7 27375 MR. BATTISTA: And this was in the
8 context of proceedings that Mr. Mulroney instituted
9 against the Government of Canada regarding the request
10 for assistance from Swiss authorities, is that correct?

11 27376 MR. LAVOIE: Right!

12 27377 Even though when you say "full-time,"
13 it was never full-time, because I was a consultant in a
14 public relations firm, but I must say that there were
15 times when it was full-time and more, yes.

16 27378 MR. BATTISTA: Meaning, during those
17 years, you gave a great number of interviews?

18 27379 MR. LAVOIE: A great number of
19 interviews and a great deal of time. But I had other
20 clients, as well.

21 27380 MR. BATTISTA: Yes... OK.

22 27381 From '95 to '97, when you were
23 working for him, were you paid at that time?

24 27382 MR. LAVOIE: Yes.

25 27383 MR. BATTISTA: On what basis?

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1 27384 MR. LAVOIE: Hourly.

2 27385 MR. BATTISTA: So, you had an hourly
3 rate and were paid based on the hours you worked?

4 27386 MR. LAVOIE: An hourly rate plus the
5 related services provided by the NATIONAL Public
6 Relations office, such as "media monitoring," if I may
7 call it that, a type of logistical support, arranging
8 any news conferences. There were two, I think. And,
9 obviously, my hourly rate.

10 27387 MR. BATTISTA: Can it be said that you
11 had a very close working relationship with Mr. Mulroney
12 during those years?

13 27388 MR. LAVOIE: Yes.

14 27389 MR. BATTISTA: Would it be accurate to
15 say that you were the spokesperson and, in fact, the
16 face of the Mulroney team for the press and for the
17 general public?

18 27390 MR. LAVOIE: I was the spokesperson.
19 And I think that meant the face, yes.

20 27391 MR. BATTISTA: Yes (laughter).

21 27392 Tell us about your relationship with
22 Mr. Mulroney. How long have you known him?

23 27393 MR. LAVOIE: I've known
24 Mr. Mulroney... I arrived on Parliament Hill in Ottawa
25 -- this will give away my age -- in 1976. And at the

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1 time, Mr. Mulroney had just been... He had been a
2 candidate in a leadership race to succeed Robert
3 Stanfield. He had lost and returned to the private
4 sector.

5 27394 And I would say that from '78 to '80,
6 I talked to him a few times, but we weren't friends. I
7 was a reporter and he was interested in the political
8 scene. And I was one of a number of reporters that he
9 talked to occasionally about politics.

10 27395 So that's how I met him. Then, as a
11 reporter, I covered his 1983 leadership campaign during
12 the leadership race. So, the convention itself, where I
13 remember spending the day, as a reporter... It was
14 held at the Civic Centre and we were just below, in
15 front of his box for 12, 13, 14, 15 hours... I don't
16 remember how long.

17 27396 Then there was his 1984 election
18 campaign. I... I covered the campaign on his airplane.
19 I wasn't always with him, but I spent some time on
20 Mr. Turner's plane and some time with Mr. Mulroney.

21 27397 Then he became Prime Minister, and I
22 was a reporter. So he knew me as a reporter, but we
23 didn't hang out together, we weren't... friends.

24 27398 Then I worked in the office of the
25 Minister of Energy, Mines and Resources as the

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1 Minister's chief of staff. But obviously, there was a
2 direct reporting relationship, so to speak, with the
3 Prime Minister's chief of staff who was... at the time,
4 when I started with Mr. Masse, I think it must have
5 been Bernard Roy, and later, Derek Burney.

6 27399 And so I saw Mr. Mulroney a little
7 more often, because I was now involved in political
8 activities and part of a government team...

9 27400 I later came to work in his office,
10 so I worked for him, but our relationship was... well!
11 It was basically a working relationship. Very
12 friendly; he's a very friendly man, very warm. He's
13 very pleasant to work with and to work for.

14 27401 But we weren't friends who saw each
15 other outside of work. Obviously, during my years in
16 the Prime Minister's Office, it was also a very active
17 period internationally. A lot of things were happening,
18 from the fall of the Berlin wall to the release of
19 Nelson Mandela, and the role Canada, and Mr. Mulroney
20 personally, played in it.

21 27402 And it was the period of the Sommet
22 de la Francophonie's inception, creation, development
23 and growth.

24 27403 Those years were extremely busy
25 internationally, and I think they were some of the most

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1 important years of the 20th century.

2 27404 So I travelled a great deal back
3 then, preparing for the visits Mr. Mulroney had to
4 make. I was quite involved in this respect. And of
5 course, when we travelled abroad, on long trips like
6 that, we got to know each other better. We ate together
7 more often, and spent more time together getting ready
8 for his trips.

9 27405 But I repeat what I said at the
10 beginning: our relationship was a working relationship,
11 and very friendly.

12 27406 MR. BATTISTA: OK. But you got to know
13 each other and he... got to know you as well?

14 27407 MR. LAVOIE: Yes, we got to know each
15 other. And I certainly developed a high regard for him
16 (which has not changed).

17 27408 MR. BATTISTA: OK.

18 27409 And you told us earlier that during
19 those years, when you were in the Prime Minister's
20 Office, the Prime Minister could rely on you to deal
21 with the occasional problem or difficult situation that
22 arose, for example, within the office. When the term
23 "trouble fixer" was used earlier...

24 27410 MR. LAVOIE: I was totally loyal to
25 the Prime Minister. He was my boss and yes, he could

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1 count on me; that's for sure.

2 27411 MR. BATTISTA: OK.

3 27412 And the Prime Minister? He understood
4 that as well?

5 27413 MR. LAVOIE: I guess so. You should
6 ask him.

7 27414 MR. BATTISTA: Yes. But what do you
8 think?

9 27415 MR. LAVOIE: If you ask me, the answer
10 is yes.

11 27416 MR. BATTISTA: OK.

12 27417 And so, you were paid for your
13 services between 1995 and 1997. You continued to act as
14 Mr. Mulroney's spokesperson from 1997 until around 2000
15 -- until 2007. Correct?

16 27418 MR. LAVOIE: Until... until
17 December 2007, yes.

18 27419 MR. BATTISTA: OK.

19 27420 And during those years, from 1997 to
20 2007, were you paid for your services?

21 27421 MR. LAVOIE: No.

22 27422 MR. BATTISTA: Between 1997 and
23 December 2000, were you still at the NATIONAL Public
24 Relations office?

25 27423 MR. LAVOIE: Yes.

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1 27424 MR. BATTISTA: You were still one of
2 the directors of this company --

3 27425 MR. LAVOIE: I was executive
4 vice-president, yes... of the NATIONAL Public Relations
5 office.

6 27426 MR. BATTISTA: So, were you still
7 working specifically in public relations at the time?

8 27427 MR. LAVOIE: Yes.

9 27428 MR. BATTISTA: Nevertheless, you
10 worked for Mr. Mulronev during those years without pay?

11 27429 MR. LAVOIE: Yes.

12 27430 MR. BATTISTA: Can it be said that you
13 worked for Mr. Mulronev without pay for reasons of
14 loyalty?

15 27431 MR. LAVOIE: That was the only and
16 real reason. Friendship, loyalty, affection, respect
17 and any other synonyms.

18 27432 MR. BATTISTA: OK. Now I'm going to
19 address some documents that were submitted to you.

20 27433 I draw your attention to Tab 1.

21 27434 So, this is an article by Mr. Mathias
22 that appeared in the *National Post* on August 20, 1999.
23 Do you have it in front of you?

24 27435 MR. LAVOIE: Yes.

25 27436 MR. BATTISTA: So, I draw your

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1 attention, after the "full text 830 words"...

2 27437 MR. LAVOIE: Yes.

3 27438 MR. BATTISTA: First paragraph:

4 "Brian Mulroney, the former

5 Prime Minister, has stepped up

6 efforts to persuade Karlheinz

7 Schreiber, the man at the centre

8 of the Airbus affair, to release

9 his confidential Swiss bank

10 accounts to the Canadian

11 Government, so the matter can

12 finally be put to rest."

13 27439 Third paragraph:

14 "'Nothing would make Mr.

15 Mulroney happier than to have

16 these documents opened up, so

17 that his innocence would be

18 clear forever', Mr. Luc Lavoie,

19 Mr. Mulroney's spokesman, said

20 yesterday."

21 27440 And lastly, on the third page, last

22 paragraph:

23 "Mr. Lavoie confirmed that

24 Mr. Mulroney has asked

25 Mr. Schreiber to release the

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1 bank accounts, but denies
2 Mr. Mulroney is applying any
3 pressure. He does not want to
4 infringe on anybody's right to
5 go to court seeking justice."

6 27441 That was Mr. Mulroney's position at
7 the time. Did he want Mr. Schreiber to release his
8 bank accounts in relation to the allegations concerning
9 the request to the Swiss authorities?

10 27442 MR. LAVOIE: Yes.

11 27443 MR. BATTISTA: Yes?

12 27442 MR. LAVOIE: Yes.

13 27445 MR. BATTISTA: And that was fine...?

14 Do your remarks really reflect that perspective?

15 27446 MR. LAVOIE: Absolutely, yes.

16 Absolutely.

17 27447 MR. BATTISTA: You had some telephone
18 conversations with Harvey Cashore in October 1999. We
19 have copies of these conversations in Tabs 2, 3 and 4.

20 27448 Can you give us some background on
21 the conversations with Mr. Cashore?

22 27449 MR. LAVOIE: On the Friday before
23 Thanksgiving, the Thanksgiving weekend in 1999, while I
24 was rushing to get ready to leave for... for an
25 assignment in South America, specifically in Ecuador,

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1 for a client in the oil industry, a crisis (because I
2 was very involved in crisis management), I received a
3 call from Mr. Mulroney around five or six o'clock on
4 Friday. He told me that he had gotten a letter from
5 Harvey Cashore, from the CBC, asking him to meet with
6 him, if I remember correctly, and referring to some new
7 information he wanted to discuss with Mr. Mulroney.
8 Mr. Mulroney asked me to contact Harvey Cashore to try
9 to find out what new information he had.

10 27450 So that's what I did.

11 27451 MR. BATTISTA: OK.

12 27452 During these conversations -- correct
13 me if I'm wrong -- you tried to obtain information from
14 Mr. Cashore so that you could relay it to Mr. Mulroney,
15 get answers from Mr. Mulroney as the case may be, and
16 relay them to Mr. Cashore. Is that correct?

17 27453 MR. LAVOIE: Could you rephrase the
18 question?

19 27454 MR. BATTISTA: Yes, of course. I'll
20 break it down.

21 27455 You had discussions with Mr. Cashore
22 at the time...

23 27442 MR. LAVOIE: Yes.

24 27457 MR. BATTISTA: ...correct?

25 27458 MR. LAVOIE: Yes.

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1 27459 MR. BATTISTA: Mr. Cashore wanted to
2 speak directly to Mr. Mulroney...?

3 27460 MR. LAVOIE: Yes.

4 27461 MR. BATTISTA: Correct.

5 27462 That was not, if I can use the
6 expression, "an option" at the time. Is that correct?

7 27463 MR. LAVOIE: That's correct.

8 27464 MR. BATTISTA: So, you explained to
9 Mr. Cashore that what you hoped to do, or what you were
10 asked to do, was to obtain information, presumably as
11 much as possible, convey it to Mr. Mulroney, get
12 answers from Mr. Mulroney and then convey them to
13 Mr. Cashore. Correct?

14 27465 MR. LAVOIE: That is correct.

15 27466 MR. BATTISTA: OK.

16 27467 And that is how you proposed to Mr.
17 Cashore that you would work, if I... Have I explained
18 it correctly?

19 27468 MR. LAVOIE: Yes. According to the
20 transcript, yes.

21 27469 MR. BATTISTA: And this happened more
22 than once. May I say that you proposed this during
23 almost every telephone discussion?

24 27470 MR. LAVOIE: That is a fact, yes.

25 27471 MR. BATTISTA: OK.

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1 27472 Did you know the name on Mr.
2 Schreiber's Swiss bank account at the time...

3 27473 MR. LAVOIE: No, not at all.

4 27474 MR. BATTISTA: ...the one Mr. Cashore
5 referred to?

6 27475 MR. LAVOIE: No, not at all.

7 27476 MR. BATTISTA: Because the situation,
8 as you explained it, was that Mr. Mulroney had received
9 a letter from Mr. Cashore and Mr. Cashore's information
10 was that Mr. Schreiber had a bank account with... under
11 a name that could suggest that Mr. Mulroney was
12 involved. Is that correct?

13 27477 MR. LAVOIE: That's what I learned
14 during the conversation with him, actually.

15 27478 MR. BATTISTA: Is that correct?

16 27479 But at the time, he never told you
17 the name on the account...

18 27480 MR. LAVOIE: Never, no.

19 27481 MR. BATTISTA: ...during this
20 conversation?

21 27480 MR. LAVOIE: Never.

22 27483 MR. BATTISTA: Did Mr. Mulroney speak
23 to you about this bank account during your discussion
24 with him at the time?

25 27484 MR. LAVOIE: No, not at all. I talked

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1 to him about it.

2 27485 MR. BATTISTA: OK.

3 27486 And did he tell you anything about

4 it?

5 27487 MR. LAVOIE: No. I told him... I gave

6 him the news.....

7 --- Pause

8 27488 MR. LAVOIE: Because I'm trying to be

9 nice.

10 27489 ...what it was, CBC's new approach.

11 27490 MR BATTISTA: OK.

12 27491 During this broadcast your remarks on

13 the topic of Mr. Schreiber were made public.

14 27492 I am going to draw your attention to

15 Tab 3, page 32... Tab 3...page 32.

16 27493 Do you have it in front of you, Mr.

17 Lavoie?

18 27494 MR. LAVOIE: Yes.

19 27495 MR. BATTISTA: Listen. Just to... I

20 am going to ask you to explain it but I am just going

21 to read it so that it's clear.

22 27496 So, you said: "We believe..."

23 27497 MR. LAVOIE: You're not censoring,

24 eh?

25 27498 MR. BATTISTA: Excuse me?

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1 27499 MR. LAVOIE: Don't censor anything
2 you read.

3 27500 MR BATTISTA: No, that's fine. So:
4 "We believe, but we don't want
5 this to be spread around in any
6 way, shape or form, that
7 Karlheinz Schreiber is the
8 biggest fucking liar the world
9 has ever seen. You know what I
10 mean. That's what we believe
11 and we are very afraid that this
12 man was quite capable of using
13 anybody's name to get money from
14 somebody else.

15 We have no proof of that; we
16 have no evidence to that, that
17 would lead us to believe that.
18 But this is the way we feel
19 about it. And that is certainly
20 why Mr. Mulroney is so nervous."

21 27501 Can you explain the context of this
22 particular statement? Why did you say that and to whom
23 were you referring?

24 27502 MR. LAVOIE: At that time, it must be
25 understood that this conversation is still in the

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1 context that we were still in the aftermath, in the
2 wake of the letter sent to Switzerland in September
3 '95.

4 27503 And everything that followed, and
5 everything that ensued and everything that was said,
6 everything that was written, that was the context these
7 conversations have to be understood in.

8 27504 Personally, when I was talking to
9 that...to that...to that individual, I always spoke in
10 the spirit of the letter sent to Switzerland that
11 described Mr. Mulroney as a criminal having been
12 involved in criminal activity, in a criminal plot to
13 defraud, to rob the Canadian government and to get \$5
14 million in "kickbacks," in Swiss bank accounts and all.

15 27505 Well. We had learned through
16 this...this circus that a certain Mr. Pelossi -- whom I
17 never met and whom, moreover, I really had no intention
18 of meeting -- had said on numerous occasions that a
19 portion of the money...that he had been informed that a
20 portion of the money received in the sale of the Airbus
21 airplanes was intended for Mr. Mulroney.

22 27506 We had deduced from that- I had
23 certainly deduced, since it was a time when, although I
24 am not an expert in German law, Schmiergelder, "grease
25 money" was tax deductible...

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1 27507 So, there was a theory that had
2 currency and which I had certainly discussed myself
3 with Mr. Mulroney...

4 27508 It could even be that it was my own
5 theory; I no longer remember because it's...there were
6 so many, so many discussions about it.

7 27509 ...that Mr. Schreiber perhaps used
8 other people's names to pass off what was income for
9 something that it wasn't, so that...doing this so that
10 he could take advantage of tax breaks that went along
11 with that sort of action.

12 27510 So, it was in that sense that this
13 answer was given.

14 27511 MR. BATTISTA: You indeed say "it's a
15 theory." You had no basis for stating that?

16 27512 MR. LAVOIE: Well, I say so,
17 moreover, in the excerpt you just quoted, that I have
18 no basis to support it.

19 27513 MR. BATTISTA: OK.

20 27514 MR. LAVOIE: I also had an overall
21 impression. I also had an overall impression which was
22 unfounded, in fact, that was more based on an
23 instinctive perception of the individual we were doing
24 business with, which led me to say that.

25 27515 And when I met with you, Mr.

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1 Battista, in preparation for this examination, I
2 specifically asked you if, when we were before a
3 commission like this one, if we enjoyed the same
4 immunity as when we appeared before a parliamentary
5 committee and you explained to me that we didn't.

6 27516 So, I must therefore be extremely
7 cautious in the remarks that I am going to give, but I
8 would just like to tell you that I listened to Mr.
9 Schreiber's examination by your colleague Mr. Wolson
10 and I can deduce one thing from it: it's that my
11 instinct was not so stupid.

12 27517 MR. BATTISTA: OK.

13 27518 You have spoken about Mr. Pelossi.
14 How did you learn about his existence and his
15 allegations?

16 27519 MR. LAVOIE: By listening to that CBC
17 "soap opera" the Fifth Estate.

18 27520 MR. BATTISTA: OK. So that's how you
19 found out about him?

20 27521 MR. LAVOIE: Yes.

21 27522 MR. BATTISTA: Did you share this
22 information with Mr. Mulroney at the time?

23 27523 MR. LAVOIE: Well, he had found out
24 about it like I had.

25 27524 MR. BATTISTA: OK.

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1 27525 Later, in the same conversation - and
2 I draw your attention to page 45...

3 27526 MR. LAVOIE: Page 45?

4 27527 MR. BATTISTA: Yes, still in Tab 3.
5 Starting at the third line:
6 "But if ever there is the name
7 of Brian Mulroney anywhere, it
8 has to be that because there
9 never was any money." (As read)

10 27528 When you say "It has to be that
11 because there never was any money," are you referring
12 to what you just explained, that is that someone used
13 his name to derive a personal benefit?

14 27529 MR. LAVOIE: I am always referring
15 (and I stress this; the context must be understood
16 properly) to a letter sent to Switzerland in which it
17 was said that between 1984 and 1993 Brian Mulroney,
18 Frank Moores and Karlheinz Schreiber conspired to
19 defraud the Canadian government and the Canadian people
20 and that a portion of the money that was received in
21 kickbacks or commission, I am not too certain about the
22 expression (there was a time when I almost knew the
23 text by heart), there was a portion -- that is, \$5
24 million - that had been deposited...

25 27530 It was stated in the letter. It

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1 was...it was unconditional. It appeared to be stated as a
2 fact in the letter that \$5 million had been deposited
3 in a bank account at the Société des Banques Suisses in
4 Zurich in an account that was hidden under the code
5 name "Devon."

6 27531 So, it was 1999. Between the sending
7 of this wild letter and 1999, many things were learned.
8 Among other things, we learned in a letter sent by the
9 Swiss Minister of Justice, who later became famous
10 because she was chief prosecutor of the International
11 Criminal Tribunal, Carla Del Ponte, that Brian Mulroney
12 had never had a bank account in Switzerland under a
13 code name or otherwise.

14 27532 So, all the theory contained in this
15 particular letter and all that this letter maintained
16 was completely false. There was nothing in it that
17 could stand up to the slightest analysis. The account
18 had never existed; the millions had never existed and
19 the whole affair was a pure fabrication, based on
20 information provided by a journalist who had become a
21 police informant.

22 27533 So, when you read that, you have to
23 always remember: it was the fall of '99, four years
24 after this letter was sent and everything that had
25 happened in the meantime. And this is the context in

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1 which these comments must be read.

2 27534 MR. BATTISTA: OK.

3 27535 So, I was indeed correct when I said:

4 "It has to be that because there

5 never was any money."

6 27536 When you say "It has to be that," do

7 you mean the explanations that you just gave us? So,

8 when you say that, are you referring to these

9 statements or to theories?

10 27537 MR. LAVOIE: "There never was any

11 money," he never had any money in a Swiss account, \$5

12 million in kickbacks on airplanes, helicopters and I

13 don't know what all. This never existed. It was

14 fiction.

15 27538 MR. BATTISTA: And you said:

16 "And to think otherwise is

17 really not to know Mulroney."

18 27539 Is that right?

19 27540 MR. LAVOIE: That's right.

20 27541 MR. BATTISTA:

21 "He is too smart to do something

22 like that." (As read)

23 27542 Is that right?

24 27543 MR. LAVOIE: Totally.

25 27544 MR. BATTISTA: OK.

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1 27545 You did not know at that time (at the
2 time of the discussion in October 1999), that Mr.
3 Schreiber had in fact paid sums of money to Mr.
4 Mulroney in 1993 and 1994, correct?

5 27546 MR. LAVOIE: Correct.

6 27547 MR. BATTISTA: Did Mr. Mulroney tell
7 you in the context of your interviews with the
8 journalist from the Fifth Estate broadcast in October
9 1999, at the time of the broadcast or immediately
10 afterwards, that he had indeed received payments from
11 Mr. Schreiber after his return to private life?

12 27548 MR. LAVOIE: Do you mean in the fall
13 of '99?

14 27549 MR. BATTISTA: Yes.

15 27550 MR. LAVOIE: No.

16 27551 MR. BATTISTA: Now, you learned that
17 Mr. Mulroney had received payments in cash from Mr.
18 Schreiber through one of Mr. Mulroney's lawyers. Is
19 that correct?

20 27552 MR. LAVOIE: That is correct, yes.

21 27553 MR. BATTISTA: Was this Mr. Tremblay?

22 27554 MR. LAVOIE: Mr. Gérald Tremblay,
23 yes.

24 27555 MR. BATTISTA: When did you learn
25 this?

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1 27556 MR. LAVOIE: In the spring of 2000.
2 27557 MR. BATTISTA: And can you give us
3 the context of how you learned this bit of news?
4 27558 MR. LAVOIE: I received a telephone
5 call from Mr. Tremblay. It...it was at my home, it was
6 10 in the morning. In and of itself it was nothing
7 unusual, because Mr. Tremblay and I had become great
8 buddies so we spoke to one another nearly every day at
9 about that time.
10 27559 And when he called me that morning,
11 his tone was a bit different. He called to tell me that
12 he had something to...he had some information to give
13 me. He announced to me that Mr. Mulroney had had a
14 business relationship with Mr. Schreiber and that he
15 had received some money as a consultant for Mr.
16 Schreiber. That's it!
17 27560 MR. BATTISTA: I am going to list the
18 items of information that you have communicated to
19 us...
20 27561 MR. LAVOIE: Of course.
21 27562 MR. BATTISTA: ...perhaps with more
22 detail and you will correct me if I am wrong.
23 27563 He had told you that he had a
24 contractual relationship with Mr. Schreiber after his
25 return to private life?

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1 27564 MR. LAVOIE: Yes.

2 27565 MR. BATTISTA: That Mr. Mulroney had
3 acted as a consultant...

4 27566 MR. LAVOIE: Yes.

5 27567 MR. BATTISTA: ...for Mr. Schreiber?

6 27568 MR. LAVOIE: Yes.

7 27569 MR. BATTISTA: That the money was, in
8 the English term, a "retainer"?

9 27570 MR. LAVOIE: Yes, it was a,
10 "retainer," yes.

11 27571 MR. BATTISTA: You took it to mean
12 that this was an advance of funds for professional
13 services?

14 27572 MR. LAVOIE: I had not... I took it
15 to mean it was a "retainer."

16 27573 MR. BATTISTA: Yes, but "retainer,"
17 for you, this means an advance of funds...

18 27574 MR. LAVOIE: Well, I myself, was
19 still a public relations consultant at that time and I
20 personally had "retainers" with a certain number of
21 clients. So, my understanding was that there was a
22 client who gave him money in order to have his advice.

23 27575 MR. BATTISTA: OK.

24 27576 And that he had been paid in cash,
25 had you learned that?

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1 27577 MR. LAVOIE: Yes.

2 27578 MR. BATTISTA: That it was in three
3 payments?

4 27579 MR. LAVOIE: I... I recall having
5 asked Gérald: Did that go on for a long time, did...?
6 Well, I no longer recall any ...

7 27580 He told me: There were three
8 payments in tens of thousands of dollars.

9 27581 MR. BATTISTA: OK.

10 27582 And that was correct? It was tens of
11 thousands of dollars?

12 27583 MR. LAVOIE: Yes. And I asked him:
13 Have his taxes been paid?

14 27584 Then he told me yes.

15 27585 MR. BATTISTA: OK.

16 27586 Did you ask Mr. Tremblay why he was
17 telling you about these facts now?

18 27587 MR. LAVOIE: Well, it's... Yes, I
19 didn't have to ask him; he told me right off. He told
20 me that the client wanted to t--me to be informed about
21 this because I was being sued for I no longer recall
22 how much, an outrageous amount, by...by the charming
23 Mr. Schreiber.

24 27588 MR. BATTISTA: At that particular
25 moment you had learned that the money had been paid in

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1 cash, is that correct?

2 27589 MR. LAVOIE: Yes.

3 27590 MR. BATTISTA: And it was in this
4 specific context that you asked the question "Have the
5 taxes been paid?"

6 27591 MR. LAVOIE: Right!

7 27592 MR. BATTISTA: Did you try to find
8 out how much money Mr. Mulroney had received?

9 27593 MR. LAVOIE: No. But three payments
10 in tens of thousands of dollars, that's what he told me
11 and I didn't ask anything more.

12 27594 MR. BATTISTA: Did Mr. Mulroney
13 himself contact you at that time, to give you any
14 details?

15 27595 MR. LAVOIE: No.

16 27596 MR. BATTISTA: How did you react?

17 27597 MR. LAVOIE: Coldly.

18 27598 MR. BATTISTA: At the time of the
19 interview with Mr. Corbeil and myself, you said you
20 were icy, your terms... you say "coldly"...

21 27599 MR. LAVOIE: Cold... ice, yes.

22 27600 MR. BATTISTA: Yes. No, it's
23 completely... And that you were...

24 27601 MR. LAVOIE: It's a question of
25 degree.

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1 27602 MR. BATTISTA: Yes, yes. No, but...
2 27603 And you were surprised, is that
3 correct?
4 27604 MR. LAVOIE: Surprised, but very
5 cold.
6 27605 MR. BATTISTA: OK.
7 27606 You also told us that you noted a
8 certain embarrassment on the part of Mr. Mulroney in
9 your regard, after this revelation. Is that correct?
10 27607 MR. LAVOIE: Yes.
11 27608 MR. BATTISTA: What can you tell us
12 about this?
13 27609 MR. LAVOIE: These are impressions,
14 you know...
15 27610 Is this really very relevant or if
16 you really want me to, I can try...
17 27611 MR. BATTISTA: Meaning that this is
18 the impression that you had, after that?
19 27612 MR. LAVOIE: I had the impression, in
20 fact, in the weeks following that he was a bit less at
21 ease with me than he had been formerly. There!
22 27613 MR. BATTISTA: OK.
23 27614 You spoke about this with Mr. Kaplan,
24 William Kaplan. I am going to refer you to Tab 7, and
25 specifically, to the last page of Tab 7. So, during

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1 the interview that we had on March 14th, you explained
2 that you had learned of the existence of some payments
3 a few months before Mr. Kaplan himself had found out.

4 27615 Is that correct?

5 27616 MR. LAVOIE: Uh... I never found out
6 exactly what, but I found out before him but not months
7 before him.

8 27617 MR. BATTISTA: That's fine.

9 27618 And you, you learned this some time
10 during the spring of 2000...

11 27619 MR. LAVOIE: Right!

12 27620 MR. BATTISTA: ...and him, towards
13 the end of 2000 or 2001?

14 27621 MR. LAVOIE: It seems to me that he,
15 I was of the impression that it was in the spring of
16 2001 but you'd have to ask him.

17 27622 MR. BATTISTA: OK.

18 27623 I am going to refer you here to his
19 note. So, on the last page:

20 "We had some discussion about
21 when he found out about Mulroney
22 and the cash. He told me that
23 he found out several months
24 before I did. However, he is a
25 professional used to dealing in

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1 all sorts of complicated
2 situations, including
3 negotiating hostage retrievals
4 in South America. However, he
5 told me both in the middle of
6 the dinner and at the end of the
7 evening that he was quite pissed
8 off to find out about the cash
9 but didn't take it personally.”

10 27624 You recall this particular meeting
11 with Mr....

12 27625 MR. LAVOIE: Yes. Definitely.

13 27626 MR. BATTISTA: Are his remarks
14 accurate, meaning is his summary accurate of what
15 happened?

16 27627 MR. LAVOIE: They're accurate,
17 they're... That is very precise, very accurate and
18 reflects my thoughts very well.

19 27628 MR. BATTISTA: OK.

20 27629 You then, Mr. Lavoie, had a
21 discussion with Mr. Mulroney where you made him a
22 proposal about the option of making a public
23 acknowledgement about the payments; is that accurate?

24 27630 MR. LAVOIE: Yes.

25 27631 MR. BATTISTA: Tell us about the

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1 context.

2 27632 MR. LAVOIE: The context is fairly
3 simple. Now that I was aware of the existence of this
4 contractual and business relationship, I was convinced,
5 because that was my profession, this type of thing,
6 that this was going to become public, and PR101 teaches
7 us that when something is going to become public, even
8 if it's disastrous and catastrophic and bad and
9 negative and whatever, you are always better off to
10 bring it out yourself if you're certain that it will
11 come out one day, because if you bring it out yourself,
12 you're going to be able to reduce the damage a bit by
13 putting it in context, whereas if you don't bring it
14 out yourself, you're going to be in reaction mode and
15 defensive, and you may not be able to put it in the
16 context that you might have been able to in other
17 circumstances.

18 27633 So, I said the same thing to him that
19 I'm telling you today. I recall that he was interested
20 in what I was saying. He asked me, for example, what
21 form I thought such a public revelation could be made
22 in.

23 27634 I suggested the possibility, for
24 example, of a text, known as an op-ed piece in English,
25 a text to the editor, signed by him or by someone close

1 to him, me, for example, putting things in context.

2 27635 He didn't say no. He even seemed very
3 interested in it because I, frankly, was very insistent
4 on the fact that: Mr. Mulroney, my experience in the
5 field has taught me that this is going to come out. I
6 don't know who or how but because this exists, it is
7 going to come out.

8 27636 MR. BATTISTA: This is in the
9 context... if we situate ourselves a bit in time, is it
10 more or less at the time when you yourself had learned
11 of the existence of these payments, to the effect that
12 journalists were starting to talk about them?

13 27637 MR. LAVOIE: No, it was before the
14 journalists were talking about it. No, no. It's
15 entirely before the journalists spoke about it.

16 27638 MR. BATTISTA: Before the journalists
17 spoke about it?

18 27639 MR. LAVOIE: Yes, yes. I'm talking
19 about the summer of 2000.

20 27640 MR. BATTISTA: OK.

21 27641 And Mr. Mulroney never followed up on
22 this proposal?

23 27642 MR. LAVOIE: We spoke about it again
24 four or five times, always on the same theme, without
25 going much further. I felt that there was interest in

1 doing it, but that, on the other hand...

2 27643 Listen, I've had many clients in the
3 public relations field and clients who find themselves
4 with bad news and who call on a public relations
5 professional, and the first reaction they have if
6 they've had some news they don't think will do them any
7 good if it comes out, is to say that we have to do
8 everything to smother this business, which Mr. Mulroney
9 did not say, by the way.

10 27644 But it's the... I'm telling how
11 people usually think who are in a situation where they
12 know that there is the risk that they could be
13 implicated in one way or another and what the public
14 relations professional -- well, it's certainly what I
15 did when I was working in that profession -- will say:
16 That's going to come out because history shows us that
17 everything ends up coming out. So, you have to take a
18 proactive approach and bring it out yourself in a
19 context where at least you can manage to give a bit
20 more understanding of the affair, a better...where the
21 nuances will be there, too.

22 27645 And, incidentally, the clients'
23 reaction to that is often that they do not want
24 something to come out so much that they would rather
25 believe that it's possible that it will not come out.

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1 27646 Well, I have often used the
2 expression with clients, in Mr. Mulroney's case, and
3 others' alike, even if the philosopher said that the
4 worst is never a sure thing, in cases like these, the
5 worst is generally a sure thing. So, you are better off
6 taking a proactive approach and doing it quickly
7 because a mistake that is admitted is already half
8 forgiven, if indeed a mistake has been made. I am not
9 claiming that any mistake had been made here.

10 27647 MR. BATTISTA: Your advice, Mr.
11 Lavoie, was not that there had been a mistake, but
12 your advice was: Listen, there are journalists asking
13 questions, there's talk about a bank account, you told
14 me that there is cash that was paid, you know that the
15 taxes have been paid, you've been told that this was
16 for legitimate work, you should go public with this to
17 put payment in cash in the right context; is that...

18 27648 MR. LAVOIE: You are right overall,
19 except one thing. It is not so much that there were
20 journalists poking around because journalists poking
21 around were doing their job. It's that there were
22 journalists who were being fed by one source, and this
23 source's behaviour was not compatible with... Is the
24 word "compatible" the right choice?

25 27649 There was an individual

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1 ...personally, I had recalled with -- how shall I say -
2 - a certain feeling of horror what had happened in the
3 fall of '99 when this charming German-Canadian
4 businessman found himself in prison and that he had, by
5 telephone, set off a political-media war in Germany
6 which ended up costing Helmut Kohl his reputation, one
7 of the great German politicians of the post-war, a
8 great re-unifier of Germany, and who had the title of
9 Chairman emeritus of the Christian Democrat party, who
10 resigned from his duties following the remarks of this
11 charming individual.

12 27650 There was someone else who committed
13 suicide, and someone else who was in the plot. And it
14 was always the same story, and there were words which
15 made my blood run cold when I read them. He said: I'm
16 like a cat standing over a cage full of mice and
17 wondering which mouse I'm going to eat next.

18 27651 So, personally, when I am...
19 instinctively when I am faced with this type of evil
20 being, I have learned to be on my guard.

21 27652 MR. BATTISTA: But going back, Mr.
22 Lavoie, the question I asked you: Did Mr. Mulroney
23 follow up on your proposal; is that correct?

24 27653 MR. LAVOIE: He hesitated but he
25 didn't take any action.

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1 27654 MR. BATTISTA: OK. And the context of
2 your proposal was that there had been, in fact, some
3 payments between Mr. Schreiber and Mr. Mulroney but not
4 as how it was alleged in the context of the request to
5 the Swiss authorities; is that correct?

6 27655 MR. LAVOIE: Obviously. It's obvious.
7 There were... there were like two worlds here and I
8 acknowledge to you that with all these years, I am no
9 longer involved in the issue.

10 27656 I was always, how shall I say it,
11 upset by the fact that there was no comparison. The
12 scandal that the media themselves baptized the Airbus
13 Scandal was based on an extremely libellous letter sent
14 following a trial that was since re-opened because it
15 was odious, which described a former prime minister of
16 Canada as a criminal, which never mentioned
17 allegations, and throughout all the preliminary
18 proceedings for the trial, which in the end never took
19 place, we learned how this system worked.

20 27657 Personally, as a citizen, I was
21 outraged by all that. The bank account never existed.
22 The five million dollars never existed. All that was a
23 fabrication behind which was a police informant who
24 ended up being revealed as a journalist who had made a
25 career out of attacking Brian Mulroney. I found that

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1 amazing.

2 27658 So, you take this, you suppose that,
3 then you learn that there was a consultancy
4 relationship with the same businessman, who, at the
5 time was someone who...against whom no accusations had
6 been made, nor had there been any extradition
7 applications, and it was two completely different
8 situations.

9 27659 What he was accused of, was when he
10 was prime minister of Canada. The matter, the payments,
11 was something he had done after leaving his job as
12 prime minister, as part of a consultation mandate which
13 was completely in line with consultation mandates that
14 are given every day in our modern society.

15 27660 MR. BATTISTA: OK. But what was
16 particular here, Mr. Lavoie, is that the money was paid
17 in cash; you had had this information, correct?

18 27661 MR. LAVOIE: Yes.

19 27662 MR. BATTISTA: Did you receive this
20 information after having publically said: "There never
21 was any money?"

22 27663 MR. LAVOIE: Excuse me, Mr. Battista.
23 "There never was any money" is in the same
24 conversation. If this were to recur today, I would say
25 that "There never was any money" because we were

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1 talking about a letter to Switzerland, which said that
2 there were kickbacks on airplanes, on helicopters,
3 which had been paid into an account that didn't exist.
4 So there was any money.

5 27664 MR. BATTISTA: That's correct, Mr.
6 Lavoie. However, you thought it was important that this
7 information be publicized by Mr. Mulroney himself?

8 27665 MR. LAVOIE: Yes, because in the
9 atmosphere...listen, when you have...you have to
10 understand that. When you have a Crown Corporation
11 receiving more than a billion dollars in subsidies per
12 year and which decides to devote nearly the entire
13 career of an individual, Mr. Cashore, who himself,
14 before joining CBC, was a researcher for a biography of
15 Mr. Mulroney which was not exactly flattering, far from
16 it, when you have a situation like that, that you know
17 you have people in front of you who are literally
18 obsessed, obsessed, obsessed, by the idea that they're
19 going to get him, because there must be something,
20 surely he'll be caught on something, and they have
21 absolutely unlimited resources, when you're faced with
22 that, you have every reason to pay close attention.

23 27666 MR. BATTISTA: OK.

24 27667 MR. LAVOIE: And you know very well
25 when you are faced with that because that,

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1 that's...There are two things in life: there is
2 journalism, and then there is the other thing and when
3 you are in the other thing, you have to conduct
4 yourself as if you are dealing with the other thing.

5 27668 MR. BATTISTA: And it was in this
6 particular context that your advice was given?

7 27669 MR. LAVOIE: It was in this particular
8 context that my advice was given because I knew that if
9 this Crown Corporation and its worthy representative
10 got their hands on that particular information, they
11 were going to start up again. There was no comparison
12 between the two things, none.

13 27670 MR. BATTISTA: OK.

14 27671 I am going to draw your attention to
15 Tab 6. This is the April 18th edition of the magazine
16 *Frank*. In the middle of the page you have...

17 27672 MR. LAVOIE: That's where they call me
18 a "fart catcher."

19 27673 MR. BATTISTA: Right! In this
20 particular piece, it says:

21 "Now there are rumours that
22 Schreiber paid over \$300,000 to
23 Mulroney's Montreal law firm
24 Ogilvie Renault."

25 27674 And then, in the column directly

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1 across:

2 "There were previous reports
3 that Schreiber set up several
4 bank accounts, one under the
5 code name Britain which had
6 \$500,000 in it from 1993, then
7 was depleted by some \$300,000 at
8 a later date."

9 27675 This article or this document was
10 published on April 18, 2001.

11 27676 Two questions. Were you informed
12 about this particular fact? Did Mr. Mulroney speak to
13 you about it?

14 27677 MR. LAVOIE: Informed about the
15 publication, Mr. Battista?

16 27678 MR. BATTISTA: Yes. Yes.

17 27679 MR. LAVOIE: I was informed that no,
18 Mr. Mulroney did not have a subscription to *Frank*.

19 27680 MR. BATTISTA: I understand, but were
20 you informed about that or did he inform you about it?

21 27681 MR. LAVOIE: I was informed about it
22 by the journalist Phil Mathias who had called me to ask
23 me if I had seen that. Answer: No. And he faxed me a
24 copy of it.

25 27682 MR. BATTISTA: Did you speak to Mr.

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1 Mulroney about the fact that this particular
2 document...

3 27683 MR. LAVOIE: Yes.

4 27684 MR. BATTISTA: ...had been published?

5 27685 MR. LAVOIE: Yes.

6 27686 MR. BATTISTA: So, he had been
7 informed about it?

8 27687 MR. LAVOIE: Yes.

9 27688 MR. BATTISTA: By you?

10 27689 MR. LAVOIE: Yes.

11 27690 MR. BATTISTA: OK.

12 27691 Tab 9, you have an article from the
13 *Globe and Mail* of November 10, 2003. I am going to read
14 you the headline:

15 "Shortly after left office [or
16 he left office, it's written
17 incorrectly] the former Prime
18 Minister accepted some \$300,000
19 in retainers from the
20 controversial German
21 businessman. In the final part
22 of the series William Kaplan
23 unravels the tale."

24 27692 That's the article that put forward
25 this figure in a major newspaper for the first time; is

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1 that correct?

2 27693 MR. LAVOIE: Yes.

3 27694 MR. BATTISTA: So, Mr. Mathias had

4 verified a piece of information with you which had

5 circulated in *Frank*; is that correct?

6 27695 MR. LAVOIE: No, he had not verified

7 that with me. He informed me...

8 27696 MR. BATTISTA: He informed you...

9 27697 MR. LAVOIE: ...about the existence of

10 this article in the *Frank* magazine.

11 27698 MR. BATTISTA: OK. Did you ask any

12 questions about this?

13 27699 MR. LAVOIE: No, because Mr. Mathias

14 had worked on this same...

15 27700 MR. BATTISTA: Story?

16 27701 MR. LAVOIE: ...information, this same

17 story, of his own initiative, and so, he wasn't calling

18 me to ask me questions on what was in *Frank*, which had

19 its own sources. He was calling me to tell me that it

20 was in *Frank*.

21 27702 MR. BATTISTA: OK.

22 27703 Had he previously verified these

23 figures with you and this particular information?

24 27704 MR. LAVOIE: He had checked with me,

25 he had called me at some time, but I am not sure about

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1 the exact chronology, about when he had called me,
2 unquestionably before the publication of *Frank* because
3 he was working on a story about how Mr. Mulroney had
4 received payments, as a consultant, for Mr. Schreiber
5 after having left his job as prime minister.

6 27705 MR. BATTISTA: OK. So, we now know
7 that November 10, 2003, was the first time that a major
8 newspaper announced the news that Mr. Mulroney
9 allegedly received payments, 300,000 dollars in cash;
10 is that correct?

11 27706 MR. LAVOIE: Yes.

12 27707 MR. BATTISTA: Did Mr. Mulroney not
13 ask you at that time to make a public statement to
14 correct this information after it was published?

15 27708 MR. LAVOIE: No.

16 27709 MR. BATTISTA: You had some
17 discussions with Mr. Kaplan prior to the publication of
18 this series of articles and his book *The Secret Trial*;
19 is that correct?

20 27710 MR. LAVOIE: I had a great many
21 discussions with Mr. Kaplan for his first and second
22 books, and moreover, we continue to have discussions at
23 this time.

24 27711 MR. BATTISTA: OK.

25 27712 So, I draw your attention to Tab 7.

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1 Did you have a telephone discussion with Mr. Kaplan on
2 January 4, 2002?

3 27713 MR. LAVOIE: Yes.

4 27714 MR. BATTISTA: Does Mr. Kaplan note
5 that you told him that Mr. Mulroney had received a
6 great deal less than the alleged 300,000?

7 27715 MR. LAVOIE: Yes.

8 27716 MR. BATTISTA: Is that correct?

9 27717 MR. LAVOIE: Yes, it's correct that
10 it's written there, yes.

11 27718 MR. BATTISTA: Yes. But is it correct
12 that you had said it to him?

13 27719 MR. LAVOIE: I am going to repeat to
14 you what I told you on March 14th.

15 27720 MR. BATTISTA: Yes.

16 27721 MR. LAVOIE: I have no particular
17 recollection...and believe me, I have no desire to fall
18 into the category of memory problems, but I have no
19 particular recollection about this particular
20 conversation, but I don't deny that it occurred.

21 27722 MR. BATTISTA: Meaning that you accept
22 the note as reliable...

23 27723 MR. LAVOIE: Yes, absolutely.

24 27724 MR. BATTISTA: ...that Mr. Kaplan
25 gave.

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1 27725 MR. LAVOIE: Yes, yes.

2 27726 MR. BATTISTA: If Mr. Kaplan said that
3 you told him that, you agree that you told him on that
4 day?

5 27727 MR. LAVOIE: I consider Bill Kaplan a
6 very straightforward person. I have no doubt that this
7 particular conversation took place. I do not
8 specifically recall this particular conversation. I
9 take note of the fact that it took place on January 4,
10 2002. I would say that the reason for the conversation
11 was to wish each other a happy new year and during the
12 conversation, Mr. Kaplan had undoubtedly expressed his
13 profound disappointment in learning about the existence
14 of these payments, that he perceived that this had been
15 hidden from him and so on.

16 27728 I would imagine, because, quite
17 honestly, I have no recollection, because... Let me
18 just remind you here that this took place in 2002. At
19 that time, I was executive vice-president of a rather
20 large company called Quebecor, and this job took up 130
21 percent of my time. The Airbus affair, blah, blah,
22 blah, and everything that resulted from it was not
23 exactly my biggest concern. I wouldn't even say that it
24 was high on my list of priorities. I would say that I
25 was doing this to help. So I wasn't deep into it the

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1 way I was from '95 to '97. So that kind of conversation
2 was much more casual in nature than was the case, say,
3 in the preceding period.

4 27729 So this conversation, I would
5 imagine... Maybe I shouldn't do this, but I could
6 easily imagine that Kaplan called me and that I told
7 Mr. Mulroney on the phone that Kaplan called me, and
8 that he's pretty unhappy about all this, and that he's
9 not really happy and that he said this and that, and I
10 would imagine that Mr. Mulroney must have slipped in,
11 it's less than 300,000.

12 27730 But quite frankly, it's... all
13 this... I see that Bill... I had never seen this side
14 of him, although I'm not surprised. Now I see that
15 when we talked, he immediately made a note. I didn't
16 do that. I'm not criticizing him for doing that.
17 Maybe this is even a credit to him, it means he's very
18 meticulous.

19 27731 I have no particular memory of that
20 conversation. I am not denying that it happened. It
21 might have lasted four minutes, I don't know. I don't
22 know, and maybe if I told him in this conversation that
23 it was less than 300,000, it's because Mr. Mulroney
24 must have told me that, and if it went right over my
25 head, it's because it really must not have seemed all

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1 that important to me.

2 27732 Mr. BATTISTA: Okay.

3 27733 You also told him that Mr. Mulrone

4 had provided services in exchange for payments? That's

5 what Mr. Kaplan says you told him.

6 27734 Mr. LAVOIE: Yes.

7 27735 Mr. BATTISTA: That's information that

8 you were aware of at the time?

9 27736 Mr. LAVOIE: Well, it must have been

10 information that Mr. Mulrone

11 y had given me in the same

12 spirit as what I just told you.

13 27737 Mr. BATTISTA: OK.

14 27738 You also said that he was organizing

15 meetings with managers from Archer Daniels Midland

16 regarding Mr. Schreiber's pasta businesses; did you

17 have this discussion with him?

18 27739 Mr. LAVOIE: Yes.

19 27740 Mr. BATTISTA: Giving him advice

20 regarding international transactions; that's what he

21 said?

22 27741 Mr. LAVOIE: Yes.

23 27742 Mr. BATTISTA: You had also told

24 Mr. Kaplan that the relation between Mr. Schreiber and

25 Mr. Mulrone

 y was professionally privileged, these were

 terms that you used, "privileged," "attorney

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1 privilege;" correct?

2 27743 Mr. LAVOIE: "Privileged," yes. I

3 have used the expression "privileged."

4 27744 Mr. BATTISTA: He says:

5 "Advising Schreiber on

6 international business

7 transactions. Essentially that

8 was it. Anything else that was

9 said was covered by

10 client/attorney privilege."

11 27745 Is that right?

12 27746 Mr. LAVOIE: I think so. I am telling

13 you that I don't remember this conversation exactly...

14 27747 Mr. BATTISTA: OK.

15 27748 Mr. LAVOIE: ...but I am not disputing

16 its content.

17 27749 Mr. BATTISTA: OK.

18 27750 And when you said "attorney

19 privilege," "client/attorney privilege," it's that you

20 understood that Mr. Mulroney was acting as counsel for

21 Mr. Schreiber?

22 27751 Mr. LAVOIE: I understood that he was

23 an attorney and that Mr. Schreiber was a client.

24 27752 Mr. BATTISTA: Very well.

25 27753 One last thing regarding your

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1 statements. So, you at least reread the interview--you
2 referred to it earlier--that Mr. Kaplan had taken down?

3 27754 Mr. LAVOIE: Yes.

4 27755 Mr. BATTISTA: You reread it all? You
5 reread it before we met and you reread it again today?

6 27756 Mr. LAVOIE: Yes.

7 27757 Mr. BATTISTA: And you do not dispute
8 its thoroughness, or its accuracy?

9 27758 Mr. LAVOIE: You are correct.

10 27759 Mr. BATTISTA: I will now draw your
11 attention to Tab 21. It's an excerpt from his book, on
12 page 19. We had seen this passage at our meeting in
13 Montréal. I will read it to you:

14 "The real examination on
15 discovery began April 17th,
16 1996."

17 27760 So, just to situate the context,
18 it's... yes, page 19, Tab 21.

19 27761 Mr. LAVOIE: Tab 21, page 19.

20 27762 Mr. BATTISTA: Halfway down the page.

21 27763 Mr. LAVOIE: Yes, here it is, 19,
22 halfway down the page. Yes.

23 27764 Mr. BATTISTA: "The real..."

24 27765 Mr. LAVOIE: "The real examination on
25 discovery..."

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1 27766 Mr. BATTISTA: Yes. So here he talks
2 about the time when Mr. Mulroney was being questioned
3 by the Government of Canada's prosecutors; correct?
4 27767 Mr. LAVOIE: Uh-huh.
5 27768 Mr. BATTISTA: And he quoted you as
6 saying:
7 "The real examination on
8 discovery began April 17, 1996
9 at the Montréal Palais de
10 Justice. Before entering the
11 courtroom, Mulroney turned to
12 Lavoie and said, 'Luc, do you
13 know what [chief government
14 lawyer Claude-Armand] Sheppard's
15 problem is going to be today?'
16 'No, boss,' Lavoie replied.
17 'He is going to ask me
18 questions and he expects me to
19 answer them.'"
20 27769 That is what you said to Mr. Kaplan?
21 27770 Mr. LAVOIE: Yes.
22 27771 Mr. BATTISTA: That is also what
23 Mr. Mulroney said to you?
24 27772 Mr. LAVOIE: Yes, but it was a joke,
25 eh!

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1 27773 Mr. BATTISTA: I understand.
2 27774 Mr. LAVOIE: Everyone was laughing
3 about it.
4 27775 Mr. BATTISTA: Very well.
5 27776 Mr. LAVOIE: For those who know him,
6 he has a pretty good sense of humour.
7 27777 Mr. BATTISTA: I will now move on to
8 something else.
9 27778 Mr. LAVOIE: It was very funny, in
10 fact.
11 27779 Mr. BATTISTA: OK.
12 27780 I will now move on to something else.
13 Tabs 18 and 19.
14 27781 Mr. LAVOIE: Eighteen and 19.
15 27782 Mr. BATTISTA: So, these are two
16 articles published in 2007, on November 22, 2007, in
17 both cases, where you are quoted.
18 27783 Tab 18, page 2, third full paragraph,
19 so to speak:
20 "A spokesman for Mr. Mulroney,
21 Luc Lavoie, said this week that
22 the former Prime Minister sees
23 accepting cash as a 'colossal
24 mistake'. Mr. Mulroney was in
25 financial straits and worried

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1 about his future when he
2 accepted the \$100,000 cash
3 payment while still a Member of
4 Parliament in August 1993, Mr.
5 Lavoie said."

6 27784 Further down, three or four
7 paragraphs later:

8 "Mr. Lavoie said Mr. Schreiber
9 met Mr. Mulroney at the Château
10 Mirabel to pitch a job to the
11 former Prime Minister as a
12 consultant on projects with an
13 'international dimension' --
14 including a military vehicle
15 plant in Montreal and a pasta
16 business."

17 27785 Skipping a paragraph:

18 "Mr. Lavoie also suggested in an
19 interview with the Ottawa
20 Citizen that Mr. Mulroney was
21 surprised when Mr. Schreiber
22 pulled out cash."

23 27786 Last paragraph:

24 "'Then he said, 'I would give
25 you \$100,000 a year' and then he

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1 pulled out an envelope with
2 \$100,000 and Mr. Mulroney said,
3 'what is that?' He said, 'Well,
4 I want to pay you in cash.' So
5 Mr. Mulroney asked a few
6 questions. 'Why would you do do
7 this in cash?' and all that,'
8 Mr. Lavoie said. 'Mr. Mulroney
9 admits today that he made a
10 colossal mistake.'"

11 27787 And if we go to November 22, still in
12 2007, Tab 19. So, Tab 18 is an article taken from the
13 *Globe and Mail*, and Tab 19, TheStar.com. First
14 paragraph:

15 "Brian Mulroney's admission
16 through a spokesperson that it
17 was a 'colossal mistake' to take
18 \$300,000 in cash from Karlheinz
19 Schreiber doesn't suffice to
20 clear the former prime minister
21 of suspicion of wrongdoing,
22 Liberals charged yesterday."

23 27788 If we go to the third paragraph from
24 the end:

25 "Lavoie told Sun News Service

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1 columnist Greg Weston last week
2 that Mulroney considers taking
3 the cash 'the silliest thing
4 I've ever done in my life.'"

5 27789 Then:

6 "Lavoie told the Ottawa Citizen
7 that after Mulroney left office
8 in 1993, he had used up all his
9 savings and worried about how he
10 was going to take care of his
11 young family. While still an
12 MP, he met late that summer with
13 Schreiber, who had retained
14 Mulroney as a business
15 consultant at \$100,000 a year
16 and immediately handed over the
17 first year's instalment in cash,
18 Lavoie said."

19 27790 These are quotes from statements that
20 you had made, correct?

21 27791 Mr. LAVOIE: Yes. Yes.

22 27792 Mr. BATTISTA: You had mentioned the
23 figure of 300,000 at that time; correct?

24 27793 Mr. LAVOIE: It's possible. I'm
25 trying to see. It's very possible, yes.

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1 27794 Mr. BATTISTA: They quoted you. They
2 quoted you when you were giving explanations.

3 27795 Mr. LAVOIE: That's what I see. Yes.
4 Yes.

5 27796 Mr. BATTISTA: And they quoted you,
6 you mentioned 100,000 dollars as well; correct?

7 27797 Mr. LAVOIE: Yes. Yes.

8 27798 Mr. BATTISTA: OK. I would like to
9 draw your attention to Tab 14 as well.

10 27799 So, Tab 14 is an exchange of e-mails
11 between you and Mr. Bruce Campion-Smith from
12 November 5, 2007. Do you follow?

13 27800 Mr. LAVOIE: Yes.

14 27801 Mr. BATTISTA: On page 2, first full
15 paragraph:

16 "You say that Mr. Mulroney never
17 'revealed' the \$300 000.
18 Indeed, he never revealed it.
19 He was never asked about it. It
20 was 'revealed' by the Globe and
21 Mail in 2004, not by the Fifth
22 Estate this year as the CBC
23 stated last Wednesday night.
24 And it had nothing to do with
25 the scheme described in the 1995

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1 Letter of Request. This
2 retainer was paid after Mr
3 Mulroney left office and was in
4 no way connected with the Airbus
5 transaction. As to the question
6 that is often asked 'What was
7 the \$300 000 for'?, the answer
8 is very simple. You will find
9 it in the transcript of the
10 testimony under oath of
11 Karlheinz Schreiber in the
12 Eurocopter trial (part of the
13 public record) and in a lot more
14 details in the Statement of
15 Claims and sworn Affidavit filed
16 by Karlheinz Schreiber in a
17 litigation he undertook this
18 year against Mr Mulroney."

19 27802

Further down:

20 "Two more points:
21 - When the RCMP informed Mr
22 Mulroney in a 2003 letter
23 that they had closed the
24 Airbus investigation and
25 found no wrongdoing on his

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1 part, they had known for a
2 full 2 years about the
3 \$300 000 retainer.”

4 27803 Are these your words, Mr. Lavoie?

5 27804 Mr. LAVOIE: Yes.

6 27805 Mr. BATTISTA: You keep referring to
7 the sum of 300,000 dollars in that document; correct?

8 27806 Mr. LAVOIE: Yes.

9 27807 Mr. BATTISTA: You also say that
10 Mr. Schreiber’s testimony in the Eurocopter trial and
11 the affidavit he produced as part of his case against
12 Mr. Mulrone y explained the reasons for the payments;
13 correct?

14 27808 Mr. LAVOIE: Yes. In any case, his
15 version.

16 27809 Mr. BATTISTA: You were still in
17 contact with Mr. Mulrone y at that time; correct?

18 27810 Mr. LAVOIE: Yes. In fact, I still
19 am.

20 27811 Mr. BATTISTA: I understand. But as
21 spokesperson, you were still a spokesperson for
22 Mr. Mulrone y at the time?

23 27812 Mr. LAVOIE: Yes. Yes.

24 27813 Mr. BATTISTA: You ended your e-mail
25 with this sentence, second to last paragraph:

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1 "I know all these facts to be
2 totally true."

3 27814 When you said that, you were telling
4 the truth?

5 27815 Mr. LAVOIE: Yes. This one wasn't an
6 affidavit, it was an e-mail.

7 27816 Mr. BATTISTA: I understand. But you
8 were telling the truth when you said that?

9 27817 Mr. LAVOIE: Of course.

10 27818 Mr. BATTISTA: I will suggest to you
11 that in 2004 as well, at Tabs 10 and 11, if you go
12 there, in an article published in *The Globe and Mail* on
13 October 8, 2004, and then, another in *The Globe and*
14 *Mail* of October 16, 2004, if you go to the middle, "In
15 an interview," then...

16 27819 Mr. LAVOIE: At Tab 11, eh, you said?

17 27820 Mr. BATTISTA: Yes... Tab 10, first,
18 excuse me.

19 27821 Mr. LAVOIE: Tab 10. Tab 10, yes.

20 27822 Mr. BATTISTA: So, in the middle of
21 the page, "In an interview," then, fifth paragraph:

22 "In an interview, Luc Lavoie,
23 spokesman for Mr. Mulroney, said
24 the former prime minister did
25 nothing wrong. 'There was

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1 nothing illegal about (the
2 payments),' Mr. Lavoie said,
3 'taxes were paid, it was a
4 commercial transaction and he
5 had left office. It was all
6 proper.'"

7 27823 Is this correct?

8 27824 Mr. LAVOIE: Yes.

9 27825 Mr. BATTISTA: And at 11...

10 27826 Mr. LAVOIE: Tab 11?

11 27827 Mr. BATTISTA: Tab 11, sorry, the
12 second to last paragraph:

13 "Nevertheless, Mr. Mulroney has
14 refused to discuss the affair at
15 length, instead relying on his
16 official spokesman, Luc Lavoie,
17 to repeat a simple mantra: The
18 payments were legal, no rules or
19 laws were broken, all income
20 taxes were paid, end of story."

21 27828 Is that right?

22 27829 Mr. LAVOIE: Excellent quote, but it's
23 very good.

24 27830 Mr. BATTISTA: Is this exact?

25 27831 Mr. LAVOIE: That is exact.

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1 27832 Mr. BATTISTA: That was your mandate?
2 27833 Mr. LAVOIE: Absolutely.
3 27834 Mr. BATTISTA: OK. There was never
4 any question at that time of correcting the figure of
5 300,000 dollars; correct?
6 27835 Mr. LAVOIE: No, that wasn't an issue,
7 no. But he had never said to me 300,000 dollars, you
8 understand.
9 27836 Mr. BATTISTA: I understand,
10 Mr. Lavoie.
11 27837 If you would give me a moment.
12 --- Pause
13 27838 Mr. BATTISTA: Commissioner, I have
14 one last thing that I don't think will take very long.
15 Maybe it would be appropriate to take a break now, and
16 then we can come back, and my colleagues... I will
17 finish what I have to do, and my colleagues will take
18 over.
19 27839 COMMISSIONER OLIPHANT: You would like
20 to take a break now?
21 27840 Mr. BATTISTA: Yes, that's what I am
22 proposing.
23 27841 COMMISSIONER OLIPHANT: No problem, 15
24 minutes.
25 27842 THE REGISTRAR: All rise. Veuillez

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1 vous lever.

2 --- Upon recessing at 10:50 a.m. / Suspension à 10 h 50

3 --- Upon resuming at 11:15 a.m. / Reprise à 11 h 15

4 27843 COMMISSIONER OLIPHANT: Be seated,
5 please.

6 27844 Monsieur Battista, before we
7 commence, there was an issue that we were going to deal
8 with, but I see from Mr. Wolson that we are not ready
9 to deal with the issue.

10 27845 MR. WOLSON: Yes. I can advise you,
11 Mr. Commissioner, that I'm waiting to hear from at
12 least one of the parties and I should know the issue
13 that I think you're talking about is the order of
14 examination of Mr. Mulroney.

15 27846 COMMISSIONER OLIPHANT: Yes.

16 27847 MR. WOLSON: And an application that
17 has been made and I'm waiting to hear from all of the
18 parties. I haven't heard from them on their positions
19 yet and I wonder if we can defer that until tomorrow.

20 27848 COMMISSIONER OLIPHANT: All right.
21 My concern, of course, is that if the matter can't be
22 resolved on a consensual basis, we'll need to set a bit
23 of time aside for a hearing and Mr. Mulroney is
24 scheduled to testify just a little bit later in the
25 inquiry and every day we lose we're more pressed for

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1 time.

2 27849 So, if we can either get it resolved
3 by tomorrow or set a date tomorrow, I would appreciate
4 it.

5 27850 MR. WOLSON: Yes. Thank you.

6 27851 COMMISSIONER OLIPHANT: Thank you.

7 All right. Mr. Battista.

8 27852 Mr. BATTISTA: Yes. Thank you.

9 So...

10 27853 COMMISSIONER OLIPHANT: You have no
11 more questions?

12 27854 Mr. BATTISTA: Yes, a few more
13 questions, Commissioner, just a few things.

14 27855 Mr. Lavoie, I would like to come back
15 to Tab 14 with you, the e-mail you had sent to
16 Mr. Bruce Campion Smith, just to draw your attention to
17 an excerpt, I read rather quickly and I did not read
18 the entire excerpt.

19 27856 So, I will ask you to go to page 2 of
20 this document, in the middle of the paragraph, the
21 question: What was the \$300,000 for? You say:

22 "The answer is very simple, you
23 will find it in the transcript
24 of the testimony under oath of
25 Karlheinz Schreiber in the

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1 Eurocopter trial (part of the
2 public record) and in a lot more
3 detail in the Statement of
4 Claims and sworn Affidavit filed
5 by Karlheinz Schreiber in a
6 litigation he undertook this
7 year against Mr. Mulronev."

8 27857 At that time, you referred to the
9 content of the Mr. Schreiber's statements. Correct?

10 27858 Mr. LAVOIE: In the Statement of
11 Claims...

12 27859 Mr. BATTISTA: Yes?

13 27860 Mr. LAVOIE: ... most probably
14 presented in winter 2007.

15 27861 Mr. BATTISTA: OK. What I just
16 read, what I just read, you are referring to... either
17 to Mr. Schreiber's testimony or to what he claims is
18 the reason for the dissension, if you like, regarding
19 the \$300,000?

20 27862 Mr. LAVOIE: Yes.

21 27863 Mr. BATTISTA: You go on to say:

22 "The litigation has to do with
23 whether or not the services he
24 paid for were rendered and the
25 Court has yet to hear the case.

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1 However, the Statement of Claims
2 is very clear. The money was to
3 get Mr. Mulroney's help in
4 building a light armoured troop
5 carrier factory for Thyssen, a
6 major German corporation in the
7 region of Montreal and to launch
8 a chain of pasta restaurants in
9 North America."

10 27864 This was, for you, how you would
11 summarize Mr. Mulroney's mandate?

12 27865 Mr. LAVOIE: Indeed.

13 27866 Mr. BATTISTA: Thank you. Now, I
14 will bring you to a last point, the issue of the...
15 Mr. Mulroney's financial situation.

16 27867 We saw in the excerpts that you
17 quoted at tabs 19 and 20, where you referred to Tab 18,
18 you referred to the fact that Mr. Mulroney was in
19 financial straits and worried about his future.

20 27868 At 19, you had said, you were quoted
21 in the *Ottawa Citizen*:

22 "After Mr. Mulroney left office
23 in 1993, he had used up all his
24 savings and worried about how he
25 was going to take care of his

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1 young family."

2 27869 I draw your attention also to Tab 17

3 in an article published in the *Globe & Mail*.

4 27870 Mr. LAVOIE: At Tab 17?

5 27871 Mr. BATTISTA: Yes.

6 27872 Mr. LAVOIE: Canwest News Service.

7 27873 Mr. BATTISTA: I'm sorry; my

8 mistake. Yes, at Tab 17, i.e., canada.com. Are you

9 following me?

10 27874 Mr. LAVOIE: Yes.

11 27875 Mr. BATTISTA: I'm sorry. I'm the

12 one... I'm the one who is not directing you properly,

13 but you did go to Tab 17.

14 27876 So, second paragraph:

15 "Luc Lavoie told Canwest News

16 Service that when Mulroney left

17 politics in 1993, he had money

18 pressures, he was the head of a

19 young family with certain

20 lifestyle expectations and not a

21 rich man."

22 27877 You were not misquoted. Is this

23 correct?

24 27878 Mr. LAVOIE: I was not misquoted. I

25 am not part of the misquoted club, no.

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1 27879 Mr. BATTISTA: And you explained to
2 us at our meeting in Montréal that you had obtained
3 this information, this vision of things, by reading
4 excerpts from Mr. Mulroney's Memoirs, but in the drafts
5 that preceded the final version.

6 27880 Am I right?

7 27881 Mr. LAVOIE: Actually, I read
8 Mr. Mulroney's Memoirs in a version that was
9 subsequently edited because this is the normal process
10 when preparing a book like this, and he used this
11 phrase:

12 "I had used all the savings I
13 had accumulated before I came
14 into politics..."

15 27882 -- something like that.

16 27883 Mr. BATTISTA: OK.

17 27884 Mr. LAVOIE: And I also note when I
18 read your Tab 21 that Mr. Kaplan quoted him saying the
19 exact same thing. That being said, I think it's
20 important to establish a little context behind this.

21 27885 I never said and I never intended to
22 say, and the fact is that I left the opposite
23 impression, which I find very unfortunate, but the
24 context in which this was said in the fall of 2007,
25 everything was blown out of proportion.

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1 27886 What I was saying, and I say it again
2 here, is that in Canada's recent history, there have
3 been prime ministers, Mr. Trudeau, for example--and I'm
4 not criticizing them, I am only making an observation--
5 Mr. Trudeau, for example, Mr. Martin, for example, were
6 people who were very well off before they went into
7 politics and who left politics still very well off.
8 That was not the case for Mr. Mulroney, first of all.

9 27887 Second, I myself have witnessed,
10 among other things, after the 1988 election, when
11 certain ministers were defeated in the election, and as
12 a journalist I also saw it in others who experienced
13 the same thing and myself, when I stopped working for
14 the Government of Canada, when you're working in jobs
15 such as these, you tend to, even if you try to reason
16 with yourself not to think that way, you tend to
17 believe that the fact that the most powerful men in the
18 country return your call within three minutes of your
19 call, and the fact that you have the general-in-chief
20 commander of the Canadian armed forces on the phone
21 within 30 seconds and the fact that you have the most
22 powerful businessmen wanting to see you right away and
23 that this is very, very important, you tend to think
24 it's personal.

25 27888 But, when you leave politics, which

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1 is a very harsh environment, you always get a shock,
2 even if you prepared yourself for it because others
3 told you about it, the shock is this one: the phone
4 doesn't ring any more. You go into consulting, as I
5 did, and you dream that the phone is going to ring and
6 even if you have confidence in your talents and the
7 future, you suffer from true anxiety.

8 27889 I have known and I know other former
9 prime ministers who built up a new career, often in
10 legal firms, and the most talented among them--because
11 these are generally very talented people--will tell you
12 that they went through the exact same thing.

13 27890 When you leave office and you try to
14 rebuild your life and you wake up one day and there is
15 no longer this huge logistical team with a driver and
16 bodyguard and secretary and private plane and all the
17 rest, and you have to make a living, you tell yourself:
18 I will join a legal firm and I am sure that clients
19 will come to me, and you quickly realize that the
20 clients don't automatically come to you.

21 27891 And what I was referring to and,
22 obviously, I am not denying the statements that are
23 there, but that was placed in a context, and it was
24 probably clumsy of me to do so, that implied that the
25 guy was scared like that. That is not at all what I

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1 wanted to say.

2 27892 What I wanted to say is that when you
3 leave politics and you want to start a new career after
4 having lived in the fast lane seven days a week for
5 nine years, you get a little scared at the thought
6 that: I hope it's going to work as well as I want and
7 God I can't wait to have my first client.

8 27893 That is all that I wanted to say.

9 27894 Mr. BATTISTA: So, if I understand
10 correctly, in short, it was still a situation of
11 concern for him at that time when... With all that you
12 just said, you just explained...

13 27895 Mr. LAVOIE: His words confirm it in
14 Kaplan's book.

15 27896 Mr. BATTISTA: Correct.

16 27897 Mr. LAVOIE: He says exactly that
17 and in the version of the book that I had seen and that
18 was expurgated because... as far as I know, it wasn't
19 expurgated because it was compromising, it was
20 expurgated because the book had 200 pages too many.
21 So, there are 200 pages that were cut and I see today
22 because myself, I had read the preliminary version, I
23 did not read the final version.

24 27898 Mr. BATTISTA: Un-huh.

25 27899 Mr. LAVOIE: In preparation for my

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1 meeting with you, Mr. Battista, and last March, I went
2 back to the book and I noted that it was no longer
3 there and I spoke to the book's editor who told me:
4 No, that was part of the 200 pages that were cut.

5 27900 Mr. BATTISTA: OK. But you were
6 still certain that you had read that in a previous
7 version?

8 27901 Mr. LAVOIE: Absolutely.
9 Absolutely.

10 27902 Mr. BATTISTA: And the fact that
11 Mr. Kaplan also has this quote supports what you are
12 saying?

13 27903 Mr. LAVOIE: Quotes him, in
14 quotation marks, saying the same thing.

15 27904 Mr. BATTISTA: Very good?

16 27905 Mr. LAVOIE: And in fact, it doesn't
17 seem all that important to me. It seems to me very much
18 in line with the pattern of people who leave politics
19 when they are not wealthy because of an inheritance or
20 wealthy because... like Mr. Martin, for example, and I
21 say this with admiration, had built up a formidable
22 fortune before going into politics.

23 27906 Mr. BATTISTA: But Mr. Lavoie, why
24 did you say that then? Why did you say these things?

25 27907 M. LAVOIE: Because it was my

1 attempt, a very clumsy one, I repeat, at explaining why
2 he had been so careless, because he himself admitted
3 that he had been careless, to agree to be paid in cash.

4 27908 Mr. BATTISTA: So for you it was
5 important to explain why...

6 27909 Mr. LAVOIE: The atmosphere was
7 that...

8 27910 Mr. BATTISTA: ... a former prime
9 minister had allegedly agreed to take cash at that
10 time. Correct?

11 27911 Mr. LAVOIE: That is in fact what I
12 was trying to explain.

13 27912 Mr. BATTISTA: Thank you. I have no
14 more questions.

15 27913 COMMISSIONER OLIPHANT: Thank you,
16 Mr. Battista. Mr. Grondin, good morning.

17 27914 MR. GRONDIN: A few questions for
18 Mr. Lavoie, but you will understand that with surnames
19 like Grondin and Lavoie, I will do it in French also.

20 27915 COMMISSIONER OLIPHANT: I am not
21 surprised.

22 27916 MR. GRONDIN: But I know you
23 understand very well. You don't even have the head
24 phones.

25 27917 Mr. LAVOIE: No. The Judge seems to

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1 understand French perfectly.

2 27918 COMMISSIONER OLIPHANT: We speak
3 French.

4 27919 Mr. LAVOIE: In Manitoba...

5 27920 COMMISSIONER OLIPHANT: Yes. And my
6 wife is also francophone.

7 27921 Mr. LAVOIE: As well; St-Boniface.

8 27922 MR. GRONDIN: I would like to file
9 an exhibit before questioning Mr. Lavoie.

10 27923 COMMISSIONER OLIPHANT: Yes.

11 27924 MR. GRONDIN: It's the transcript of
12 the press conference that was given on November 18,
13 1995, prior to the release of the lawsuit by
14 Mr. Mulroney against the Canadian Government and I know
15 it has been distributed to other parties and I believe
16 the next reference is P-36, if I'm --

17 27925 COMMISSIONER OLIPHANT: That's
18 correct.?

19 27926 MR. GRONDIN: -- following well.

20 27927 COMMISSIONER OLIPHANT: Does anyone
21 have a problem with this transcript going in as an
22 exhibit? Mr. Vickery?

23 27928 MR. VICKERY: No, I don't.

24 27929 COMMISSIONER OLIPHANT: Mr. Houston?

25 27930 MR. HOUSTON: No, sir, I don't.

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1 27931 COMMISSIONER OLIPHANT: Mr. Auger?
2 27932 MR. AUGER: No, sir.
3 27933 COMMISSIONER OLIPHANT: Mr.
4 Battista, no problem with that? All right then, the
5 transcript of the press conference will be received and
6 marked as Exhibit P-37, la pièce, en français
7 EXHIBIT NO. P-36: Transcript of
8 a press conference
9 27934 Mr. BATTISTA: Commissioner, I
10 believe we are now at P-36.
11 27935 COMMISSIONER OLIPHANT: Thirty-seven
12 (37)?
13 27936 MR. GRONDIN: Thirty-six (36), I
14 think, yes.
15 27937 COMMISSIONER OLIPHANT: Thirty-six
16 (36), yes.
17 27938 Mr. BATTISTA: Thirty-five (35),
18 excuse me.
19 27939 MR. GRONDIN: It's my way of having
20 my name on the record, filing documents. So --
21 EXAMINATION: LUC LAVOIE BY MR. GRONDIN
22 INTERROGATOIRE: LUC LAVOIE PAR Me GRONDIN
23 27940 Mr. GRONDIN: So, Mr. Lavoie, a few
24 questions for you, a few clarifications following your
25 testimony, your responses to Mr. Battista's questions.

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1 27941 You referred to your job at Québecor
2 as executive vice-president. Can you explain to the
3 Commissioner starting on what date you were... began in
4 this position?

5 27942 Mr. LAVOIE: December 18, 2000.

6 27943 Mr. GRONDIN: And until what date,
7 Mr. Lavoie?

8 27944 Mr. LAVOIE: Formally, I... wait.
9 My departure was announced on August 30, 2008.

10 27945 Mr. GRONDIN: And I imagine that I
11 would be right in saying that this was a full-time job?

12 27946 Mr. LAVOIE: And more.

13 27947 Mr. GRONDIN: So, did I understand
14 correctly from your testimony that there were actually
15 two very distinct periods in the role you may have
16 played for Mr. Mulrone, that is to say, first from
17 November 1995 to February 1997, while it was your
18 primary mandate when you were at National. Correct?

19 27948 Mr. LAVOIE: Oh, yes. It was... it
20 was my job.

21 27949 Mr. GRONDIN: And you were...

22 27950 Mr. LAVOIE: That was what I did.
23 That's what I was doing for a living, as they say.

24 27951 Mr. GRONDIN: And you were in fact
25 paid to do it?

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1 27952 Mr. LAVOIE: Absolutely, yes.

2 27953 Mr. GRONDIN: While afterwards it
3 was a bit more to help piy, if I understand correctly,
4 Mr. Mulroney, and out of loyalty, friendship, as you
5 explained?

6 27954 Mr. LAVOIE: It was out of
7 friendship, to help him out, that's all.

8 27955 Mr. GRONDIN: And I understand that
9 in late November 2007, early December 2007, you stopped
10 representing him or doing such favours for him,
11 precisely because you had time issues and because you
12 had realized that you could no longer provide him with
13 adequate services given your lack of time?

14 27956 Mr. LAVOIE: Well...

15 27957 Mr. GRONDIN: Is that correct?

16 27958 Mr. LAVOIE: Well, no. It's because
17 during the 2000s, it was on the occasion--call it a
18 pop, you know? It was like a "boom" and then you were
19 busy for two days with a few phone calls, a few letters
20 exchanged, and life went on.

21 27959 But come the fall of 2007 it became
22 completely, completely full time, which I really
23 couldn't commit to. At that time Quebecor was involved
24 in an issue that had important implications for the
25 future of the company, namely, their bid to obtain

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1 frequencies for third-generation mobile phone
2 technologies.

3 27960 On the one hand I didn't have the
4 time, and on the other hand — and as I told him at the
5 time — I didn't think I was the right person for the
6 job. The way things stood, they needed someone who
7 could really devote themselves to the issue, and
8 I wasn't in a position to do that, it wasn't my job.

9 27961 MR. GRONDIN: You didn't always have
10 time to conduct the necessary checks, and I also
11 understand that you might occasionally speak to the
12 media without checking first with Mr. Mulroney, on the
13 basis of your general knowledge of the issue. Is that
14 correct?

15 27962 MR. LAVOIE: It's true, but no,
16 I didn't check with him.

17 27963 MR. GRONDIN: I would now draw your
18 attention, Mr. Lavoie, to Tab 7, that is, the notes...
19 what Mr. Kaplan calls his "interview notes. "

20 27964 On the first page, we read: "Interview
21 with Luc Lavoie, Friday,
22 January 4, 2002."

23 27965 I know that Mr. Battista has asked
24 you some questions about this.

25 27966 So as I understand it, when you

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1 contacted Mr. Kaplan in 2002, you acknowledged the
2 payments received by Mr. Mulroney?

3 27967 MR. LAVOIE: I don't deny the
4 payments.

5 27968 MR. GRONDIN: Mr. Mulroney never
6 asked you to deny the payments?

7 27969 MR. LAVOIE: Mr. Mulroney never
8 asked me anything like that, no.

9 27970 MR. GRONDIN: And we see that as of
10 January 4, 2002, you say — and this is mentioned twice
11 in Mr. Kaplan's note:

12 "He said the amount was much
13 less than \$300,000."

14 27971 And you have explained that this
15 information came to you in January 2002 from
16 Mr. Mulroney, who told you...

17 27972 MR. LAVOIE: I assume... I assume.

18 27973 MR. GRONDIN: ... that the amount
19 was less than the \$300,000 put forward by Mr. Kaplan?

20 27974 MR. LAVOIE: I will tell you again
21 that I do not recall that particular conversation, but
22 I'm certain that it was after a conversation with him
23 that I said that.

24 27975 MR. GRONDIN: Very well. We also
25 read in the middle of the note, on the first page, and

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1 here it refers... "he" refers to you:

2 "He said that Mulroney never
3 lobbied for Schreiber and so,
4 never had to register as a
5 lobbyist. "

6 27976 Do you remember saying that to
7 Mr. Kaplan?

8 27977 MR. LAVOIE: I don't recall that
9 conversation, but I said it in there and you will find
10 that in other parts of that binder I say the same
11 thing.

12 27978 MR. GRONDIN: So you don't disagree
13 with the note's account of what you said on this
14 subject?

15 27979 MR. LAVOIE: Certainly not, because
16 I said it elsewhere and I say it again today.

17 27980 MR. GRONDIN: Very well. And turning
18 to the next page, the second page, Mr. Lavoie, it says:

19 "The truth was that Mulroney had
20 nothing to do with Airbus,
21 nothing to do with MBB and he
22 had nothing improper to do with
23 Bear Head. Being hired as an
24 international adviser after he
25 left office was entirely

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1 consistent with the practice he
2 was setting out to establish. "

3 27981 So, again, you have no reason to
4 challenge Mr. Kaplan's account of this matter in his
5 notes?

6 27982 MR. LAVOIE: That one I remember
7 very well. I remember that dinner very well. It's much
8 more recent. I think it was in 2006.

9 27983 MR. GRONDIN: No, it seems to be
10 part of the same entry, for January 4, 2002.

11 27984 MR. LAVOIE: Ah! You're right.
12 You're absolutely right. I apologize. But, no, I don't
13 disagree with it at all.

14 27985 MR. GRONDIN: So as of January 2002,
15 during your conversation with Mr. Kaplan, we see that
16 you mention that Mr. Mulroney had provided services to
17 International in connection with the Bear Head Project.
18 Correct?

19 27986 MR. LAVOIE: I realize that yes,
20 absolutely.

21 27987 MR. GRONDIN: Earlier, when you told
22 us that you had already said Mr. Mulroney never did any
23 lobbying for Mr. Schreiber, as the latter alleges,
24 I now draw your attention to Mr. Kaplan's book, found
25 at Tab 21, page 18.

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1 27988 MR. LAVOIE: Yes.

2 27989 MR. GRONDIN: And we'll begin with

3 the section right after "Fair enough", where it says:

4 "But had Mulroney retained to
5 lobby for Bear Head, at the very
6 least, he would have had to
7 register as a lobbyist under
8 Legislation passed by Parliament
9 under his government, which he
10 did not. "

11 27990 This is still Mr. Kaplan speaking:

12 "There might also have been
13 conflict of interest issues,
14 given that he had recently been
15 Prime Minister and did not step
16 down as sitting MP until the
17 general election on October
18 25th, 1993.

19 So, perhaps I thought
20 Mathias got that part of the
21 story wrong and the truth was
22 that he received proper and
23 appropriate payments for
24 assisting Schreiber's other
25 business interests in Canada and

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1 overseas. "

2 27991 And here you are quoted as saying:

3 "That is exactly what happened
4 insisted Lavoie. Mulroneu never
5 lobbied for Schreiber, so he
6 never had to register as a
7 lobbyist."

8 27992 So, again, you agree that this is an
9 accurate report of what you said?

10 27993 MR. LAVOIE: Absolutely. It's the
11 same passage.

12 27994 MR. GRONDIN: And you mentioned the
13 fact that Mr. Mulroneu had spoken to you about his
14 involvement with Mr. Schreiber for the... in connection
15 with Bear Head, and if I understand correctly, he
16 had... there are references to services to
17 International, and you referred to the fact that he
18 would be promoting those vehicles to International.
19 Correct?

20 27995 MR. LAVOIE: Yes, yes, he did, yes.

21 27996 MR. GRONDIN: This is what you
22 mentioned earlier, that... you referred to "so-called
23 peace keeping vehicles"?

24 27997 MR. LAVOIE: That's right.

25 27998 MR. GRONDIN: I now draw your

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1 attention to Tab 9, which is an article by
2 Mr. Bill Kaplan dated November 10, 2003, in which he
3 refers to a proposed article by Mr. Phil Mathias.

4 27999 MR. LAVOIE: Uh-huh.

5 28000 MR. GRONDIN: And I draw your
6 attention to page 3, beginning at the second paragraph,
7 which reads:

8 "Award-winning National Post
9 reporter Philip Mathias got the
10 story first, nailing it down in
11 late 2000 and early 2001:
12 'Brian Mulroney was paid
13 \$300,000 in cash by German
14 businessman Karlheinz Schreiber,
15 the man at the centre of the
16 Airbus affair, over an 18-month
17 period beginning soon after
18 Mulroney stepped down as prime
19 minister in 1993.'

20 The story made it clear that
21 the payments had nothing to do
22 with Airbus, or any of the other
23 wrongdoing asserted in the 1995
24 letter of request. The story
25 noted that, at the time the

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1 payments were made, Mulroney was
2 re-establishing himself in the
3 private sector and there was no
4 reason not to do business with
5 Schreiber, who was not, at the
6 time, embroiled in the various
7 legal proceedings and political
8 scandals that would soon
9 overtake him. "

10 28001 We can skip the next paragraph; the
11 one after that reads:

12 "Mulroney apparently declined to
13 comment for a story, as did his
14 lawyers. However, Mathias did
15 get to speak to a 'Mulroney
16 confidant' who told him that
17 'the former prime minister
18 earned the fee in full' by
19 performing services for
20 Schreiber after the fee was
21 paid. The Post was not told the
22 nature of the work or when it
23 was done. Asked why Mulroney had
24 not made this matter public
25 sooner, the confidant replied

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1 that Mulroney was fearful of
2 creating a false impression in
3 the middle of what he described
4 as 'a witch hunt over the
5 so-called Airbus affair.'

6 28002 So my first question is, are you the
7 "Mulroney confidant" to whom Mr. Mathias refers?

8 28003 MR. LAVOIE: I am. I am.

9 28004 MR. GRONDIN: So that also means
10 that as of late 2000 or early 2001, during a
11 conversation with Mr. Mathias, you acknowledged the
12 payments by Mr. Schreiber to Mr. Mulroney. Is that
13 correct?

14 28005 MR. LAVOIE: I didn't deny them.

15 28006 MR. GRONDIN: And Mr. Mulroney never
16 asked you to deny them?

17 28007 MR. LAVOIE: He never asked me to
18 deny them.

19 28008 MR. GRONDIN: And so when we... when
20 we read the last sentence of the last paragraph, the
21 passage I just read, where it says:

22 "Asked why Mulroney had not made
23 this matter public sooner, the
24 confidant replied that Mulroney
25 was fearful of creating a false

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1 impression in the middle of what
2 he described as 'a witch hunt
3 over the so-called Airbus
4 affair.'"

5 28009 I take it that this is what you were
6 referring to this morning, that people were confusing a
7 perfectly legitimate, post-Prime Ministerial business
8 relationship with the allegations of criminal activity
9 contained in the September 1995 letter requesting
10 assistance while Mr. Mulroney was still Prime Minister.
11 Is that correct?

12 28010 Is that the false impression that...

13 28011 MR. LAVOIE: Yes, of course that is
14 correct, and at the risk of repeating myself I will say
15 it again now. As someone who is no longer involved in
16 this matter, I am still stunned and amazed to see that
17 once it was established that the contents of that
18 odious letter sent to Switzerland, which was woven out
19 of nothing but lies, falsehoods and exaggerations based
20 on nothing but the idle gossip of a second-rate
21 reporter -- when all that was proved to be false, and
22 it came out that afterwards, afterwards, when he was no
23 longer prime minister, he entered into a business
24 relationship as a consultant to a businessman, then
25 everybody said, "Aha! Now we've got him."

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1 28012 Personally, I find that... It was
2 enough to give me migraines that sent me to the doctor.

3 28013 MR. GRONDIN: Because this morning,
4 in response to some of Mr. Battista's questions, you
5 talked about the fact that there were discussions about
6 whether Mr. Mulroney should have taken a proactive
7 approach and gone public...

8 28014 MR. LAVOIE: But he didn't want to
9 do that...

10 28015 MR. GRONDIN: The existence...

11 28016 MR. LAVOIE: I'm interpreting.
12 I think I can explain his reluctance. If he did that,
13 that faithful defender of freedom and civilization,
14 Harvey Cashore, would rear up and say, "Aha! The
15 \$300,000 must come from a bank account somewhere in
16 Liechtenstein," and then all kinds of conspiracy
17 theories would surface, all...

18 28017 When you're caught up in something
19 like that, you know, you think that sooner or later
20 Canada will produce a worthy successor to Franz Kafka.
21 It's unbelievable.

22 28018 MR. GRONDIN: So I understand from
23 your testimony that at no time did Mr. Mulroney or you,
24 in response to any request whatsoever, ever deny the
25 payments?

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1 28019 MR. LAVOIE: Never.

2 28020 MR. GRONDIN: Which leads me to draw
3 your attention to a document you will find at Tab 9 —
4 this is again Mr. Kaplan's article in the *Globe and*
5 *Mail* of November 10, 2003. This time I'd like to draw
6 your attention to the penultimate paragraph on page 7.

7 28021 At this point Mr. Kaplan is talking
8 about the payments, and he says:

9 "What is also very surprising
10 about it all, and arguably
11 telling of their legitimacy and
12 Mulroneys innocence, is that
13 Mulroneys did not just deny the
14 payments. Doing so, presumably
15 would have been the easiest
16 course, as there were by all
17 accounts no witnesses to the
18 exchanges.

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19 Mulroneys did admit them
20 because the payments were above
21 board."

22 28022 Do you agree with Mr. Kaplan's
23 statement?

24 28023 MR. LAVOIE: Yes, absolutely.

25 28024 MR. GRONDIN: You also talked about

1 the question of the amount, of the sums paid. As we
2 have seen, as of January 2002 Mr. Kaplan's notes
3 indicate that you told him the amount was "less than
4 \$300,000". But is it not true that at that time, in
5 2007, the newspapers were still referring to payments
6 of \$300,000? That was the amount reported in the
7 newspapers, in the media?

8 28025 MR. LAVOIE: On the one hand, that
9 was the amount reported in Bill Kaplan's article in the
10 *Globe and Mail* in the fall of 2003. On the other hand,
11 in Bill Kaplan's 2002 notes about a conversation I do
12 not specifically recall, I don't say it was \$225,000,
13 I don't say it was \$262,000; I say it was less; but in
14 all the confusion, the \$300,000 figure was the one that
15 stuck.

16 28026 And in all honesty, in my own mind,
17 the difference between \$225,000 and \$300,000, when it
18 came right down to it, I didn't quite see why it
19 mattered. And it was only in the fall of 2007 that
20 Mr. Mulroney told me, "By the way, Luc, it's not 300,
21 it's 225." That was the only time it was put like that,
22 flat out like that.

23 28027 MR. GRONDIN: Because when you
24 learned, in the spring of 2000, about certain things
25 through Mr. Gérald Tremblay, at that time no specific

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1 amount was mentioned. Correct?

2 28028 MR. LAVOIE: The expression used was

3 "three times tens of thousands."

4 28029 MR. GRONDIN: And you, before the

5 event you have just described, you never asked

6 Mr. Mulroney the exact amount of the payments?

7 28030 MR. LAVOIE: No, no.

8 28031 MR. GRONDIN: And you referred to

9 your conversation with Mr. Mulroney, which you say took

10 place in 2007, when he first told you that it was

11 \$225,000 and not \$300,000?

12 28032 MR. LAVOIE: That's right.

13 28033 MR. GRONDIN: And am I to believe

14 that it was after one of the articles to which

15 Mr. Battista referred you, in which you seemed to

16 indicate that the amount was \$300,000?

17 28034 MR. LAVOIE: It was clearly after an

18 article in which I made... I appeared to confirm

19 \$300,000.

20 28035 MR. GRONDIN: And am I also to

21 believe that at that time, in spite of the fact that

22 the amount mentioned was not the correct one, that is,

23 \$300,000 instead of \$225,000, it was agreed not to

24 specify that amount publicly, at that particular time,

25 because of the climate that then prevailed in the

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1 media?

2 28036 MR. LAVOIE: That conversation was
3 an extremely brief one, and it took place in the
4 following context: I was accompanying Mr. Mulroney to
5 some events in connection with the launch of his
6 Memoirs. We had just landed in Toronto, we were in a
7 car going downtown for an event, when that conversation
8 took place, and it lasted no longer than 30 seconds:
9 "By the way, Luc" — I remember his words clearly —
10 "By the way, Luc, it's not \$300,000, it's \$225,000."

11 28037 So after that, it wasn't... You'd
12 have to correct that, and when would you correct it?..
13 No, no, no. That's all that was said.

14 28038 MR. GRONDIN: Mr. Battista also
15 asked you some questions about an e-mail you will find
16 at Tab 14, your e-mail dated November 5, 2007 to
17 Mr. Champion Smith. Can you explain to the Commissioner
18 the context in which you wrote that e-mail? Where were
19 you when you wrote it?

20 28039 MR. LAVOIE: I was on holiday in
21 Paris with my daughter, who was living there at the
22 time. Although it was November, it can be beautiful in
23 Paris in November. I was sitting outdoors at a café on
24 the Place Vendôme in Paris. Bruce Champion Smith had
25 sent me an e-mail or left me a telephone message, or

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1 both.

2 28040 I should point out that this was in
3 the days following the 49th episode of the soap opera
4 called *the fifth estate*, and to my knowledge
5 Bruce Campion Smith had never covered the
6 aforementioned Airbus affair.

7 28041 That affair is so complex, when you
8 start looking at it in its entirety, that I gathered
9 from my conversation with him or from his voice mail
10 message that he wasn't clear on the chronology — and
11 I say that without malice — besides, you can see from
12 the tone of my e-mail that I thought perhaps he should
13 put the matter in context as objectively as possible.

14 28042 So that e-mail was written on a
15 Blackberry while sitting at a café, and those are the
16 circumstances in which it was sent.

17 28043 MR. GRONDIN: And am I also to
18 understand that you did not communicate with
19 Mr. Mulroney before sending the e-mail?

20 28044 MR. LAVOIE: No.

21 28045 MR. GRONDIN: If you will allow me,
22 Mr. Commissioner, I will just confer with my
23 colleagues.

24 --- Pause

25 28046 MR. GRONDIN: It's always good to

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1 have older friends.

2 28047 MR. YAROSKY: We'll find out,
3 Mr. Commissioner.

4 28048 COMMISSIONER OLIPHANT: It's your
5 way to come to the podium, Mr. Yarosky.

6 28049 MR. GRONDIN: Yes. That's
7 maître Wolson's mission, I heard.

8 28050 Mr. Lavoie, Mr. Battista referred to
9 excerpts from the e-mail you sent to Mr. Champion Smith.
10 Are we to understand that when you refer to the nature
11 of the services, you are suggesting that Mr. Mulroney
12 was lobbying for Mr. Schreiber?

13 28051 MR. LAVOIE: Absolutely not.
14 Absolutely not. Mr. Mulroney... My understanding was
15 that he had been retained as a strategic advisor.

16 28052 You know, when I was working for
17 National Public Relations, Canada's largest public
18 relations firm, I personally never accepted a lobbying
19 retainer. You have to know what lobbying is all about.

20 28053 Lobbying, or *démarchage* as we say in
21 French, consists of making phone calls on behalf of a
22 client, or going in person to meet a politician, an
23 elected representative or a civil servant to put
24 forward an idea, a proposal or a point of view.
25 I've never done that.

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1 28054 On the other hand, I was responsible
2 for many projects where lobbyists were part of the team
3 and I acted as a strategic consultant, and my own
4 modest contribution was that, having worked at the
5 highest level of the machinery of Canadian government,
6 I knew how to position things.

7 28055 My understanding of Mr. Mulroney's
8 function was that he was there as a strategic
9 consultant, and I've done that in my own consulting
10 career, I've been paid a monthly fee without any...
11 with no specific job description aside from "Stay on
12 top of such and such a file, and if it's OK with you
13 I'll call you every now and then to see what you
14 think." And that's not at all unusual.

15 28056 And it was my understanding that
16 Mr. Mulroney had that kind of mandate.

17 28057 It had nothing to do with lobbying.
18 Besides, the very idea of Brian Mulroney lobbying
19 Jean Chrétien seems ridiculous to me. It's just not...
20 you know...

21 28058 MR. GRONDIN: And when you spoke of
22 the mandate... your understanding of Mr. Mulroney's
23 mandate, as you stated earlier, which also... part of
24 it was to carry out promotion to International to
25 advance...

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1 28059 MR. LAVOIE: Promotion to
2 International, yes, absolutely.

3 28060 MR. GRONDIN: ...to advance the
4 interests of Thyssen.

5 28061 MR. LAVOIE: Yes, that's right.

6 28062 MR. GRONDIN: Thank you, Mr. Lavoie.
7 No further questions.

8 28063 COMMISSIONER OLIPHANT: Thank you
9 very much.

10 28064 Mr. Vickery, do you have any
11 questions for Mr. Lavoie?

12 28065 MR. VICKERY: No, I do not. Thank
13 you.

14 28066 COMMISSIONER OLIPHANT: Thank you.
15 Mr. Houston?

16 28067 MR. HOUSTON: No. Thank you, Mr.
17 Commissioner.

18 28068 COMMISSIONER OLIPHANT: Thank you.
19 Mr. Auger?

20 28069 MR. AUGER: No. Thank you.

21 28070 COMMISSIONER OLIPHANT: All right.
22 Any re-direct, maître Battista?

23 28071 MR. BATTISTA: Just a couple of
24 questions.

25 28072 COMMISSIONER OLIPHANT: No? Yes.

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1 EXAMINATION: LUC LAVOIE BY MR. BATTISTA

2 INTERROGATOIRE: LUC LAVOIE PAR Me BATTISTA

3 28073 MR. BATTISTA: I said, just a couple
4 of questions.

5 28074 So, Mr. Lavoie, just to clarify your
6 testimony a little. You said that it was in the fall of
7 2007 that Mr. Mulronev told you that he had received
8 not \$300,000, but \$225,000 — is that right?

9 28075 MR. LAVOIE: Yes.

10 28076 MR. BATTISTA: And that a decision
11 was made at that time not to specify that amount?

12 28077 MR. LAVOIE: There was no decision,
13 it wasn't about that. He just told me, that's all.

14 28078 MR. BATTISTA: OK.

15 28079 MR. LAVOIE: It lasted 30 seconds.

16 28080 MR. BATTISTA: And did you discuss
17 it? Did you say, "But maybe we should clarify, maybe we
18 should correct that"?

19 28081 MR. LAVOIE: No.

20 28082 MR. BATTISTA: You didn't discuss
21 it?

22 28083 MR. LAVOIE: No. We were in the
23 middle of a media storm, that's all.

24 28084 MR. BATTISTA: This was in the fall
25 of 2007?

1 28085 MR. LAVOIE: Yes.

2 28086 MR. BATTISTA: We saw earlier that
3 in 2001-2003-2004 and at other times, you were still a
4 spokesperson and that number was still circulating.

5 28087 MR. LAVOIE: \$300,000.

6 28088 MR. BATTISTA: The amount of
7 \$300,000?

8 28089 MR. LAVOIE: Yes.

9 28090 MR. BATTISTA: You were in regular
10 contact with Mr. Mulroney during those years?

11 28091 MR. LAVOIE: Yes.

12 28092 MR. BATTISTA: You exchanged...
13 I'm going to suggest to you that every time
14 Mr. Mulroney received a request for a live media
15 interview, his secretary would forward the letters to
16 you?

17 28093 MR. LAVOIE: In fact...

18 28094 MR. BATTISTA: The letters
19 Mr. Mulroney received?

20 28095 MR. LAVOIE: Yes, though the
21 requests rarely arrived in the form of a letter, and
22 they generally came directly to me.

23 28096 MR. BATTISTA: Yes, but when they
24 were sent to Mr. Mulroney, it was not unusual that they
25 be forwarded to you. Is that correct?

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1 28097 MR. LAVOIE: That's what generally
2 happened, yes.

3 28098 MR. BATTISTA: Here, for instance,
4 at Tab 12, we have a letter written by you to
5 Mr. Linden MacIntyre.

6 28099 M. LAVOIE: Uh-huh.

7 28100 MR. BATTISTA: And in it you say:
8 "As a follow-up to our
9 conversations of last week
10 regarding the letter sent to
11 The Right Honourable
12 Brian Mulroney by your colleague
13 Harvey Cashore... "

14 28101 Is that correct?

15 28102 MR. LAVOIE: Uh-huh.

16 28103 MR. BATTISTA: So you were doing a
17 follow-up. Requests would come in to Mr. Mulroney, the
18 letters would be forwarded to you, and you would act as
19 the media spokesperson. Is that right?

20 28104 MR. LAVOIE: The written
21 communications involved only the Crown corporation.

22 28105 MR. BATTISTA: I see, but... So,
23 from the Crown corporation -- that is, Radio-Canada and
24 the English network, CBC -- the requests were in
25 writing?

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1 28106 MR. LAVOIE: Yes, it did happen,
2 yes.

3 28107 MR. BATTISTA: And from the other
4 media they were by telephone?

5 28108 MR. LAVOIE: Yes, yes.

6 28109 MR. BATTISTA: And the requests for
7 Mr. Mulroney were forwarded to you?

8 28110 M. LAVOIE: Yes.

9 28111 MR. BATTISTA: And the figure of
10 \$300,000 was still around, was still circulating at
11 that time, is that right?

12 28112 MR. LAVOIE: Well, the amount...
13 well, listen. What you're saying is that all the
14 written communications I received from Mr. Mulroney's
15 office...

16 28113 MR. BATTISTA: Yes?

17 28114 MR. LAVOIE: ...contained the figure
18 of \$300,000. No, that's not true.

19 28115 MR. BATTISTA: No. What I'm saying is
20 that the amount of \$300,000, as we have seen, was
21 mentioned in 2001, in 2003, it was referred to in 2004
22 and 2007?

23 28116 MR. LAVOIE: Yes, yes.

24 28117 MR. BATTISTA: And at no time during
25 that period did Mr. Mulroney ask you to correct it, nor

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1 did he say, "That amount is not \$300,000, it's
2 \$225,000"?

3 28118 MR. LAVOIE: It seems to me that he
4 told me that in January 2002, but apart from that, no,
5 I don't recall, no.

6 28119 MR. BATTISTA: And what exactly did
7 he tell you in January 2002?

8 28120 MR. LAVOIE: Well, it's as I see
9 here in Mr. Kaplan's notes.

10 28121 MR. BATTISTA: And what was it he
11 said?

12 28122 MR. LAVOIE: It's less than
13 \$300,000.

14 28123 MR. BATTISTA: Exactly. He never
15 said \$225,000?

16 28124 MR. LAVOIE: No.

17 28125 MR. BATTISTA: And he never asked you
18 to correct the figure that was circulating for all
19 those years?

20 28126 MR. LAVOIE: No. No, but, excuse me,
21 no, it wasn't as if... You have to put these things in
22 context; it was...

23 28127 MR. BATTISTA: Mr. Lavoie, just, if
24 I may...

25 28128 MR. YAROSKY: Mr. Commissioner, I

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1 think that Mr. Battista should allow the witness to
2 complete his answer.

3 28129 Me BATTISTA: Mr. Commissioner, if I
4 may, I would like the witness to complete his answer,
5 but the question was very simple. Was he told what the
6 amount was and was he ever told to correct what was
7 circulating.

8 28130 COMMISSIONER OLIPHANT: All right.

9 28131 MR. YAROSKY: I don't think
10 Mr. Battista really wants to prevent the witness from
11 explaining and answering the questions fully. I don't
12 like to object, but in all fairness, and I think
13 Mr. Battista has been very fair, but I think in all
14 fairness, he should allow the witness to complete his
15 answer.

16 28132 COMMISSIONER OLIPHANT: And I think
17 we'll hear the answer now.

18 28133 MR. LAVOIE: As I was saying, the
19 context was that the story wasn't getting intense media
20 coverage. In fact, to put it euphemistically, it was
21 sporadic, and it was always from the same source.

22 28134 And that source was the CBC and there
23 was no way to establish a dialogue with them, no way to
24 explain anything whatsoever to them. Those people were
25 obsessed with the idea that "we will get the guy."

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1 28135 So to argue with them about whether
2 it was \$225,000 or \$265,000 or \$300,000 would have been
3 a complete waste of time, because anything we told them
4 they would turn against us. Everything we said was
5 turned against us.

6 28136 They tried at various times to catch
7 me out, and they also tricked me, Mr. Battista. The
8 famous conversation they aired -- and which earned me a
9 lawsuit from the charming German fellow you see over
10 there -- was an interview which I was never told was
11 being recorded.

12 28137 No one ever told me I was being
13 recorded.

14 28138 Secondly, there was a clear
15 understanding that it was off the record.

16 28139 These people believe they are
17 untouchable, and if anyone should decide to go after
18 them they'd better have deep pockets, because the CBC
19 has a billion dollars in funding.

20 28140 So, in that context, how could I ask
21 anyone to try to persuade these people, bent as they
22 were on their destructive mission? And I saw the
23 Mulroney family suffer for it. They were on a mission
24 of systematic destruction: from show to show it just
25 got crazier and crazier. Anything went. You'd watch

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1 them and you'd go, "Ah! my God, what's next?"

2 28141 Nothing could have convinced those
3 people that it was \$225,000, \$240,000; and besides,
4 I didn't know.

5 28142 In that context, there was no point
6 in considering correcting the amount, telling the CBC
7 that maybe it wasn't \$300,000 but \$225,000 — they
8 would have used that to put another bullet in our head:
9 "Aha! You lied!" There was nothing to be done with
10 those people.

11 28143 MR. BATTISTA: So to get back to my
12 question, Mr. Lavoie: Mr. Mulroney never told you the
13 amount was \$225,000 when the amount of \$300,000 was
14 mentioned -- yes or no?

15 28144 MR. LAVOIE: He never told me to
16 correct it? No, he never told me that, no.

17 28145 MR. BATTISTA: OK. So as for the
18 \$300,000, he never told you it was \$225,000 until the
19 fall of 2007?

20 28146 MR. LAVOIE: He never told me it was
21 \$225,000, but clearly, in January 2002 he told me it
22 was less than \$300,000.

23 28147 MR. BATTISTA: I understand,
24 Mr. Lavoie, but my question was: Before the fall of
25 2007, he never told you the amount was \$225,000. Is

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1 that right?

2 28148 MR. LAVOIE: He never told me that,
3 but in January 2002 he told me it was less than
4 \$300,000.

5 28149 MR. BATTISTA: OK, now we're on the
6 same page. And with regard to the amount of \$300,000,
7 when that figure was circulating, he never told you to
8 declare or announce publicly that that amount was
9 incorrect. Is that right?

10 28150 MR. LAVOIE: That's right, and also
11 there was the article by Bill Kaplan that appeared in
12 the *Globe and Mail* in the fall of 2003.

13 28151 I will conclude my answer -- if you
14 will allow me, Your Honour -- with an anecdote I used
15 to tell my clients, and which I also told Mr. Mulroney.

16 28152 When that article appeared, reporting
17 the amount of \$300,000, on reading the whole article
18 I have to acknowledge that Mr. Kaplan was extremely
19 thorough in covering all the angles; he was objective,
20 and he didn't try to ascribe motives where none
21 existed. I re-read it yesterday as I was preparing for
22 this appearance. The article was, to use the English
23 expression, very carefully crafted. I can see the
24 effort that went into it.

25 28153 But if under those circumstances

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1 Mr. Mulroney had said to me, "We have to correct the
2 \$300,000, it should be \$225,000," it would... it would
3 have been a way to make the front page again the next
4 day, and here's the anecdote — it's very typical of
5 Ottawa, I love this story, I've used it many times to
6 help clients.

7 28154 One day, a delegation of Canadian
8 parliamentarians went to Paris for a meeting of the
9 International Association of French-Speaking
10 Parliamentarians. The Parti Québécois had just been
11 elected in Quebec, and the delegation included Parti
12 Québécois MNAs, who were separatists, and Liberal MPs,
13 who were federalists, and in Paris there was the whole
14 confused question of the France-Quebec-Canada
15 relationship, and the French delegates had decided to
16 treat the Quebec MNAs better than the MPs. And the MPS
17 were extremely frustrated by this.

18 28155 And so one evening there was a gala
19 dinner at the Élysée Palace, and one MP, whom out of
20 Christian charity I shall not name (especially as he is
21 no longer with us), did something. The next day, the
22 newspaper *Le Devoir* reported that "Mr. XYZ, MP was so
23 irritated that he blew his nose on the drapes at the
24 Élysée.

25 28156 The MP's wife -- he was from an

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1 isolated region -- called him and said, "It can't be
2 true, the whole family is ashamed, did you really blow
3 your nose on the drapes at the Élysée?" "No, no," he
4 replied, "I did no such thing. Of course not." "Well,
5 if you didn't do it, you have to call the paper and get
6 them to print a retraction."

7 28157 So he called the paper, and *Le Devoir*
8 ran a correction the next day: "*Le Devoir* apologizes.
9 We reported that Mr. So-and-so, MP, blew his nose on
10 the drapes at the Élysée. We were completely wrong, and
11 we regret the error. In fact he blew his nose on a
12 table napkin at the Élysée."

13 28158 So you see, trying to say it's not
14 \$300,000, it's \$225,000, at some point it becomes
15 meaningless. The news is out, that's the way it goes.
16 The news is out, it's presented accurately, with
17 attention to detail and with whatever fine distinctions
18 are required -- let it go!

19 28159 MR. BATTISTA: Did Mr. Mulroney tell
20 you to let it go?

21 28160 MR. LAVOIE: I told him.

22 28161 MR. BATTISTA: OK. That was your
23 personal opinion?

24 28162 MR. LAVOIE: That was my personal
25 opinion.

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1 28163 MR. BATTISTA: And Mr. Mulroney
2 didn't... he took your advice?

3 28164 MR. LAVOIE: Apparently.

4 28165 MR. BATTISTA: Now, you referred to
5 a witch hunt as the reason you didn't correct the
6 amounts that were circulating and didn't clarify
7 certain facts.

8 28166 Did Mr. Mulroney tell you that, or
9 was that your own interpretation?

10 28167 MR. LAVOIE: Sometimes great minds
11 think alike. I believe we had the same idea at the same
12 time.

13 28168 MR. BATTISTA: All right, but in
14 your reply to my colleague you said you were being
15 subjective. My question for you is this: Did
16 Mr. Mulroney say to you: This is a witch hunt, it's
17 going to get nasty, let's not correct it. Did he say
18 that to you?

19 28169 MR. LAVOIE: No, he did not.

20 28170 MR. BATTISTA: Thank you. No further
21 questions.

22 28171 COMMISSIONER OLIPHANT: Mr. Lavoie,
23 thank you very much for your testimony.

24 28172 MR. LAVOIE: Thank you, Your Honour.

25 28173 COMMISSIONER OLIPHANT: That's all.

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1 28174 M. LAVOIE: Thank you.

2 28175 COMMISSIONER OLIPHANT: I understand
3 that this afternoon we will be hearing from Mr. MacKay
4 and that he will be giving his evidence by interactive
5 video and that we will commence à 1330, Ottawa time.
6 Is that correct?

7 28176 MR. WOLSON: It's all that is so.

8 28177 COMMISSIONER OLIPHANT: All right.
9 Is there any reason why we ought not to take the break
10 for lunch now?

11 28178 MR. WOLSON: And excuse the witness
12 first.

13 28179 COMMISSIONER OLIPHANT: Yes, I'm
14 sorry. I thought I had done that. Thank you very
15 much, monsieur Lavoie. Merci beaucoup.

16 28180 MR. LAVOIE: Thank you very much,
17 Your Honour. Thank you.

18 28181 COMMISSIONER OLIPHANT: Well, it's
19 ten after twelve, we'll break for lunch and come back
20 at 1330 for the evidence of Mr. MacKay.

21 --- Upon recessing at 12:09 p.m. / Suspension à 12 h 09
22 --- Upon resuming at 1:30 p.m. / Reprise à 13 h 30

23 28182 COMMISSIONER OLIPHANT: Good
24 afternoon. Be seated, please.

25 28183 Mr. Roitenberg...?

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1 28184 MR. ROITENBERG: Good afternoon,
2 Mr. Commissioner.

3 28185 COMMISSIONER OLIPHANT: Good
4 afternoon.

5 28186 MR. ROITENBERG: I am hoping that
6 once the screen changes to focus on a witness that
7 Mr. MacKay is there. And he is.

8 28187 COMMISSIONER OLIPHANT: Good
9 afternoon, Mr. MacKay.

10 28188 THE HON. ELMER MacKAY: Good
11 afternoon, sir

12 28189 COMMISSIONER OLIPHANT: Can you hear
13 me all right?

14 28190 THE HON. ELMER MacKAY: Yes, I can.

15 28191 COMMISSIONER OLIPHANT: All right.
16 Mr. MacKay, I don't know whether you wish to be sworn
17 or affirmed; and if you wish to be sworn, I don't know
18 whether you have a Bible handy.

19 28192 THE HON. ELMER MacKAY: I do have a
20 Bible handy, Mr. Roitenberg.

21 28193 COMMISSIONER OLIPHANT: Would you
22 prefer to be sworn or to affirm, Mr. MacKay?

23 28194 THE HON. ELMER MacKAY: I will
24 affirm.

25 28195 COMMISSIONER OLIPHANT: It doesn't

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1 matter to you?

2 28196 MR. ROITENBERG: I believe he said he
3 will affirm.

4 28197 THE HON. ELMER MacKAY: It doesn't
5 really matter. If it matters to you, sir, then I will
6 be glad to --

7 28198 COMMISSIONER OLIPHANT: You will
8 affirm. All right, then.

9 AFFIRMED: THE HON. ELMER MacKAY /
10 DÉCLARATION SOLENNELLE : L'HON ELMER MacKAY

11 28199 COMMISSIONER OLIPHANT: Are you
12 standing, Mr. MacKay?

13 28200 THE HON. ELMER MacKAY: Yes, sir, I
14 am.

15 28201 COMMISSIONER OLIPHANT: I have no
16 problem if you wish to be seated as long as you remain
17 within sight of the camera.

18 28202 Do you have a chair there, sir?

19 28203 THE HON. ELMER MacKAY: I don't mind.
20 I think I would prefer to stand for a while.

21 28204 COMMISSIONER OLIPHANT: Oh, well OK.
22 Stand as long as you wish, but if you feel that you
23 want to sit down, that's fine with me.

24 28205 If, Mr. MacKay, at any time you feel
25 the need for a break, please just indicate that and we

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1 will give you the break that you ask for. OK?

2 28206 THE HON. ELMER MacKAY: All right,
3 sir.

4 28207 COMMISSIONER OLIPHANT: Thank you.

5 28208 Mr. Roitenberg...?

6 28209 MR. ROITENBERG: Thank you, sir.

7 EXAMINATION: THE HON. ELMER MacKAY BY MR. ROITENBERG /
8 INTERROGATOIRE : L'HON. ELMER MacKAY PAR Me ROITENBERG

9 28210 MR. ROITENBERG: Mr. MacKay, good
10 afternoon.

11 28211 THE HON. ELMER MacKAY: Good
12 afternoon, sir.

13 28212 MR. ROITENBERG: You can hear me all
14 right?

15 28213 THE HON. ELMER MacKAY: I can, thank
16 you.

17 28214 MR. ROITENBERG: Very well.

18 28215 I understand, sir, that you served as
19 a Member of Parliament and a Minister during the
20 Mulroney governments from 1984 to 1993.

21 28216 Am I right?

22 28217 THE HON. ELMER MacKAY: Yes, sir.

23 28218 MR. ROITENBERG: Prior to the
24 formation of that government, you had sat as a Member
25 of Parliament for a number of years?

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- 1 28219 THE HON. ELMER MacKAY: That's
2 correct.
- 3 28220 MR. ROITENBERG: And you held a
4 number of ministerial posts during your tenure. Is
5 that correct?
- 6 28221 THE HON. ELMER MacKAY: That is true.
7 I was a Minister with Mr. Clark's government as well.
- 8 28222 MR. ROITENBERG: That would have been
9 the Minister of Regional Economic Expansion back in the
10 government of Mr. Clark?
- 11 28223 THE HON. ELMER MacKAY: Yes.
- 12 28224 MR. ROITENBERG: In the Progressive
13 Conservative government of 1984 you were appointed as
14 Minister -- excuse me, you were appointed as Solicitor
15 General of Canada.
- 16 28225 Is that right?
- 17 28226 THE HON. ELMER MacKAY: Yes, sir.
- 18 28227 MR. ROITENBERG: Following that you
19 served as the Minister of National Revenue?
- 20 28228 THE HON. ELMER MacKAY: Yes.
- 21 28229 MR. ROITENBERG: We won't hold that
22 against you.
- 23 28230 THE HON. ELMER MacKAY: I appreciate
24 that.
- 25 28231 MR. ROITENBERG: Following that you

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1 were the Minister of Public Works.

2 28232 THE HON. ELMER MacKAY: Yes, sir.

3 28233 MR. ROITENBERG: And then the
4 Minister for the purposes of the Atlantic Canada
5 Opportunities Agency Act or ACOA.

6 28234 THE HON. ELMER MacKAY: Yes.

7 28235 MR. ROITENBERG: Actually, that was
8 at the same time as Minister of Public Works; correct?

9 28236 THE HON. ELMER MacKAY: Yes.

10 28237 MR. ROITENBERG: Then you were the
11 Minister Responsible for Canada Mortgage and Housing
12 Corporation and that was the last portfolio that you
13 held.

14 28238 Is that right, sir?

15 28239 THE HON. ELMER MacKAY: Yes, I
16 believe that's correct.

17 28240 MR. ROITENBERG: Now, in 1983
18 Mr. Mulroney was elected the Leader of the Progressive
19 Conservative Party and thus the Leader of the Official
20 Opposition.

21 28241 Is that right?

22 28242 THE HON. ELMER MacKAY: Yes.

23 28243 MR. ROITENBERG: But as I understand
24 it, as not having a constituency and not being an
25 elected Member of Parliament, Mr. Mulroney needed a

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1 seat in the House of Commons.

2 28244 THE HON. ELMER MacKAY: Yes.

3 28245 MR. ROITENBERG: And if my
4 information is correct, you graciously stepped down as
5 the sitting Member of Parliament for Central Nova, thus
6 allowing a by-election to occur and Mr. Mulroney to run
7 in your stead.

8 28246 THE HON. ELMER MacKAY: I wanted him
9 to have a really good seat.

10 28247 MR. ROITENBERG: Now, my
11 understanding was while you were a member of government
12 and a member of Cabinet in the first Mulroney
13 government, an issue arose involving a German company
14 called Thyssen potentially creating a manufacturing
15 concern in Cape Breton.

16 28248 Is that right?

17 28249 THE HON. ELMER MacKAY: Yes, sir.

18 28250 MR. ROITENBERG: And I understand
19 that you were supportive of such a project right from
20 the get-go?

21 28251 THE HON. ELMER MacKAY: Yes.

22 28252 MR. ROITENBERG: And this was before
23 you took over as the Minister for ACOA, but just as a
24 Minister within the region.

25 28253 THE HON. ELMER MacKAY: Yes.

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1 28254 MR. ROITENBERG: In 1988 there were
2 negotiations under way about a potential Understanding
3 in Principle or Memorandum of Understanding as between
4 the government and this corporation from Germany,
5 Thyssen, in terms of the setting up of a manufacturing
6 plant in Cape Breton.

7 28255 Is that right?

8 28256 THE HON. ELMER MacKAY: Yes, sir.

9 28257 MR. ROITENBERG: My understanding is
10 that you did not take part in the negotiations of that
11 Understanding in Principle in 1988, but you were aware
12 of them.

13 28258 THE HON. ELMER MacKAY: That's
14 correct.

15 28259 MR. ROITENBERG: Were you aware, upon
16 the signing of that Understanding in Principle, that
17 the signing of the document itself triggered a million
18 dollars' worth of commissions to certain individuals?

19 28260 THE HON. ELMER MacKAY: No, I was
20 not.

21 28261 MR. ROITENBERG: When did you become
22 aware of that?

23 28262 THE HON. ELMER MacKAY: To the best
24 of my knowledge, I became aware of it in a court
25 proceeding in Toronto in 1999.

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1 28263 MR. ROITENBERG: Hopefully before
2 you, sir, you have a binder of documents.

3 28264 THE HON. ELMER MacKAY: Yes, sir, I
4 do.

5 28265 MR. ROITENBERG: I understand that we
6 had attempted a couple of weeks ago to get you a binder
7 of documents, but that was somewhat delayed and you
8 eventually received that book of documents.

9 28266 Is that correct?

10 28267 THE HON. ELMER MacKAY: Yes, sir.

11 28268 MR. ROITENBERG: And that we have
12 subsequently sent you a revised book of documents which
13 I'm led to believe you received late last week.

14 28269 THE HON. ELMER MacKAY: That's
15 correct.

16 28270 MR. ROITENBERG: Do you have that
17 revised book of documents with you?

18 28271 THE HON. ELMER MacKAY: I do.

19 28272 MR. ROITENBERG: And you have had a
20 chance to look at it before your testimony today?

21 28273 THE HON. ELMER MacKAY: Yes.

22 28274 MR. ROITENBERG: I'm going to ask,
23 Madam Registrar, that that be marked as the next
24 exhibit, Exhibit P-27.

25 28275 COMMISSIONER OLIPHANT: Any objection

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1 to that book of documents going in as an exhibit?
2 28276 Mr. Vickery...?
3 28277 MR. VICKERY: No.
4 28278 COMMISSIONER OLIPHANT: Mr. Auger...?
5 28279 MR. AUGER: No.
6 28280 COMMISSIONER OLIPHANT: Mr.
7 Houston...?
8 28281 MR. HOUSTON: No.
9 28282 COMMISSIONER OLIPHANT: Thank you
10 very much.
11 28283 The book of documents with respect to
12 the evidence of Mr. MacKay will be received and marked
13 as Exhibit P-37.
14 28284 I'm sorry, I didn't have the
15 microphone on.
16 28285 The booklet of documents, then, in
17 support of Mr. MacKay's evidence will be received and
18 marked as Exhibit P-37.
19 EXHIBIT NO. P-37: Binder
20 entitled "Documents in Support
21 of The Honourable Elmer MacKay's
22 Testimony"
23 28286 MR. ROITENBERG: Thank you,
24 Mr. Commissioner.
25 28287 THE HON. ELMER MacKAY: Mr.

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1 Roitenberg, may I say something?

2 28288 MR. ROITENBERG: Absolutely, sir.

3 28289 THE HON. ELMER MacKAY: I may have
4 inadvertently referred to you, sir, instead of the
5 Commissioner when I was first being addressed. If I
6 misspoke and called Commissioner Oliphant, if I called
7 him your name, it was inadvertent. I didn't
8 understand.

9 28290 COMMISSIONER OLIPHANT: That's OK,
10 Mr. MacKay. I have been treated worse than that lots
11 of times. But thank you.

12 28291 MR. ROITENBERG: Mr. MacKay, in
13 January of 1989, a few months after this Understanding
14 in Principle was signed -- and we have had information
15 and evidence before this Commission that it was signed
16 in late September of 1988 -- you were sworn in as the
17 Minister Responsible for ACOA.

18 28292 That's the end of January 1989;
19 correct?

20 28293 THE HON. ELMER MacKAY: I believe
21 that is correct.

22 28294 MR. ROITENBERG: I take it shortly
23 around that time you would have received a briefing or
24 briefings pertaining to the status of the Thyssen Bear
25 Head proposal.

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1 28295 THE HON. ELMER MacKAY: Yes, I'm sure
2 I did.

3 28296 MR. ROITENBERG: If I could ask you,
4 sir, to turn to Tab 6A of the book of documents that we
5 now have before the Commission as Exhibit P-37 --

6 28297 THE HON. ELMER MacKAY: Yes, 6A. I
7 have 6 and -- is this an Understanding in Principle?

8 28298 MR. ROITENBERG: Six is the
9 Understanding in Principle, but there should be a Tab A
10 following it.

11 28299 THE HON. ELMER MacKAY: Yes.

12 28300 MR. ROITENBERG: Which is first a
13 cover sheet followed by a memorandum from Mr. McPhail
14 to yourself.

15 28301 THE HON. ELMER MacKAY: Yes.

16 28302 MR. ROITENBERG: In this memorandum
17 information was shared with you that there was going to
18 be, as of June of 1989, a request forthcoming to
19 Cabinet -- I am at the very top of the first page of
20 the memorandum -- a request brought to Cabinet by the
21 Minister of National Defence to award a sole-source
22 contract to General Motors and the need to review the
23 implications of such a decision for Bear Head
24 Industries.

25 28303 Do you see that, sir?

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1 28304 THE HON. ELMER MacKAY: I see that.

2 28305 MR. ROITENBERG: You were made aware
3 in and around that time that there was this issue on
4 the horizon of a sole-source contract being awarded to
5 General Motors and that that might have some
6 implications for Bear Head's proposal?

7 28306 THE HON. ELMER MacKAY: That's true.
8 There were other sole-source contracts as well in that
9 general time, but this was the one that I remember
10 most.

11 28307 MR. ROITENBERG: If you go to the
12 very last paragraph on that page, it is a comment that:
13 "... as you are aware, the much
14 larger light armoured vehicle
15 contract for which Thyssen had
16 been bidding has effectively
17 been canceled as a result of the
18 Budget."

19 28308 It went on to state that for
20 budgetary concerns there was not going to be an LAV
21 contract in the foreseeable future.

22 28309 THE HON. ELMER MacKAY: Is that in
23 the last paragraph on page 2, sir?

24 28310 MR. ROITENBERG: Last paragraph page
25 1, into the first paragraph of page 2.

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1 28311 THE HON. ELMER MacKAY: Yes, I see
2 this.

3 28312 MR. ROITENBERG: So at that time
4 there were concerns being addressed or at least brought
5 to your attention that there were difficulties on the
6 horizon for the very contract that Thyssen Bear Head
7 was contemplating building a plant towards bidding on;
8 correct?

9 28313 THE HON. ELMER MacKAY: Yes.

10 28314 MR. ROITENBERG: Now, if I could ask
11 you to go to Tab 9 of this book of documents.

12 28315 THE HON. ELMER MacKAY: Yes.

13 28316 MR. ROITENBERG: It is a letter
14 addressed to you as written by Mr. Schreiber.

15 28317 Now, I pause here simply to ask you
16 when you first became acquainted with Mr. Schreiber.

17 28318 THE HON. ELMER MacKAY: When did I
18 first become acquainted with him?

19 28319 MR. ROITENBERG: Yes.

20 28320 THE HON. ELMER MacKAY: Oh, I have
21 trouble pinpointing an exact date, but it would be
22 after Mr. Mulroney formed the government in 1984, I
23 believe. I'm not --

24 28321 MR. ROITENBERG: As you were a Member
25 of the Cabinet right from the formation of the

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1 government, any major capital proposals that would have
2 been discussed around the Cabinet table you would have
3 become familiar with; correct?

4 28322 THE HON. ELMER MacKAY: Yes, I
5 believe that is correct.

6 28323 MR. ROITENBERG: You recall, sir,
7 that you were kind enough to provide a telephone
8 interview with Commission counsel back on the 25th of
9 March 2009; yes?

10 28324 THE HON. ELMER MacKAY: Yes.

11 28325 MR. ROITENBERG: And I believe we
12 forwarded to you a summary of that interview and you
13 approved of the summary provided?

14 28326 THE HON. ELMER MacKAY: I believe,
15 yes.

16 28327 MR. ROITENBERG: Do you have a copy
17 of the summary with you?

18 28328 THE HON. ELMER MacKAY:
19 Unfortunately, Mr. Roitenberg, I didn't bring it.

20 28329 MR. ROITENBERG: Very well. I just
21 want to share with you a part of what we have recorded
22 here, just to confirm whether that meets with your
23 recollection, sir.

24 28330 For the benefit of counsel in the
25 room, I am referring to the interview summary, the

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1 fifth paragraph of the first page.

2 "Mr. MacKay first became aware
3 of the Bear Head proposal when
4 Sinclair Stevens raised the
5 proposal either in Cabinet or in
6 a Cabinet Committee. Mr. MacKay
7 advised that he supported the
8 Bear Head proposal from its
9 introduction onwards, including
10 the period during which he was a
11 Minister of the Atlantic Canada
12 Opportunities Agency."

13 28331 I pause there. So you first became
14 aware of the proposal, at least from what you shared
15 with us back in March, when it was brought to Cabinet
16 or Cabinet Committee by your Cabinet colleague at the
17 time, Sinclair Stevens.

18 28332 THE HON. ELMER MacKAY: This is the
19 first clear recollection I have of this project.

20 28333 MR. ROITENBERG: Would it be fair to
21 say, sir, that in your role as a Minister from Atlantic
22 Canada and in your role of supporting the Bear Head
23 Project you came to be acquainted with Mr. Schreiber?

24 28334 THE HON. ELMER MacKAY: Yes.

25 28335 MR. ROITENBERG: In the letter at Tab

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1 9 that I have asked you to turn to, we find a letter
2 from Mr. Schreiber to you basically outlining a level
3 of frustration on Mr. Schreiber's behalf with the
4 progress, or lack thereof, that the project has had to
5 that point.

6 28336 Would that be fair?

7 28337 THE HON. ELMER MacKAY: Yes, it seems
8 to be.

9 28338 MR. ROITENBERG: If you go to the
10 very last page of this letter, page 4, in the
11 second-last paragraph Mr. Schreiber writes:

12 "Secondly, as you know, I am
13 duty-bound to inform the Prime
14 Minister of the serious
15 situation the whole matter has
16 reached. Will you want me to
17 write to him directly or would
18 you prefer to do so on my
19 behalf?"

20 28339 I'm sorry, sir, were you with me?

21 28340 THE HON. ELMER MacKAY: Yes, I'm with
22 you.

23 28341 MR. ROITENBERG: OK. Now, I pause
24 there. My understanding -- and you can correct me if
25 I'm wrong -- was ACOA as a proponent of this proposal

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1 was trying to reach some kind of consensus between the
2 Government of Canada and Thyssen Bear Head as to how to
3 get this done.

4 28342 Would that be fair?

5 28343 THE HON. ELMER MacKAY: That would be
6 fair.

7 28344 MR. ROITENBERG: ACOA, and you as its
8 Minister, wanted to see the proposal go ahead because
9 you, as in you on behalf of ACOA, felt it was for the
10 benefit of the region.

11 28345 Would that be fair?

12 28346 THE HON. ELMER MacKAY: Yes, sir.

13 28347 MR. ROITENBERG: And you were
14 negotiating with the company and the person of
15 Mr. Schreiber on behalf of the company to try to make
16 that happen.

17 28348 THE HON. ELMER MacKAY: Yes.

18 28349 MR. ROITENBERG: Would it strike you
19 as odd that Mr. Schreiber would suggest that you write
20 to the Prime Minister on his behalf as a party with
21 whom you are negotiating?

22 28350 THE HON. ELMER MacKAY: Yes, it does
23 strike me as a bit odd. However, I believe that this
24 project, which had a very high profile, was the subject
25 of contact between Mr. Schreiber and the Prime Minister

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1 and possibly others.

2 28351 So it doesn't entirely surprise me,
3 but it does seem a little bit irregular.

4 28352 MR. ROITENBERG: Would it be fair to
5 say that as you came to be acquainted with
6 Mr. Schreiber as a result of your contact with him
7 regarding this proposal, the acquaintanceship grew into
8 eventually a friendship?

9 28353 THE HON. ELMER MacKAY: That would be
10 fair.

11 28354 MR. ROITENBERG: Now, I know you were
12 kind enough to share with us during the interview that
13 at one point years down the road when you are out of
14 government, you entered into a business relationship
15 with Mr. Schreiber by way of being an investor in one
16 of his other businesses.

17 28355 Is that right?

18 28356 THE HON. ELMER MacKAY: Well, that's
19 not exactly true, Mr. Roitenberg.

20 28357 Mr. Schreiber is an entrepreneur par
21 excellence and he was very interested in starting a
22 pasta chain of restaurants. I never invested money
23 directly to Mr. Schreiber, through Mr. Schreiber, but
24 what I did do was invest in a company that proposed to
25 start a chain of pasta restaurants that was going to

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1 buy some machinery that Mr. Schreiber's factory
2 produced.

3 28358 MR. ROITENBERG: Do you recall what
4 year that would have been?

5 28359 THE HON. ELMER MacKAY: I'm thinking
6 maybe in the -- it was some time after I left public
7 life. I think possibly in maybe 1996-'97 perhaps. But
8 I hasten to say that it's only a guess.

9 28360 MR. ROITENBERG: OK. But as best as
10 you can figure, it was toward the later '90s.

11 28361 Would that be fair?

12 28362 THE HON. ELMER MacKAY: I believe
13 that's -- yes, I think that's right.

14 28363 MR. ROITENBERG: OK. Prior to that
15 you had no business relationship with Mr. Schreiber.
16 Correct?

17 28364 THE HON. ELMER MacKAY: No, I never
18 had a business relationship with Mr. Schreiber in the
19 classic sense.

20 28365 MR. ROITENBERG: We were at the point
21 of comment that, eventually, shy of your investing in
22 the company that perhaps would have purchased some of
23 the machines that Mr. Schreiber was going to
24 manufacture, your relationship with him, your
25 acquaintanceship with him along the way grew to be a

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1 friendship. Correct?

2 28366 THE HON. ELMER MacKAY: Yes, correct.

3 28367 MR. ROITENBERG: In fact, in May of
4 1999, Mr. Schreiber found himself in some difficulties
5 in Switzerland, or potential difficulties, and you flew
6 to Switzerland and then flew back to Canada with Mr.
7 Schreiber.

8 28368 Is that right?

9 28369 THE HON. ELMER MacKAY: That's right.

10 28370 MR. ROITENBERG: Shortly thereafter
11 Mr. Schreiber found himself in some difficulties in
12 Canada, toward the end of August, the beginning of
13 September, and you were involved in assisting with
14 making arrangements for Mr. Schreiber's judicial
15 interim release, or bail.

16 28371 Is that correct?

17 28372 THE HON. ELMER MacKAY: Yes, sir.

18 28373 MR. ROITENBERG: In fact, you acted
19 as a surety on his behalf.

20 28374 THE HON. ELMER MacKAY: I did.

21 28375 MR. ROITENBERG: You, over the years,
22 developed a friendship with Mr. Mulroney, as well.
23 Correct?

24 28376 THE HON. ELMER MacKAY: Correct.

25 28377 MR. ROITENBERG: We have already

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1 discussed the fact that you stepped aside in 1983 so
2 that he could potentially get a good seat in Central
3 Nova.

4 28378 THE HON. ELMER MacKAY: That's
5 correct.

6 28379 MR. ROITENBERG: And you consider
7 both gentlemen to be friends of yours.

8 28380 Is that correct?

9 28381 THE HON. ELMER MacKAY: Yes, that's
10 correct. I regard Mr. Mulroney with the greatest of
11 affection and gratitude for the work that he did as
12 Prime Minister, and particularly the assistance he gave
13 to Atlantic Canada.

14 28382 Mr. Schreiber's acquaintanceship with
15 me is based on a different kind of criteria, but, yes,
16 I do regard them both as friends.

17 28383 MR. ROITENBERG: Would it be fair to
18 say that you have observed, over the years, that while
19 you remained friends with both parties, their
20 relationship seems to have, at times, deteriorated?

21 28384 THE HON. ELMER MacKAY: Yes, it
22 vacillated. At times they appeared to be quite close,
23 but then, later on, the relationship deteriorated.

24 28385 MR. ROITENBERG: Would it be accurate
25 to say that, at times, you felt yourself placed in the

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1 middle as between the two?

2 28386 THE HON. ELMER MacKAY: That was my
3 fault, and it's true.

4 28387 MR. ROITENBERG: I am going to ask
5 you, if you wouldn't mind, sir, to turn to Tab 49 of
6 the book of documents before you.

7 28388 THE HON. ELMER MacKAY: Yes.

8 28389 MR. ROITENBERG: This is a document
9 that is a newspaper article, penned by Philip Mathias,
10 of October the 20th, 1999, and it speaks of a
11 suggestion that Mr. Mulroney had made some approach to
12 Mr. Schreiber to release certain bank documents, in an
13 effort to clarify things for the RCMP during an
14 investigation.

15 28390 If you go toward the bottom of the
16 first page, the third paragraph from the bottom, it
17 says:

18 "This week, Mr. Mulroney
19 telephoned his former chief of
20 staff, Fred Doucet, from South
21 Africa, where the former prime
22 minister is vacationing with his
23 family, and asked him to
24 organize another approach to Mr.
25 Schreiber.

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1 Mr. Doucet persuaded a
2 former cabinet minister in Mr.
3 Mulroney's government, a man who
4 knew Mr. Schreiber, to telephone
5 him on Mr. Mulroney's behalf and
6 ask that the documents be
7 released."

8 28391 Now, sir, it doesn't mention your
9 name; I am asking you if, in fact, you were approached
10 by Mr. Doucet in this regard on behalf of the Prime
11 Minister and asked to make such an approach to Mr.
12 Schreiber.

13 28392 THE HON. ELMER MacKAY: Mr.
14 Roitenberg, that is a possible scenario, but I somehow
15 doubt it. I have no recollection of ever making any
16 request of Mr. Schreiber to ask him to release any
17 documents. I just don't think that happened.

18 28393 MR. ROITENBERG: Very good, sir.

19 28394 Tab 51, if you will...

20 28395 THE HON. ELMER MacKAY: Yes.

21 28396 MR. ROITENBERG: This is a letter
22 from Mr. Schreiber to Mr. Mulroney. It states:

23 "From our friend in Nova Scotia
24 I learned that you intended to
25 meet with me.

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1 I think it is a good idea to
2 improve our way of
3 communication..."

4 28397 And it goes on to speak of other
5 matters.

6 28398 Do you recall making an approach to
7 Mr. Schreiber, advising him in and around January of
8 2004 that Mr. Mulroney wanted to contact him, or was
9 thinking of contacting him?

10 28399 THE HON. ELMER MacKAY: You know, I
11 believe that I may have, because Mr. Mulroney, I think,
12 at one point, did mention that he -- I hesitate to say
13 this because I'm not 100 percent sure, but I think he
14 mused that maybe he could meet with Mr. Schreiber for
15 lunch, or something to that effect.

16 28400 But, of course, this never happened.

17 28401 MR. ROITENBERG: My understanding is
18 that you were, prior to news breaking in the media,
19 unaware that there existed a business relationship
20 between Mr. Schreiber and Mr. Mulroney.

21 28402 Is that correct?

22 28403 THE HON. ELMER MacKAY: That's
23 correct.

24 28404 MR. ROITENBERG: If I could ask you
25 to turn to Tab 52, at Tab 52 is an e-mail sent from the

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1 e-mail of "sharonmackay923@hotmail.com", which I
2 understand is your wife's e-mail --

3 28405 THE HON. ELMER MacKAY: Yes, that's
4 right.

5 28406 MR. ROITENBERG: -- to
6 "Schreiberbarbel@AOL.com", which I believe you
7 understand to have been Mr. Schreiber's wife's e-mail.

8 28407 THE HON. ELMER MacKAY: Yes.

9 28408 MR. ROITENBERG: This is an e-mail
10 suggestive of an outline of a possible letter that
11 would be from Mr. Schreiber to "Dear Brian", which I
12 assume to be Mr. Mulroney.

13 28409 THE HON. ELMER MacKAY: Right.

14 28410 MR. ROITENBERG: Did you send this
15 e-mail?

16 28411 THE HON. ELMER MacKAY: I personally
17 did not send it, but I had it sent.

18 28412 MR. ROITENBERG: Were you asked by
19 Mr. Schreiber to provide such an outline of a potential
20 letter to Mr. Mulroney?

21 28413 THE HON. ELMER MacKAY: To the best
22 of my recollection, Mr. Schreiber asked me what sort of
23 letter he might write, or what sort of communication he
24 might put forward to Mr. Mulroney to try to repair
25 their relations.

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1 28414 MR. ROITENBERG: Had you been asked
2 by Mr. Mulroney to convey to Mr. Schreiber that he
3 required such a letter for a purpose?

4 28415 THE HON. ELMER MacKAY: No, Mr.
5 Mulroney never requested any letter.

6 28416 If I might just elaborate a little
7 bit, Mr. Roitenberg --

8 28417 MR. ROITENBERG: Please do, sir.

9 28418 THE HON. ELMER MacKAY: -- Mr.
10 Schreiber continued to be very upset that he wasn't, in
11 his opinion, getting enough support from Mr. Mulroney
12 with respect to some of the difficulties in which he
13 found himself. I conveyed this in one of my
14 conversations to Mr. Mulroney, and while I don't
15 remember the purport of everything, I came to the
16 conclusion that Mr. Mulroney, who was never loath to
17 help Mr. Schreiber when it was possible to do so --
18 support him and so on -- felt that he couldn't do
19 anything when this fifth estate program and other
20 communications made him look so bad because of what Mr.
21 Schreiber was asked to say on TV.

22 28419 So, foolishly, I thought that perhaps
23 some sort of apology might clear the air and, at least,
24 if Mr. Mulroney wished to do so, he could do something
25 to support Mr. Schreiber, if he thought it was

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1 appropriate.

2 28420 MR. ROITENBERG: So this was, then, a
3 conclusion that you drew, that perhaps with a letter of
4 apology from Mr. Schreiber to assist in the reparation
5 of their relationship, Mr. Mulroney might be inclined
6 to assist Mr. Schreiber in some way.

7 28421 THE HON. ELMER MacKAY: Yes, I think
8 that's a fair way to put it.

9 28422 MR. ROITENBERG: The information
10 contained in this letter, I understand, in terms of the
11 facts as set out in the letter, came from Mr.
12 Schreiber, in terms of your source of information.

13 28423 Is that correct?

14 28424 THE HON. ELMER MacKAY: You speak of
15 this memo that I sent?

16 28425 MR. ROITENBERG: Yes, this e-mail.

17 28426 THE HON. ELMER MacKAY: Yes.

18 28427 Well, Mr. Schreiber, I felt -- I felt
19 that I was conveying in the second-last paragraph Mr.
20 Schreiber's feelings, which, I must say, to some extent
21 were shared by myself, and I just put that in there as,
22 I suppose --

23 28428 I don't know why I put it in there,
24 but those are my words, of course, not Mr. Schreiber's.

25 28429 MR. ROITENBERG: But if you don't

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1 mind, sir, I would like to go through some of the facts
2 as set out in the letter, because my understanding,
3 from our interview with you, was that as far as the
4 facts were concerned, your source of those facts was
5 Mr. Schreiber.

6 28430 Is that correct?

7 28431 THE HON. ELMER MacKAY: Yes, that
8 would be correct. Those feelings that I put in that
9 paragraph would have been as a result of conversations
10 that I had with Mr. Schreiber.

11 28432 MR. ROITENBERG: If we look at the
12 first paragraph of this e-mail:

13 "I wish to tender my profuse
14 apologies to you..."

15 28433 -- and I pause there.

16 28434 In terms of this being an apology,
17 the nature of the letter being an apology, that was
18 because you felt that might be needed to repair the
19 relationship. Correct?

20 28435 THE HON. ELMER MacKAY: Yes.

21 28436 MR. ROITENBERG: And you advised Mr.
22 Schreiber of that, and he agreed that it might be
23 helpful.

24 28437 Would that be fair?

25 28438 THE HON. ELMER MacKAY: Yes.

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1 28439 MR. ROITENBERG:
2 "...for the misleading,
3 erroneous and unfair
4 characterization of your
5 business relationship with me as
6 depicted on the CBC program 'The
7 Fifth Estate'."

8 28440 I take it that you understood that
9 Mr. Schreiber viewed the depiction of the business
10 relationship to have been misleading and an unfair
11 characterization.

12 28441 Correct?

13 28442 THE HON. ELMER MacKAY: Correct.

14 28443 MR. ROITENBERG: The second
15 paragraph:
16 "...I was misled by the
17 producers that the program would
18 deal with my complaints about
19 the 'sting'."

20 28444 That's something that Mr. Schreiber
21 had shared with you, that he felt he had been duped by
22 the producers of the program. Correct?

23 28445 THE HON. ELMER MacKAY: Yes, I
24 believe that Mr. Schreiber did not believe that the
25 primary reason for him being on the program was to

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1 malign Mr. Mulroney.

2 28446 MR. ROITENBERG: Your next paragraph:

3 "May I state for the record,
4 that my testimony under oath in
5 prior legal proceedings is the
6 only correct description of our
7 business arrangement..."

8 28447 That's something you were told by Mr.
9 Schreiber. Correct?

10 28448 THE HON. ELMER MacKAY: Yes, I
11 believe he mentioned that, at least in one connection,
12 by the testimony he gave in another legal procedure
13 involving MBB helicopters.

14 28449 MR. ROITENBERG: At the end of that
15 paragraph it is written:

16 "You were the best advocate I
17 could have ever retained, and I
18 am grateful for your efforts."

19 28450 Was that language you used to try to
20 convey the apologetic tone of the note, or was that
21 something told to you by Mr. Schreiber?

22 28451 THE HON. ELMER MacKAY: Those were my
23 words. I guess if I were to say why I put that
24 phraseology down, I had in mind some of the very kind
25 things that Mr. Schreiber had said in the past about

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1 Mr. Mulroney.

2 28452 MR. ROITENBERG: At the next
3 paragraph you have:

4 "You and I have been the victims
5 for a long time of a vicious,
6 unfounded and totally misleading
7 information."

8 28453 Was that a sentiment that was
9 expressed to you by Mr. Schreiber?

10 28454 THE HON. ELMER MacKAY: I believe so.
11 I hesitate to put it in the exact words that --

12 28455 I am not saying that Mr. Schreiber
13 gave me that phraseology, but that was the feeling that
14 I felt he had.

15 28456 MR. ROITENBERG: Now, I understand
16 from the interview that we conducted with you back in
17 March that at no time prior to your forwarding the
18 suggested e-mail, the suggested letter to Mr.
19 Schreiber, had Mr. Mulroney told you of any pending
20 meeting that he had on the horizon with Prime Minister
21 Harper. Correct?

22 28457 THE HON. ELMER MacKAY: Not that I
23 recall. Now, it is possible, but I do not recall it,
24 because I believe that Mr. Mulroney had met with Mr.
25 Harper on more than one occasion.

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1 28458 But I do not recall conveying any
2 information in that specific regard.

3 28459 MR. ROITENBERG: Following your
4 providing this letter to Mr. Schreiber -- and the
5 information that we have is that Mr. Schreiber actually
6 sent a letter with much of what you have written here
7 contained therein -- it is in the same tab, the next
8 two pages following -- did you ever convey to Mr.
9 Schreiber on Mr. Mulroney's behalf that the letter had
10 been received, or that the letter and its message had
11 been received by Prime Minister Harper?

12 28460 THE HON. ELMER MacKAY: No, I did
13 not, but I may have told Mr. Schreiber that Mr.
14 Mulroney had received a letter from him.

15 28461 To my recollection, the letter was
16 sent some time -- and I forget, I guess the dates would
17 indicate -- after I had sent the memo, and I believe
18 that Mr. Mulroney may have indicated to me that he
19 received such a letter.

20 28462 And I also believe that I told Mr.
21 Schreiber in another conversation that Mr. Mulroney had
22 received the letter.

23 28463 MR. ROITENBERG: This goes all the
24 way to 2006, when you forwarded this e-mail to Mr.
25 Schreiber, trying to patch up their relationship. But,

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1 as you said earlier, their relationship had, on and off
2 over the years, deteriorated and repaired itself from
3 time to time.

4 28464 Is that correct?

5 28465 THE HON. ELMER MacKAY: I would say
6 that's correct, yes.

7 28466 MR. ROITENBERG: In 1999, toward the
8 end of 1999, did you ever pick up the phone or run into
9 Fred Doucet and suggest to him, in an effort to make
10 amends, that he contact Mr. Schreiber and invite him
11 over around the Christmas season of 1999?

12 28467 THE HON. ELMER MacKAY: Mr.
13 Roitenberg, that is something, again, that could have
14 happened, but I have no reason to believe that it did.
15 I don't recall doing that.

16 28468 I can see no reason for me to do
17 that, although it's possible.

18 28469 MR. ROITENBERG: So it's something
19 you don't recall occurring, but you don't say
20 definitively that it could not have happened, it's just
21 something that you don't believe occurred, from your
22 memory.

23 28470 THE HON. ELMER MacKAY: That's
24 correct.

25 28471 MR. ROITENBERG: Did you have ongoing

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1 contact with Mr. Doucet over the years?

2 28472 THE HON. ELMER MacKAY: In a sense I
3 did. I didn't see him often, or talk to him often, but
4 I --

5 28473 It was very seldom, but, yes, I had
6 some contact with him over the years.

7 28474 MR. ROITENBERG: I want to go back --
8 because I took you forward in time, I want to go back
9 in time to your tenure as the Minister for ACOA.

10 28475 If I could direct your attention to
11 Tab 12 in the book of documents --

12 28476 THE HON. ELMER MacKAY: Did you say
13 12?

14 28477 MR. ROITENBERG: Yes, sir.

15 28478 THE HON. ELMER MacKAY: Yes.

16 28479 MR. ROITENBERG: Following the letter
17 that I showed you some time ago at Tab 9, the letter
18 from Mr. Schreiber outlining certain frustrations as to
19 the lack of progress, which was in November of 1989, we
20 now find ourselves in January of 1990, according to
21 this memo -- and it's a memo from Mr. Peter Lesaux at
22 ACOA, and it is setting out a follow-up to the fact
23 that it looks as though there is not going to be a
24 major light-armoured vehicle procurement in the offing.
25 Correct?

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1 28480 THE HON. ELMER MacKAY: Yes.

2 28481 MR. ROITENBERG: In fact, at page 2,
3 if you go to the second full paragraph on the page, it
4 suggests that ACOA has been informed by the Deputy
5 Minister of DND that the Department of National Defence
6 will not be proceeding with any LAV contract, or any
7 comparable equipment which could be supplied by Bear
8 Head, for the foreseeable future.

9 28482 Do you see that, sir?

10 28483 THE HON. ELMER MacKAY: I do.

11 28484 MR. ROITENBERG: It goes on to
12 comment that a letter should be sent to Thyssen Bear
13 Head, and a draft letter is included with this
14 memorandum, and the letter should not, or does not,
15 refer at all to a military market or contract, but
16 simply notes the government's interest in seeking to
17 orient the company toward environmental production in
18 Cape Breton.

19 28485 In essence, because there is no LAV
20 contract coming, here is another avenue you might wish
21 to pursue to set up a manufacturing concern.

22 28486 Would that be an accurate
23 characterization?

24 28487 THE HON. ELMER MacKAY: Yes.

25 28488 MR. ROITENBERG: If you go to the

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1 very end of this memorandum, it is like a side note to
2 you:

3 "Minister: Inasmuch as this is
4 a very sensitive file, and has
5 been the subject of much
6 discussion both in cabinet and
7 amongst officials, I believe it
8 imperative that you speak with
9 the Prime Minister and/or Mr.
10 Stanley Hartt..."

11 28489 -- who, I understand, was the Chief
12 of Staff in the PMO at the time:

13 "...to apprise them of your
14 intentions. As the letter quite
15 properly states, you are
16 pursuing an important initiative
17 on behalf of the Government of
18 Canada."

19 28490 Do you see that, sir?

20 28491 THE HON. ELMER MacKAY: I do.

21 28492 MR. ROITENBERG: Why was this file so
22 sensitive?

23 28493 THE HON. ELMER MacKAY: Mr.
24 Roitenberg, this is, I believe, almost a unique file.
25 There were other projects of equal magnitude -- the

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1 Confederation Bridge, Westray Coal Mine, initiatives in
2 Prince Edward Island between the Irvings and the
3 McCains -- all of which proceeded, more or less, in a
4 conventional way.

5 28494 This project, to me, smacked of kind
6 of a cloak-and-dagger attitude, that officials in one
7 department -- DND -- were concerned about what
8 officials in my agency -- ACOA -- were doing. There
9 were ambiguous statements made, I believe, about the
10 true intentions of what might or might not occur in
11 connection with a multifaceted approach in Cape Breton
12 involving perhaps environmental or other concerns,
13 blended or not blended with the military option.

14 28495 I think it was one of the chiefs of
15 staff of the Prime Minister in an earlier procedure who
16 said that this was the project that wouldn't go away,
17 it kept being brought back.

18 28496 I think that was partly because there
19 seemed to be information given back and forth, saying
20 that certain things were true or were not true about
21 the characteristics of these multi-role combat
22 vehicles, the MRCV, which could have been the Fox at
23 one stage, or it could have been the TH 495 at another
24 stage.

25 28497 It wasn't able to be transported in a

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1 Hercules aircraft, or, maybe again, it was able to be
2 transported.

3 28498 There was an awful lot of back chat
4 going on between the departments over the years, and it
5 never seemed -- although in some of these documents it
6 would appear that the matter had been definitively
7 settled, it never really seemed to be clearly
8 terminated.

9 28499 MR. ROITENBERG: There may have been
10 an awful lot of back chat between the departments, but
11 one thing which seemed clear from much of the
12 information that you saw at the time was that the
13 Department of National Defence didn't seem to want to
14 purchase this vehicle from Thyssen.

15 28500 Would you agree with that?

16 28501 THE HON. ELMER MacKAY: I would.

17 28502 MR. ROITENBERG: And they would have,
18 at least at that time, been the ultimate consumer of
19 the product, if it had been built. It was a proposal
20 to sell them the vehicle. Correct?

21 28503 THE HON. ELMER MacKAY: That's true.
22 There were other implications, but the key to the whole
23 project, at least at the beginning, and perhaps
24 throughout, was the military aspect, the acquiring for
25 our soldiers of a state-of-the-art combat vehicle.

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1 28504 MR. ROITENBERG: Who better to know
2 what the Army needs than the Army itself, or the
3 Department of National Defence?

4 28505 THE HON. ELMER MacKAY: That's true,
5 but even there there were conflicting signals sent out.

6 28506 I think it was Major-General Fox, at
7 a parliamentary committee -- I think it was '87 -- who
8 gave a --

9 28507 I don't want to put words in his
10 mouth, I won't go any further, but the expense --

11 28508 I was never Minister of Defence, and
12 I make no pretense of being an expert in military
13 procurement, but from what I learned, I was kind of
14 puzzled. The initial cost for these vehicles was
15 pegged at around \$300 million -- I am only
16 approximating -- but in these documents it appears that
17 at one point it was up as high as \$780 million, and
18 there was a \$200 million figure put in there for --
19 "inefficiencies" I think was the quote.

20 28509 I wondered at the time about who was
21 quantifying the costs, and whether we were getting the
22 straight goods from DND.

23 28510 But I am digressing now, and I
24 apologize.

25 28511 MR. ROITENBERG: That's quite all

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1 right, sir.

2 28512 We are at this memo, which was
3 January 4th, 1990, suggesting that you send a letter to
4 Thyssen, advising them that, as the government will not
5 be engaging in a procurement of the LAVs in the near
6 future, they might want to consider an environmental
7 production centre.

8 28513 Is that correct?

9 28514 THE HON. ELMER MacKAY: Yes.

10 28515 MR. ROITENBERG: If I could direct
11 you, then, to Tab 14, if you bypass the first two pages
12 within the tab, you will come to a memorandum which was
13 written on the 19th of January 1990.

14 28516 THE HON. ELMER MacKAY: Yes.

15 28517 MR. ROITENBERG: This memorandum was
16 written for Stanley Hartt, the Chief of Staff in the
17 Prime Minister's Office, and it outlines a bit of the
18 history of the project over the first couple of pages.

19 28518 If you go to page 3 of the
20 document -- this memo, by the way, was written January
21 the 19th of 1990 -- if you go to the third page, it
22 says at the top of the page:

23 "With ACOA assistance, Thyssen's
24 Canadian company, Bear Head
25 Industries, has retained Price

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1 Waterhouse to look into the
2 market for non-military
3 products. The company
4 apparently has some prospects to
5 sell emission control scrubbers
6 for thermal power plants. This
7 is presumably the `environmental
8 field' referred to in the draft
9 letter from Mr. MacKay to the
10 company. Preliminary results of
11 the Price Waterhouse study may
12 be available informally in
13 February."

14 28519 So it further comments on your
15 draft -- or the draft letter that has now been
16 forwarded by you to PMO or PCO.

17 28520 It then goes on to talk about issues
18 to be resolved, and the first issue is:

19 "Despite Government disclaimers,
20 there are still concerns that
21 the plant may be ultimately
22 intended for military exports to
23 sensitive areas."

24 28521 And it goes on to speak of some of
25 the concerns in the past about sending to certain

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1 countries.

2 28522 The second issue to be resolved is:

3 "The federal government has
4 tried to keep the onus on
5 Thyssen to develop a business
6 plan and demonstrate the
7 viability of the plant. It
8 would be counter-productive for
9 the Government to appear too
10 eager or to provide too strong a
11 level of comfort to the company
12 before that work is done."

13 28523 So we have a couple of concerns
14 voiced here.

15 28524 You have proposed a draft letter,
16 directing them more to the environmental arena, rather
17 than military, but there are concerns that, ultimately,
18 they want to produce militarily and export to countries
19 of concern; and number two, that if we offer too strong
20 a level of comfort by way of letter, it is going to
21 diminish the bargaining position, as it were, of the
22 government.

23 28525 Would that be fair?

24 28526 THE HON. ELMER MacKAY: Yes, that
25 would be fair.

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1 28527 The background of this, Mr.
2 Roitenberg, as I understand it, is that, initially,
3 Thyssen was strongly encouraged to come and take their
4 business expertise to Canada, and the primary motive,
5 of course, to start this process was the military one,
6 and that always remained, more or less, part of the
7 suggestion, that they might broaden their business to
8 include other areas.

9 28528 MR. ROITENBERG: But the fact is, at
10 this stage, in any event, for budgetary reasons, the
11 government was not looking at engaging in the
12 procurement in question in any event. So what was
13 desired here was a steerage of the company to another
14 manufacturing arena, so that they didn't put all of
15 their eggs in the basket of the military procurement.
16 Correct?

17 28529 THE HON. ELMER MacKAY: Right.

18 28530 MR. ROITENBERG: If we go to Tab 13,
19 it is a memorandum from the Operations Committee, and I
20 am led to believe -- and correct me if I am wrong --
21 that the Operations Committee is akin to an inner
22 cabinet amongst the cabinet.

23 28531 Would that be correct?

24 28532 THE HON. ELMER MacKAY: Yes.

25 28533 This is Tab 13, sir?

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1 28534 MR. ROITENBERG: Yes, Tab 13. Are
2 you there, sir?

3 28535 THE HON. ELMER MacKAY: Oh, yes.

4 28536 MR. ROITENBERG: OK.

5 28537 THE HON. ELMER MacKAY: Yes, I am.

6 28538 MR. ROITENBERG: So there are a
7 number of issues discussed. If I could get you to go
8 to what is marked at the top as page 2 of these notes.

9 28539 THE HON. ELMER MacKAY: Yes.

10 28540 MR. ROITENBERG: By the way, this
11 took place on January 22, 1990, so we had the
12 memorandum internally at ACOA on January 4th suggesting
13 the letter be sent; January 19th we have the memorandum
14 to Chief of Staff Hartt suggesting that the letter be
15 sent but should be milder in comfort. We now have the
16 Operations Committee memo.

17 28541 And if you go to number four, again
18 there is a highlighting of the fact that before a final
19 decision is made vis-à-vis Thyssen:

20 "... the company must complete a
21 viable business plan for
22 non-military products and the
23 Government must resolve the
24 level and source of federal
25 funding."

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1 28542 It then is suggestive of a process
2 which includes:
3 "Mr. McKay proposes to write to
4 the parent company to invite
5 early discussions."
6 28543 That is under number 4 at page 2 of
7 the memo.
8 28544 THE HON. ELMER MacKAY: Yes.
9 28545 MR. ROITENBERG: So we have gone from
10 the internal ACOA memo suggesting a letter be sent, the
11 memo to the Prime Minister -- to the Chief of Staff of
12 the Prime Minister's Office suggesting a letter be
13 sent, comment at the Operations Committee level
14 suggesting that you are going to send a letter.
15 28546 I will then ask you to turn to Tab
16 14, the first memo contained therein, a memo of January
17 24, 1990, which is a memo again highlighting some
18 recent history.
19 28547 It has comment on the draft letter,
20 comment on the letter that's -- the memo that is
21 included, sent to the Chief of Staff, Stanley Hartt.
22 28548 And then if you will turn to page 2,
23 January 23rd, this is the day after the Operations
24 Committee where you have suggested sending a letter to
25 the parent company.

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1 28549 It says:
2 "Mr. MacKay passes a note to P.
3 Tellier ..."
4 28550 Paul Tellier.
5 "... expressing fear that the
6 project will go to the U.S. if
7 Schreiber is not given a letter
8 of comfort. Note is passed to
9 R. Bilodeau, who follows up with
10 ACOA/Lesaux and with PMO to try
11 to determine whether there is an
12 inclination at PMO to provide
13 letter of comfort."
14 28551 Do you see that, sir?
15 28552 THE HON. ELMER MacKAY: I do.
16 28553 MR. ROITENBERG: It then says:
17 "MacKay places a midnight call
18 to P. Tellier."
19 28554 Do you recall doing that, sir?
20 28555 THE HON. ELMER MacKAY: No. As a
21 matter of fact, I'm quite certain I didn't. I mean
22 there are people that I might call at midnight, but for
23 no particular reason I don't think Paul Tellier is one
24 of them, not because I would be afraid to call him or
25 anything, but he wasn't the kind of fellow that I think

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1 would have appreciated a call over such a matter at
2 midnight.

3 28556 I don't think I did that.

4 28557 MR. ROITENBERG: It might be
5 suggestive --

6 28558 THE HON. ELMER MacKAY: I would like
7 to know where that information came from.

8 28559 MR. ROITENBERG: Well, we will hear
9 from Mr. Tellier, I think as soon as tomorrow.

10 28560 THE HON. ELMER MacKAY: Oh, good.

11 28561 MR. ROITENBERG: But whether it was
12 actually at midnight, it is suggestive of there being a
13 call of some urgency on the subject.

14 28562 You would agree with that?

15 28563 THE HON. ELMER MacKAY: Perhaps, yes.

16 28564 MR. ROITENBERG: And it is true that
17 you had some concerns that if a letter of comfort were
18 not provided to Mr. Schreiber that this manufacturing
19 concern for Nova Scotia, which would create hundreds of
20 jobs, might be lost.

21 28565 Is that correct?

22 28566 THE HON. ELMER MacKAY: Mr.
23 Roitenberg, I didn't have many greater concerns than
24 losing this industry of whatever kind for Nova Scotia.
25 The need was desperate there, and that's correct, I

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1 would have done all I could, did all I could, to
2 preserve these initiatives.

3 28567 MR. ROITENBERG: If you go to the
4 next note on the same page, January 24th -- and I
5 mercifully won't read the entire note into the record,
6 but the underlined portion is:

7 ... that Tellier apparently had
8 convinced MacKay that letter
9 should not go forward."

10 28568 In essence suggesting that there has
11 been a resolution of the matter, there won't be a
12 letter.

13 28569 Have I lost you, sir?

14 28570 THE HON. ELMER MacKAY: I'm sorry,
15 Mr. Roitenberg, what tab are we on?

16 28571 MR. ROITENBERG: I am still at Tab
17 14. I was still on the same page of the same document
18 we have been looking at.

19 28572 THE HON. ELMER MacKAY: Oh, I'm
20 sorry. OK. Still on Tab 14.

21 28573 MR. ROITENBERG: Tab 14.

22 28574 THE HON. ELMER MacKAY: I'm sorry, I
23 lost the page.

24 28575 MR. ROITENBERG: We are at the second
25 page of that memo, January 24th notation.

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1 28576 THE HON. ELMER MacKAY: I'm very
2 sorry about this.

3 28577 MR. ROITENBERG: That's all right.
4 Take your time.

5 28578 THE HON. ELMER MacKAY: I have -- we
6 have the midnight call to Paul Tellier mentioned.

7 28579 MR. ROITENBERG: Right.

8 28580 THE HON. ELMER MacKAY: That's on
9 page 2.

10 28581 MR. ROITENBERG: And the very next
11 note, January 24th, right under that sentence.

12 28582 THE HON. ELMER MacKAY: OK. Yes.

13 28583 MR. ROITENBERG: If you look at the
14 underlined portion towards the bottom of the day's
15 notation:

16 "... Tellier apparently had
17 convinced MacKay that letter
18 should not go forward."

19 28584 THE HON. ELMER MacKAY: Yes.

20 28585 MR. ROITENBERG: In essence
21 suggesting a decision has been made. We are not
22 sending a letter.

23 28586 THE HON. ELMER MacKAY: Yes.

24 28587 MR. ROITENBERG: Correct?

25 28588 THE HON. ELMER MacKAY: Yes.

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1 28589 MR. ROITENBERG: If you will go down
2 to the bottom of the page and the handwriting, it says:
3 "PS: Bob Grauer called back at
4 7:55, to say that MacKay had
5 gone back to the charge with S.
6 Hartt..."

7 28590 I'm assuming that's Stanley Hartt,
8 Chief of Staff in the Prime Minister's Office:
9 "... only this time to argue for
10 a letter of support for a Bear
11 Head military project, based on
12 a Sept. '88 understanding with
13 Bear Head. Hartt apparently is
14 now inclined to authorize a
15 letter of comfort, as long as it
16 is completely non-committal as
17 to federal support."

18 28591 Do you recall going back to push for
19 a letter in the face of the denial of the environmental
20 one and now pushing for the military aspect to be
21 highlighted?

22 28592 THE HON. ELMER MacKAY: That's
23 possible. I don't recall it, but it is entirely
24 possible.

25 28593 MR. ROITENBERG: Well, I will ask you

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1 to turn the page to Tab 15 then.

2 28594 THE HON. ELMER MacKAY: Fifteen?

3 28595 MR. ROITENBERG: Tab 15, yes.

4 28596 THE HON. ELMER MacKAY: Yes.

5 28597 MR. ROITENBERG: It's a note dated

6 the 25th of January:

7 "We understand that Mr. McKay

8 and Mr. McKnight,..."

9 28598 And that is William McKnight who was

10 then the Minister for National Defence:

11 "... with the agreement of PMO,

12 agreed last night that Mr.

13 McKnight would send an anodyne

14 letter of comfort to Thyssen

15 Industry AG."

16 28599 So following what appears to have

17 been your going back to Mr. Hartt to push for a

18 military letter, you then met with the Minister of

19 National Defence and hashed out a potential letter to

20 be sent to Thyssen.

21 28600 Would that be accurate, sir?

22 28601 THE HON. ELMER MacKAY: That seems to

23 be accurate.

24 28602 MR. ROITENBERG: And as it is not

25 your letter --

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1 28603 THE HON. ELMER MacKAY: You are going
2 by these --

3 28604 MR. ROITENBERG: Pardon me, sir?

4 28605 THE HON. ELMER MacKAY: Mr.
5 Roitenberg, I am assuming all these things are correct.
6 If I don't remember precisely the events surrounding
7 them, I certainly believe them to be true.

8 28606 MR. ROITENBERG: Very good, sir.
9 Thank you for the qualification.

10 28607 At Tab 16 -- and I won't go through
11 it -- is the letter that was sent under the hand of
12 William McKnight to Mr. Schreiber on behalf of Bear
13 Head Industries.

14 28608 You may recall, sir, that following
15 the negotiations surrounding the provision of a letter
16 of comfort to Thyssen, there were a number of follow-up
17 meetings between yourself, Mr. Schreiber and
18 Mr. McKnight.

19 28609 Do you recall that, sir?

20 28610 THE HON. ELMER MacKAY: I recall that
21 there probably were some. I don't remember how many,
22 but I think that's true.

23 28611 MR. ROITENBERG: Well, if it assists
24 you, at Tab 20 is a letter to Mr. Hartt from
25 Mr. McKnight, and if I can direct you to page 3 of the

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1 letter it comments on, at page 3, a meeting on February
2 the 1st that included the presence of Mr. Hartt that
3 you were present at; as well as, in the last paragraph,
4 a meeting of March the 9th between yourself,
5 Mr. Schreiber and Mr. McKnight.

6 28612 THE HON. ELMER MacKAY: Yes, I see
7 that.

8 28613 MR. ROITENBERG: So at least those
9 two are highlighted.

10 28614 THE HON. ELMER MacKAY: Yes.

11 28615 MR. ROITENBERG: You as well became
12 aware that at the suggestion of Mr. McKnight, a meeting
13 was held between members of his department and
14 Mr. Schreiber and other individuals from his company
15 early in February of 1990.

16 28616 Were you aware of that, sir?

17 28617 THE HON. ELMER MacKAY: I'm sure I
18 was, yes.

19 28618 MR. ROITENBERG: I'm going to direct
20 you to Tab 55. This is a memo to the Prime Minister
21 from E.M., which I will confess I am operating under
22 the assumption is you, bringing the Prime Minister up
23 to date on the Thyssen Bear Head Project.

24 28619 Now, it's undated, but it refers
25 directly to a meeting had on February the 5th, if you

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1 go to page 2 of the letter, sir.

2 28620 If you go to the second full
3 paragraph it speaks of:

4 "A meeting was held on February
5 5, 1990 between Thyssen and
6 Defense. The purpose was to
7 explore the army's need and
8 Thyssen's capacity to produce
9 the vehicle."

10 28621 In the letter you make the suggestion
11 that:

12 "The Army people appeared
13 muzzled but did admit there was
14 a need, and acknowledged the
15 compatibility of Thyssen's
16 TH 495 in meeting that need."

17 28622 You then say, in the second-last
18 paragraph:

19 "I have since learned from
20 reliable sources that the Army
21 people present were in fact
22 muzzled. They were told not to
23 openly admit the need."

24 28623 Then you go on to say:

25 "This is very confidential

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1 information."

2 28624 I'm curious as to what your source of
3 that information would have been, if you recall.

4 28625 THE HON. ELMER MacKAY: I wish I
5 could tell you that, Mr. Roitenberg. Can I say
6 parenthetically that there seemed to be a lot of
7 conflicting requirements or needs or wishes within DND.
8 It seems hard now to remember or to recall, but at one
9 point DND were pushing very hard to acquire nuclear
10 submarines, which sounds completely incongruous, but it
11 happened; it was true.

12 28626 So I wish I could help you with that,
13 but I do know that there were -- at least I'm fairly
14 certain there were a lot of conflicting opinions within
15 DND itself.

16 28627 MR. ROITENBERG: Now, ACOA seemed to
17 be uniformly in support of this project. Would you
18 agree with that?

19 28628 THE HON. ELMER MacKAY: Yes, I think
20 ACOA was kind of mandated -- we were in effect the tail
21 on the dog.

22 28629 We didn't have -- we did not have the
23 resources, as you pointed out earlier, to play a major
24 role in the financing of this initiative. We had some
25 money and then the problems -- the province was an

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1 important part of this, too, I might add.

2 28630 With the economic and regional
3 development agreements, the province had the
4 prerogative of designating a major amount of money to
5 be put on a particular priority they had and I believe
6 that they at one point were supportive of this as well.

7 28631 MR. ROITENBERG: But on the federal
8 level --

9 28632 THE HON. ELMER MacKAY: Yes...?

10 28633 MR. ROITENBERG: -- ACOA was the best
11 friend this project could have had.

12 28634 THE HON. ELMER MacKAY: I think
13 that's true.

14 28635 MR. ROITENBERG: Another incident of
15 note that I wanted to ask you about from 1990. At Tab
16 22 there is a letter from the Chairman and Chief
17 Executive Officer of Bombardier Incorporated, a letter
18 to Prime Minister Mulroney, suggesting at paragraph 4
19 of the first page that it has come to their attention
20 that Mr. Schreiber, at least in their opinion, seems to
21 be engaged in a campaign of sabotage as to the German
22 government's purchase of a Bombardier product and
23 wishes it to be held up unless and until the Thyssen
24 light armoured vehicle project directed by Thyssen is
25 approved by the Government of Canada.

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1 28636 Do you see that, sir?

2 28637 THE HON. ELMER MacKAY: I do.

3 28638 MR. ROITENBERG: It goes on to state

4 that:

5 "We have also been told that the

6 Honourable Elmer McKay(sic) has

7 been supporting Mr. Schreiber in

8 these efforts."

9 28639 Now, before we get to that latter

10 suggestion, were you aware even that Bombardier was

11 engaged at a similar time with the German government

12 negotiating an export to Germany?

13 28640 THE HON. ELMER MacKAY: I believe I

14 was and I think that the information came to me for

15 Mr. Schreiber.

16 28641 MR. ROITENBERG: Were you aware that

17 Mr. Schreiber was trying to utilize the Thyssen

18 proposal as a pawn with the German government in

19 relation to Bombardier's proposal?

20 28642 THE HON. ELMER MacKAY: A bargaining

21 tool as it were?

22 28643 MR. ROITENBERG: Yes.

23 28644 THE HON. ELMER MacKAY: Yes, I may

24 have been aware of that, Mr. Roitenberg, but certainly

25 I wasn't fermenting it or anything like that.

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1 28645 Mr. Schreiber was nothing if not
2 resourceful and determined.

3 28646 It has been suggested I think,
4 perhaps before this Commission, that Mr. Schreiber was
5 motivated largely by money to get this project
6 completed. From what I saw of Mr. Schreiber and what I
7 know, money may have been part of it, but it became
8 intensely -- I don't want to say personal, but
9 Mr. Schreiber really believed passionately in this
10 project for a number of reasons, and he would use every
11 possible bargaining tool that he had, I think, to try
12 to get this through.

13 28647 MR. ROITENBERG: This letter,
14 however, suggests that you may have been complicit in
15 Mr. Schreiber's resourcefulness.

16 28648 I'm not going to suggest to you that
17 you were. I'm going to ask you to comment, if you
18 don't mind.

19 28649 THE HON. ELMER MacKAY: Well, I was
20 not complicit in anything that would work against the
21 Government of Canada, but I had sympathy with
22 Mr. Schreiber. But I don't remember suggesting to him
23 that he try to deprive a Canadian company, particularly
24 a great Canadian company like Bombardier, of some
25 foreign business.

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1 28650 The whole idea implicit in all of
2 this was to draw in German industry and to try to get
3 alternatives. Canada was open for business, as the
4 saying went, and we weren't going to get anywhere by
5 backstabbing people trying to take business away from
6 the very country that we wanted to come and do business
7 in our country.

8 28651 MR. ROITENBERG: Did anyone from the
9 Prime Minister's Office or PCO speak with you about
10 this particular suggestion or allegation contained in
11 this letter?

12 28652 THE HON. ELMER MacKAY: No. The
13 first I ever knew of it was the letter that was sent to
14 me.

15 28653 MR. ROITENBERG: The letter that was
16 sent to you with our materials?

17 28654 THE HON. ELMER MacKAY: With your
18 material, yes.

19 28655 MR. ROITENBERG: I note that it is
20 quarter to 3:00, Mr. Commissioner, and Mr. Mackay is
21 standing and answering all my questions. Perhaps we
22 can take a break now. He could have a short break and
23 then we can come back and conclude.

24 28656 COMMISSIONER OLIPHANT: Mr. Mackay,
25 you heard what Mr. Roitenberg just said. Would you

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1 like to take a break at this point, sir, or continue on
2 for a little while?

3 28657 THE HON. ELMER MacKAY: Commissioner,
4 it's entirely up to you. I feel quite comfortable in
5 continuing on, but I wouldn't object to a break either.

6 28658 Don't interrupt the flow of the
7 proceedings for me.

8 28659 COMMISSIONER OLIPHANT: Well,
9 Mr. Roitenberg has suggested that perhaps it might be
10 time for a break and that usually means that counsel is
11 at a position, at a point where break is not
12 inconvenient.

13 28660 So I think we will break for 15
14 minutes. OK?

15 --- Upon recessing at 2:50 p.m. / Suspension à 14 h 50

16 --- Upon resuming at 3:10 p.m. / Reprise à 15 h 10

17 28661 COMMISSIONER OLIPHANT: Be seated,
18 please.

19 28662 Please proceed, Mr. Roitenberg.

20 28663 MR. ROITENBERG: Thank you,
21 Mr. Commissioner.

22 28664 Mr. MacKay...?

23 28665 THE HON. ELMER MacKAY: Mr.
24 Roitenberg...?

25 28666 MR. ROITENBERG: Yes, sir.

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1 28667 THE HON. ELMER MacKAY: May I just
2 take a moment at this point to thank the Commissioner
3 and the Commission for permitting me to testify in this
4 fashion while I am recovering from my operation. I
5 deeply appreciate it.

6 28668 COMMISSIONER OLIPHANT: Thank you
7 very much, Mr. MacKay. It's no problem at all. The
8 technology seems to be working perfectly.

9 28669 Thank you very much.

10 28670 MR. ROITENBERG: Following the
11 timeframe within which there was this letter from
12 Bombardier, May of 1990, shortly after that a meeting
13 was arranged between yourself, Mr. Schreiber and
14 Mr. Tellier, who was the Chief Clerk of the Privy
15 Council.

16 28671 Is that correct?

17 28672 THE HON. ELMER MacKAY: I believe it
18 to be correct.

19 28673 MR. ROITENBERG: I believe the
20 meeting took place early in July of 1990.

21 28674 Is that fair?

22 28675 THE HON. ELMER MacKAY: I wouldn't
23 deny it. I can't remember specifically.

24 28676 MR. ROITENBERG: Were you aware as to
25 what recommendations or observations were shared with

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1 the Prime Minister by Mr. Tellier following that
2 meeting?

3 28677 THE HON. ELMER MacKAY: Mr.
4 Roitenberg, I'm not sure.

5 28678 MR. ROITENBERG: If I can ask you to
6 turn to Tab 24A. So if you go to Tab 24, there is a
7 document and following that document is another tab
8 marked "A".

9 28679 THE HON. ELMER MacKAY: Twenty-four
10 "A".

11 28680 MR. ROITENBERG: Yes, sir.

12 28681 THE HON. ELMER MacKAY: Yes.

13 28682 MR. ROITENBERG: It's a memorandum to
14 the Prime Minister from Mr. Tellier.

15 28683 THE HON. ELMER MacKAY: Yes, I see
16 this.

17 28684 MR. ROITENBERG: And it comments
18 on -- it's dated July 12, 1990 and it comments on,
19 right at the beginning to the Prime Minister:

20 "As you had requested, I met
21 recently with Elmer MacKay and
22 Karlheinz Schreiber, Chairman of
23 Bear Head Industries Ltd...."

24 28685 Do you see that, sir?

25 28686 THE HON. ELMER MacKAY: I do.

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1 28687 MR. ROITENBERG: Now, I want to take
2 you to "COMMENT" on page 3.
3 "COMMENT
4 An investment of this size, in a
5 depressed region, by a West
6 German company of this stature
7 would be a positive signal about
8 Canada as a place to invest. At
9 a time when Canada is attempting
10 to give a business as usual
11 signal to foreign investors,
12 this would be a reassuring
13 message."
14 28688 And it gives a caution as to what
15 might be some difficulty if the project is less than
16 successful.
17 28689 Do you see that, sir?
18 28690 THE HON. ELMER MacKAY: I do.
19 28691 MR. ROITENBERG: Now, at the very
20 bottom of the next paragraph, about four lines up, it
21 says:
22 "To make this judgment, a full
23 business plan should be
24 requested from Thyssen, and an
25 analysis of this and the

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1 project's costs and benefits
2 would need to be undertaken
3 thoroughly."

4 28692 Do you see that, sir?

5 28693 THE HON. ELMER MacKAY: I do.

6 28694 MR. ROITENBERG: Now, hopefully you
7 will recall from much of the memorandum that I have put
8 to you that there has been comment on the need for a
9 complete business plan from the company.

10 28695 Do you recall that, sir?

11 28696 THE HON. ELMER MacKAY: Yes.

12 28697 MR. ROITENBERG: So here we are in
13 July of 1990 coming up to two years after the signing
14 of the Understanding in Principle, which was September
15 of 1988, and there is still comment on the fact that
16 the company has not provided a significant or
17 sufficient business plan.

18 28698 Is that right, sir?

19 28699 THE HON. ELMER MacKAY: Yes.

20 28700 MR. ROITENBERG: And this is the plan
21 that ACOA is supporting and trying to assist in the
22 negotiating between the Government of Canada as a whole
23 and Thyssen Bear Head.

24 28701 Was there some frustration expressed
25 on behalf of ACOA, some notion of get on with it, to

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1 the company through you in terms of it is time to give
2 us what we need to get the job done? Was that
3 something you put to Mr. Schreiber?

4 28702 THE HON. ELMER MacKAY: I can
5 remember asking Mr. Schreiber about a business plan,
6 and to the best of my knowledge he kind of disclaimed
7 the need for one because they weren't requesting, as he
8 said, a lot of money.

9 28703 But eventually we did, ACOA did
10 commission Peat Marwick, I believe, to prepare such a
11 business plan.

12 28704 But in answer to your question, I do
13 seem to recall that there was some frustration that we
14 didn't have an upfront business plan with which to
15 work.

16 28705 MR. ROITENBERG: In 1990 as the
17 matter was continuing through this negotiating process,
18 you were reporting to the Prime Minister on the
19 progress on behalf of ACOA.

20 28706 Is that fair?

21 28707 THE HON. ELMER MacKAY: Yes.

22 28708 MR. ROITENBERG: In fact, if I can
23 direct you to Tab 28, October 17, 1990, there is a note
24 to the Prime Minister from you basically suggesting:

25 "When you have an opportunity in

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1 the next day or so, would you
2 mind if I call you or perhaps
3 you could ask someone to leave
4 word with my staff as to when it
5 might be convenient."

6 28709 Because you wanted to discuss with
7 the Prime Minister certain aspects of the Thyssen
8 project.

9 28710 Is that right?

10 28711 THE HON. ELMER MacKAY: Yes, sir.
11 Yes.

12 28712 MR. ROITENBERG: Was this something
13 that occurred on a frequent basis, whereby you
14 contacted the Prime Minister to want a meeting, either
15 in person or by telephone, to share with him what is
16 going on with ACOA, what is going on with this project?

17 28713 THE HON. ELMER MacKAY: Mr.
18 Roitenberg, I wouldn't say that it was a frequent -- I
19 may have -- I may have tested the Prime Minister's
20 patience too much, because I did used to sometimes
21 request meetings with him, not just on this particular
22 file but on others. But I tried not to bother him too
23 much.

24 28714 MR. ROITENBERG: You were aware that
25 in the fall of 1990 the then Chief of Staff of the

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1 Prime Minister's Office, Norman Spector, wanted to
2 gather all of the players and have them produce a
3 document which would hopefully once and for all answer
4 the outstanding questions as to what is involved in the
5 Thyssen proposal, how much will it cost, is it doable
6 and, if it is, how do we get it done?

7 28715 You were aware that such a gathering
8 was commissioned?

9 28716 THE HON. ELMER MacKAY: Yes.

10 28717 MR. ROITENBERG: And that meeting was
11 to take place on November 1, 1990.

12 28718 I'm going to ask you, if you wouldn't
13 mind, to go to Tab 27. I'm only asking you to go to
14 this document to confirm in your own mind the accuracy
15 that what we are looking at is a November 1st meeting,
16 upcoming.

17 28719 THE HON. ELMER MacKAY: Yes, sir, I
18 have 27.

19 28720 MR. ROITENBERG: OK. If you go to
20 the second paragraph, it:

21 "... is intended for use by MND
22 and senior DND officials..."

23 28721 That is the Minister of National
24 Defence and senior Department of National Defence
25 officials:

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1 "... involved in the 1 Nov 90
2 meeting with the Honourable
3 Elmer MacKay and Mr. Norman
4 Spector."
5 28722 I am only putting you on this
6 document to orient you timewise.
7 28723 Do you see where it says that?
8 28724 THE HON. ELMER MacKAY: October
9 '90 -- yes.
10 28725 MR. ROITENBERG: November 1, 1990 --
11 28726 THE HON. ELMER MacKAY: Yes.
12 28727 MR. ROITENBERG: -- is the meeting.
13 28728 THE HON. ELMER MacKAY: Yes.
14 28729 MR. ROITENBERG: And you understood
15 that at this meeting there was a request made by then
16 Chief of Staff Spector that the parties produce a
17 document cooperatively which would set out everybody's
18 position, the costs, the benefits, so that there could
19 be some finality as to whether or not this proposal
20 could move forward; correct?
21 28730 THE HON. ELMER MacKAY: Yes.
22 28731 MR. ROITENBERG: But there was some
23 concern raised along the way that ACOA was not willing
24 to wait for this cooperative product but in fact were
25 trying to do an end run around the process and go

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1 directly to the Prime Minister's Office.

2 28732 Do you recall that concern being
3 raised?

4 28733 THE HON. ELMER MacKAY: I see this in
5 the documentation, but I'm not so sure I can remember
6 it otherwise.

7 28734 MR. ROITENBERG: OK. Well, let's go
8 to Tab 29, if you would. This is a memo from
9 Mr. Gillespie, who my understanding was he was the
10 Assistant Deputy Minister Materiel in DND.

11 28735 THE HON. ELMER MacKAY: Yes.

12 28736 MR. ROITENBERG: And he puts forward
13 the proposition that:
14 "In arranging this last
15 night..."

16 28737 "This" being the preparation of the
17 business plan by ACOA.

18 28738 He is arranging it with Peter Smith,
19 who my understanding is was the Vice-President of ACOA
20 Ottawa at the time.

21 28739 Is that right, sir?

22 28740 THE HON. ELMER MacKAY: I believe
23 that's right.

24 28741 MR. ROITENBERG:
25 "... I was informed that the

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1 draft MC (that paper that we
2 have received from ACOA) had
3 been circulated yesterday to at
4 least PCO, TBS and SSC ..."

5 28742 I know the Commissioner is going to
6 stop me right there with the acronyms and ask if I can
7 get you to identify those organizations, other than
8 PCO, which we know to be the Privy Council Office.

9 28743 So if you could help me with TBS and
10 SSC?

11 28744 THE HON. ELMER MacKAY: Well, I'm
12 embarrassed, Mr. Roitenberg, I'm not too sure I know
13 all of these acronyms after all these years either.

14 28745 COMMISSIONER OLIPHANT: You have made
15 my day, Mr. MacKay.

16 28746 THE HON. ELMER MacKAY: You have TBS,
17 Treasury Board Secretariat.

18 28747 MR. ROITENBERG: I believe it is.

19 28748 THE HON. ELMER MacKAY: And DEA,
20 Department of --

21 28749 MR. ROITENBERG: External Affairs, I
22 believe.

23 28750 THE HON. ELMER MacKAY: Privy Council
24 Office. I'm not sure, I thought I had put all these
25 acronyms behind me a long time ago.

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1 28751 MR. ROITENBERG: Well, I apologize
2 for bringing back what must have been a recurring
3 nightmare of the attack of the alphabet.

4 28752 But we have Privy Council Office,
5 Treasury Board Secretariat, SSC, which I don't know,
6 and the Department of External Affairs.

7 28753 It could be Supply and Services
8 Canada, I am advised by my colleague.

9 28754 THE HON. ELMER MacKAY: It could be
10 Supply and Services, yes.

11 28755 MR. ROITENBERG: OK.

12 "This was done just in case Mr.
13 Mackay(sic) decides to walk the
14 paper into Cabinet Committee in
15 the 'next week to ten days'
16 without the DND portion."

17 28756 Suggesting at least a concern that
18 there would be some effort on your behalf to bypass DND
19 having input and take it right to Cabinet Committee.

20 28757 But you don't recall that occurring.

21 28758 THE HON. ELMER MacKAY: No, I don't.
22 But again, Mr. Roitenberg, I plead guilty to being very
23 aggressive on this project, probably with the benefit
24 of hindsight too much so.

25 28759 It was never my intention to

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1 seriously circumvent the rules that governed these
2 things, but I was conscious of how much time had
3 elapsed and how much we were banking on this down in
4 Cape Breton.

5 28760 So I may have been -- I may have been
6 overly aggressive, but I don't know.

7 28761 MR. ROITENBERG: All right.

8 28762 If I could ask you to go to Tab 30,
9 Tab 30 is the memorandum for Norman Spector which was
10 prepared by Paul Tellier to accompany the Aide Memoire
11 that was the joint production of the departments
12 involved, which set out everybody's positions in terms
13 of efficiencies, costs, benefits, et cetera.

14 28763 In the covering memo from Paul
15 Tellier he offers comment at page 2:

16 "As you requested, the
17 aide-memoire does lay out what
18 would be necessary for this
19 project to go ahead: the price
20 is very high, with DND
21 purchasing equipment it
22 basically does not want in a
23 time-frame that does not suit
24 its needs."

25 28764 It sets out that there might be an

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1 approximate cost per job of \$2 million, that is per job
2 created, and that the government might want to be very
3 sure the plant would succeed.

4 28765 It further suggests an understanding
5 that Mr. Spector will be discussing with you how to
6 proceed on the project as you are:

7 "... very anxious to have this
8 matter scheduled for Operations
9 Committee in the near future."

10 28766 I take it your desire to have it
11 dealt with by the Operations Committee in the near
12 future, if that was an accurate statement of your
13 desire, was part and parcel of you aggressively
14 pursuing this on behalf of Nova Scotia?

15 28767 THE HON. ELMER MacKAY: That's true,
16 Mr. Roitenberg, and I would have had a chance to debate
17 a little bit the additional costs, as mentioned on page
18 1 here:

19 "... of \$765 million over and
20 above ... to fit the Fox into
21 the not-yet-completed defence
22 policy..."

23 28768 And so on. It seemed to me -- and
24 again I plead guilty to being completely ignorant on
25 defence procurement costs, and so on, but that is not

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1 unusual for politicians, I guess.

2 28769 But it seemed to me that the costs
3 for this project had been vastly inflated, to my
4 layman's understanding and, you know, again if I might
5 be permitted a slight digression, I am filled with
6 ironic thoughts when I think that we lost this project,
7 at least in part, because of the ostensible extra
8 costs, but yet we wrote off half a billion dollars,
9 enough to complete half of the bridge to Prince Edward
10 Island, when we cancelled the helicopter order and the
11 taxpayers got nothing for that.

12 28770 So I guess I was a little querulous
13 about costs.

14 28771 MR. ROITENBERG: Well, you made it
15 known that you were concerned about the cost and ACOA
16 put forward the position, at your direction, that this
17 was an erroneous assessment of costs because in your
18 view it built in costs for inefficiencies; that they
19 were going to outfit the Forces with one machine and
20 then have to retrofit with another.

21 28772 And that particular concern was
22 addressed when DND did a reassessment of its portion of
23 the Aide Memoire in early January of 1991.

24 28773 If I can get you to turn to Tab 36 --

25 28774 THE HON. ELMER MacKAY: Yes...?

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1 28775 MR. ROITENBERG: I just want to pause
2 to put us into the appropriate perspective.

3 28776 What had been contemplated on the
4 earlier Aide Memoire was the purchase of the TPz Fox
5 from Thyssen, following which there would be an
6 additional purchase of the TH 495 down the road and
7 some concern about the inefficiencies of doing it in
8 that fashion.

9 28777 So at ACOA's suggestion DND then
10 revisited its numbers premised on a lower purchase of
11 vehicles, of the TH 495 instead of the Fox.

12 28778 That is reflected at the memo at Tab
13 36 you will see.

14 28779 If you go to "Comment" on page 2,
15 again under Mr. Tellier's hand, he says:

16 "The DND amendments in summary
17 argue that the substitution of
18 the TH 495 for the Fox makes no
19 difference to the total cost of
20 the acquisition... Although
21 ACOA is of the view that this is
22 overstated ..."

23 28780 And there is attached correspondence
24 from ACOA suggesting that:

25 "... the bottom line is that the

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1 Thyssen proposal costs at least
2 \$500 million (in ball park
3 terms) more than was budgeted."

4 28781 Do you see that, sir?

5 28782 THE HON. ELMER MacKAY: I do.

6 28783 MR. ROITENBERG: So even once they
7 have recosted everything and affording ACOA its view
8 that there is still an overstatement, there is still
9 half a billion dollars over budget that would be
10 required, according to this memo, to go forward with
11 the project.

12 28784 But Mr. Tellier goes on and says:

13 "The bottom line from our
14 perspective continues to be that
15 this project is undesirable
16 since it would involve DND
17 acquiring a product that does
18 not meet its requirements; in
19 quantities larger than it
20 requires; at a price higher than
21 it can afford; in a time frame
22 in advance of its needs, and for
23 which a source of funds has not
24 been identified."

25 28785 That is a pretty steep hill to climb,

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1 you would agree?

2 28786 THE HON. ELMER MacKAY: That is
3 pretty damning indictment of the project.

4 28787 MR. ROITENBERG: And one which
5 certain individuals within ACOA started to share.
6 Would that not be fair?

7 28788 THE HON. ELMER MacKAY: That could
8 very well be true.

9 28789 MR. ROITENBERG: I'm going to direct
10 you to Tab 31, if I may.

11 28790 This is a memo from Peter Smith to
12 you. Peter Smith, the Vice-President of ACOA, he in
13 fact was the individual at your direction who wrote to
14 PCO and advised them as to the difficulties that ACOA
15 had with the costs as set out in the earlier Aide
16 Memoire.

17 28791 But Mr. Smith, writing you a memo as
18 his Minister, at page 2, the second page of the memo,
19 at the bottom, the very last paragraph, expresses as
20 follows:

21 "In short, the views of all
22 departments over the years..."

23 28792 Are you there, sir? I don't want to
24 start without you.

25 28793 THE HON. ELMER MacKAY: Yes, I am.

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1 28794

MR. ROITENBERG:

2

"In short, the views of all

3

departments over the years have

4

not changed, but due to the

5

economic climate and other

6

factors, opposition to the

7

initiative has definitely

8

widened, has solidified and has

9

become even more legitimate."

10 28795

The next paragraph:

11

"Without exception, each of the

12

participants, most notably DND

13

who would have to fund the

14

vehicles, DIST who have a

15

mandate for analyzing the impact

16

on the industrial infrastructure

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in this country and Finance made

18

an appeal to have the company's

19

business plan exposed prior to

20

being able to adequately comment

21

on the viability of the

22

proposal."

23 28796

So again comment on the fact that we

24

don't even have a substantive business plan from the

25

company such that it would afford us the opportunity of

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1 commenting properly.

2 28797 And if you go to the penultimate
3 paragraph starting with "Although":

4 "Although I have only become
5 personally acquainted with this
6 file over the past six months, I
7 have now had ample time to
8 analyze the difficulties
9 associated with approving such a
10 proposal in the past. Some of
11 these concerns could have at the
12 time been either eliminated or
13 at best minimized, based on
14 Thyssen's reputation and the
15 potential benefit to Atlantic
16 Canada. However, as I analyze
17 the facts now, in light of all
18 of the factors that must be
19 considered such as our current
20 economic situation, the Defence
21 Agreement with the US, the state
22 of the National Defence budget
23 and the unapproved Defence
24 policy, I would be less than
25 responsible, despite the

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1 potential positive impact on
2 Atlantic Canada, to advise that
3 this initiative should be
4 pursued."

5 28798 This is the Vice-President of ACOA,
6 the best friend the Thyssen proposal had on the federal
7 level, telling you, the Minister, we really shouldn't
8 be pursuing it in light of all of these factors and all
9 of the opposition and the financial circumstances in
10 which the country finds itself.

11 28799 Do you recall seeing this memo, sir?

12 28800 THE HON. ELMER MacKAY: I do and I
13 would like to just note that on the very top of the
14 page to which you are referring, after this indictment
15 there is the following sentence:

16 "Notwithstanding this
17 opposition, each department also
18 offered suggestions as to what
19 would have to be done to allow
20 this proposal to proceed."

21 28801 So nothing ever seemed -- despite
22 some of the unequivocal language, nothing ever seemed
23 entirely definitive.

24 28802 The justification for the military
25 component solidified, but there was also the other side

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1 issue which perhaps didn't get enough attention, was
2 that Thyssen, being a huge multinational with a lot of
3 business in the United States and other countries, had
4 some major projects going on and were prepared to
5 supply some of these projects as well as environmental
6 ones from Nova Scotia.

7 28803 Now, this may have been pie in the
8 sky or pipe dreams, but nevertheless I think it was
9 contemplated that sometimes at least that getting a
10 company of this stature into Canada was a good thing.

11 28804 To put it in today's context, I see
12 in the local press we have to make more overtures to
13 the EU. So there are other factors involved here.

14 28805 MR. ROITENBERG: You know, you may be
15 offered a very good deal on some patio furniture, but
16 if you don't have a house to put it in, there is no
17 point in buying it.

18 28806 You would agree with that, sir?

19 28807 THE HON. ELMER MacKAY: Yes, unless
20 you can get a construction company to build a house.

21 28808 MR. ROITENBERG: So here you have
22 what you thought was a very good deal for Nova Scotia,
23 but the department who would have had to have been
24 willing to buy it was basically saying we don't need
25 it, we don't want it, we can't afford it, we don't know

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1 where to put it, we don't know how we will pay for it.
2 And your own department in the memo we have just gone
3 through, or at least the Vice-President of ACOA is here
4 saying they make some good points and we can no longer
5 get over those obstacles. It would be irresponsible to
6 recommend proceeding at this point.

7 28809 You have seen that in terms of what
8 Mr. Smith has written this memo?

9 28810 THE HON. ELMER MacKAY: I have.

10 28811 MR. ROITENBERG: The very next day,
11 December 11, 1990, Tab 33, in spite of the
12 recommendation that you have received from the
13 Vice-President of ACOA, you send a letter to the Prime
14 Minister:

15 "I am writing to seek your
16 support for the proposal by
17 Thyssen to establish an
18 armoured-vehicle and
19 environmental-industries
20 manufacturing facility in Nova
21 Scotia."

22 28812 And the request further on at page 3:

23 "To conclude, Prime Minister, if
24 you concur..."

25 28813 This is the last paragraph:

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1 "... it would be my intention on
2 Thursday, December 13, to have
3 the entire proposal, including
4 the company's final offer,
5 brought forward for discussion
6 by Operations Ministers."

7 28814 And then if there could be some
8 formal decision, it should go to Cabinet later that
9 morning.

10 28815 How does one do that in the face of
11 the recommendation by the best friend in Ottawa, ACOA
12 and those individuals who have sat down, assessed the
13 proposal, assessed the economic realities and the other
14 departments' arguments against?

15 28816 THE HON. ELMER MacKAY: The place to
16 put an end to this debate, if it can be called that, in
17 my view, is in Cabinet and have the various
18 departments, all of whom had some -- not all, but most
19 of whom had some peripheral interest in this, come to a
20 conclusion that if this was going to happen the way
21 that ACOA had analyzed it, let's put paid to it. Let's
22 finish it off.

23 28817 I am probably guilty, as I said
24 earlier, of being too aggressive vis-à-vis this
25 project, but that's the way I am.

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1 28818 MR. ROITENBERG: Now, it never
2 actually went to Operations Committee on the 13th or
3 the 14th, and that Tab 34 is a letter that you
4 forwarded to Norman Spector, Chief of Staff to the
5 Prime Minister, where at the first paragraph you say:
6 "Last week, I received your
7 personal assurances that the
8 Thyssen issue would be
9 considered imminently via an
10 'alternative route', rather than
11 being discussed at Operations as
12 I and others had wished."
13 28819 Do you have any idea what alternative
14 route was either mentioned or understood by you?
15 28820 THE HON. ELMER MacKAY: I'm sorry,
16 Mr. Roitenberg, would you just repeat?
17 28821 I was glancing at another paragraph.
18 28822 MR. ROITENBERG: I apologize. The
19 first paragraph sets out that you had been advised that
20 the matter "would be considered imminently via an
21 'alternative route'..." In fact, it says you received
22 a personal assurance from Mr. Spector.
23 28823 I'm curious as to what alternative
24 route you understood that to be or if one was
25 specifically mentioned.

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1 28824 THE HON. ELMER MacKAY: Well, my
2 present recollection or understanding would be that it
3 would have to be -- it would have to be one of the
4 alternatives that Thyssen might be persuaded to bring
5 to Nova Scotia that would less expensive, having to do
6 with -- for example, there was a large requirement for
7 coal scrubbers and stuff at the Lingan Coal Mine.
8 There was a need to do something at Trenton industries
9 in Trenton, Nova Scotia.

10 28825 It would seem to me -- and I can't
11 recall specifically -- but a company this large and
12 this diverse, I would have hoped that we could have
13 gotten some business from them.

14 28826 MR. ROITENBERG: No, sir. This
15 paragraph seems to be suggestive as an alternative
16 route to the process rather than going through the
17 Operations Committee; that you had received a personal
18 assurance that the Thyssen issue would be considered
19 via an alternative route, not to suggest that Thyssen
20 would proceed alternatively through a different project
21 but that the government would consider it via what
22 would have been a channel different than the ordinary
23 channels.

24 28827 THE HON. ELMER MacKAY: Well, I
25 can't -- I wish I could help you with that, Mr.

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1 Roitenberg, but I don't know what alternative channel
2 it would be other than having it discussed at Cabinet
3 or Operations Committee or what have you.

4 28828 COMMISSIONER OLIPHANT: Maybe the
5 answer lies in the second paragraph of that letter.

6 --- Pause

7 28829 THE HON. ELMER MacKAY: Yes, with the
8 Minister of Industry, Michael Wilson.

9 28830 You see, there is always the
10 financial considerations here. As you mentioned
11 before, Mr. Roitenberg, ACOA didn't have the financial
12 muscle as DND did to fund or to in any way advance this
13 except in a peripheral way. IST did, Finance did, but
14 some of the considerations that were put forward by
15 Peter Smith, of course, would be valid.

16 28831 So this particular initiative, if you
17 want to call it, was very hard to finally terminate.

18 28832 I was responsible in many ways for
19 keeping it alive, but there was I think a recognition
20 that the benefits that could accrue from this project,
21 if we could chop it down to size, would have been a
22 very good thing for Cape Breton, a very good thing for
23 regional development.

24 28833 MR. ROITENBERG: Mr. Spector, who
25 testified last week, testified to the fact that along

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1 the way someone had given the Prime Minister the
2 impression that this proposal could proceed at no cost
3 to the taxpayer.

4 28834 We know that you were having ongoing
5 communications with the Prime Minister, either by way
6 of letter or in person or by telephone. You were
7 reporting to him.

8 28835 Did you suggest in any way to the
9 Prime Minister that this matter could proceed at no
10 cost to the taxpayer?

11 28836 THE HON. ELMER MacKAY: No, sir, I
12 don't remember ever making such a statement because it
13 would be manifestly absurd. You couldn't get a project
14 of any size up and running without any cost to the
15 taxpayer.

16 28837 There were some offsets -- not
17 offsets, but there were some special programs involved,
18 Cape Breton Investment Tax Credit and things like that.
19 But all of them will ultimately be a cost to the
20 taxpayer.

21 28838 I said to you earlier and I am
22 probably being obstinate and stupid; I plead guilty to
23 that. But I still am somewhat bemused by the
24 tremendous costs, since we are talking costs, that DND
25 heaped on this project.

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1 28839 MR. ROITENBERG: Well --

2 28840 THE HON. ELMER MacKAY: But that is
3 their affair and I am not an expert in military
4 procurement.

5 28841 MR. ROITENBERG: Your focus wasn't
6 the procurement aspect on behalf of the military; it
7 was the regional developmental benefits --

8 28842 THE HON. ELMER MacKAY: Yes.

9 28843 MR. ROITENBERG: -- for Nova Scotia.
10 28844 Would that be fair?

11 28845 THE HON. ELMER MacKAY: That's fair.

12 28846 MR. ROITENBERG: The creation of the
13 jobs for Nova Scotia.

14 28847 THE HON. ELMER MacKAY: Yes.

15 28848 MR. ROITENBERG: And I say Nova
16 Scotia, because although the project had started off as
17 a proposal to be based in Cape Breton, it eventually at
18 some point moved outside of Cape Breton to Pictou
19 County; correct?

20 28849 THE HON. ELMER MacKAY: Yes, in a
21 very transitory way. It never went anywhere, but
22 Lavalin, another large Canadian company, eventually
23 came in and helped to resuscitate a very important
24 industry in Trenton.

25 28850 There was some suggestion that maybe

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1 Thyssen could be of some assistance there as well, but
2 that did not fly for very long.

3 28851 MR. ROITENBERG: Now again, in Pictou
4 County there would be a tremendous benefit to the local
5 economy and creation of jobs, and again this was
6 something that you were championing?

7 28852 THE HON. ELMER MacKAY: That's true.

8 28853 MR. ROITENBERG: When the discussions
9 occurred way back when, around the time of the
10 Understanding in Principle, September of 1988, you were
11 aware of all the efforts that Senator Lowell Murray,
12 who was then the Minister Responsible for ACOA, all of
13 the efforts he had engaged in to try to get some
14 consensus, some approval by Cabinet or the Operations
15 Committee or Planning and Priorities, some authority to
16 enter into some letter of comfort with Thyssen.

17 28854 Is that right?

18 28855 THE HON. ELMER MacKAY: Yes.

19 28856 MR. ROITENBERG: And you were aware
20 that to enter into any kind of agreement, there had to
21 be some authorization granted by the government itself
22 to you on behalf of ACOA to sign any agreement with
23 Thyssen; correct?

24 28857 THE HON. ELMER MacKAY: Yes.

25 28858 MR. ROITENBERG: If I can ask you to

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1 turn to Tab 29A...

2 28859 THE HON. ELMER MacKAY: I have 29B

3 and --

4 28860 MR. ROITENBERG: If you go back,

5 there should be an "A".

6 28861 COMMISSIONER OLIPHANT: I hate to do

7 this to you, Mr. Roitenberg, but is this the MOU?

8 28862 MR. ROITENBERG: Yes. You are

9 getting more and more comfortable, sir.

10 28863 THE HON. ELMER MacKAY: I am working

11 my way towards 29B, Mr. Roitenberg, but I don't see

12 29A.

13 28864 MR. ROITENBERG: If you go to Tab 29,

14 sir, there is a memo from the Assistant Deputy

15 Minister, Materiel. It is two pages long.

16 28865 THE HON. ELMER MacKAY: Yes.

17 28866 MR. ROITENBERG: Following that there

18 should be a divider marked "A", which would then have

19 the Memorandum of Understanding --

20 28867 THE HON. ELMER MacKAY: Yes, I have

21 it now.

22 28868 MR. ROITENBERG: Very good.

23 28869 At the top of the page it says

24 "November 1990" in handwriting.

25 28870 Do you see that, sir?

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1 28871 THE HON. ELMER MacKAY: Yes.

2 28872 MR. ROITENBERG: If you go to the
3 very end of the document, it appears to be signed on
4 behalf of the Government of Canada, and above the line
5 "Minister Responsible for the Atlantic Canada
6 Opportunities Agency", it appears to be your signature.

7 28873 THE HON. ELMER MacKAY: Yes.

8 28874 MR. ROITENBERG: Under the line for
9 Bear Head Industries Limited, "Mr. Karlheinz Schreiber,
10 Chairman", there appears to be the signature of Mr.
11 Schreiber.

12 28875 THE HON. ELMER MacKAY: Yes.

13 28876 MR. ROITENBERG: And there seems to
14 be a blank above "Minister of National Defence".

15 28877 THE HON. ELMER MacKAY: Yes.

16 28878 MR. ROITENBERG: I am curious, sir,
17 as to when and from what body you received the
18 authority to sign this document on behalf of the
19 Government of Canada.

20 28879 THE HON. ELMER MacKAY: This
21 particular Memorandum of Understanding, to the best of
22 my knowledge -- and I don't have a lot of recollection
23 of it -- was probably prepared by ACOA, and I think it
24 had a history of wanting certain undertakings put in
25 this Memorandum of Understanding with respect to the

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1 undertakings that Thyssen would have not to divest
2 itself of Bear Head Industries and to do certain
3 things.

4 28880 In answer to your direct question, I
5 have no recollection of the actual signing or who
6 prepared this. It was the second one.

7 28881 The first one, of course, as you
8 know, was signed by the same parties, only at that
9 time, I think, the Minister of Defence was Perrin
10 Beatty --

11 28882 MR. ROITENBERG: And Robert de
12 Cotret.

13 28883 THE HON. ELMER MacKAY: -- and Gerry
14 Merrithew.

15 28884 But this one, subsequently, I really
16 can't help you with that. I would like to, but I
17 can't.

18 28885 MR. ROITENBERG: Because in all of
19 the documentation that we have searched through, there
20 doesn't appear to be anywhere where cabinet approval
21 was given, or approval by the Operations Committee --

22 28886 THE HON. ELMER MacKAY: M'hmm.

23 28887 MR. ROITENBERG: -- but it was signed
24 by you and forwarded to Mr. Schreiber for his
25 signature.

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1 28888 THE HON. ELMER MacKAY: I see.

2 28889 MR. ROITENBERG: Further to that end,
3 maybe I could assist in how and when it was prepared.

4 28890 If you go to Tab 25A, this is a memo
5 to you from Peter Lesaux of ACOA.

6 28891 THE HON. ELMER MacKAY: This is 25A.

7 28892 MR. ROITENBERG: It is 25A, yes, sir.

8 28893 THE HON. ELMER MacKAY: "Additions to
9 the Bear Head Industries MOU"?

10 28894 MR. ROITENBERG: Yes.

11 28895 THE HON. ELMER MacKAY: Yes.

12 28896 MR. ROITENBERG: If you go to the
13 second-last paragraph on the first page, there is an
14 observation offered that:

15 "While Mr. Schreiber, the
16 Chairman of BHI, is a proposed
17 signatory of the MOU, my
18 understanding is that he has no
19 formal relationship with Thyssen
20 Industrie AG, and thereby may be
21 unable to commit the parent to
22 ownership of BHI."

23 28897 If you go to page 2, the second-last
24 paragraph on the page is a suggestion that you seek
25 some consultation with the Minister of National

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1 Revenue, and in the last paragraph it says:
2 "Finally, as you instructed..."
3 28898 -- and this is a memo to yourself:
4 "...the MOU has not been
5 circulated within ACOA or
6 interdepartmentally, and has had
7 no legal review. Prior to
8 signature, you may wish to seek
9 a final legal review, in order
10 to ensure the agreement binds
11 each party in the way they would
12 wish. Indeed, you may recall
13 that such a review was directed
14 by Cabinet prior to the signing
15 of the 'Understanding in
16 Principle', two years ago."
17 28899 THE HON. ELMER MacKAY: Yes.
18 28900 MR. ROITENBERG: Do you recall this
19 ever receiving any legal review, or you directing it to
20 have any legal review?
21 28901 THE HON. ELMER MacKAY: No, I do not.
22 28902 MR. ROITENBERG: Do you recall why
23 you instructed that it not be circulated within ACOA or
24 interdepartmentally?
25 28903 THE HON. ELMER MacKAY: No, I do not.

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- 1 28904 MR. ROITENBERG: There was a second
2 MOU prepared, and that is at Tab 38 of the book of
3 documents. This is April the 9th, 1991. Again, it is
4 sign by you on behalf of the ministry responsible for
5 ACOA, and signed by Mr. Schreiber as Chairman for Bear
6 Head Industries.
- 7 28905 Do you recall being provided with any
8 authority to enter into any such agreement by cabinet
9 or the Operations Committee or Planning and Priorities?
- 10 28906 THE HON. ELMER MacKAY: No, I do not.
- 11 28907 MR. ROITENBERG: Do you recall
12 offering this to the Minister of National Defence for
13 their perusal and signature at any time?
- 14 28908 THE HON. ELMER MacKAY: No.
- 15 28909 MR. ROITENBERG: If I could ask you
16 to turn to Tab 44, sir, this is a letter from Mr.
17 Schreiber to the Hon. Marcel Masse, who was the
18 Minister of National Defence in the spring of 1992.
19 This letter follows meetings between Mr. Schreiber and
20 then Prime Minister Mulroney, and a meeting between
21 yourself, Minister Masse and Mr. Schreiber, at which
22 the plan of moving the Thyssen Bear Head proposal to
23 East Montreal was discussed, and it was followed up
24 with meetings with officials of the Province of Quebec.
- 25 28910 Do you recall the timeframe that I am

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1 referring to, sir?

2 28911 THE HON. ELMER MacKAY: Not well, but
3 I have it fitted into, you know, a perspective.

4 28912 MR. ROITENBERG: OK. Our
5 understanding is that you were involved in some of
6 these meetings, and in further supporting the proposal,
7 as it was being suggested that it could potentially be
8 moved to Quebec.

9 28913 THE HON. ELMER MacKAY: I do
10 remember -- I am pretty certain that I remember meeting
11 with Marcel Masse, and that would be part of that
12 meeting that's mentioned there.

13 28914 And, yes, I do recall supporting the
14 project. I would have preferred to see it in Nova
15 Scotia, but east end Montreal was also an economic
16 disaster area.

17 28915 MR. ROITENBERG: But all of this
18 political capital had been spent by yourself and by
19 ACOA championing the jobs for Nova Scotia. Resources
20 of ACOA had been spent championing the boon to the
21 economy for Nova Scotia.

22 28916 THE HON. ELMER MacKAY: Right.

23 28917 MR. ROITENBERG: Now that there is
24 talk of moving it to Quebec, I would expect hue and
25 outcry from the minister responsible for ACOA, not

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1 support in moving it to East Montreal.

2 28918 What could the benefit possibly have
3 been for Nova Scotia?

4 28919 THE HON. ELMER MacKAY: There would
5 be no ostensible benefit for Nova Scotia, but the last
6 time I checked, Quebec is part of Canada, and if some
7 of my colleagues in Quebec thought they needed some
8 assistance, I had some familiarity with the project,
9 and I was not going to be a dog in the manger.

10 28920 MR. ROITENBERG: So rather than
11 folding up your tent and going home with talk of it
12 moving to Montreal, you were prepared to continue to
13 support a proposal in which you believed.

14 28921 THE HON. ELMER MacKAY: Yes.

15 28922 MR. ROITENBERG: Even if it lessened
16 the economic impact for the region you had been
17 fighting for.

18 28923 THE HON. ELMER MacKAY: I am not
19 certain that it would lessen the economic impact. I
20 don't recall thinking about it in those terms.

21 28924 If Nova Scotia was not able to
22 achieve it, Quebec, a larger province, with more
23 resources perhaps from their regional development
24 group, backed by some of my colleagues from that
25 province -- if they could have it, that would be fine

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1 with me. It would still be a benefit to Canada.

2 28925 MR. ROITENBERG: Now, at this point
3 in time you had been working for many years on this
4 project with Mr. Schreiber.

5 28926 Is that right?

6 28927 THE HON. ELMER MacKAY: Right.

7 28928 MR. ROITENBERG: This would have been
8 past your acquaintanceship and into the time when the
9 two of you had struck up a friendship.

10 28929 Would that be fair?

11 28930 THE HON. ELMER MacKAY: Yes.

12 28931 MR. ROITENBERG: Were you aware at
13 the time that if this project were to go ahead, Mr.
14 Schreiber was due to profit a considerable amount of
15 money?

16 28932 THE HON. ELMER MacKAY: I'm sorry,
17 would you repeat that?

18 28933 MR. ROITENBERG: Were you aware at
19 this time that if the project were to go ahead,
20 somewhere -- Quebec, Nova Scotia, Ontario, British
21 Columbia -- anywhere -- if this plant got built, these
22 LAVs got made and got sold, that Mr. Schreiber was due
23 to profit a rather substantial amount of money?

24 28934 Were you aware of that?

25 28935 THE HON. ELMER MacKAY: It never

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1 entered my mind. I wasn't aware of it, as such, no.

2 28936 It was not part of my thinking.

3 28937 MR. ROITENBERG: Well, this is now
4 your friend. He has been pushing for this proposal.
5 He has been pushing hard for the proposal. I imagine
6 you didn't think he was doing this just out of the
7 goodness of his heart.

8 28938 THE HON. ELMER MacKAY: Mr.
9 Roitenberg, it sounds incredibly naive for me to think
10 that, but I tell you, I watched Mr. Schreiber's
11 dedication and determination to try to get this
12 project, and, as I said to you before, I never equated
13 it with any success fees, or bonus payments, or
14 anything else.

15 28939 I would have liked to have seen
16 Thyssen and Mr. Schreiber achieve their objectives in
17 Canada and bring German industry into this country.

18 28940 MR. ROITENBERG: Sir, I want to take
19 you forward, if I could, to 1994 -- December of 1994.

20 28941 Now, you have told the Commissioner
21 that you had no business relationship with Mr.
22 Schreiber at any time, that the only time you were tied
23 with Mr. Schreiber in any way in a business
24 relationship was when you made an investment in a
25 company that potentially was looking at purchasing

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1 certain pasta machines from Mr. Schreiber. Correct?
2 28942 THE HON. ELMER MacKAY: Yes, that's
3 true.
4 28943 MR. ROITENBERG: In December of 1984,
5 you are out of government now for about 15 months.
6 28944 Would that be fair?
7 28945 THE HON. ELMER MacKAY: 1984 you
8 said?
9 28946 MR. ROITENBERG: 1994, excuse me.
10 28947 December 8th, '94. You are out of
11 government now for about 15 months or so?
12 28948 Is that right?
13 28949 THE HON. ELMER MacKAY: That would be
14 right.
15 28950 MR. ROITENBERG: You didn't seek
16 re-election in the October 1993 federal election.
17 Correct?
18 28951 THE HON. ELMER MacKAY: Correct.
19 28952 MR. ROITENBERG: On December 8th,
20 1994, or December 7th, 1994, you find yourself at The
21 Pierre Hotel in New York. Correct?
22 28953 THE HON. ELMER MacKAY: Yes.
23 28954 MR. ROITENBERG: My understanding,
24 from testimony we have heard, is that Mr. Schreiber and
25 his wife, in honour of your recent marriage at the

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1 time, invited you and your wife to be their guests in
2 New York and to accompany them to the Atlantic Bridge
3 function in New York on December 7th, 1994.

4 28955 Do you recall that, sir?

5 28956 THE HON. ELMER MacKAY: I do.

6 28957 MR. ROITENBERG: We have also heard
7 evidence that on December the 8th, 1994, you were
8 invited by Mr. Schreiber and his wife to be their
9 guests for lunch at The Pierre Hotel.

10 28958 THE HON. ELMER MacKAY: Yes.

11 28959 MR. ROITENBERG: We have heard
12 evidence that, unbeknownst to you, a couple of
13 gentlemen were shortly to join your luncheon -- former
14 Prime Minister Mulroney and Fred Doucet -- and they
15 did, in fact, join you for lunch. Correct?

16 28960 THE HON. ELMER MacKAY: Correct.

17 28961 MR. ROITENBERG: You had no idea that
18 they were going to be there, I understand.

19 28962 THE HON. ELMER MacKAY: That's my
20 understanding. I don't remember them coming.

21 28963 MR. ROITENBERG: They came, and it
22 was a rather brief lunch that they stayed for.

23 28964 Am I correct?

24 28965 THE HON. ELMER MacKAY: Yes.

25 28966 MR. ROITENBERG: In fact, I believe

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1 you have said that they ordered something which was
2 quickly prepared, they ate and they left before
3 everybody else was finished their lunch.

4 28967 THE HON. ELMER MacKAY: That's my
5 recollection.

6 28968 MR. ROITENBERG: They left together,
7 saying something about having to go to the airport.

8 28969 Am I right?

9 28970 THE HON. ELMER MacKAY: I believe
10 that's correct.

11 28971 MR. ROITENBERG: You had spent, in
12 your last years in government, much time, much
13 political capital, pursuing the Thyssen Bear Head
14 Project.

15 28972 Am I right?

16 28973 THE HON. ELMER MacKAY: Right.

17 28974 MR. ROITENBERG: We have heard
18 evidence that, prior to that luncheon, Mr. Mulroney,
19 Mr. Doucet and Mr. Schreiber met and perhaps had a
20 discussion that centred around the Thyssen Bear Head
21 Project, its status, whether anything could be done to
22 keep it going or make it happen, and that certain
23 payments were made.

24 28975 Is it your evidence, sir, that you
25 knew nothing of that meeting and nothing of those

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1 discussions?

2 28976 THE HON. ELMER MacKAY: That's my
3 evidence.

4 28977 MR. ROITENBERG: Would you have
5 expected, considering your involvement over so many
6 years at the forefront of pursuing this proposal, that
7 had such a meeting taken place, and had such a
8 discussion occurred surrounding the Bear Head Project,
9 somebody would have mentioned it to you at this
10 luncheon?

11 28978 THE HON. ELMER MacKAY: No.

12 28979 MR. ROITENBERG: It makes perfect
13 sense to you that these three gentlemen would meet in
14 New York, discuss the project that you had worked so
15 hard on, then come to lunch with you, and nobody would
16 say anything about the fact that they had just met,
17 discussed this project, discussed its future?

18 28980 That makes perfect sense to you, sir?

19 28981 THE HON. ELMER MacKAY: Well, whether
20 it makes perfect sense or not, Mr. Roitenberg, my
21 recollection is that that was never mentioned at the
22 luncheon.

23 28982 MR. ROITENBERG: It is your evidence
24 that you never knew anything of the payments from Mr.
25 Schreiber to Mr. Mulroney until you read about it in

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1 the paper.

2 28983 Is that correct?

3 28984 THE HON. ELMER MacKAY: That is my
4 recollection. I don't remember having any prior
5 knowledge of any such payments or proposed payments.

6 28985 MR. ROITENBERG: On this date,
7 December the 8th, 1994, though, you were in New York,
8 at The Pierre Hotel, you had lunch with all the
9 protagonists, and had no idea that payments had just
10 occurred. Correct?

11 28986 THE HON. ELMER MacKAY: Correct.

12 28987 MR. ROITENBERG: Sir, I am going to
13 ask you to turn to Tab 45 in your book of documents.

14 28988 THE HON. ELMER MacKAY: Yes.

15 28989 MR. ROITENBERG: These are diary
16 excerpts from Mr. Schreiber's diary of 1993.

17 28990 THE HON. ELMER MacKAY: Yes.

18 28991 MR. ROITENBERG: I would ask you to
19 turn to December the 17th, 1993.

20 28992 THE HON. ELMER MacKAY: Is that the
21 first page, Sunday the 13th?

22 28993 MR. ROITENBERG: No, sir.

23 28994 THE HON. ELMER MacKAY: I am into
24 1993 now.

25 28995 MR. ROITENBERG: Yes. The first page

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1 is Sunday, June 13th. I am going to ask you to forward
2 through to Friday, December 17th.

3 28996 It's approximately four pages or
4 three pages from the end.

5 28997 THE HON. ELMER MacKAY: Friday the
6 20th? No.

7 28998 I'm sorry, but I'm having trouble
8 getting --

9 28999 You say three pages from the end of
10 these excerpts?

11 29000 MR. ROITENBERG: Yes.

12 29001 THE HON. ELMER MacKAY: I am going to
13 the back now. I have December --

14 29002 MR. ROITENBERG: December the 20th,
15 the 21st, December the 18th and 19th, and then December
16 the 16th and 17th.

17 29003 THE HON. ELMER MacKAY: December the
18 16th and 17th, yes.

19 29004 MR. ROITENBERG: We have heard
20 evidence that on December 17th or December 18th,
21 according to Mr. Schreiber, \$100,000 was paid to Mr.
22 Mulroney in a hotel room in Montreal. On December
23 17th, at approximately 11 a.m., in Mr. Schreiber's
24 diary, is the notation, "Telephone Elmer".

25 29005 Do you see that, sir?

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1 29006 THE HON. ELMER MacKAY: Yes, I do.

2 29007 MR. ROITENBERG: Did Mr. Schreiber
3 advise you that he was going to be seeing Mr. Mulroney
4 that day and providing him with funds in relation to
5 the Bear Head Project, or funds for any reason?

6 29008 THE HON. ELMER MacKAY: No.

7 29009 MR. ROITENBERG: If you could keep
8 going backwards in this diary, about six pages from
9 where you are -- five pages, excuse me --

10 29010 THE HON. ELMER MacKAY: Monday the
11 29th?

12 29011 MR. ROITENBERG: One more page, sir.

13 29012 THE HON. ELMER MacKAY: Friday the
14 27th --

15 29013 MR. ROITENBERG: Friday the 27th of
16 August.

17 29014 THE HON. ELMER MacKAY: Yes.

18 29015 MR. ROITENBERG: We have heard
19 evidence that on this date Mr. Schreiber met with Mr.
20 Mulroney at a hotel near Mirabel and provided him with
21 \$100,000.

22 29016 THE HON. ELMER MacKAY: Yes.

23 29017 MR. ROITENBERG: You will see in the
24 diary that there is the notation, "Telephone Fred.
25 Telephone Brian. Telephone Elmer. Telephone Fred."

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1 29018 THE HON. ELMER MacKAY: Yes.

2 29019 MR. ROITENBERG: We have heard of
3 Fred and Brian's involvement, but the telephone call to
4 Elmer is what I wish to ask you about, sir.

5 29020 In this telephone call that Mr.
6 Schreiber may have made to you on August the 27th of
7 1993, did he advise you that he was going to be meeting
8 with Mr. Mulroney later that day and providing him with
9 cash?

10 29021 THE HON. ELMER MacKAY: Not that I
11 remember. Not at all.

12 29022 MR. ROITENBERG: Did he advise you
13 that he was going to be meeting with Mr. Mulroney in
14 furtherance of the Bear Head Project?

15 29023 THE HON. ELMER MacKAY: No.

16 29024 MR. ROITENBERG: Do you recall, sir,
17 meeting with Ms Brooks and Mr. Battista in Halifax
18 toward the end of 2008?

19 29025 THE HON. ELMER MacKAY: I do.

20 29026 MR. ROITENBERG: Do you recall
21 advising them at that time that you would have expected
22 either Mr. Schreiber or Mr. Mulroney to have said
23 something to you at that luncheon in New York about the
24 topic of their meeting that they had just had?

25 29027 THE HON. ELMER MacKAY: I don't

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1 recall making that remark; I may have.

2 29028 MR. ROITENBERG: If you had made that
3 remark, would it have been true?

4 29029 THE HON. ELMER MacKAY: No.

5 29030 I, first of all, didn't expect to see
6 anyone there but Mr. Schreiber and his wife Baerbel.
7 There was no conversation that I can remember involving
8 the meeting that allegedly took place in that hotel.

9 29031 MR. ROITENBERG: We have you at the
10 hotel on December the 8th, 1994. We have Mr. Schreiber
11 phoning you on December 17th, 1993 and August 27th,
12 1993, all dates that payments were made, allegedly, by
13 Mr. Schreiber to Mr. Mulroney.

14 29032 I am going to ask you to keep going
15 back in the diary, sir, to the 12th of July 1993.

16 29033 THE HON. ELMER MacKAY: This is
17 partly blurred.

18 29034 It's a Monday, is it?

19 29035 MR. ROITENBERG: Yes, sir.

20 29036 THE HON. ELMER MacKAY: Yes.

21 29037 MR. ROITENBERG: Do you see on the
22 right-hand side that it says "Elmer" at the third
23 notation from the top?

24 29038 THE HON. ELMER MacKAY: Yes.

25 29039 MR. ROITENBERG: It says, "ELMER DO.

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1 berchen," which is German for books. "Elmer do books."
2 29040 Do you have any recollection of
3 speaking with Mr. Schreiber on that day, or having any
4 conversations with him on that day?
5 29041 THE HON. ELMER MacKAY: None
6 whatsoever.
7 29042 MR. ROITENBERG: We are going to hear
8 evidence later this week that on July the 12th a
9 request or a direction was made by Mr. Schreiber of a
10 bank in Switzerland that \$500,000 be transferred from
11 the Frankfurt account to the Britan account.
12 29043 No contact with Mr. Schreiber on that
13 day?
14 29044 THE HON. ELMER MacKAY: No.
15 29045 MR. ROITENBERG: If you will turn
16 back, sir, to July the 5th, which is just one page
17 back --
18 29046 COMMISSIONER OLIPHANT: Just a
19 moment, I want to get this clear.
20 29047 Mr. MacKay said, at first, that he
21 didn't remember having contact with Mr. Schreiber that
22 day, and then you followed up by saying, "No contact
23 with Mr. Schreiber that day," and he said, "No."
24 29048 Mr. MacKay, I just want this for
25 clarification. Are you saying that no contact

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1 occurred, sir, or that, if it did, you don't remember
2 it?

3 29049 THE HON. ELMER MacKAY: Mr.
4 Commissioner, I received, as I think these excerpts
5 from Mr. Schreiber's daytimer will show, a lot of
6 telephone calls, and I do not remember the specifics of
7 any of the conversations, except I do know that there
8 was nothing in there about business or money or
9 anything like that.

10 29050 COMMISSIONER OLIPHANT: OK, thank
11 you.

12 29051 MR. ROITENBERG: Thank you, sir.

13 29052 I neglected -- on July the 12th there
14 is another notation with your name, "MacKay - Thyssen -
15 Massmann", at about 3 p.m. -- 1500 hours.

16 29053 But I take it your answer is the
17 same, that you don't recall any communication from Mr.
18 Schreiber that day?

19 29054 THE HON. ELMER MacKAY: No. I looked
20 at --

21 29055 I might say, if I may, that I looked
22 at these daytime extracts -- I looked at them, and I
23 can't make any sense out of them in terms of any
24 specific information or any of the conversations.

25 29056 MR. ROITENBERG: That's fair, sir,

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1 but I have one more question for you.

2 29057 If you could go back a page to July
3 the 5th --

4 29058 THE HON. ELMER MacKAY: July the 5th.

5 29059 MR. ROITENBERG: Yes.

6 29060 THE HON. ELMER MacKAY: This is 1993?

7 29061 MR. ROITENBERG: 1993, yes.

8 29062 We will hear evidence later this week
9 that this is a day where Mr. Schreiber contacts his
10 banker in Switzerland and asks that a bank account with
11 the rubric "Britan" be created --

12 29063 THE HON. ELMER MacKAY: Excuse me,
13 Mr. Roitenberg. I am sorry to be so fumbling here, but
14 this is --

15 29064 Is this July the 5th?

16 29065 MR. ROITENBERG: July the 5th, one
17 page back from where you were at July the 12th.

18 29066 THE HON. ELMER MacKAY: Monday, July
19 the 5th.

20 29067 MR. ROITENBERG: Yes, sir.

21 29068 THE HON. ELMER MacKAY: Yes?

22 29069 MR. ROITENBERG: At 1300 hours, or 1
23 p.m., on the date where Mr. Schreiber asks his banker
24 to create the bank account rubric "Britan" --
25 "Telephone Elmer".

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1 29070 Do you recall receiving a phone call
2 from Mr. Schreiber on that day?

3 29071 THE HON. ELMER MacKAY: No, I do not,
4 but Mr. Schreiber keeps meticulous notes, obviously,
5 and if he says that he phoned me, I am not going to say
6 that he didn't. But I don't remember getting the call.

7 29072 MR. ROITENBERG: Very well, sir.

8 29073 I am not certain if others have
9 questions of you, but those are mine. I thank you for
10 your time, sir.

11 29074 THE HON. ELMER MacKAY: Thank you,
12 sir.

13 29075 COMMISSIONER OLIPHANT: Thank you,
14 Mr. Roitenberg.

15 29076 Mr. Hughes...

16 29077 MR. HUGHES: Thank you, Commissioner,
17 we have no questions.

18 29078 COMMISSIONER OLIPHANT: No questions.
19 29079 Mr. Vickery...

20 29080 MR. VICKERY: No questions, thank
21 you.

22 29081 COMMISSIONER OLIPHANT: Mr.
23 Houston...

24 29082 MR. HOUSTON: No questions, thank
25 you, sir.

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1 29083 COMMISSIONER OLIPHANT: Mr. Auger...

2 29084 MR. AUGER: Very briefly,

3 Commissioner, please.

4 29085 COMMISSIONER OLIPHANT: Mr. MacKay,

5 Mr. Auger represents Mr. Schreiber.

6 EXAMINATION: THE HON. ELMER MacKAY BY MR. AUGER /

7 INTERROGATOIRE: L'HON. ELMER MacKAY PAR Me AUGER

8 29086 MR. AUGER: Good afternoon, sir. I

9 just have a couple of brief areas, with your

10 permission.

11 29087 THE HON. ELMER MacKAY: Good

12 afternoon.

13 29088 MR. AUGER: The first is, you had

14 told Mr. Roitenberg that Mr. Schreiber, although it has

15 been suggested that he stood to profit from the Bear

16 Head Project -- in your evidence, I think you were

17 about to list other reasons for Mr. Schreiber's

18 passion, and I just wanted to give you an opportunity

19 to do that.

20 29089 Are you able to tell the

21 Commissioner, aside from Mr. Schreiber's alleged profit

22 in the project, anything about other aspects of Mr.

23 Schreiber's interest?

24 29090 THE HON. ELMER MacKAY: Mr. Auger, I

25 had a chance to have many conversations with Mr.

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1 Schreiber, and when it came to economic projects and
2 military matters, I would say that he was a bit of an
3 idealist. He wanted very badly to see Canadian
4 soldiers with top-flight equipment. He wanted to see
5 Thyssen make an entré into Canada for a multiplicity of
6 purposes.

7 29091 I got the impression from Mr.
8 Schreiber that, in terms of this project, and in terms
9 of his involvement with Canada, it was more than money.

10 29092 I may not be articulating this very
11 well, but it was almost a commitment that he felt he
12 wanted to do for Canada, and he took it very badly when
13 it appeared that he wasn't going to be able to achieve
14 anything in this regard.

15 29093 MR. AUGER: You don't have to turn it
16 up, but at Tab 44, Mr. Roitenberg had taken you to a
17 letter addressed to Minister of Defence Marcel Masse,
18 at the time, and there was reference there to meetings
19 with Army generals.

20 29094 Go ahead, take your time, sir. It's
21 at Tab 44, just to give you the context --

22 29095 THE HON. ELMER MacKAY: "Four of your
23 senior Army generals"?

24 29096 MR. AUGER: Correct.

25 29097 I just wanted to see if I could

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1 refresh your memory about whether or not you and/or Mr.
2 Schreiber had participated in meetings with Army
3 generals about the status of the equipment at this
4 time.

5 29098 THE HON. ELMER MacKAY: Mr. Schreiber
6 had a couple of Army generals -- Canadian Army
7 generals -- whom he consulted, and it is possible that
8 I may have been privy to a couple of conversations he
9 had with them.

10 29099 I don't know whether I should mention
11 their names, in case I am miscalling them, but the
12 answer to your question is, yes, I believe I had at
13 least one conversation with a Canadian Army general.

14 29100 MR. AUGER: Does the name Army
15 General Jim Fox, by any chance, refresh your memory?

16 29101 THE HON. ELMER MacKAY: Yes.

17 29102 MR. AUGER: Does the name Army
18 General Gordon Reay refresh your memory?

19 29103 THE HON. ELMER MacKAY: I have spoken
20 with General Reay.

21 29104 MR. AUGER: And again, this is
22 specifically on the status of the appropriateness of
23 the equipment at the time?

24 29105 THE HON. ELMER MacKAY: That's my
25 knowledge -- that's to my knowledge. That would be the

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1 only subject, yes.

2 29106 MR. AUGER: And a final name to try
3 to refresh your memory, General Jack Vance. Does that
4 assist?

5 29107 THE HON. ELMER MacKAY: Yes, that is
6 another name with which I am familiar, by association
7 anyway.

8 29108 MR. AUGER: You also touched on your
9 evidence about this issue of the lack of a business
10 plan and I just want to ask you briefly. Did
11 Mr. Schreiber at any point indicate that a business
12 plan was unlikely until a startup order was achieved?

13 29109 Does that refresh your memory at all?

14 29110 THE HON. ELMER MacKAY: Well, if I
15 could make this comment, Mr. Schreiber, as you may
16 know, is a pretty straightforward and impatient man and
17 I seem to recall he felt that there needed to be some
18 action; that it was a fairly straightforward project
19 and if there was some movement or whatever, a business
20 plan -- look, I'm getting myself in difficulty here
21 because I don't remember all of the conversations.

22 29111 But I do remember we talked about a
23 business plan.

24 29112 MR. AUGER: Fair enough. Thank you,
25 sir. Those are my questions.

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1 29113 Thank you, Commissioner.

2 29114 COMMISSIONER OLIPHANT: Mr. MacKay,
3 did you want to finish that answer? Were you finished
4 when you said we talked about a business plan? Was
5 that the extent of your answer, sir?

6 29115 THE HON. ELMER MacKAY: Yes, that is
7 the extent of my answer.

8 29116 I think that I raised the issue we
9 need a business plan, or the bureaucrats need a
10 business plan or we should have a business plan. But I
11 don't remember any details following that.

12 29117 COMMISSIONER OLIPHANT: All right,
13 thank you.

14 29118 MR. AUGER: Thank you, Commissioner.

15 29119 COMMISSIONER OLIPHANT: Thank you,
16 Mr. Auger.

17 29120 Mr. Wolson, I take it that your
18 standing means there is no redirect examination?

19 29121 MR. WOLSON: No.

20 29122 COMMISSIONER OLIPHANT: No, what?

21 29123 MR. WOLSON: No, there is no
22 re-examination, Mr. Commissioner.

23 29124 COMMISSIONER OLIPHANT: All right.
24 Thank you.

25 29125 Is there any reason why, then, we

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1 can't excuse Mr. MacKay at this time?

2 29126 MR. WOLSON: No.

3 29127 COMMISSIONER OLIPHANT: Mr. MacKay, I
4 would like to, on behalf of the Commission, thank you
5 for your evidence, sir, and wish you well with your
6 health.

7 29128 Thank you very much. You are
8 excused, sir.

9 29129 THE HON. ELMER MacKAY: Thank you
10 very much, Commissioner.

11 29130 MR. WOLSON: We have no other
12 witnesses set for today. It is 4:15.

13 29131 There are two witnesses for tomorrow.
14 29132 Navigant will be testifying Wednesday
15 and Mr. Schreiber on Thursday.

16 29133 COMMISSIONER OLIPHANT: All right. I
17 take it that that concludes the business for today
18 then?

19 29134 MR. WOLSON: Yes.
20 29135 I might tell you that I have now
21 talked with all counsel, at least on the issue of when
22 Mr. Mulronee testifies next week, Tuesday, that he
23 would go from Tuesday to Friday if necessary as opposed
24 to Tuesday until Thursday and then have him come back
25 after the long weekend.

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1 29136 I had raised that with all counsel.
2 All counsel are in agreement on that score.

3 29137 I am waiting still to hear from Mr.
4 Auger as to his position on the request of
5 Mr. Mulroney's counsel, Mr. Pratte, that Mr. Pratte,
6 under our rules, be allowed to question his client
7 first by way of an examination in-chief and I don't
8 know whether...

9 29138 COMMISSIONER OLIPHANT: Mr. Auger, if
10 you are not in a position now to state your position,
11 that's fine, but could you indicate to me perhaps when
12 you might be ready to indicate your position on that
13 request?

14 29139 I just reiterate that if all counsel
15 do not agree to the proposal, we will have to have a
16 hearing where the issue is argued.

17 29140 MR. AUGER: Certainly. And I have
18 indicated to Mr. Wolson that I have one last inquiry to
19 consult with Mr. Greenspan on. Mr. Greenspan was in
20 court today. I did speak to Mr. Pratte and Mr. Wolson.
21 We have had a fruitful discussion and I hope to report
22 to Mr. Wolson within the hour on the final decision.

23 29141 COMMISSIONER OLIPHANT: I see. So
24 that tomorrow morning we should know one way or the
25 other?

1 29142 MR. AUGER: Before tomorrow morning.

2 29143 MR. WOLSON: Just to understand the
3 issue, because it would be slightly different than we
4 have done before with other witnesses, there is a
5 provision in the rules of this inquiry that enable a
6 party representing -- a party to the inquiry --

7 29144 COMMISSIONER OLIPHANT: It's Rule 36
8 in fact.

9 29145 MR. WOLSON: Yes. Representing a
10 client, may apply to the Commissioner to direct his own
11 witness.

12 29146 So Mr. Pratte would like to therefore
13 direct Mr. Mulronee in an examination in-chief with the
14 rules as it apply to examination in-chief, and we are
15 waiting to get information from all counsel.

16 29147 We have heard from others that they
17 would not be opposed and just for purposes of
18 clarification, then, I accept Mr. Auger's comments --

19 29148 COMMISSIONER OLIPHANT: Sure.

20 29149 MR. WOLSON: -- and we will hear from
21 him in due course today. I will then be in a position
22 to communicate to my friend Mr. Pratte, and we can, if
23 necessary, come back before you and arrange a date for
24 submissions.

25 29150 We don't have a lot of time, but we

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1 are working towards resolving the issue.

2 29151 COMMISSIONER OLIPHANT: All right.

3 29152 Just for the record I should perhaps
4 state that Mr. Pratte, in informing the Commission of
5 his desire to get permission to examine under Rule 36,
6 did so in a timely way.

7 29153 I received a letter from Mr. Pratte
8 on the 28th of April, and I appreciate the timeliness
9 of the request. I might just say that when I received
10 the letter, I asked Mr. Wolson to explore with all
11 counsel the possibility of a consensual resolution of
12 your request so that we could avoid having a hearing.

13 29154 MR. PRATTE: Thank you,
14 Mr. Commissioner.

15 29155 COMMISSIONER OLIPHANT: Fine.

16 29156 All right, then. We will adjourn now
17 until 9:30 tomorrow morning.

18 29157 MR. WOLSON: Good afternoon.

19 29158 COMMISSIONER OLIPHANT: Good
20 afternoon.

21 --- Whereupon the hearing adjourned at 4:20 p.m.,
22 to resume on Tuesday, May 5, 2009 at 9:30 a.m. /
23 L'audience est ajournée à 16 h 20, pour reprendre
24 le mardi 5 mai 2009 à 09 h 30

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